

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

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S.C. Supreme Court

KANDY GILLIARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001425

APPENDIX

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1 calling are? What about the EMS?

2 MR. DUTREMBLE: No, sir. The medical examiner took
3 care of that.

4 THE COURT: What about Sloan?

5 MR. DUTREMBLE: No, sir. He doesn't need to testify.

6 THE COURT: All right. Then, that will leave the ones
7 you've listed, that will leave in Marcare, Hagge, Emily
8 Gilliard, Cookie Gilliard, and Deckard; and you'll decide
9 on those. And you plan to call three of those five?

10 MR. DUTREMBLE: You can strike Cookie Gilliard, Your
11 Honor.

12 THE COURT: From the State's case.

13 MR. DUTREMBLE: And you can strike Marcare as well.

14 THE COURT: Okay. All right. Then we should get all
15 your case in -- pretty much all of it in, today, anyway.

16 MR. DUTREMBLE: Yes, sir. Hopefully.

17 THE COURT: Okay. We'll take ten, then, everyone.
18 Before you do, by the way, let the record reflect that
19 while Mr. Johnson and Johnson, both Johnsons testified.
20 That their attorneys, Mr. Pennington's in the courtroom the
21 entire time of Benjamin "B.J." Johnson's testimony, and the
22 attorney for Mr. Brian Johnson, Ellen Howard were in the
23 courtroom at the same time during the entire testimony.
24 And I had already told them beforehand if they had any
25 concerns about their testimony to please let me know and

1 I'd stop at that time. No one said anything at all. I
2 just want the record to reflect that. Thank you.

3 (WHEREUPON, there was a short recess.)

4 THE COURT: Any matters before we bring the jury in?

5 MR. DUTREMBLE: With the consent of Mrs. Gay, Your
6 Honor, we're going to move State's 27, the mask, into
7 evidence. And I will not be required to call another
8 witness.

9 THE COURT: All right. You'd have no objection to
10 State's 27, which is the mask, in evidence?

11 MRS. GAY: Just so that we let you know, Your Honor,
12 of how that does come in. My client's mother found it in
13 the house. And that's how it came in. Maybe, we can --
14 I'd like them to know how they found it, but I don't know
15 that you'd have to call her.

16 THE COURT: If you don't object, they don't have to
17 call her. And I'm not going to make a decision yet whether
18 you have to call her, or if you do object. But the
19 question at this stage is: Do you object?

20 MRS. GAY: No.

21 THE COURT: All right. State's 27 is in evidence
22 without objection.

23 (State's Exhibit Number 27 received in evidence.)

24 MR. DUTREMBLE: And if you want to draw up a
25 stipulation and put it in your case, that's fine. I'll

1 sign it.

2 MRS. GAY: That it was found in Cookie's closet, and
3 that it was provided by Kandy's family members.

4 THE COURT: Do you want to do a stipulation in his
5 case with regard to that? I won't in any way require you,
6 or have the record say that we're requiring you to open a
7 case.

8 MRS. GAY: Yes. We can do it in his case.

9 THE COURT: All right. Go ahead.

10 MR. DUTREMBLE: If Your Honor please, some how --
11 well, Your Honor has admitted the photograph of the body.
12 I somehow have marked two of them. One is marked 19 and
13 one is marked 14. I'd like the Court to make them all one.

14 THE COURT: All right. Does Mrs. Gay agree that
15 they're both the same photograph?

16 MR. DUTREMBLE: They're both the same photograph.

17 MRS. GAY: I would like to see the photograph.

18 THE COURT: The one that is marked 14 is the one I
19 admitted.

20 MR. DUTREMBLE: Number 19 somehow got marked in
21 advance, and I'll withdraw 19.

22 THE COURT: Well, 19 couldn't have been marked as
23 evidence; was it?

24 COURT REPORTER: It was marked for ID.

25 THE COURT: It's marked for ID. So you don't really

1 need to withdraw it. It's not in evidence. It's ID. So
2 19 is ID. You withdraw 19 for ID purposes.

3 MR. DUTREMBLE: Yes, sir. There's nothing written on
4 19 except "19".

5 THE COURT: Madam Court Reporter, we need you to make
6 sure it's not in evidence.

7 COURT REPORTER: It's ID only.

8 MR. DUTREMBLE: Thank you, Judge. That's all I have.

9 THE COURT: Anything else?

10 MR. DUTREMBLE: Nothing.

11 THE COURT: Okay. Let's go ahead and call your
12 witness so he can be coming around.

13 Bring the jury in, please.

14 (The jury returns to the courtroom.)

15 THE COURT: Okay. Next witness for the State?

16 MR. DUTREMBLE: We call Detective Scott Deckard, Your
17 Honor.

18 THE COURT: Come around, MR. Deckard.

19 SCOTT DECKARD, being first duly sworn,
20 testified as follows:

21 THE CLERK: Please, be seated. Please, give your full
22 name for the Court and spell your last.

23 WITNESS: Thomas Scott Deckard. D-e-c-k-a-r-d.

24 THE COURT: All right. Your witness, Mr. DuTremble.

25 MR. DUTREMBLE: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. DUTREMBLE:

3 Q. Detective Deckard, by whom are you employed?

4 A. The City of North Charleston Police Department.

5 Q. In what capacity, sir?

6 A. I'm a Detective Supervisor.

7 Q. And how long have you been with the City of North
8 Charleston?

9 A. I've been with the City for eight years.

10 Q. And how long have you been a Detective Supervisor?

11 A. For the last two. I've been in the Detective Division
12 for five.13 Q. All right. Have you had the occasion, sir, to become
14 involved in the investigation of the murder of Dawn Russ
15 that took place on January 5th of the year 2000?

16 A. Yes, I did.

17 Q. Did you have occasion, sir, on January the 9th of the
18 year 2000 to come into contact with the defendant in this
19 case, Kandy Gilliard?

20 A. Yes, sir, I did.

21 Q. And can you explain to the members of the jury where
22 you came into contact with Ms. Gilliard?23 A. I was called in to the North Charleston police a
24 little after 3:00 in the morning, around 3:15. I was told
25 that Ms. Gilliard had been located by members of the police

1 department, and been taken to the station. And that's
2 where I met her.

3 Q. And what was your purpose for meeting her at the
4 station, sir?

5 A. My purpose for meeting her at the station was to
6 interview her further in reference to the information that
7 the investigation had developed about Ms. Gilliard, and
8 what had occurred at The Game Room.

9 Q. Was anybody else present when you met with Ms.
10 Gilliard?

11 A. There were people outside the interview room. I was
12 the only one in the interview room interviewing her per se
13 at that time.

14 Q. And can you explain to the members of the jury what
15 kind of questions you were talking to Ms. Gilliard about?

16 A. For a while we -- I just spoke to her about background
17 information about her family, about friends, how she got
18 into the video poker playing, where she played at, things
19 of that nature for a good while.

20 Q. Now, during the time that she was with you, did you
21 threaten her in any way?

22 A. No, I did not.

23 Q. Did you make her any promises while you were talking
24 to her?

25 A. No, sir, I did not.

1 Q. And while you were talking with her, sir, did she make
2 any statements that implicated herself in the murder?

3 A. No, sir, she didn't.

4 Q. And did there come a time when you were talking with
5 her that she asked to speak to anybody else?

6 A. Yes, sir. About 6:15 in the morning, she asked to
7 speak to my supervisor.

8 Q. And who was your supervisor?

9 A. My supervisor was Sargent Hagge.

10 Q. And did Sargent Hagge go in the room with her?

11 A. Yes, he did. He went in the room alone with her.

12 Q. Where did you go?

13 A. I went outside in the detective bay to my desk.

14 Q. Did you have any further contact with Ms. Gilliard
15 while Detective Hagge was in with her?

16 A. While Detective Sargent Hagge was in the room, I did
17 not contact Ms. Gilliard.

18 Q. And what were you doing out there in the room?

19 A. I was just, basically, waiting for him to finish his
20 interview and come out of the room.

21 Q. And did he finally come out of the room?

22 A. Yes, he did.

23 Q. Approximately how long was he with Ms. Gilliard?

24 A. It was approximately forty-five minutes to an hour
25 later when he came out of the room.

1 Q. Did you have a conversation with him?

2 A. Yes, I did. He informed me ---

3 MR. DUTREMBLE: Well ---

4 MRS. GAY: Your Honor, I would object.

5 THE COURT: He stopped him.

6 BY MR. DUTREMBLE:

7 Q. Don't tell me what he informed you, but based upon
8 your conversation, can you tell the members of the jury
9 what actions you, then, took?

10 A. Yes. Based upon my conversation with him, I went back
11 into the interview room with a North Charleston Police
12 Department Advisement of Rights form. I then, showed Ms.
13 Gilliard that form; advised her of those rights; read it to
14 her, and had her read those rights; had her initial and
15 sign the form; and then she provided a written statement to
16 what had occurred at The Game Room.

17 Q. Well, in reference to the North Charleston Advisement
18 of Rights form, let me show you what's been previously
19 marked as State's Exhibit Number 1, and ask you if you can
20 identify this document, sir?

21 A. State's Exhibit one is the North Charleston Police
22 Department Advisement of Constitutional Rights form that I
23 issued to Kandy Gilliard.

24 Q. Now, does your signature appear on that form?

25 A. Yes, sir, it does.

1 Q. And does her signature appear on that form?

2 A. Yes, sir, it does.

3 Q. And can you tell the members of the jury what
4 constitutional rights you advised Ms. Gilliard of?

5 A. Yes, sir. I advised her of every single right. What
6 I usually do is I start at the top where it says "I" and
7 then her name, Kandy Latrice Gilliard, have been advised by
8 Detective Thomas Deckard of the North Charleston Police
9 Department. And then I read each of the rights to her.
10 And if she understands them, I ask her to initial the
11 rights on the side of the numbers.

12 Q. And did you read her those rights?

13 A. Yes, sir, I did.

14 Q. Would you tell the jury what rights you read to her?

15 A. Yes, sir. The first right is: I have the absolute
16 right to remain silent, do not have to answer any questions
17 or give a statement, and this fact cannot be used against
18 me.

19 Q. Now, did she initial that particular item?

20 A. She initialed beside the number.

21 Q. And what initials did she place beside that number?

22 A. K.G.

23 Q. For Kandy Gilliard?

24 A. For Kandy Gilliard.

25 Q. What was the second right that you gave her?

1 A. The second right is: If I do answer questions or give
2 a statement, anything I say can and will be used against me
3 in a court of law.

4 Q. Did she initial that?

5 A. Yes, she did.

6 Q. And what initials did she place beside that right?

7 A. Again, K.G.

8 Q. How about the third right?

9 A. The third right is: I have the right to consult with
10 a lawyer of my choice before I answer questions or give a
11 statement, and also have him present while I'm being
12 questioned. And, again, she initialled beside the 3 with
13 K.G. indicating that she understood it.

14 Q. How about the fourth right?

15 A. The fourth right is: If I wish to talk to a lawyer or
16 have him present, but am unable to afford to hire a lawyer,
17 one will be appointed to represent me free of charge. And,
18 again, she initialled beside the number indicating that she
19 understood that right.

20 Q. And how about the last one?

21 A. And the fifth right is: If I decide to answer
22 questions or give a statement without having a lawyer
23 present, representing me, I have the absolute right during
24 this interview to stop answering questions and to remain
25 silent. And, again, she initialled beside the number 5

1 with K.G.

2 Q. Now, after initialling all five of the constitutional
3 rights, is there anything printed below where she has
4 initialled?

5 A. Yes, there is. There is a next statement that states:
6 I fully understand each of these rights explained to me.

7 Q. Okay. Did she sign it?

8 A. Yes. She signed her name where it says "signature,"
9 and then I signed my name where it says "witness."

10 Q. What day did this take place on?

11 A. It took place on the 9th of January 2000.

12 Q. Now, below where she signed acknowledging her
13 understanding, is there another place for her to sign?

14 A. Yes, there is.

15 Q. And what is the statement that appears on that form
16 prior to the signing?

17 A. The statement is: Having these rights in mind, I wish
18 to waive these rights and answer the questions concerning
19 the charge of murder. No threats, force, or promises of
20 any kind have been made to me by anyone to cause me to
21 waive these rights, and or answer questions.

22 Q. Did she sign that?

23 A. Yes, she did.

24 Q. And did you sign that?

25 A. And I signed that as well.

1 Q. Did she get a copy of that?

2 A. Yes, she did.

3 Q. Now, did you use any kind of threats, force, or
4 coercion to get her to talk to you?

5 A. No, I did not.

6 Q. Let me hand you what's been marked as State's Exhibit
7 Number 2, and ask you if you can identify this document,
8 sir?

9 A. State's Exhibit Number 2 is the written statement that
10 I wrote for Ms. Gilliard at her request.

11 Q. All right. Explain to the members of the jury how
12 that procedure worked?

13 A. After I advised her of her rights, I, basically,
14 filled in the top part of the form which is her name and
15 her address and telephone number; and asked her if she
16 would like to write her statement, or I would like to write
17 her statement. She said, You can write it.

18 I, then, filled in the information where this, you
19 know, statement is given, 1/9/2000, at 0745, at North
20 Charleston Police Department.

21 Q. And did she tell you what happened?

22 A. Yes, she did.

23 Q. And did you write it down as she told you?

24 A. Yes, I did.

25 Q. Now, when she was explaining to you what happened,

1 were you able to understand her?

2 A. Yes, I was.

3 Q. And she appeared to be able to understand you?

4 A. Yes, she did.

5 Q. Did she respond to your questions?

6 A. Yes, she did.

7 Q. And at any time that she was giving you the statement,
8 did she indicate to you that she wanted to stop talking to
9 you?

10 A. No, she did not.

11 Q. Did she indicate that she wanted an attorney at any
12 time?

13 A. No, she did not.

14 Q. Did you threaten her in any way to get her to talk to
15 you?

16 A. No, I did not.

17 Q. Did you promise her anything to get her to talk to
18 you?

19 A. No, sir, I did not.

20 Q. Did you deprive her of the necessities of life, such
21 as using the bathroom or anything of that nature?

22 A. No, sir, I did not.

23 Q. Did you display any weapons in your getting to talk to
24 you?

25 A. No, sir. I had my departmental issued weapon on my

1 side, but it was never -- it was just there.

2 Q. Did you ever take it out of the holster?

3 A. No, sir.

4 Q. Was it ever displayed to her?

5 A. No, it wasn't.

6 Q. Did you threaten to have her children taken away from
7 her?

8 A. No, sir, I did not.

9 Q. Did you coerce her in any way to get her to talk to
10 you?

11 A. No, sir, I did not.

12 Q. Now, as she would tell you what happened, Detective
13 Deckard, and you would write it down as you described, what
14 happened when you would come to the end of the page?

15 A. At the end of the page we go to a second page. And
16 then, after we finish the complete statement, we go back
17 and, you know, read it either to her or together. And
18 she's able to make any changes. And then, she signs the
19 form at the end.

20 Q. All right. Did she make any changes?

21 A. Yes. There were several places where I either
22 misunderstood her, or just wrote down wrong what she said.
23 And at that point, we scratched through what was wrong and
24 add what she wanted to correct it with. And then, that was
25 initialled by her.

1 Q. And how would she initial that?

2 A. She initialled the places with K.G.

3 Q. The same as she had done on the Advice of Rights form?

4 A. The same as she had done on the Advice of Rights form.

5 Q. And in the end, did she go back and sign each and
6 every page of that five-page statement?

7 A. Yes, she did. At the bottom of each page there is a
8 statement that is read to her, and is also provided as
9 she's looking at it. It says: I have read the foregoing
10 statement or have had it read to me, and it is true and
11 correct to the best of my knowledge. I have given this
12 statement freely and voluntarily, and have been provided a
13 copy of my statement. And then, the process is that she
14 signs it and I sign it as well.

15 Q. And approximately what time of day did she give you
16 this statement?

17 A. This was approximately 7:45 in the morning.

18 Q. And can you tell the members of the jury from the
19 document, the exhibit which is in evidence, what Kandy
20 Gilliard told you about what happened at The Game Room on
21 January 5th of 2000?

22 A. Yes, sir. Would you like for me to read the whole
23 statement.

24 Q. Yes, sir, I would.

25 A. It begins: This statement is written for me by

1 Detective Deckard at my request, as I tell it to him. At
2 about 11:30 p.m. or 12:00 a.m. on January 4, 2000, I went
3 to The Game Room on Rivers Avenue next to Alex's to give
4 Dawn, the attendant, some antibiotics for her cold. I had
5 known Dawn for about six to seven months from going to The
6 Game Room to play video poker. I played the poker machine
7 for a little while.

8 Then, after a Korean lady left, Dawn came out of the
9 office and played for a little while, also. After we
10 played, we sat down in the office and watched t.v. Both of
11 us started dozing off, but I made a phone call. I paged my
12 sister's pager for somebody to come meet me. No one called
13 back. So, I guess, B.J. walked straight up there. I heard
14 tapping on the window and saw B.J., Benjamin Johnson, at
15 the door with a red, black, and yellow mask with furry hair
16 on his head.

17 I let him in thinking we were only going to hit her
18 for money, because we talked about it before. I let him
19 in, and he asked if we were still going to do it. And I
20 shrugged my shoulders. And he said, She's going to see us.
21 I ran to the back and got a trash bag off a roll of bags in
22 the back by the microwave. I ran back to the office with
23 the bag to cover her face so she wouldn't see us. B.J.,
24 when he first walked in, went to the back and wanted to use
25 a monkey wrench to hit her. But I told him, No. Because

1 all we wanted was the money. We didn't want to hurt her.

2 B.J. got the cord out of a trash can that had a bunch
3 of cords in them, and said, I'll use this. It won't hurt
4 her. First, B.J. went back to the office and put the cord
5 around her neck, and she looked like she was turning around
6 to see us. So I took the bag and put it around her head.
7 I didn't put it over her head so she couldn't see us. I
8 dug in her pocket and got the money out of her right
9 pocket, I think, and got the key out of her left pocket.
10 After I got the money and the key out of her pocket, she
11 fell on the floor. And I think the chair fell, too.

12 B.J. was kneeling down over her, and I was trying to
13 get the money and rushing to get out. I unlocked the lock
14 with the key, and took all the money and ran toward the
15 front door. I put the money in my purse, got the bicycle,
16 and left through the front door. I was gagging as I went
17 home, and as I was half way home, B.J. caught up with me
18 and we went to the house. When we got in the house, we
19 went to my room and took the money which was in bundles and
20 divided it. At about 4:00 a.m. I asked my mom if I could
21 use her car to go get cigarettes. She said, Bring my damn
22 car right back, too. And I left.

23 Before I went to get cigarettes, I stopped at Alex's
24 and placed my order for a double order of hashbrowns with
25 cheese and sausage patties. Then, I went to the Amoco and

1 got two packs of Newports and a lighter. I went back to
2 Alex's, picked my order up, and went back home. I tried to
3 eat the hashbrowns and sausage, but, to me, it was greasy.
4 I stayed in my room for the rest of the morning. Me and
5 B.J. talked. He said that he thinks that she might be
6 dead.

7 Later that day, the police picked me up from Brian
8 Johnson's house in Goose Creek, where me and B.J. went
9 because we were scared and didn't know what was going to
10 happen. We took North Area cab from Gas Lite Square to the
11 mall, then to Brian's house. We sat there for a little
12 while, and I talked to Mr. Bob while we were there. We
13 played cards and was watching Rap City or whatever it was.
14 That's when the detective called me back.

15 Me and B.J. panicked and put all the money in a
16 plastic bag. And Brian took it out to the tree in the
17 backyard and hid it. I sat there and waited on the
18 detective to come. Then they brought me to the police
19 station. The next day, me and B.J. talked about how we
20 were scared and he didn't mean to do it. I asked him what
21 happened to the money, and he said Brian had it. I didn't
22 talk to B.J., again, after that.

23 When B.J. came in The Game Room he had on black jeans,
24 a black hoody, and the ugly mask. He had gloves on his
25 hands. I was wearing a black sweater, blue jeans, and

1 green Reeboks.

2 And at this point, she was completed with her
3 statement, and I asked her if she would like to write
4 anything at the bottom of her statement which she did.

5 Q. What did she write on her statement?

6 A. She wrote on her statement: This is my statement,
7 truthfully and honest, I am sorry. Please, forgive me. We
8 -- I never meant for it to happen like this. I just only
9 wanted the money.

10 And it's signed, Kandy Gilliard, underneath that
11 statement.

12 Q. Did she write that part of it in her own hand?

13 A. She wrote that in her own handwriting.

14 Q. Now, did there come a time when she wrote anything
15 else for you?

16 A. Yes.

17 Q. And how did that come about, sir?

18 A. Later that morning, we received additional
19 information. And I went back in the room with a series of
20 questions, four questions.

21 Q. Did you write those four questions out?

22 A. Yes, I did.

23 Q. And did you ask her to write her responses to those
24 questions?

25 A. Yes, I did.

1 Q. Did she do so in her own hand?

2 A. Yes, she did.

3 Q. And did she sign after she answered those questions?

4 A. Yes, sir, she did.

5 Q. Can you tell the members of the jury what those four
6 questions were and what the responses were?

7 A. Yes, sir. The first question was: Where did you take
8 the money from? And she wrote: I took the money from
9 black file cabinet and Dawn's pocket. And initialled, K.G.
10 at the end of her writing.

11 The second question was: How much money was taken?
12 She wrote: Around \$1200 and initialled K.G. at the end of
13 that statement.

14 The third question was: What did you do with the
15 padlock? She wrote: I dropped it. And, again, initialled
16 above that.

17 The fourth question: What was the plan for splitting
18 up the money afterwards? She wrote: Half and half. And,
19 again, initialled it. And she also signed the bottom of
20 the form after it was read that, you know, she has read the
21 foregoing statement, or had it read to me and it is true
22 and correct to the best of my knowledge having given this
23 statement freely and voluntarily and I have been provided a
24 copy of my statement.

25 Q. And was she given a copy of her statement?

1 A. Yes, she was.

2 Q. And since giving a copy of the statement that you've
3 described to the jury, has she ever recanted that statement
4 that she told you?

5 A. No, sir. Not to my knowledge.

6 Q. She never called you up and said, That's not what
7 happened?

8 A. No, sir, she didn't.

9 Q. And after obtaining this written statement from her
10 and that she signed and made changes on, as you described,
11 did you thereafter have any further contact with this
12 particular case?

13 A. No, sir. I didn't.

14 Q. All right. Were additional arrest warrants issued as
15 a result of that statement?

16 A. Oh, yes. Yes, sir. There were additional people that
17 were identified and arrested pursuant to the statement.

18 Q. And who were those people?

19 A. Brian Johnson and Benjamin Johnson.

20 Q. At any time, before, during, or after Kandy Johnson,
21 (sic) did you threaten her or coerce her in any way to get
22 her to talk to you to give that statement?

23 A. No, sir. I did not.

24 Q. Did you make any promises at all concerning what
25 sentence she might receive, or what charges might be placed

1 against her?

2 A. No, sir, I did not.

3 Q. Did you make any representations to her at all what my
4 office, a judge, or any other person might do as a result
5 of her talking to you?

6 A. No, sir, I did not.

7 Q. Thank you, Detective Deckard. Please, answer Mrs.
8 Gay's questions.

9 THE COURT: All right. Cross-examination, Mrs. Gay.

10 MRS. GAY: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MRS. GAY:

13 Q. Detective Deckard, I believe that you are actually a
14 detective at the North Charleston Police Department?

15 A. Yes. I am a Detective Supervisor at the North
16 Charleston Police Department.

17 Q. And pursuant to that, you have had some type of
18 training to be a detective; haven't you?

19 A. Yes.

20 Q. And not all officers have that type of training that
21 you have?

22 A. I was fortunate enough to attend several detective level
23 schools.

24 Q. And I believe that you said that you came in during
25 this situation at about three o'clock in the morning?

1 A. It was a little after 3:00. Yes.

2 Q. But you're aware that Ms. Gilliard had been at the
3 North Charleston Police Department, in that room, for quite
4 a while -- not exactly sure how long, but for quite a while
5 before you got there?

6 A. I know that she was contacted by other officers before
7 my arrival. I don't know exactly when or how long she had
8 been there.

9 Q. So before you got there at 3:00 in the morning, you
10 know that she was brought there by some other officers
11 earlier that night?

12 A. Yes, ma'am.

13 Q. And, certainly, you say that sometime around three
14 o'clock in the morning you started talking to her. And I
15 believe the statement that you've referred to is, actually
16 signed at 7:45 in the morning; isn't it?

17 A. Yes, ma'am.

18 Q. So that would be some four hours and forty-five
19 minutes or so after you got there, certainly?

20 A. Yes, ma'am.

21 Q. And longer in the light of the fact that she had been
22 there at the Detective Division before you arrived?

23 A. Yes, ma'am. That's true.

24 Q. And that during this period of time, this is,
25 basically, in the middle of the night?

1 A. Yes, ma'am, or early morning.

2 Q. Early morning, middle of the night, not four o'clock
3 in the afternoon?

4 A. That's correct.

5 Q. And, certainly, you would agree that it was kind of an
6 unusual time to be interviewing somebody in a case until
7 three o'clock in the morning?

8 A. Whenever we make contact with somebody that we need to
9 interview, that's what time we interview them.

10 Q. And the reason that you needed to interview her in
11 this case, I believe, is because you had information about
12 her presence at this crime scene; didn't you?

13 A. Yes, ma'am. We knew that she was there. She was one
14 of the last people there in the video game room that night.

15 Q. I think you, also, knew that there had been a
16 fingerprint of hers identified on the trash bag that was
17 under the deceased's body?

18 A. Yes. I was aware of the fingerprint on the trash bag.

19 Q. And I believe you, also, were aware and indicated that
20 she was somebody who you believed -- you believed -- had
21 information about this incident?

22 A. It was very possible from the information that we
23 gathered that she may have seen something, may have seen
24 the person, and just had not disclosed it to us.

25 Q. Right. Had not disclosed it to us. And you're, also,

1 aware that she had given a previous statement where she
2 said that she didn't know anything about this?

3 A. Yes. That's correct. I was aware of that.

4 Q. And so in light of the fact that she had given some
5 information previously, that you believe may have been
6 false information; right?

7 A. That's correct.

8 Q. And when people actually give false information, they
9 can actually be arrested for charges for giving false
10 information; can't they?

11 A. They can be arrested for providing a false statement.
12 However, that's a discretionary ---

13 Q. They can be arrested?

14 A. They can be. But that's a discretionary call that we
15 didn't feel it was necessary at that time to do that.

16 Q. I understand that. But they can be arrested for it?

17 A. It's possible.

18 Q. And they can, also, be arrested for being some type of
19 accessory to a crime; can't they?

20 A. That is a charge.

21 Q. And, also, misprision of a felony, which is when you
22 don't provide information to the police that you may know
23 afterwards, can be charged as a crime?

24 A. I know misprision of a felony is a crime. I don't
25 know the exact reading of the statute.

1 Q. And so, certainly, you knew that she had at one point
2 said that she didn't know anything about it. But, yet, at
3 three o'clock in the morning on the 9th, you were pretty
4 convinced that she had some information; that she knew
5 about it?

6 A. Based on our investigation and what we had uncovered,
7 it was a very good chance that she knew what happened or
8 had seen who did it.

9 Q. Right. And so at that night, I believe, you testified
10 that it was your goal that night to find out information
11 from her about what she may know about this incident?

12 A. We were interviewing her based on the information that
13 we had received, whether or not she did see anything or
14 not.

15 Q. And at that point when you were talking to her, you
16 showed her some pictures of Ms. Russ?

17 A. I believe, I showed her one picture.

18 Q. And do you recall saying to her that you wanted her to
19 tell you who did this to her friend?

20 A. I don't recall my exact words, but it may have been
21 stated in that manner.

22 Q. Do you recall, specifically, stating to her that she
23 was a witness in this case?

24 A. I was unaware of her level of involvement in the
25 incident, until after Sargent Hagge met with her. At the

1 point I was speaking to her, she had made no statements to
2 me as to her involvement in the incident whatsoever. So
3 the statement that she may just be a witness might have
4 been spoken.

5 Q. You may have told her that she was, maybe, just a
6 witness in this?

7 A. I may have told her she may have been a witness.

8 Q. Do you recall telling her that Ms. Russ or, Dawn, her
9 friend, didn't deserve this to happen to her?

10 A. That was probably said during the interview as well.

11 Q. And so do you recall at a certain point -- you said
12 that this interview happened about 3:00 in the morning, but
13 isn't it true that sometime around 4:00 or 5:00 in the
14 morning, Ms. Gilliard became very emotionally upset and was
15 crying?

16 A. Yes. During the later part of the interview she did
17 get upset and was crying.

18 Q. And she was crying, and she was telling you she was
19 scared?

20 A. Yes. I believe that's what she said.

21 Q. And at that point, I think, she even said that she
22 asked you if she could leave?

23 A. Yes. She asked me, When can I leave?

24 Q. And I believe you actually said to her: Yeah, you can
25 leave, but right now we're going to keep doing this,

1 because I need to find out what happened to your friend,
2 Dawn. And I think you know about this?

3 A. She asked me, When can I leave? And I said, Anytime,
4 but we are here for your friend. We'd like to resolve
5 this. She made no effort to stand up, leave the room, get
6 out of the chair. She sat there, and she kept speaking to
7 me as I spoke to her.

8 Q. And I believe -- well, let me get this straight.
9 You've got a big room with a small conference area where
10 you and she are the only two people talking in that room;
11 right?

12 A. We are in a room. Yes.

13 Q. And outside of that room at 3:00, 4:00, or 5:00 in the
14 morning are some other officers that stand between you and
15 her in the entrance door out the building; isn't there?

16 A. I don't know which officers were outside the interview
17 room while I was inside. I know Sargent Hagge was there,
18 because I contacted him when I came out. But I don't know
19 what other officers were inside the Detective Division.

20 Q. And, certainly, she would have had to have gone
21 between -- left your room, gone through these -- Hagge, or
22 whoever else is out there to actually get out the building?

23 A. She would probably have to pass those people. She
24 made no effort to leave her chair and get up out of the
25 door.

1 Q. But, certainly, you said to her that she can leave,
2 but right now you were going to keep asking her questions
3 about her friend, Dawn?

4 A. She asked me, When can I leave? And I said, Anytime,
5 but we're here for your friend, Dawn. We'd like to resolve
6 this.

7 Q. And at this point, I think you're clear, and it's true
8 that she was crying and she was scared and she was upset?

9 A. She was crying. I don't know why she was crying. I
10 can't explain why she was crying.

11 Q. Now, this person -- I know, pursuant to your
12 involvement in this case, this lady -- certainly, you have
13 pictures -- this was a pretty large woman; wasn't it?

14 A. Yes, it was.

15 Q. And at the time, Ms. Gilliard, was a pretty petite
16 woman, about 135 pounds?

17 A. Yes. She was smaller than she is, today.

18 Q. And so do you recall telling her that based on your
19 view of it that there was no way that she could have
20 strangled this woman?

21 A. I don't recall saying that.

22 Q. You don't recall talking to her at all about how this
23 crime had to be committed by somebody else?

24 A. I don't recall saying that somebody else did it.

25 Q. But you said, specifically, that you believe that she

1 had information; that she may have seen something, or she
2 may have been -- had some knowledge about this that she
3 wasn't telling y'all?

4 A. That's correct. With our information, we didn't know
5 her level of involvement while I spoke to her that night or
6 early that morning.

7 Q. And by the time, I believe, you said that Hagge came
8 in -- Sargent Hagge came in and you left the room?

9 A. Yes. I left the room when she asked to speak to my
10 supervisor. I walked out of the room, advised him that she
11 wanted to speak to him, and he went in the room.

12 Q. And, I think, your testimony was that he stayed in
13 there for about forty-five minutes?

14 A. Forty-five minutes to an hour. I'm not sure of the
15 exact time.

16 Q. And you have no idea of what actually went on in
17 there?

18 A. No. I don't know what the discussion was other than
19 what he told me.

20 Q. And when you came back, I believe, you said that
21 Sargent Hagge said to get a form and go in there and talk
22 to her and get a written statement?

23 A. Based upon what he had told me and informed me that
24 occurred in the interview room ---

25 Q. Well, I'm not asking you what he told you.

1 A. --- I took the form in the room.

2 Q. I'm asking what your understanding was?

3 A. Based upon what he informed me of, I took the
4 statement into the room with me and the advisement of
5 rights.

6 Q. And I believe you said that this advisement of rights
7 was what you, actually -- this is marked as State's Exhibit
8 1 -- is what you, actually, had her go over?

9 A. Yes. That's the original advisement of rights.

10 Q. And I believe you testified that you went through all
11 this with her, and that she signed her initials on it?

12 A. Yes, I did.

13 Q. And that this was some time around the time period
14 when she signed the documents or you're writing out this
15 written statement for her?

16 A. It was directly before I began writing her written
17 statement.

18 Q. And we know that the written statement was written
19 about seven something in the morning?

20 A. That's correct.

21 Q. Now, I want you to look at this form. And I want you
22 to go to about the middle of the page. Is there a -- there
23 is a date on this form; isn't there?

24 A. Yes, there is a date.

25 Q. And that's 1/9/2000?

1 A. Yes. That's correct.

2 Q. But there is no time on this; is there?

3 A. There is no time on this form.

4 Q. And you were the one that was having her complete this
5 form?

6 A. Yes, I was.

7 Q. So you were the one that should have a put a time on
8 it?

9 A. Yes, I was.

10 Q. But you didn't?

11 A. I did not put a time on it.

12 Q. And with regard to the statement, I believe, that you
13 testified that you wrote? You did write it?

14 A. Yes. I wrote it for her.

15 Q. For her. And as she's talking, you're writing?

16 A. Yes.

17 Q. And in the end you said that she signed it?

18 A. Yes. She signed it all ---

19 Q. And you saw her sign it?

20 A. Yes. She signed all four pages of it.

21 Q. And she signed this other form, and, I believe, her
22 statement was signed at 7:45 in the morning?

23 A. Around there or a little later. It's rather lengthy
24 to get everything written down what she says in a calm
25 fashion to make sure everything's right.

1 Q. Well, let me go back to that "in a calm fashion." She
2 was pretty upset at that point; wasn't she? Crying, upset?

3 A. She was still emotional. However, I could understand
4 her, and I wrote down as she told me. And she even had the
5 opportunity to review and make changes to her statement.

6 Q. Do you recall her saying anything to you about fearing
7 for her children, or fearing for her mother or sister about
8 who did this?

9 A. I believe she indicated during that, that she was
10 afraid of something.

11 Q. Afraid of the person who committed the act?

12 A. It's very possible she could have said that.

13 Q. Because she told you she was afraid of B.J.?

14 A. It's very possible that she could have said that.

15 Q. And she told you that she was afraid that in giving a
16 statement that she was afraid of him?

17 A. It's possible.

18 Q. But she definitely was emotionally upset and crying?

19 A. By the point that I took the statement, she was not as
20 emotional and crying as she had been earlier, prior to
21 Sargent Hagge speaking with her. She was clear and concise
22 in what she was telling me. And, like I said, she
23 initialled her changes in her statement and signed the
24 bottom of the form after the statement at the bottom was
25 read to her.

1 Q. So is it fair to say that she was the most upset and
2 the most emotional after a couple of hours of talking to
3 you before she talked to Detective Hagge?

4 A. She was more emotional before she spoke to Sargent
5 Hagge. Yes.

6 MRS. GAY: One moment, please, Your Honor.

7 THE COURT: Yes.

8 BY MRS. GAY:

9 Q. During the course of this time where she's getting
10 upset, you admit that you yelled at her; didn't you? That
11 you raised your voice, and were telling her to tell you
12 what happened to her friend?

13 A. I don't recall raising my voice.

14 Q. You don't recall that. But you do recall her being
15 very very upset?

16 A. I do recall her crying. She was emotional.

17 Q. And you were telling her that you believed she had
18 information that would help y'all figure out who did this
19 to her friend?

20 A. Based upon her reactions to what I was saying, it was
21 believed to me that she knew more than she was telling us.

22 Q. Right. And, certainly, as you're doing this -- it
23 starts at three o'clock in the morning and somehow ends
24 around 7:30, there's a progression in there where you
25 realize -- you, yourself, realize -- that you may be

1 getting to her; that you may be getting to the heart of her
2 knowledge that she knew something?

3 A. That's correct.

4 Q. And that there was a point where when you saw that she
5 became less and less emotionally stable?

6 A. She was crying and she was emotional by the end of the
7 time that I spoke to her and Sargent Hagge went in the
8 room.

9 Q. And let me ask you just a real direct question: When
10 you were talking to her, you were trying to get
11 incriminating information about this incident if there was
12 any to get; weren't you?

13 A. We did not know her level of involvement. We were
14 trying to get any information that she might have been
15 hiding from us.

16 Q. And if she was hiding information, you've already
17 testified that that can be incriminating?

18 A. If somebody is hiding information, there is a
19 possibility that they can be charged. However, there must
20 be other evidence indicating that -- prove that they're
21 lying, basically.

22 Q. So if you can prove they're lying, you can charge them
23 with a crime. And if they're lying, that's incriminating
24 for criminal purposes?

25 A. For the crime of obstructing justice or whatever that

1 may be.

2 Q. Or misprision of a felony?

3 A. Or misprision of a felony.

4 Q. Or accessory of some sort; right?

5 A. Yes, ma'am.

6 Q. And those are crimes that a person can implicate
7 themselves for?

8 A. Yes, they are.

9 MRS. GAY: I have not further questions, Your Honor.

10 THE COURT: Anything else?

11 MR. DUTREMBLE: Nothing further, Your Honor.

12 THE COURT: You may step down.

13 Any requirement that Detective Deckard stick around?

14 MRS. GAY: Your Honor, I have one more question I

15 forgot to ask. A very important question.

16 THE COURT: Come around, Officer.

17 MRS. GAY: Sorry. I apologize.

18 THE COURT: You're still under oath, Officer. Please,
19 have a seat.

20 CONTINUED CROSS-EXAMINATION

21 BY MRS. GAY.

22 Q. You're familiar with what we call the Miranda
23 warnings?

24 A. Yes, ma'am, I am.

25 Q. And those Miranda warnings, I believe, you,

1 specifically, said you had Ms. Gilliard sign in the written
2 form at 7:00 or so in the morning?

3 A. Yes, ma'am.

4 Q. And you're familiar with the fact that all of these
5 rights, which I'll have you read again off this statement
6 -- can you read these rights, again, one through five?

7 A. Yes, ma'am. I have the absolute right to remain
8 silent and do not have to answer any questions or give a
9 statement. And this fact cannot be used against me. Two,
10 if I do answer questions or give a statement, anything I
11 say can and will be used against me in a court of law. I
12 have the right to consult with a lawyer of my choice before
13 I answer questions or give a statement. Also have him
14 present while I am being questioned. If I wish to talk to
15 a lawyer or have him present, but am unable to afford to
16 hire a lawyer, one will be appointed to represent me, free
17 of charge. If I decide to answer questions or give a
18 statement without having a lawyer present representing me,
19 I have the absolute right during this interview to stop
20 answering questions and to remain silent.

21 Q. And your testimony is that at about seven o'clock in
22 the morning you had Ms. Gilliard sign this form?

23 A. It was directly before the written statement was
24 taken.

25 Q. Okay. Back when at three o'clock in the morning when

1 you started talking to Ms. Gilliard, you never said to her
2 anything like this; did you?

3 A. No, ma'am, I didn't.

4 Q. You didn't give her any of these Miranda warnings at
5 three o'clock in the morning when you started questioning
6 her about this incident?

7 A. No, ma'am, I didn't. Like I said, she may have been a
8 witness and just been hiding that fact.

9 Q. Certainly, you did testify, though, as it started and
10 you realized that you were starting to get somewhere, and
11 you started seeing her emotional level go up, you didn't at
12 that point stop and say, By the way, you have the right to
13 remain silent and an attorney; what you say can be used
14 against you; did you?

15 A. No, ma'am. She was not in custody, and she could
16 leave whenever she wanted to.

17 Q. That's your opinion; isn't it? That she wasn't in
18 custody?

19 A. I had told her she could leave at anytime.

20 Q. And she did actually ask to leave, but you said, No,
21 we're going to keep on, because you need to help us?

22 A. She said, When can I leave, and I said, Anytime, but
23 we're here for your friend, Dawn. And she kept speaking to
24 me as I was speaking to her. She did not make any attempt
25 to get out of the chair and walk out of the room.

1 Q. I understand that. But, certainly, you made not
2 attempt to give her these warnings, either; did you?

3 A. Not at that point. No, ma'am.

4 MRS. GAY: Thank you. No further questions, Your
5 Honor.

6 THE COURT: Any other questions?

7 MR. DUTREMBLE: No, sir, Your Honor.

8 THE COURT: All right. Now, you may step down.

9 WITNESS: Thank you.

10 (The witness leaves the witness stand.)

11 THE COURT: Do you all have any requirement that he
12 remain under subpoena?

13 MR. DUTREMBLE: None from the State, Your Honor.

14 MRS. GAY: No, Your Honor.

15 THE COURT: All right. You may stay in the courtroom
16 or go back to your duty, one or the other.

17 Next witness?

18 MR. DUTREMBLE: We call Detective Ken Hagge, Your
19 Honor.

20 KEN HAGGE, being first duly sworn,
21 testified as follows:

22 THE CLERK: Please, be seated. Please, give your full
23 name for the Court, and spell your last.

24 WITNESS: Ken Hagge. H-a-g-g-e.

25 THE COURT: All right. Your witness, Mr. DuTremble.

1 MR. DUTREMBLE: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. DUTREMBLE:

4 Q. Detective Hagge, by whom are you employed?

5 A. The City of North Charleston Police Department.

6 Q. And what capacity are you employed?

7 A. I am a Detective Sargent in charge of the major case
8 unit and general investigations.

9 Q. And how long have you been with the City of North
10 Charleston Police Department?

11 A. I've been with the City of North Charleston twelve
12 years. I've been a supervisor since about 1994.

13 Q. And as a supervisor of the Detective Division, did you
14 have occasion, sir, to become involved in the investigation
15 of the murder of Dawn Russ?

16 A. Yes, sir, I did.

17 Q. And pursuant to that participation in the
18 investigation of the murder, did you have an occasion to
19 come into contact with the defendant, Kandy Gilliard, on
20 January 9th of the year 2000?

21 A. Yes, sir, I did.

22 Q. And can you explain to the members of the jury how you
23 happened to come into contact with Ms. Gilliard on that
24 day?

25 A. On the 9th, approximately 3:30 in the morning, I

1 received a page on my departmental pager. I telephoned our
2 dispatch unit, and they related that one of our specialty
3 teams had come in contact with Ms. Gilliard.

4 Q. Did you make any request of the specialty team?

5 A. Yes. I asked if she would voluntarily come to the
6 police station. They related that she would. I asked that
7 she be brought to our headquarters.

8 Q. And where are your headquarters?

9 A. At 4900 LaCross in the City of North Charleston, right
10 across from Mall Drive.

11 Q. That's in the County of Charleston?

12 A. Yes, it is.

13 Q. Approximately, what time did you arrive?

14 A. I received a page about 3:30, and I probably got to
15 the station or headquarters right around 3:45.

16 Q. Was anybody else there when you got there?

17 A. The specialty team supervisor and Ms. Gilliard.

18 Q. How about Detective Deckard? Was he there?

19 A. Not as of yet. In route to the station, I requested
20 that Deckard -- Corporal Deckard be paged so he could
21 assist in the investigation.

22 Q. When you arrived, did you speak with the defendant,
23 Ms. Gilliard?

24 A. I believe, briefly. Yes.

25 Q. Did you make any attempt to interrogate her?

1 A. Not initially. No, sir.

2 Q. When you arrived, where was she?

3 A. She was sitting at the conference table in the
4 detective bay.

5 Q. Was she in handcuffs?

6 A. No, sir, she was not.

7 Q. Was she under arrest?

8 A. No, sir.

9 Q. Did you place her in a cell?

10 A. No, sir.

11 Q. And what transpired after Detective Deckard arrived?

12 A. Detective Deckard arrived, and I requested, being the
13 supervisor, that he interview Ms. Gilliard.

14 Q. And did he do so at the table that she was seated at,
15 or did he take her some place else?

16 A. No, sir. I had requested, prior to his arrival, that
17 she be placed in an interview room; and she was.

18 Q. Okay. Did he interview her in that interview room?

19 A. Yes, sir.

20 Q. Were you present?

21 A. No, sir, I was not.

22 Q. And where were you physically located?

23 A. Physically, I was at my desk which is outside the
24 detective bay.

25 Q. Approximately, how far a way from the interview room?

1 A. Probably thirty or thirty-five feet with partitions
2 and everything in between.

3 Q. Were you able to hear anything that was going on in
4 the interview room?

5 A. No, sir, I was not.

6 Q. Did there come a time when you, again, spoke with
7 Detective Deckard about this case, about Ms. Gilliard?

8 A. Yes, sir. Approximately, 6:15, Detective Deckard came
9 to my desk, and stated that Kandy Gilliard wanted to speak
10 with me.

11 Q. Did you go back and speak with Ms. Gilliard?

12 A. Yes. I entered the interview room and began a
13 conversation with Ms. Gilliard.

14 Q. Where was Detective Deckard when this happened?

15 A. I don't recall. He was not in the interview room with
16 me.

17 Q. Just the two of you?

18 A. Yes.

19 Q. And what, if anything, did Ms. Gilliard want to talk
20 to you about?

21 A. Initially, Ms. Gilliard asked if she told the truth,
22 could she go home.

23 Q. And what was your response?

24 A. I told her I didn't know what the truth was, but if
25 she was involved, she was not going home.

1 Q. Did she ask you about making any kind of deals?

2 A. She did ask if she told the truth what kind of deal I
3 would give her.

4 Q. What did you respond?

5 A. I responded that those type deals came from the
6 Solicitor's Office.

7 Q. Okay. And did you make her any promises of any kind?

8 A. No, I did not.

9 Q. Did you tell her she would receive a probationary
10 sentence?

11 A. No, I did not.

12 Q. Did you tell her that -- strike that. Did she say
13 anything else to you while you were in there?

14 A. She asked if she was involved, how long she would go
15 to jail for.

16 Q. What was your response to that?

17 A. My response was, actually, if she was involved, it
18 wasn't "if" she was going to jail, it was for "how long"
19 and that, basically, it was up to the judge.

20 Q. Did you make her any promises that she would only get
21 some sort of sex-month sentence?

22 A. No, sir.

23 Q. And after you told her that it would be up to the
24 judge how long she went to jail for, did she make any other
25 comment to you?

1 A. She related that she wanted to tell me the truth.

2 Q. She wanted to tell you the truth. And what did you
3 do, if anything, after she made that statement to you?

4 A. At that point, not knowing what the truth was, and not
5 knowing if Corporal Deckard had read her her rights, I
6 pulled out my rights card from my pocket, and verbally
7 Mirandized Ms. Gilliard.

8 Q. What rights did you give her, sir?

9 A. Her constitutional rights, which I have in my pocket.

10 Q. Do you carry that card with you at all times?

11 A. Yes, I do. It, also, contains my business cards.

12 Q. Is that the card you use to read her her rights?

13 A. Yes, sir, it is.

14 Q. Can you tell the members of the jury what rights you
15 read to Ms. Gilliard?

16 A. You have the right to remain silent. Anything you say
17 can and will be used against you in a court of law. You
18 have the right to an attorney, and to have your attorney
19 present while you're being questioned. If you want an
20 attorney and cannot afford one, one will be appointed for
21 you before any questioning.

22 Q. Did she indicate she understood those rights?

23 A. She did understand. She indicated she understood the
24 rights.

25 Q. Did you have any problems speaking with her?

1 A. No.

2 Q. Did you have any problems understanding her?

3 A. No.

4 Q. Did she appear to be under the influence of any type
5 of alcohol or other substances?

6 A. No, sir.

7 Q. Was she coherent?

8 A. Yes, sir.

9 Q. And did she proceed to tell you what the truth was?

10 A. Yes, she did.

11 MRS. GAY: Your Honor, I would object to the question.

12 THE COURT: Well, that's, obviously, a question for
13 the jury to determine. So I'm sure you meant did she tell
14 you -- did she talk with you.

15 MR. DUTREMBLE: Yes, sir

16 THE COURT: Please, continue.

17 BY MR. DUTREMBLE:

18 Q. And what was it, exactly, that Ms. Gilliard told you
19 at that time?

20 A. She related that she had robbed Dawn; that Dawn had
21 fallen asleep inside the business, and that she had gotten
22 her boyfriend's brother, B.J., to come over to The Game
23 Room. She stated that B.J. came to The Game Room.

24 Initially, the door was locked, and he scared her, because
25 he had on a wolfman mask. She related that she let him

1 into the business, and that they went into the back room
2 where Dawn was asleep, where she placed a plastic bag over
3 Dawn's head and B.J. put an extension cord around Dawn's
4 neck. They got the keys, took the money, and departed the
5 business.

6 Q. And after she gave you that recitation of the facts,
7 what actions, if any, did you take?

8 A. At that point, not knowing as much about the case as
9 Corporal Deckard did, I requested that Corporal Deckard
10 enter the interview room. And we, again, Mirandized her.

11 Q. And how did you do that?

12 A. Via North Charleston Rights form.

13 Q. And with reference to the North Charleston Rights
14 form, let me show you what's been previously marked as
15 State's Exhibit Number 1, and ask you if you can recognize
16 this document, sir?

17 A. Yes, I do.

18 Q. Is that the North Charleston Advice of Rights form
19 that you just mentioned to the jury?

20 A. Yes, sir, it is.

21 Q. Is that signed by Kandy Gilliard?

22 A. Yes, sir, it is.

23 Q. It's, also, signed by yourself and Corporal Deckard?

24 A. Yes, sir, it is.

25 Q. Now, once she signed that Advice of Rights form --

1 well, let me ask you this: Do the Miranda warnings that
2 you previously read to the jury from your personal card,
3 appear on that form?

4 A. Yes, sir, they do.

5 Q. And did y'all advise her, again, of those Miranda
6 warnings or those constitutional rights?

7 A. Corporal Deckard did in my presence. Yes, sir.

8 Q. And did she initial each and everyone of those rights?

9 A. She initialled beside each one indicating that she
10 understood her rights.

11 Q. And after she initialed indicating that she understood
12 her rights, did you stay in the interview room when
13 Corporal Deckard took her statement?

14 A. No, I did not.

15 Q. And where did you go?

16 A. I went back out to my desk. At this point, we needed
17 a lot more investigators on the scene. So I was calling
18 more people out.

19 Q. And did there come a point in time when Corporal
20 Deckard came out of the room with the multi-page statement?

21 A. Yes, sir. Yes, there was.

22 Q. And what actions, if any, did you take in response to
23 Corporal Deckard indicating that he had taken a written
24 confession of Ms. Gilliard?

25 A. I believe that he explained the statement to me. And

1 from that statement, we were able to obtain arrest warrants
2 on two other individuals.

3 Q. Who were those two individuals?

4 A. That would have been Benjamin and Brian Johnson.

5 Q. At any time when she was in your presence, Detective
6 Hagge, did you threaten her or promise her anything to get
7 her to talk to you?

8 A. No, I did not.

9 Q. Did you display any weapons of any sort?

10 A. No, sir, I did not.

11 Q. Did you threaten to take away her children in any
12 fashion?

13 A. No, sir, I did not.

14 Q. Did you threaten to allow the co-defendant, B.J.
15 Johnson, to do anything to hurt her or her family?

16 A. No, sir.

17 Q. At any time after you spoke with her, did she call you
18 back and indicate that she wanted to change or recant
19 anything that she had previously told you?

20 A. No, sir.

21 Q. At any time after Corporal Deckard came out with a
22 written statement, did Ms. Gilliard call you back and
23 indicate that anything contained in the written statement
24 need to change or recant?

25 A. No, sir, she did not.

1 Q. Thank you, very much. If you would, sir, please
2 answer any questions that Mrs. Gay has.

3 THE COURT: All right. Mrs. Gay, cross-examination?

4 MRS. GAY: One moment, please.

5 CROSS-EXAMINATION

6 BY MRS. GAY:

7 Q. One thing that I want to ask you, is this concept of
8 her calling you back to change or recant her statement, she
9 had been arrested at that point; hadn't she? She was
10 arrested the day of the 9th?

11 A. At the point I went back and talked to her?

12 Q. No. There is all this statement going on at seven
13 o'clock in the morning. That day -- later that day, she
14 was actually arrested for the charge?

15 A. After her statement, she was arrested for the charge
16 of murder. Yes.

17 Q. Right. And at that point, she was the defendant
18 charged with an offense?

19 A. After her written statement. Yes.

20 Q. Right. So she didn't call you back up to recant it
21 after that point, because she was a defendant charged with
22 an offense?

23 A. I don't know why she didn't call me back, but she
24 didn't call me back. No.

25 Q. I understand that. When you said that you had been

1 brought in, it was about six o'clock in the morning --

2 6:00, maybe, 6:30 in the morning?

3 A. When I was brought into headquarters, initially.

4 Q. No. When Mr. Deckard told you that Ms. Gilliard,

5 Kandy, wanted to talk to you, it was about 6:30 in the

6 morning?

7 A. It was about 6:15. Yes, ma'am.

8 Q. 6:15 in the morning. Do you recall her telling you

9 that she had to go to the bathroom, and going with her to

10 the bathroom?

11 A. I don't recall. No.

12 Q. You don't recall that. Do you recall having a

13 conversation, and isn't it true, that you told her that you

14 knew that she couldn't have done this offense, because this

15 victim was a big person and she was a little person?

16 A. I don't recall, ma'am.

17 Q. It's fair to say that today about fifteen or sixteen

18 months later, you don't have a real vivid memory of a lot

19 of the things that occurred that particular night; do you?

20 A. It would depend on what you're asking. I mean, do I

21 remember ---

22 Q. Specifics about your conversation with her. A lot of

23 it you said you don't recall?

24 A. Is that a question? I mean, I remember the evening.

25 Yes.

1 Q. But you don't remember anything about saying that she
2 was a little person, and that this victim was a big person?

3 A. No, I don't recall that.

4 Q. And that there was no way she could have done this,
5 because someone else bigger ro stronger than her would have
6 had to have done it?

7 A. No, ma'am. I don't recall that.

8 Q. At your office, you keep pictures of your family
9 members on your desk at this point in time; don't you?

10 A. At this point, yes, ma'am.

11 Q. And it's possible that at that point in time you had
12 family member's pictures on your desk, possibly?

13 A. Sure. Sure.

14 Q. And you have children?

15 A. Yes, I do.

16 Q. And pursuant to your involvement in this case at that
17 time, you were aware that Ms. Gilliard has two small
18 children; didn't you?

19 A. I don't think I did. No.

20 Q. You weren't aware of any of her personal facts about
21 herself or her personal life, though, you were the chief
22 investigative detective in this case?

23 A. No. I was not the chief investigating -- I was the
24 supervisor over the case. And I don't recall that she had
25 children. No.

1 Q. You don't recall telling her that you had, actually,
2 spoken to her grandparents about her children?

3 A. No, I don't.

4 Q. At the time that you were talking to her, she was
5 pretty upset; wasn't she?

6 A. Yes, ma'am, she was.

7 Q. She was crying?

8 A. Off and on crying. Yes, ma'am.

9 Q. So during the forty-five minutes or so that you talked
10 to her when you first walked in, she was crying; wasn't
11 she?

12 A. She cried throughout off and on. Yes, ma'am.

13 Q. And you know that before you got there, Detective
14 Deckard had been talking to her and asking her things --
15 you're not exactly sure what -- but you know he'd been
16 talking with her for a number of hours before you walked in
17 that room?

18 A. He was questioning her. Yes, ma'am.

19 Q. About this incident and about what she knew about this
20 incident?

21 A. Yes, ma'am.

22 Q. That's what he was questioning her about?

23 A. Yes, ma'am.

24 Q. And I believe you said you didn't know whether he read
25 Miranda or not?

1 A. No, ma'am.

2 Q. And at the time that you were talking to her, you
3 believed that it was appropriate to read her Miranda?

4 A. Well, not knowing what was going to be said, yes,
5 ma'am, I did.

6 Q. And isn't it fair to say that as a good precaution or
7 because you didn't know what she was going to say, that you
8 believed she needed to know that she had the right to
9 remain silent, that she had the right to have an attorney
10 present, the Miranda warnings that we have gone over
11 several times in the courtroom?

12 A. At about 6:30, when she told me she wanted to tell me
13 the truth, I felt it appropriate to read her her rights.
14 Yes.

15 Q. But, certainly, before that, there was a good bit of
16 information about the fact that you knew and your
17 detectives knew that she may have information about this
18 incident that could have somewhat been incriminating to
19 her?

20 A. There were a few people that could have been
21 incriminating -- whether or not her rights were read, I
22 don't know.

23 Q. I understand that. But, certainly, y'all knew, you,
24 the other people involved in this case, knew that her
25 fingerprints were on the bag that was found under the

1 deceased?

2 A. Oh, yes, ma'am.

3 Q. And you knew that she had given a statement at some
4 point having to do with the fact that she didn't know
5 anything about it?

6 A. Didn't know anything about the crime, itself?

7 Q. Right?

8 A. Oh, yes, ma'am.

9 Q. And so at the time -- and I believe you said that you
10 had let people know that if they could find her to let you
11 know?

12 A. Yes, ma'am.

13 Q. And you're aware that you got there at say three
14 o'clock in the morning, but there was a period of time
15 before you got there that she was with police officers,
16 from the time they found her and brought her to the
17 detective's office?

18 A. You knew that there was a period of time that, they
19 may not know exactly how long, but knew there was a period
20 of time where she had been brought to the station before
21 you arrived.

22 A. I was paged at 3:30, and I don't know how much longer
23 she was with the other officers.

24 Q. So you don't have any information to state today to
25 the jury what time she would have arrived at the detective

1 office?

2 A. No.

3 Q. But, certainly, you know that Detective Deckard had
4 spent a good bit of time with her, questioning her about
5 this incident before you talked to her?

6 A. Detective Deckard did question her. Yes, ma'am.

7 Q. And, certainly, I believe that there is crimes that
8 involve not telling the police one thing, and, maybe, that
9 not being true -- maybe, false information to the police,
10 something like that. Those are crimes on your statute
11 books?

12 A. Yes, ma'am.

13 Q. And so if somebody has given some information to an
14 officer about a crime, and then comes back later and
15 changes that, and you can tell that they're lying, that's
16 actually a chargeable offense?

17 A. If it meets the probable cause. Yes, ma'am.

18 Q. And there's, also, crimes associated with things like
19 accessory to a felony or to an offense?

20 A. Yes, ma'am.

21 Q. And there's crimes -- misprision of a felony is one of
22 them -- where you have information that you don't give to
23 the police, and they later can charge you with withholding
24 that information; you're familiar with that charge?

25 A. Yes, ma'am.

1 Q. So in talking to somebody about a situation where you
2 believe, or your officers believe that there was
3 information that they knew that they hadn't given to the
4 police, that, in fact, in itself could be a crime; can't
5 it? Generally?

6 A. Could you restate the question?

7 Q. Generally, if a person has given some information that
8 they don't know anything about a crime, but you can later
9 show that they did, and they'll tell you, Yes, I withheld
10 information, and you can prove that, that's a crime?

11 A. Yes, ma'am.

12 Q. And so on this night when you were talking to Kandy,
13 you said you don't remember anything about telling her that
14 the victim was a big person and she was a little person,
15 and that there's no way she could have done this?

16 A. I don't recall that. No, ma'am.

17 Q. Do you remember talking to her about asking her if she
18 believed in God?

19 A. No, ma'am.

20 Q. So during this period of forty-five minutes, you say,
21 your testimony is that all y'all talked about was her
22 discussing with you what type of deal she could get or how
23 this could work out for her?

24 A. No, ma'am. As I testified earlier, about fifteen
25 minutes of that was about the deal. If she told me, could

1 she go home. That was about fifteen minutes,
2 approximately.

3 Q. And the other thirty minutes was about what?

4 A. What she had done in The Game Room.

5 Q. Okay. But, certainly, none of this had anything to do
6 with how she could help you try to establish or prove what
7 happened that night? How she could help y'all solve the
8 crime? None of this was about that?

9 A. Well, I think that's your motive. Yes, ma'am. I
10 mean, if she could help us, we definitely want anybody's
11 help in a crime of this nature.

12 Q. So, certainly, you admit that you could have talked to
13 her about the fact that her information could be helpful to
14 y'all?

15 A. I don't recall. No, ma'am.

16 MRS. GAY: One moment, Your Honor.

17 THE COURT: All right.

18 MRS. GAY: I have no further questions.

19 THE COURT: Redirect?

20 MR. DUTREMBLE: None, Your Honor. Thank you.

21 THE COURT: You may step down. Any requirement that
22 the officer remain available or are you all ready to
23 release him?

24 MR. DUTREMBLE: I'm ready to release him, Your Honor.

25 MRS. GAY: Your Honor, I have no problem with that.

1 THE COURT: All right. You may stay in the courtroom,
2 or be released; your choice.

3 (The witness leaves the witness stand.)

4 THE COURT: Next witness for the State?

5 MR. DUTREMBLE: If Your Honor please, I would ask the
6 Court's indulgence to allow me to have until the morning to
7 determine whether I'm going to call one more witness or not
8 and I will rest my case.

9 THE COURT: One thing I think we need to go ahead and
10 put on the record was the stipulation you all had regarding
11 the mask ---

12 MR. DUTREMBLE: Yes, sir.

13 THE COURT: --- prior to the State's case. As I
14 understand it, Mrs. Gay, are you ready to put that
15 stipulation on?

16 MRS. GAY: Yes, sir.

17 THE COURT: Would you like to recite what the
18 stipulation is, Mr. DuTremble, and we can see if everyone
19 agrees that's the stipulation?

20 MR. DUTREMBLE: Yes, sir. It's my understanding that
21 Mrs. Gay agrees and would stipulate with me that the mask,
22 which is State's Exhibit Number 27, was found in Cookie
23 Gilliard's closet by Ms. Emily Gilliard, the mother of the
24 defendant, at the residence on [REDACTED].

25 THE COURT: And does not object to as being admitted

1 into evidence?

2 MR. DUTREMBLE: That's correct.

3 THE COURT: Is that your stipulation, Mrs. Gay?

4 MRS. GAY: Yes, sir. That is my stipulation. It was
5 found by Ms. Gilliard, and it was, ultimately, turned over
6 to the Solicitor's Office and is being admitted today.

7 THE COURT: All right. And found in her closet?

8 MRS. GAY: Yes, sir.

9 THE COURT: All right. What a stipulation means,
10 ladies and gentlemen, is you all don't have to deliberate
11 or discuss that one way or the other. You can accept that
12 as fact. So they both agree you can accept the fact that
13 this mask was found by Ms. Gilliard in her closet, and
14 turned over to the police. So you all can accept that as
15 fact. And it is in evidence at this time. Okay.

16 (State's Exhibit Number 27 received in evidence in the
17 presence of the jury. State's Exhibit Number 27 received
18 in evidence outside the jury's presence on page 494.)

19 THE COURT: Ladies and gentlemen of the jury, if you
20 all would, just stay where you are so I don't have to send
21 you back to the jury room.

22 You all approach for a minute.

23 MR. DUTREMBLE: Yes, sir.

24 (WHEREUPON, there was an off-the-record bench
25 conference in the presence of the jury, but outside the

1 hearing of the jury.)

2 THE COURT: Okay. Ladies and gentlemen, if you would.
3 If you all would come back tomorrow at 9:30 in the morning.
4 I don't know as far as when I'll be turning this case over
5 to you. It could very well be tomorrow afternoon, but it
6 could well be Friday morning. One or the other. But at
7 some point in time, either tomorrow afternoon or Friday
8 morning, the case will be yours.

9 Now, what I want you to do is, remember what I told
10 you. Do not look at any papers. In fact, I don't want to
11 promote papers, but if you've got to look at a paper, look
12 at USA Today, or something like that. And, also, do not
13 look at any local newscasts. Watch TBS or TNT or ESPN. So
14 don't look at any local newscasts -- no local papers, no
15 local newscasts at all. I will ask you that, again,
16 tomorrow. And remember you are under oath. So when I ask
17 you those questions, you are responding under oath
18 regarding that.

19 Do not talk with anyone, family members, or anyone
20 else about this case. If, inadvertently or otherwise,
21 someone mentions to you about it, or for some reason you
22 make a mistake and say something, let me know and I can
23 handle it then. Better that than if I find out later.
24 Okay? So we'll see you tomorrow morning at 9:30. Report
25 to your jury room at that time. We'll see you then.

1 And, Ms. Pulliam, you need to, probably, make
2 arrangements. I know you mentioned about Friday. Okay.

3 (The jury leaves the courtroom for the evening break.)

4 THE COURT: What do you do with all the exhibits?

5 THE CLERK: We put them down in our evidence locker.

6 THE COURT: I just want to make sure there is an
7 agreement between both the State and the defense and you,
8 then, as to what you took in your control. So there's no
9 doubt, in case something's not here. And everyone's, like,
10 where was it. I just want to make sure that everybody
11 agrees as far as whose got what. We can't lock this
12 courtroom, you say?

13 THE CLERK: No, sir.

14 THE COURT: All right. How many exhibits, Madam Court
15 Reporter, at this time, how many exhibits do we have
16 admitted for the State. Give me the numbers.

17 COURT REPORTER: I have Exhibit Number 1, 2, 4, 5
18 though 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27,
19 28, 29, 30, 31, 32, and 33.

20 THE COURT: So you don't have an Exhibit 3 or an
21 Exhibit 18? We know 19 was withdrawn.

22 COURT REPORTER: Correct.

23 THE COURT: What was 3 and 18? There is no 3 and 18.

24 MR. DUTREMBLE: I have 18 here, Your Honor. It's a
25 picture that I did not put in, because I put the shoes in.

1 THE COURT: All right. What about 3?

2 MR. DUTREMBLE: I don't know what 3 is.

3 COURT REPORTER: It was this.

4 THE COURT: Yes. Let me -- for the record -- I didn't
5 allow 3 in. Number 3 has comments on it that, obviously,
6 are inappropriate to put in evidence. And if you all
7 wanted to do something like that, you should have redacted
8 it before you moved to put in evidence, instead of putting
9 the Court in the situation there in making a ruling. And,
10 obviously, I can't let it in with comments on it. It was
11 hearsay comments on there. So that's why I didn't put 3
12 in.

13 MR. DUTREMBLE: I understand, Your Honor. And I
14 apologize. I was looking for the original in the evidence
15 box, and I handed that to Damon just to mark for ID so I
16 could have a few moments to find it, and I never did find
17 it.

18 THE COURT: All right. Well, that was my purpose ---

19 MRS. GAY: You're talking about this receipt?

20 THE COURT: Yes, 3, because the comments on there
21 were, obviously, inappropriate. That's why I did not let
22 it in.

23 MR. DUTREMBLE: This is 18.

24 THE COURT: I just wondered why we had the misnumbers,
25 but now I know. Number 3 was the receipt that I did not

1 allow in, and 18 is the photograph that you decided not to
2 put in, which are photographs of the sneakers there.

3 MR. DUTREMBLE: Yes, sir.

4 THE COURT: All right. Now, you say, you may have a
5 witness or so tomorrow?

6 MR. DUTREMBLE: Yes, sir. And if I do, it would be a
7 witness that wouldn't take more than three or four
8 questions from me.

9 THE COURT: The situation I have, is you mentioned
10 something about you have a motion. I assume that motion is
11 something you would do at the end of the State's case?

12 MRS. GAY: Yes.

13 THE COURT: Well, I would rather -- on a case of this
14 nature, I'd rather it wait until, actually, the State has
15 ended. If the State determines not to present any evidence
16 further, then I'd say at 9:15 we can consider that. But if
17 they do, then we need to wait until that witness is
18 presented. Okay. I'd rather do it that way.

19 Now, I'm going to hand you back, if you wish, the
20 transcript -- this is not the original transcript of Dr.
21 Leo; is it?

22 COURT REPORTER: I've got it.

23 THE COURT: You've got the original transcript. And
24 I've got a copy.

25 Do you need this copy back?

1 MRS. GAY: I can take it back.

2 THE COURT: I did review it and I read the transcript
3 as well as the tape*or three-quarters of the tape until I
4 started reading the transcript where I left off at the
5 tape. And I read that and reviewed it in considered it in
6 my rulings on the admissibility of the statements. But
7 anyway, you can have that back. So we'll have that
8 tomorrow. And you say that -- that is mighty thin to be
9 three hours long. But, I guess, that is the condensed
10 version.

11 MRS. GAY: It was the condensed version.

12 THE COURT: Obviously, it will be three hours long.
13 We will not have the jury watch all at one time. Are there
14 any parts that you all have redacted or plan to redact or
15 anything?

16 MRS. GAY: No.

17 THE COURT: All right. I need, also, obviously, to
18 talk to your client regarding her rights; or at least
19 discuss with her and explain to her her rights about
20 testifying or not testifying. But I need to make that
21 decision once I decide whether or not the directed
22 verdict's motion made -- whether I grant it or not grant
23 it.

24 MRS. GAY: Your Honor, something I should have done,
25 which I know that we had discussed before, but needs to be

1 put on the record, is before B.J. testified -- the fact
2 that he has this mental illness history, I believe, that
3 what Mr. DuTremble said is in accepting his plea, you had
4 determine a Blair hearing anyway. So we may just want to
5 make his plea a part of this record. Is it already a part
6 of the record?

7 THE COURT: I'm not sure I know what you're talking
8 about.

9 MRS. GAY: That if he's competent to testify -- if
10 he's competent to enter a guilty plea, that he would then
11 be competent to be a witness.

12 THE COURT: Well, Mrs. Gay, you didn't bring that up
13 on the record at all to discuss that. And you didn't
14 object to him testifying. I didn't have a hearing in that
15 regard. I don't feel that, necessarily, a judge who takes
16 a plea one day, his plea mandates and requires and locks a
17 judge into making determination of the competency of a
18 witness the next day, even if it's the same judge, those
19 are different proceedings. If you're saying it's likely, I
20 guess, you could assume it's likely, but there was no
21 hearing about that. I don't think you can -- well, number
22 one is you didn't bring -- are you saying you're bringing
23 the issue of competency of Mr. Johnson?

24 MRS. GAY: If you recall, I brought it up with Mr.
25 DuTremble last week when we talked to you.

1 THE COURT: Yes, ma'am.

2 MRS. GAY: And he said that you would be doing his
3 plea, and that that would be something that would be done
4 beforehand. I acknowledge that I didn't mention it
5 beforehand; however ---

6 THE COURT: Well, I will say, for the record, that I
7 did take his plea, and I decided in taking his plea, that
8 he was competent to face the charges, competent to enter a
9 free and voluntary plea of guilty to the charges, and there
10 was no issue brought up about his ability to know right
11 from wrong, or his ability to conform his conduct to the
12 requirements of the law. But I did make findings that from
13 what I reviewed, and after my discussions with him, but I
14 made those findings in regard to the plea. But there had
15 been no issues brought up, in the trial here, regarding his
16 competency to testify. I mean, if you wanted to bring that
17 up, I feel, you should have brought that up before he
18 testified.

19 MRS. GAY: I understand that, Your Honor. It's just
20 something that we ---

21 THE COURT: But I don't mind record reflecting what I
22 recited on his plea. But if you want to, also, add his
23 plea as a Court Exhibit ---

24 MRS. GAY: Yes, sir.

25 THE COURT: --- then you can add his plea as a Court

1 Exhibit if this matter goes up on appeal, then you can add
2 his plea as a Court Exhibit as far as for you. But as far
3 as what bearing he had on my decision of competency to
4 testify, it wasn't brought up.

5 MRS. GAY: I understand that, Your Honor.

6 THE COURT: Okay. All right. Anything else?

7 MR. DUTREMBLE: No, sir.

8 MRS. GAY: No, sir.

9 THE COURT: Okay. We'll see you all at 9:15, and then
10 we'll make decisions then about whether you have anybody
11 else testify.

12 MR. DUTREMBLE: Yes, sir. Thank you.

13 THE COURT: Good night.

14 (WHEREUPON, Court recessed for the evening break.)

15 (The following was reported on Thursday, May 31,
16 2001.)

17 THE COURT: All right. Be seated. We have all our
18 juror here in the jury room. We need to proceed with any
19 matters you all need to do before we start with the -- I
20 think, the State has one other witness. So, Mrs. Gay, did
21 you want to proffer anything before we do the other witness
22 or afterwards?

23 MRS. GAY: No, Your Honor.

24 THE COURT: All right. Okay. Mr. DuTremble, are you
25 ready?

1 MR. DUTREMBLE: Yes, Your Honor.

2 THE COURT: All right. Bring the jury in. Oh, wait
3 one second. There is a matter down in the other courtroom,
4 honoring a court reporter. This lady is a court reporter.
5 I think colleagues should go honor other colleagues. You
6 go on down there and come back when you're ready. Okay.

7 (WHEREUPON, there was a short recess.)

8 THE COURT: Okay. Be seated. All right. Now, let's
9 bring the jury in, please.

10 (WHEREUPON, the jury returns to the courtroom.)

11 BAILIFF: All present, Your Honor.

12 THE COURT: Ladies and gentlemen, before we proceed
13 with further testimony, did anybody hear anything about the
14 case, discuss it with anyone at all, since we left
15 yesterday evening, or see anything about it in the media?
16 If so, let me know, now.

17 (No response.)

18 THE COURT: Okay. Any polling requested? Hearing no
19 requested polling, we will now proceed.

20 Mr. DuTremble, I understand you have one other
21 witness.

22 MR. DUTREMBLE: That's correct, Your Honor.

23 THE COURT: And what's the name of the person?

24 MR. DUTREMBLE: Officer Heis, Your Honor.

25 THE COURT: An Officer Heis with the North Charleston

1 Police Department?

2 MR. DUTREMBLE: That's correct.

3 THE COURT: Does anybody on the jury panel -- this
4 person was not listed -- anybody on the jury panel know an
5 Officer Heis with the North Charleston Police Department?

6 (No response.)

7 THE COURT: Okay. You may proceed.

8 MR. DUTREMBLE: We call Officer Heis to the stand.

9 WILLIAM HEIS, being first duly sworn,
10 testified as follows:

11 THE CLERK: Please, be seated. Please, give the Court
12 your full name, and spell the last.

13 WITNESS: William Heis. H-e-i-s.

14 THE COURT: Okay. Your witness, Mr. DuTremble.

15 MR. DUTREMBLE: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. DUTREMBLE:

18 Q. Officer Heis, by whom are you employed?

19 A. North Charleston Police Department.

20 Q. And in what capacity, sir?

21 A. Uniform Division.

22 Q. And how long have you been a police officer with North
23 Charleston?

24 A. Thirteen years.

25 Q. And are you a member of any specialized team?

1 A. Not at this time.

2 Q. How about back in January of the year 2000?

3 A. I was with the North Charleston PACT team.

4 Q. What was the North Charleston PACT team? Is that
5 P-A-C-T?

6 A. Yes, sir.

7 Q. What did you do for them?

8 A. It's a community policing.

9 Q. All right. Did you have occasion during the late
10 evening hours of January 4th and the early morning hours of
11 January 5th of the year 2000, be involved in attempting to
12 locate the defendant in this case, Ms. Kandy Gilliard?

13 A. Yes, sir.

14 Q. And can you explain to the members of the jury what
15 you did in relation to that activity?

16 A. On what date, sir.

17 Q. Let's start on the 4th at nine o'clock. What were you
18 doing?

19 A. We were asked to go find the defendant. We were given
20 some areas that she possibly visits, and we went to those
21 areas attempting to locate her.

22 Q. I'm sorry. I gave you the wrong date. Mine says
23 January 8th and January 9th, I'm talking about, of the year
24 2000?

25 A. Yes, sir.

1 Q. And so you're looking for her. And what areas were
2 you looking in?

3 A. We checked a couple of areas in Remount Road, went to
4 Oakwood.

5 Q. What is Oakwood?

6 A. Off of Oliair (phonetic) I believe.

7 Q. Okay. Did you find her at either of those locations?

8 A. No, sir.

9 Q. Approximately, what time in the evening was this on
10 the 8th?

11 A. We started at about 9:00, 9:30.

12 Q. Did you eventually wind up out in Goose Creek?

13 A. Yes, sir.

14 Q. And where were you looking in Goose Creek?

15 A. I believe it was Redbank. I'm not sure what street it
16 was.

17 Q. And, approximately, what time of the evening did you
18 say you were out in the Goose Creek area?

19 A. I believe, between 10:00 and 11:00.

20 Q. Did you locate the defendant in Goose Creek?

21 A. No, sir.

22 Q. And while you were out in the Goose Creek area, did
23 you stop and do anything else of a personal nature?

24 A. We ate dinner.

25 Q. And then what did you do after you finished eating

1 dinner?

2 A. We went back and tried Oakwood one more time.

3 Q. And while you were in Oakwood, were you alone or did
4 you have other officers assisting you?

5 A. There was three other officers.

6 Q. And while you were in the Oakwood area, did you come
7 in contact with Ms. Gilliard?

8 A. Yes, sir.

9 Q. And where were you in Oakwood, do you recall?

10 A. Just sitting next to some of the trailers in the
11 surrounding area.

12 Q. And how long were you in the Oakwood area before she
13 actually showed up?

14 A. I would say no more than, maybe, a half hour or so.

15 Q. Approximately, what time in the evening was this, or
16 in the early morning hours of the 9th?

17 A. It would have been about 2:00 in the morning.

18 Q. And at some point in time, did Ms. Gilliard agree to
19 get into your patrol car and accompany you to the North
20 Charleston Police Department?

21 A. Yes, sir.

22 Q. When she did that, sir, was she under arrest?

23 A. No, sir.

24 Q. Was she placed in handcuffs?

25 A. No, sir.

1 Q. Was she shackled in any form?

2 A. No, sir.

3 Q. Did you search her before you allowed her to get into
4 your police car?

5 A. No, sir.

6 Q. And did you actually do the physical transportation of
7 the defendant to the North Charleston Police Department?

8 A. Yes, sir.

9 Q. And, approximately, what time did you depart the
10 Oakwood area would you estimate?

11 A. About 2:30.

12 Q. And how long did it take you to get from Oakwood to
13 the North Charleston Police Department?

14 A. About ten minutes.

15 Q. And at any time during the transportation from Oakwood
16 to the North Charleston Police Department, did she ever ask
17 you to stop and turn the car around to take her back home?

18 A. No, sir.

19 Q. Did she ever indicate to you that she did not want to
20 accompany you to the North Charleston Police Department?

21 A. No, sir.

22 Q. And when you got her to the North Charleston Police
23 Department, sir, where did you take her?

24 A. Third floor, Detective Division.

25 Q. And where was she physically taken when you got her to

1 the third floor?

2 A. There is a table in the detective's bay where we let
3 her sit there.

4 Q. All right. Did you ask her any questions during that
5 time that she was sitting there?

6 A. No, sir.

7 Q. Did she ask you to use the bathroom, get her a Coke,
8 get her something to eat, or anything like that?

9 A. No, sir.

10 Q. And how long did you, physically, stay there on the
11 third floor of the Detective Division?

12 A. About forty-five minutes.

13 Q. And who were you waiting on?

14 A. Detective Deckard.

15 Q. Did Detective Deckard eventually arrive?

16 A. Yes, sir.

17 Q. And what did you do after Detective Deckard arrived?

18 A. We released her to him, and then went home.

19 Q. You went home and went to bed?

20 A. Yes, sir.

21 Q. Did you have any further contact with the defendant in
22 this case after delivering her to Detective Deckard?

23 A. No, sir.

24 Q. Thank you, very much, sir. Please, answer any
25 questions Mrs. Gay has for you.

1 THE COURT: All right. Mrs. Gay?

2 MRS. GAY: One moment, please.

3 CROSS-EXAMINATION

4 BY MRS. GAY:

5 Q. And you indicated that there were three of y'all that
6 went to the place in Oakwood?

7 A. There was four including me.

8 Q. So four officers?

9 A. Yes, ma'am.

10 Q. And, I believe, she was actually in your car?

11 A. I transported her.

12 Q. And you said that when you transported her, that you
13 took her to the Detective Division and you stayed with her
14 until Detective Deckard got there?

15 A. Yes, ma'am.

16 Q. And I believe you said, specifically, that you
17 released her to him?

18 A. Yes, ma'am.

19 Q. Because she was your responsibility until another
20 officer got there?

21 A. Well, I was waiting for the detective to show up.

22 Q. And then, not until another detective showed up, did
23 you leave her with that detective?

24 A. I'm sorry. I don't know what you mean.

25 Q. Yes. My question is: You didn't leave her alone; did

1 you?

2 A. No, ma'am.

3 Q. You were with her until the detective got there?

4 A. Yes, ma'am.

5 MRS. GAY: I have no further questions, Your Honor.

6 THE COURT: Anything else?

7 MR. DUTREMBLE: Nothing further, Your Honor.

8 THE COURT: Okay. You may step down.

9 Any objection to this officer being excused?

10 MRS. GAY: No, Your Honor.

11 MR. DUTREMBLE: None from the State.

12 THE COURT: All right. You may be excused to return
13 to your duty, Officer. Thank you, very much.

14 WITNESS: Thank you, sir.

15 (The witness leaves the witness stand.)

16 THE COURT: Further witnesses from the State?

17 MR. DUTREMBLE: With that witness, Your Honor, the
18 State rests.

19 THE COURT: All right. Ladies and gentlemen, that
20 will complete the State's case. I have certain matters I
21 need to handle. So I'm going to let you go back to your
22 jury room at this time. It should take about fifteen to
23 twenty minutes. I'm going to go ahead and say quarter
24 after 10:00. So if you need to step outside or whatever,
25 the bailiff will step outside with you or whatever. Okay.

1 But I need to make sure everybody's back in there by
2 quarter after 10:00.

3 Okay. You all step outside. Please, do not discuss
4 the case. It's not your's yet to discuss.

5 (WHEREUPON, the jury retires to the jury room.)

6 THE COURT: All right. Any motions from the State?
7 Hearing none. Any motions from the defense?

8 MRS. GAY: Thank you, Your Honor. At this time I make
9 a motion for directed verdict on behalf of my client. Even
10 in the light most favorable, I don't believe the State has
11 met it's burden to prove the elements of the crime in this
12 case. Specifically, Your Honor, the prior rulings, also,
13 that have been made with the motion to supress, and the
14 other objections that we've made, we believe that those are
15 erroneous rulings. We would reiterate our objections to
16 those rulings, and make a motion for a directed verdict on
17 behalf of Ms. Gilliard.

18 THE COURT: All right. Response from Mr. DuTremble?

19 MR. DUTREMBLE: Your Honor, the evidence in this case
20 is overwhelming. She has been charged with the crime of
21 murder, which is the killing of another human being with
22 malice aforethought. There is testimony in the record that
23 this was a planned crime; that the opportunity was seized
24 when the victim fell asleep; that she had recruited an
25 accomplice. Actually, if you believe her testimony in her

1 statement, she actually had to unlock the door to allow her
2 accomplice in. She took a trash bag from the roll of bags
3 from the break room, specifically, to put over her face,
4 which her statement says she did. She assisted as the
5 co-defendant wrapped the cord around the lady's neck. And
6 while they were doing that, she went into the lady's pocket
7 and pulled out, not only the lady's personal money, Ms.
8 Russ' personal money, but also the keys to the filing
9 cabinet. She knew the money was in there. She unlocked
10 it, took it, and they left.

11 Clearly, that is shown malice. Malice can be inferred
12 from the use of a deadly weapon. Certainly, the use of the
13 cord and the use of the bag can be considered deadly
14 weapons. And there is no question about it, but taking the
15 evidence most favorably to the State at this point in time
16 as the Court must do, and given, not only her confession,
17 but the live testimony of her accomplice, there is no
18 question about the planning the commission and the murder
19 of Dawn Russ. There is no question about the robbery.

20 I believe, we have more than met the elements, and the
21 motion should be denied.

22 THE COURT: All right. I will respectfully deny the
23 motion of the defense.

24 Any other motions?

25 MRS. GAY: No, Your Honor.

1 THE COURT: All right. Mrs. Gay, obviously, I would
2 like to have a colloquy with you and your client regarding
3 her rights to testify or not to testify. Do you have any
4 matters you wish for me to consider before we do that?

5 MRS. GAY: Your Honor, I believe that we have
6 discussed in chambers, and I would like to put on the
7 record that I have gone over with Ms. Gilliard, the
8 exposure and any plea offers that have been offered to her
9 in this case. And that as an Officer of the Court, I would
10 just like to put on th record, that I have thoroughly
11 explained to her what her possible penalties are in the
12 event that she's convicted.

13 THE COURT: And I want to make -- hold on. There has
14 been an accident with the water. Everybody's working on
15 that. I have no problem with that, but let's just make
16 sure you all finish that before we -- because I want to
17 make sure she hears you on this. Do you all still need to
18 do any further work there?

19 MRS. GAY: No.

20 THE COURT: All right. Now, you were saying, Mrs.
21 Gay?

22 MRS. GAY: Your Honor, I just would like to put on the
23 record that I have gone over all the facts with Ms.
24 Gilliard in preparation for this trial; that I've gone over
25 all of the possibility of any type of plea arrangements, or

1 deals, if you want to call it that, that could have been
2 made in this case before this trial started or even during
3 this trial.

4 I have discussed with her the two possible penalties
5 or even the three possible penalties, in light of the fact
6 that concurrent sentences are possible as well as
7 consecutive sentences. That the two penalties for murder
8 could be thirty years or life. I've gone over that
9 extensively with her. That at all points when I have
10 discussed this with her, she's indicated to me that she
11 wants to proceed with the trial. That I've discussed with
12 her all of the relevant law in this case, and how I believe
13 that that applies to these facts. And that it is my
14 professional opinion that she has been fully informed of
15 the possibilities of the outcome.

16 THE COURT: All right. Mrs. Gay, did you inform Ms.
17 Gilliard that if the jury convicts her of murder, she could
18 receive thirty years or life in prison?

19 MRS. GAY: Yes, sir.

20 THE COURT: Did you inform her that that in our State
21 now means exactly what it says, thirty years means thirty
22 years; life means life?

23 MRS. GAY: Yes, sir. I have advised her that life
24 would mean her natural life.

25 THE COURT: And did you, also, inform her that even if

1 she got thirty, she still has the -- if she were convicted
2 -- if she were convicted of the other crime of robbery, she
3 could get fifteen in addition to life or in addition to
4 thirty?

5 MRS. GAY: Yes, sir. I have advised her of that.

6 THE COURT: You have informed her of that?

7 MRS. GAY: Yes, sir.

8 THE COURT: And were there plea negotiations at all
9 before this?

10 MRS. GAY: Your Honor, it was my understanding, that
11 if she would enter a guilty plea to strong arm robbery and
12 murder and not have a trial, that the State would have
13 recommended, at the beginning of this trial -- and, I
14 believe, even during some parts of this trial --
15 recommended a concurrent thirty-year sentence. And it was
16 my understanding, and I did advise her, that I believed
17 that you would have followed that recommendation. It would
18 not have been negotiated, but I do believe that you would
19 have followed that recommendation.

20 THE COURT: You informed her fully of that?

21 MRS. GAY: Yes, sir.

22 THE COURT: And, Mr. DuTremble, that was the offer of
23 the State before the trial began?

24 MR. DUTREMBLE: I don't think I ever formally made
25 that offer, Your Honor, but I would not have resisted that

1 had Mrs. Gay come to me and indicated that was her client's
2 wishes. I would have gone along with it.

3 THE COURT: All right. Stand up for me, please, Ms.
4 Gilliard.

5 (The defendant complies.)

6 THE COURT: Now, Ms. Gilliard, Mrs. Gay has explained
7 to you the matters that have just been discussed here in
8 open court?

9 DEFENDANT: Yes, sir.

10 THE COURT: And you understood them?

11 DEFENDANT: Yes, sir.

12 THE COURT: And you understood, also, the matters of
13 the plea negotiations, as far as the State would not have
14 objected to a plea with a recommendation of thirty years
15 concurrent; she informed ou of that?

16 DEFENDANT: Yes, sir.

17 THE COURT: Being informed of all that, your choice
18 was and still is to go forward with the trial; is that
19 right, ma'am?

20 DEFENDANT: Yes, sir.

21 THE COURT: All right. And you understand all the
22 consequences on all ways about this? I'm not in any way
23 inferring anything, I just want to make sure you understand
24 everything.

25 DEFENDANT: Yes, sir, I do.

1 THE COURT: All right. I find that you make a free
2 and voluntary decision -- that you made a free and
3 voluntary decision to reject any negotiations or attempts
4 at negotiations. And we'll proceed.

5 Now, while you're standing, Ms. Gilliard, I want to
6 make sure you understand something, ma'am. The State has
7 now finished their case. I have now denied a motion to
8 direct a verdict of not guilty. So at this point in time,
9 you have an opportunity, if you wish, to present any
10 evidence in the case.

11 Now, please, understand you have no obligation to
12 present any evidence. It's the State's duty to prove you
13 guilty; not your duty to prove yourself innocent. However,
14 you may, if you wish, present evidence. And I'm sure you
15 can discuss that and you will discuss that with Ms. Gay.
16 If you were to chose not to present evidence, I would tell
17 the jury not to hold that against you, and not even to
18 consider that, because it's the State's duty to prove you
19 guilty. If you wish me to, I'd instruct on that regard,
20 because it's not your duty to prove yourself innocent.
21 Plus, as Mrs. Gay has probably informed you, if you don't
22 present evidence then she gets the last argument.

23 But, further, ma'am, also, in regard to the
24 consideration of presenting evidence, you, yourself, do not
25 have to testify. Even if you choose to put up other

1 evidence, you don't have to testify. And if you choose not
2 to testify, I'll tell that jury not in any way to hold that
3 adverse to you; not in any way to consider that adverse
4 against you at all, and not even to discuss it in the jury
5 room. Because I would remind them, the burden, again, is
6 on the State to prove you guilty; not upon you to prove
7 yourself innocent.

8 Ms. Gilliard, you do, though, have a right to testify
9 if you want to testify. And if you choose to testify,
10 though, you need to realize, ma'am, you will be under oath
11 and you'll be required to respond to any questions that are
12 relevant to this case. Plus, ma'am, if you have any
13 convictions which fit under our rules of inadmissibility,
14 then, of course, they would be permitted to be introduced
15 only for impeachment purposes; not to show that you did
16 this crime. As I recall, we had a short hearing about
17 that. As I recall, you had nothing that I would admit in
18 evidence.

19 Is that right, Mr. DuTremble?

20 MR. DUTREMBLE: That's correct, Your Honor.

21 THE COURT: And so unless for some reason -- I think
22 it was a CDV conviction -- so unless for some reason you
23 were to mention something that would open the door -- Mrs.
24 Gay can explain that to you about that -- that would not
25 come in evidence at all.

1 But you need to make a decision about whether you wish
2 to testify or not. You have a right under the fifth
3 amendment, and in our corresponding provision of our own
4 constitution, not to testify. And, once again, if you do,
5 I'll tell them not to hold that against you, and remind
6 them the burden's on the State to prove you your guilt
7 beyond a reasonable doubt; not you, to prove yourself
8 innocent. But, once again, you can testify if you wish.

9 And, also, ma'am, you should understand that you will
10 be under oath if you do testify, and be required to answer
11 all relevant questions.

12 Now, do you understand your rights to testify and not
13 testify?

14 DEFENDANT: Yes, sir.

15 THE COURT: Mrs. Gay, have you discussed this with
16 her, already?

17 MRS. GAY: Yes, sir.

18 THE COURT: Please, discuss it with her, again. And
19 then, once at an appropriate time, Mrs. Gay, when you're
20 ready to let me know, just let me know what her decision
21 is. All right.

22 By the way, let me let you know this also, Ms.
23 Gilliard: This decision to testify or not to testify is
24 your decision. And your decision alone. It is not your
25 lawyer's decision. It's not your family's decision. It's

1 not your friend's decision. But it is your decision. Of
2 course, you can do it after discussing it with various
3 people, including your attorney, but it should be your
4 decision. Do you understand that?

5 DEFENDANT: Yes, sir.

6 THE COURT: All right. Have a seat, please.

7 All right. Mrs. Gay, while she's considering that,
8 you had a matter you wanted to present?

9 MRS. GAY: Yes, Your Honor. We had, in this case,
10 would like to offer as evidence to the jury, the results of
11 a polygraph. And, I believe, that under the recent case
12 which, I believe, is called Honeywell, that is, I believe
13 that we should -- I'm asking to have this admitted. I know
14 we need to have this -- I'm asking to have the opportunity
15 to present the witness about the polygraph. And it's my
16 understanding that, if nothing else, we should have an in
17 camera hearing.

18 THE COURT: Well, let's do this for a second. You've
19 handed up to me an Investigative Associates of Charleston
20 Report of Polygraph Examination. Have you given a copy of
21 this to Mr. DuTremble?

22 MRS. GAY: Yes, I have, Your Honor.

23 THE COURT: As I understand it, the polygraph
24 examination -- let me mark this as a Court Exhibit, if you
25 would.

1 MRS. GAY: I have a copy for the Court, Your Honor.
2 That's the original. And both of these are copies for the
3 Court.

4 THE COURT: Okay.

5 MRS. GAY: I guess, the one that you have, it's Mr.
6 Bloomingburg's affidavit, would need to be the original for
7 the Court. Your Honor, it's State vs. McHoney. It's 544
8 South East 2d 30. This is my copy of the case. I believe,
9 what it says, specifically, Your Honor, is that they
10 believe that the Court ruled that it would be appropriate
11 to consider the evidence, to consider the polygraph
12 examiner or the polygraph, itself -- the polygraph examiner
13 as an expert under Rule 702. And in light of that, we have
14 to look at the Jones factors to determine if, in fact, it
15 meets the South Carolina requirements for an expert to
16 testify in a specific area. And that under Rule 403, I
17 believe, that it would definitely be relevant and helpful
18 to the trier of fact. And it's not overly prejudicial.
19 And we do believe that it's appropriate to admit it in this
20 case.

21 Another thing with regard to this particular person.
22 The questions were asked were not: Are you guilty? Are
23 you innocent? Or anything that would take out away from
24 the trier of facts domain. It's information that is
25 relevant to the factual scenario that occurred that night.

1 And relevant, in light of the fact that the co-defendant or
2 Mr. Johnson has testified to certain things in this case
3 that we don't believe are accurate. And, I believe, that
4 the polygraph is relevant to that; not dispositive of guilt
5 or innocence, but relevant to the facts that have been
6 presented up to this point.

7 THE COURT: All right. Mr. DuTremble, any response to
8 this, sir?

9 MR. DUTREMBLE: No, sir. I have the same copy of the
10 McHoney. And it appears that, for whatever reason, despite
11 the ruling of the United States Supreme Court, which our
12 Supreme Court cites right above their ruling, it appears
13 that we have to go through this exercise, because we have
14 adopted Federal Rules. So I don't think the Court has any
15 choice but to do it by proffer or do it by live testimony.
16 It appears that that is the mandate from our Court.

17 THE COURT: Yes. All right. I prefer to do it by
18 proffer, and consider it. And under 702, I will consider
19 this issue, based on the standards set down by State v.
20 McHoney, a case that was decided just a few months ago.

21 Mrs. Gay, what witnesses do you wish to present in
22 regard to that?

23 MRS. GAY: Your Honor, I would like to call Mr. Thomas
24 Williams.

25 THE COURT: All right. Mr. Williams, come around,

1 please, sir.

2 MRS. GAY: Judge, may I have the information that I
3 had showed you earlier?

4 THE COURT: Okay. The booklets?

5 MRS. GAY: The booklets. The resume. I would like to
6 mark this, also.

7 THE COURT: Did you give her the Court Exhibit of the
8 other two documents?

9 MRS. GAY: I gave her this one. The original on Mr.
10 Bloomingburg is what I wanted to mark.

11 THE COURT: Go ahead and mark it, and we'll talk about
12 it.

13 (Court's Exhibits 8 through 13 marked for ID.)

14 MRS. GAY: So you have it, Your Honor.

15 THE COURT: Wait one second. Let me see what she's
16 marked. Okay. What have you marked? That, okay. That's
17 the copy I have, the thing signed -- the second page -- by
18 Thomas C. Williams?

19 MRS. GAY: Yes, sir.

20 THE COURT: All right. That's a Court Exhibit.
21 All right. Go ahead and swear the witness.

22 (The following was proffer testimony, out of the
23 presence of the jury.)

24 THOMAS WILLIAMS, being first duly
25 sworn, testified as follows:

1 THE CLERK: Please, be seated. Watch your step.
2 Please, state your full name for the Court, and spell your
3 last.

4 WITNESS: Thomas Calvin Williams. W-i-l-l-i-a-m-s.

5 THE COURT: All right. Your witness, Mrs. Gay.

6 MRS. GAY: Thank you.

7 DIRECT EXAMINATION

8 BY MRS. GAY:

9 Q. Mr. Williams, certainly, you know why you're here,
10 today. So can you tell us a little bit about yourself and
11 your qualifications?

12 A. I'm a retired polygraph examiner from a Naval
13 Investigative Service. I was trained and was honor
14 graduate of the U.S. Army, Polygraph School, Ft. Gordon,
15 Georgia, in August 1972. I was a polygraph examiner for
16 the Navy from that time until I retired in June of 1988. I
17 was a senior polygraph examiner in the Far East for a
18 period of four years, and was a senior polygraph examiner
19 in Europe for a period three years. And I was a Branch
20 Chief of the Department of Defense Polygraph Institute at
21 Ft. McClellan, Alabama, for about a year and a half during
22 1984 or '85.

23 Q. And so how many years have you been involved with the
24 polygraph?

25 A. Since 1972. I might add that I'm in partnership now,

1 since my retirement, with Frank Bloomingburg.

2 B-l-o-o-m-i-n-g-b-u-r-g -- who is also a polygraph examiner
3 who went through the same school as I did; and graduated,
4 also, as an honor graduate at the same time that I did.

5 Q. And you and Mr. Bloomingburg, are in partnership in
6 what type of entity?

7 A. We do polygraphs for attorneys, and private polygraphs
8 in Charleston. We do a couple of other things, but
9 primarily that's what we do.

10 Q. And pursuant to your responsibilities -- what is the
11 name of your company?

12 A. Investigative Associates of Charleston, Inc.

13 Q. I'd like to show you what's been marked as Court's
14 Exhibit Number 9 for ID purposes. Can you describe this
15 document?

16 A. Yes, I can. That's a resume of myself that I had
17 prepared some length of time ago.

18 Q. Is it depictive of the information that you've just
19 provided to the Court from the stand?

20 A. Yes, it is.

21 MRS. GAY: Your Honor, I provided this to you earlier.

22 THE COURT: All right. That's the resume of his
23 qualifications.

24 MRS. GAY: Yes, sir.

25 THE COURT: Court's Exhibit 1, I think, at this time;

1 is it not?

2 COURT REPORTER: Nine.

3 THE COURT: Court's Exhibit 9.

4 BY MRS. GAY:

5 Q. Now, pursuant to your involvement with polygraphs, are
6 you a member of any type of associations or memberships in
7 any groups associated with polygraphs?

8 A. I've been a member of the American Polygraph
9 Association, which is the national organization since the
10 1970's. I'm also a member of the South Carolina Polygraph
11 Association -- Association of Polygraph Examiners, SCAPE,
12 and I'm a board member of that newly established
13 organization.

14 Q. And, approximately, when was the national association
15 started?

16 A. I think in the 1960's, '50's.

17 Q. And how about the South Carolina association?

18 A. It had been reestablished since last year.

19 Q. Was it in existence before that?

20 A. It had been in existence and had kind of closed the
21 doors, because in 1988 there was a congressional edict that
22 did away with a lot of polygraph examiners which was the
23 lifeblood of that particular organization. And thereafter,
24 that association just kind of fell on hard times.

25 Q. But recently it's ---

1 A. Recently it has been reestablished. Skip Mitchell,
2 who is in charge of the SLED polygraph, is the president of
3 the association.

4 Q. And is Skip Mitchell employed by the South Carolina
5 Department -- SLED, you said?

6 A. SLED. He's in charge of their polygraph at SLED.

7 Q. And he is somebody who works with prosecutors and
8 police officers?

9 A. Yes.

10 Q. And not somebody who would generally work with
11 defendants or private case?

12 A. No.

13 Q. And he's the president of this association?

14 A. Yes.

15 Q. And do you carry card membership?

16 A. I do.

17 Q. Could you provide these cards?

18 MRS. GAY: Your Honor, I think, I made a copy of these
19 cards for you.

20 THE COURT: If you did, I don't recall you giving them
21 to me, but if you want to put them in, just put them as a
22 Court's Exhibit.

23 MRS. GAY: Yes, sir. I'll make a copy afterwards for
24 the Court Exhibit.

25 BY MRS. GAY:

1 Q. I'm going to show you this card. Can you describe
2 this for the Court?

3 A. That's the State of South Carolina Polygraph License
4 which is issued to me by SLED.

5 Q. And this license, what did you have to do to
6 accomplish this license?

7 A. I had to prove my ability as a polygraph examiner to
8 SLED before they authorized my license.

9 Q. And SLED is the South Carolina group?

10 A. Yes. They're in charge of licensing all polygraph
11 examiners in the state.

12 Q. And that as we said before, is the agency that's
13 associated with the police officers and the prosecutors in
14 the State of South Carolina?

15 A. You asked me about an association. SCAPE, the South
16 Carolina Association of Polygraph Examiners is not a state
17 agency. It is a private agency within the state, just like
18 the American Polygraph Association is within the country.

19 Q. However, SLED, which is a state agency, is in charge
20 of the licensing in the State of South Carolina?

21 A. That's correct. That's correct. And that's where I
22 got that.

23 Q. And how many licensed polygraphers are there in the
24 State of South Carolina, approximately, if you know?

25 A. I think there are probably seventy-five. That

1 includes -- over ninety percent of them are government
2 examiners for the police departments and the county and
3 probation and parole and those people.

4 Q. And are you, also, aware that there are a number of
5 people who are either licensed or operating in the Federal
6 System throughout this country?

7 A. Yes.

8 Q. Do you have my idea how many people would be in the
9 Federal System?

10 A. I have no idea. I think, when I retired from the
11 Navy, Naval Investigative Service, I think, we had about
12 forty-five within the Naval Investigative Service. I
13 think, all the Department of Defense have at least that
14 many, and probably more now, because the Federal Government
15 does what is called "screening polygraph examinations" for
16 security clearances. And so there are probably 1500
17 Federal Examiners.

18 Q. And I'm going to show you now this card. Can you
19 describe to the Court what this card is?

20 A. That's a membership to the American Polygraph
21 Association. It's a membership of a national polygraph
22 association.

23 Q. And both of these cards that I show you indicate a
24 2001 membership?

25 A. Yes, they do.

1 Q. And I believe you have a business card, also? Could I
2 see one of those?

3 A. Sure.

4 Q. This business card -- can you describe to the Court
5 what this says?

6 A. It's just a business card giving myself as a person
7 with the Investigative Associates of Charleston.

8 Q. And this is your business, Investigative Associates of
9 Charleston?

10 A. Yes, ma'am.

11 Q. And this is the company that you and Mr. Bloomingburg
12 have?

13 A. Yes.

14 Q. And how long have you had that company?

15 A. Since 1988.

16 Q. And with regard to your experiences in polygraphs in
17 general, could you describe to the Court what a polygraph,
18 basically, is?

19 A. A polygraph measures physiological responses to
20 stimulus. If I poke you with a pen, you're going to jump
21 back. That's a stimulus. When you were a small child,
22 four or five, and you had done something wrong, and your
23 mother asked you or your grandmother asked you what you had
24 done, you put your eyes down; and you told her you didn't
25 do it; and your mother immediately knew that you had done

1 it. That is a response to applied stimulus. The polygraph
2 exam -- a polygraph, simply, measures those responses that
3 the body had made when it is placed under stress. And it
4 goes to react to that particular response that is of
5 greater fear to your well-being.

6 The psychological response is the fight or flight
7 syndrome. You run away from that which causes you the
8 biggest anxiety. And that is caused by stress. The
9 polygraph instrument, simply, measures those physiological
10 responses that the body has when questions, which are the
11 stimuli, are asked, and records those reactions.

12 Q. Now, when questions are asked and the stressors or the
13 stimuli are there and it's recorded, what do y'all do with
14 that information?

15 A. Well, first of all, the responses are recorded on a
16 chart, polygraph paper, per se. The test that is utilized,
17 the sequence of questions has to be an established and
18 recognized test. And it has to have had some validity.
19 The test we used when we conducted the examination on Ms.
20 Gilliard ---

21 Q. Before you get to Ms. Gilliard, if you'll just
22 describe to me a little bit more about the general
23 processes of it?

24 A. Okay. The test, itself, has an order, or sequence of
25 questions. And those questions are asked while the

1 examinee is hooked up to the instrument, responding to that
2 stimuli, the question.

3 Q. Is it fair to say that given each person, that some of
4 those test questions would be different?

5 A. Oh, of course.

6 Q. And so if -- when you're giving it, the polygraph
7 examinations, most of the information, questions are
8 specific to that person?

9 A. That's correct.

10 Q. However, the responses or how the responses are read,
11 are not specific to that person? The graphs?

12 A. Everyone will make a graph, because it's measuring --
13 the one that we use, measures three physiological
14 responses: The blood pressure, the pulse rate, galvanic
15 skin response, and breathing. That's what it measures in
16 the individual. And everyone will have a different pattern
17 of blood pressure and pulse rate, of sensitivity of the
18 skin, and of breathing patterns.

19 Q. So would you -- you said, test questions?

20 A. That's correct.

21 Q. Let me describe it, and if you agree with me -- you
22 ask an individual certain questions that you know that
23 they're going to answer "yes" to?

24 A. That's correct.

25 Q. Like, their age or something like that?

1 A. That's correct.

2 Q. And then you look at a pattern that that individual,
3 themselves, develops?

4 A. We use what's called a "controlled question technique"
5 which has been established as the most reliable polygraph
6 technique, which means if we give a question, or we insert
7 questions within the test during which the examinee will
8 most probably lie to, or will cause the examinee some
9 stress. For instance, if we're talking about a theft of
10 \$1000 from a place of business, we might ask that person,
11 Did you steal the \$1000? And that person would say, No, if
12 they did not steal it, or, no, maybe, if they did steal it.
13 But we will ask that person, Have you ever stolen anything.
14 And that person -- and it takes some time to develop the
15 rapport with the examinee. But that person will say, No,
16 I'm not a thief.

17 Now, I might ask a question, Before the date of the
18 theft, did you ever steal even one thing? And that person
19 would say, No. And we would not direct that lie, but we
20 would have that person tell us, no, they had not stolen
21 anything. We then, would compare to questions of, Did you
22 steal that thousand dollars? But before 2000, did you ever
23 steal even one thing?

24 Now, whether or not that person stole anything or not
25 before 2000, they would be concerned that maybe someone

1 might think that they were a thief. They would know
2 without equivocation if they stole \$1000. But they would
3 have to search their mind about before that time had they
4 ever stolen even one thing.

5 During the test, if the person reacts greater to the:
6 Before 2000, did you ever steal even one thing, than the
7 question of, Did you steal \$1000, we assume that the
8 person's psychological set that goes to the position of
9 most greater threat to that person's well-being, by making
10 me think that they're a thief. If they go to that
11 question, I would say, they didn't steal the \$1000. If
12 they stole the \$1000, they would react to the \$1000, and
13 would not even hear: Before 2000, did you ever steal even
14 one thing.

15 Q. So what you're, basically, describing is a set of
16 psychological factors that are going on inside somebody ---

17 A. That's correct.

18 Q. --- that you have a quantitative mechanism to -- I
19 think, you said blood pressure, breathing, and what's the
20 other one?

21 A. Galvanic skin response which changes on the surface of
22 the skin.

23 Q. Like, sweat?

24 A. The sweat gland is effective. In reality, your mind
25 sends messages throughout your body through electrical

1 field. And your skin is -- we use that kind of like a
2 wheatstone thredge (phonetic) which is a little resister in
3 the polygraph. But it measures and changes on the
4 surfaces.

5 Q. And so based on certain questions given to an
6 individual, and based on a graph that is produced by these
7 pads or sensories that are put in different areas on their
8 body, where do you put the sensories?

9 A. We put two tubes around the chest, which measures the
10 changes in the thoracic cavity, the breathing patterns. We
11 put a regular blood pressure cuff. We usually try to put
12 it on the upper-left arm, because it's closer to the
13 thoracic aorta. We put the two metal plates on the fingers
14 of the opposite hand.

15 Q. And these sensories are attached to a machine that
16 does some type of graph?

17 A. That's correct.

18 Q. And, I believe, you've described the psychological
19 factors, and how it ends up on paper, and to some extent
20 how you analyze that. Can you describe for me and the
21 Court the scientificness of it? I believe, that there's
22 been lots of research and studies done.

23 A. There have been a lot of studies, validity studies.
24 When the Department of Defense Polygraph Institute was
25 begun in 1985, they not only established a training program

1 for Federal Examiners, but they also established a research
2 center at that time.

3 THE COURT: I'm sorry. Who is "they"?

4 WITNESS: The Department of Defense Polygraph
5 Institute.

6 THE COURT: All right. Go ahead.

7 WITNESS: It was a coordinated effort by the Army,
8 Navy, and Air Force, that was also assisted by Marine Corp
9 and the user agencies, which was the FBI, Secret Service,
10 National Security Agency, Treasury Department, all of the
11 Federal agencies. And they established a scientific
12 research department at that time. They brought in a man by
13 the name of Dr. Gordon Varland, who is recognized as an
14 authority on polygraphy, the head of that department. They
15 did a lot of studies there.

16 Q. What is your understanding of those studies? You've
17 had an indication to ---

18 A. The validity studies -- there have been numerous
19 validity studies. And the validity studies have always
20 been in excess of eighty percent reliability of the
21 polygraph. It's been as high as ninety-three percent, and
22 one study was ninety-eight percent. That does not include
23 inconclusives, because there are no opinions. You can
24 either review charts, and you say the person is deceptive,
25 does not attempt deception, or it is inconclusive and you

1 can give no opinion. When it is inconclusive you do not
2 make a judgment one way or the other. So most times that
3 is not gaged into the validity study.

4 Q. So the validity studies that you're referring to were
5 either that they passed or they didn't pass?

6 A. That's correct.

7 Q. But those gray areas were not a part of the study?

8 A. That's correct.

9 Q. Or they were excluded?

10 A. That's correct.

11 Q. And I believe your testimony is that the Federal
12 Government as well as all the Department of Defense
13 agencies that -- our military had commissioned a gentleman,
14 who is known in this area to do specific studies to try to
15 establish the validity scale?

16 A. That's correct.

17 Q. Or the reliability scale?

18 A. That's correct.

19 Q. And it's your understanding there has been more than
20 one of these studies?

21 A. Many studies. Yes.

22 Q. And, I think, that you had indicated to me that there
23 has been a relatively recent one?

24 A. The one that I mentioned, was a re-study of facts by
25 Dr. William Yanky, who was at one time -- in fact, when I

1 was there -- he came in as head of the Polygraph Institute.
2 He is since deceased, but he did a study on known examinees
3 and rewrote a paper. And his paper was ninety-eight
4 percents reliability.

5 Q. And I believe you said -- let me ask it this way: The
6 reliability scale, is it different between people who are
7 deceptive and people who are not deceptive?

8 A. So far most of the studies indicate that it is more
9 accurate with a deceptive subject than a nondeceptive
10 subject.

11 Q. And pursuant to your understanding of the literature
12 in this area and the experimentation and studies that have
13 been done, are these studies or information about
14 polygraphs printed in any type of journal or publication?

15 A. You can get the publications from the American
16 Polygraph Association. And they routinely print studies
17 and all matter of information pertaining to polygraphy.

18 Q. And I'm going to show you a number of documents. I
19 four of this document that's blue and white. Can you
20 describe to the Court what these four documents are?

21 A. These are newsletters put out by the American
22 Polygraph Association for the last -- well, this year 2001,
23 and one of 2000. And those set forth information
24 pertaining to polygraphs, some studies, some validity
25 studies, some just general information on polygraphs.

1 Q. And these two documents that are tan colored, can you
2 describe to the Court what these are?

3 A. These are polygraphs -- this is the journal. And
4 these are the last two journals that have been established.
5 The last one of 2000 and the first one of 2001.

6 MRS. GAY: And I'm going to have one of each of these
7 documents marked as Court Exhibits, Your Honor.

8 THE COURT: Fine.

9 BY MRS. GAY:

10 Q. And in these documents, I believe, that you said that
11 there are articles?

12 A. Yes.

13 Q. Articles, general information?

14 A. General information on polygraph, studies have been
15 done.

16 Q. So polygraph people, peers in this community, put
17 information in these ---

18 A. Yes.

19 Q. --- magazines that they believe are relevant?

20 A. They would.

21 Q. And I know that you have described how it's done, what
22 some of the psychological factors that go into the results.
23 Is your profession -- is there a quality controlled process
24 to your profession, to what you do in your testing?

25 A. The Federal Government has called it a quality

1 control. And, in fact, when Frank and I began our
2 business, we wanted to maintain the same quality control
3 that was maintained by the Federal Government.

4 My partner, Frank Bloomingburg, was in charge of the
5 Navy World Wide Polygraph Program and, also, was as such
6 the Chief quality control for the Navy at that time; and
7 worked with congress in the new polygraph laws of 1986.
8 And so we do that with our examinees, now. When we run
9 polygraphs, we do it in tandem. One person does the
10 polygraph, the examination, the mechanical portion of the
11 polygraph; and the other sits, watches the examination, to
12 ensure that the polygraph is done properly. While the
13 person is running the polygraph, doing the mechanical
14 portion of the polygraph, the quality control, whether it
15 be Frank or myself, will go through the charts; make sure
16 the charts are proper, and will do an evaluation of the
17 charts.

18 After the examination, the person who does the
19 polygraph test will then do his own evaluation of the
20 charts by giving a numerical evaluation to the relevant
21 questions. And then the examiner and the quality control
22 will compare their evaluations and make sure that it's done
23 properly, and you see the same thing in the charts.

24 Q. Now pursuant to -- what you're actually saying is that
25 you and Mr. Bloomingburg do this in your Investigative

1 Associates of Charleston practice?

2 A. That's correct.

3 Q. You said that this was done in the -- is done by the
4 Federal Government?

5 A. In the Federal Government what usually occurs is, for
6 instance, I was in the Far East by myself. I would do the
7 polygraph exam, I would send in my report to Washington.
8 And Mr. Bloomingburg would look over my charts to make sure
9 that I had everything -- all my T's were crossed and my I's
10 were dotted. If he had a problem with my charts, then he
11 would have to come out to the field. We have instant
12 quality control, which is something that most police
13 departments don't have.

14 Q. In other words, you have two people?

15 A. We have two people.

16 Q. And is it required under your license to have two
17 people?

18 A. No, it does not. That's an adjunct for us. We do
19 that.

20 Q. And, Mr. Bloomingburg, (sic) I would like to show you
21 what's been marked as Court's Exhibit ---

22 MRS. GAY: Judge, do you have the original?

23 THE COURT: No. I gave it back to you. Wait a
24 minute. Here it is.

25 MRS. GAY: Thank you.

1 BY MRS. GAY:

2 Q. I would like to show you Court's Exhibit, for ID for
3 the defendant, 10. Can you tell me -- don't tell me
4 exactly what it says, but what it is?

5 A. It is a letter that's signed by my partner with
6 subject: Polygraph examination on 20, December, which says
7 ---

8 Q. Right now, I just want you to identify it?

9 A. Okay.

10 Q. It's a letter from Mr. Bloomingburg?

11 A. Yes. Bloomingburg.

12 MRS. GAY: Your Honor, for purposes of this hearing,
13 Mr. Bloomingburg was unavailable, and I would like to
14 publish this to the Court, just for purposes of the fact
15 that he was unavailable to come.

16 THE COURT: Well, when you say "publish it to me," do
17 you wish for me to believe what it says?

18 MRS. GAY: Your Honor, it says -- yes.

19 THE COURT: Okay. So if you wish me to believe what
20 it says, how is the defense going to confront or challenge
21 the individual?

22 MRS. GAY: Well, I guess, I can ask some questions as
23 to this individual that he was present, and that he ---

24 THE COURT: Well, Mr. DuTremble, do you object to a
25 letter coming in for me to consider?

1 MR. DUTREMBLE: No, sir. You can consider it.

2 THE COURT: All right.

3 MRS. GAY: This is, primarily, for the purposes of
4 quality control as opposed to the test, itself.

5 THE COURT: All right. Mr. DuTremble doesn't object.
6 It will be in.

7 MRS. GAY: Do you have a problem if he reads it, or do
8 you just want the Court to read it? I'd just ask the Court
9 to read this, Your Honor.

10 BY MRS. GAY:

11 Q. So Mr. Bloomingburg was present at the time that this
12 polygraph with Ms. Gilliard was done?

13 A. Yes.

14 Q. And that as a part of your procedure, you've indicated
15 that that is what you do, you and Mr. Bloomingburg do, to
16 ensure quality control?

17 A. That's correct.

18 Q. And would that, also, be some type of peer review?

19 A. No.

20 Q. Do you have peer review in your profession?

21 A. We do. It was not done in this case. If we have
22 problems with charts, he and I, we might take them to other
23 examiners that we know. And we have a pretty free
24 interchange with other polygraph examiners.

25 Q. And so there are other polygraph examiners in this

1 state that have had at times reviewed your ---

2 A. Yes.

3 Q. And that's a common in your field?

4 A. That's not uncommon.

5 Q. Not uncommon. And are you aware of any occasions
6 where polygraph examiners have testified in court?

7 A. My partner testified in a Maritime -- results of a
8 polygraph in a Maritime Court, which would have been a
9 Federal Court.

10 Q. And have you testified in a court before?

11 A. I have testified in a court a number of times, but I
12 have not testified with the results -- of polygraph results
13 in court. I've testified in the Federal Government at
14 boards and hearings. I've testified in court after
15 conducting a polygraph examination, and then obtaining a
16 confession from a subject. I testified to the statement,
17 but not with regards to the polygraph exam.

18 Q. Are you familiar with the fact that in the Federal
19 System, polygraph examiners do sometimes testify in court?

20 A. I understand that they have on occasion. Yes.

21 Q. Now, with regard to Ms. Gilliard ---

22 MRS. GAY: Your Honor, at this point, I would like to
23 have the Court qualify him as an expert.

24 THE COURT: Well, at this point, I'm going to permit
25 you to continue questioning him. I'll let all of it come

1 in together. We're not in front of a jury, anyway. I'd
2 rather you complete your entire questions. Okay.

3 MRS. GAY: Thank you.

4 BY MRS. GAY:

5 Q. I'd like to show you what's Court's Exhibit, ID for
6 the Defendant, 8. And ask you if you can identify this?

7 A. Yes, I can.

8 Q. And what is it?

9 A. That is a report of investigation that was with
10 regards to the subject, Kandy Latrice Gilliard, that I
11 prepared regarding a polygraph that I administered on the
12 20th of December.

13 Q. And is this the final written report?

14 A. Yes.

15 Q. Do you also have the file present in the courtroom
16 with you?

17 A. Yes.

18 Q. And are there other documents in your file related to
19 Ms. Gilliard other than this report?

20 A. The only thing that I have additional to that are the
21 polygraph charts and related materials to the polygraph
22 charts, themselves.

23 Q. So the actual chart?

24 A. Yes.

25 Q. Could you show that to me?

1 A. Sure.

2 Q. Okay. This is your file. Can you look through and
3 see if you can find your charts? And how many of these
4 charts are there?

5 A. Three, six, seven.

6 Q. Seven charts?

7 A. Yes.

8 MRS. GAY: I would like to make a copy of this for the
9 Court record, Your Honor.

10 THE COURT: Well, let's do that later. Go ahead at
11 this time.

12 BY MRS. GAY:

13 Q. So we're going to have a copy of this, sir. Can you
14 -- with regard to Ms. Gilliard, I know you've described
15 generally the psychological factors that go in, and how the
16 charts are read. Can you tell us a little bit about your
17 meeting with Ms. Gilliard, herself?

18 A. We did a polygraph at the ---

19 Q. "We" means you and Mr. Bloomingburg?

20 A. My partner and myself. Frank Bloomingburg and myself.
21 We did the polygraph at the County jail. I talked to Ms.
22 Gilliard for probably thirty-five minutes to an hour before
23 we ---

24 Q. Let me ask you a question. When you do polygraphs, do
25 you routinely talk to the person before you actually

1 administer the test?

2 A. Oh, yes.

3 Q. And why do you do that?

4 A. It's called the pretest interview. The polygraph
5 examination really has three parts. The pretest interview
6 to get to know the individual, to determine what that
7 person says did not occur, what that person says did occur,
8 and also trying to put the examinee at some ease; and gets
9 that person attuned to answering questions and the sound of
10 my voice.

11 Q. Do you do this with everybody?

12 A. Everyone. Yes.

13 Q. So the fact that you had a lengthy conversation with
14 Ms. Gilliard is not unusual?

15 A. No. It is always the case.

16 Q. And then what happened?

17 A. We decided what questions we would ask.

18 Q. And how do you decide that?

19 A. We had obtained some information from you.

20 Q. What type of information?

21 A. And that was information regarding the crime that had
22 occurred, what was alleged regarding Ms. Gilliard, and what
23 she said did not occur.

24 Q. In reviewing that, did you take that from what I said
25 or did you have documents to it?

1 A. We had documents that we looked at. I think that you
2 provided my partner, as a matter of fact, with documents.

3 Q. And you, ultimately, saw those documents?

4 A. Yes, I did. Then, after we talked to Ms. Gilliard,
5 she told me what she did not do, and what she did do. And
6 we made questions based on what she said did not occur.

7 Q. And is it fair to say that the purpose of the
8 polygraph is to find out if they're going to use deception
9 in saying something did not occur?

10 A. Of course.

11 Q. I didn't hear you?

12 A. Of course. Yes. Yes. We ran one series of charts,
13 three charts, plus an acquaintance test, which just gives
14 her a feeling of how the test is going to be done. It was
15 our opinion based on the first charts -- and you'll see the
16 report -- that ---

17 Q. If you don't mind, just talk about your opinion. We
18 know that Mr. Bloomingburg isn't here. So just your
19 opinion?

20 A. It was my opinion that she was inconclusive to one of
21 the questions, but was not lying regarding the second
22 question. We asked her with regards to her involvement in
23 the choking. And we asked her was there pre-planning.

24 Q. I would like to show you this report, and I know the
25 Court has a copy, also. If you would refer, I believe, it

1 says -- this word says?

2 A. Synopsis.

3 Q. And in that part of your report -- is this the
4 standard way that you create a report?

5 A. Yes. Yes.

6 Q. In your report, the standard report, what would
7 synopsis include?

8 A. That would include what she's alleged -- what the
9 person's alleged to have occurred and what she said -- the
10 person says did not occur.

11 Q. Let me ask you a question. You have described an
12 incident where you sat down and talked with her. And this
13 written report, does it also, basically, describe how this
14 interview went?

15 A. Yes.

16 Q. Okay. And in this second portion, what is this word?

17 A. Background data.

18 Q. And what does that describe?

19 A. That describes the information that the subject is
20 providing to me, or the attorney is providing to me, and
21 why that person is taking the polygraph test. The synopsis
22 is a word of the entire report.

23 Q. And the background information, this report follows
24 the process of how you administered the test?

25 A. Yes.

1 Q. And then with regard to Ms. Gilliard, would you have
2 done this test in the general course -- I believe you
3 described the putting the sensors on her?

4 A. Yes.

5 Q. You put them on her?

6 A. Yes. After we had discussed the matter, after we had
7 written down and obtained the questions that we were going
8 to ask, and before the test was to begin, then we would put
9 the sensors on.

10 Q. Did you?

11 A. Yes.

12 Q. And where did you put the sensors on Ms. Gilliard?

13 A. I put two tubes around her chest that measure the
14 breathing patterns, and changes with the thoracic cavity.
15 I put a blood pressure cuff on her arm. And I put two
16 metal plates on her fingers.

17 Q. Okay. And so are those things, actually, hooked up to
18 something with cords?

19 A. Yes.

20 Q. And then, what are they, actually, hooked up to? What
21 does it look like?

22 A. It looks like a suitcase. It's got four pens, because
23 we have four components. The pens wiggle as the individual
24 is -- after the instrument is activated. It is run ---

25 Q. Can I see your test results?

1 A. These?

2 Q. Yes. Is it like a gage? I think, looking at this
3 document ---

4 A. Yes.

5 Q. So it's like a gage?

6 A. That's correct.

7 Q. And this thing is attached to some type of writing
8 implement?

9 A. Yes. This has pens coming from the instrument. These
10 are the two ---

11 Q. And you're pointing to the top two?

12 A. Top two lines.

13 THE COURT: Mrs. Gay? Sir, I'm sorry. Mrs. Gay, you
14 had told me before that your examination would take about
15 twenty minutes. You have already gone about forty minutes,
16 and I have no problem with that. It's just that I told the
17 jury based on hearing from you. How much longer will you
18 be? And I'm only asking for information.

19 MRS. GAY: I think that he's about to wrap it up. I
20 just wanted to go over this report.

21 THE COURT: Okay. All right. I understand.

22 BY MRS. GAY:

23 Q. And so these reports have written ---

24 A. Okay. These are the two numergraph tubes. This is
25 the galvanic skin response. And this is a recordation of

1 pulse rate and blood pressure change.

2 Q. And there are three of these sheets?

3 A. There are three of those to that test.

4 Q. And pursuant to your testing of Ms. Gilliard, you read
5 the results?

6 A. No. I -- after.

7 Q. Right. After?

8 A. Yes. Yes.

9 Q. And you were able to make conclusions from those
10 results?

11 A. Yes.

12 Q. And did Mr. Bloomingburg, also -- you don't have to
13 tell me what he said, but are you aware of whether or not
14 he read the results?

15 A. Yes, I am.

16 Q. And when you made your, ultimate, conclusions, was it
17 your understanding that there was an agreement between the
18 two of you?

19 A. Yes, there was.

20 Q. And you are the one who actually signed the report?

21 A. That's correct.

22 Q. And for purposes -- I think, we had gotten to this
23 part where it says, polygraph examination?

24 A. Yes.

25 Q. Can you describe to the Court -- not what you asked

1 and how -- what you asked, how she responded, what your
2 conclusions were, and what happened after that?

3 A. Okay. We had decided what questions we were going to
4 ask. The two relevant questions were: Did you plan with
5 B.J. to do that robbery that night? She said she did not
6 plan with him to do that.

7 Q. Well, her answer on the question was?

8 A. No.

9 Q. Okay, and?

10 A. Before the robbery, did you talk to B.J. about choking
11 Dawn? Her response was, no. In my opinion, she did not
12 attempt deception in her response to: Before the robbery,
13 did you talk to B.J. about choking Dawn? But with regards
14 to her response to: Did you plan with B.J. to do that
15 robbery that night? Her response being, no. It was
16 inconclusive.

17 Q. Now, inconclusive, does that mean that there was
18 deception?

19 A. No. It means that I could neither make a deceptive
20 call or a nondeceptive call.

21 Q. So what did you do at that point?

22 A. I took that question out of the test. We talked to
23 Ms. Gilliard. Ms. Gilliard said that B.J. had talked about
24 robbing that place before, but she didn't plan with him.
25 She didn't know he was going to do it that night. And so

1 the questions I asked -- the next question I asked: Before
2 you saw B.J. at the poker parlor, had you already agreed to
3 help him in the robbery? She answered, no. In my opinion,
4 she was truthful in that.

5 Q. Well, what is the actual statement on the report?

6 A. Before you saw B.J. ---

7 Q. No. I understand that. What were your findings?

8 A. The statement did not attempt deception in the
9 response.

10 Q. And was it your understanding that Mr. Bloomingburg
11 also reviewed the results of the graph?

12 A. I saw him review the charts. And he concurred with my
13 examination.

14 Q. And pursuant to that, this report was written?

15 A. That's correct.

16 Q. And this report is dated?

17 A. That's the date of the examination.

18 Q. Which is?

19 A. The same date that I wrote the report.

20 Q. Which is?

21 A. 20, December 2000.

22 Q. And this is your signature?

23 A. That is my signature.

24 MRS. GAY: Your Honor, I believe I'm finished.

25 THE COURT: All right. Mr. DuTremble, questions?

1 MR. DUTREMBLE: Thank you, Your Honor. May it please
2 the Court.

3 CROSS-EXAMINATION.

4 Q. Mr. Williams, you were employed by the Naval
5 Investigative Service, which means, does it not that you
6 were involved with military personnel and civilian
7 personnel working on a military basis?

8 A. That's correct.

9 Q. So in connection with your work as a polygraph
10 examiner, you would have some sort of contact with either
11 the Federal Courts or the Military Courts for court
12 marshals and things of that nature?

13 A. That's correct.

14 Q. I take it that you were not involved in the background
15 screening and screening for employment purposes?

16 A. The only screening that I've ever done was with
17 Counter Intelligence Screening. During that time, we do
18 screening for people for high-level clearances, or we did
19 screening on intelligence matters.

20 Q. Okay. So in connection with your work with the
21 military, of course, you were, of course, familiar with
22 Military Rule 707 of their Rules of Evidence, which
23 absolutely precludes the admission of polygraph
24 examinations in their courts?

25 A. That's correct.

1 Q. And that's because polygraphs are apparently
2 unreliable, and their reliability cannot be shown to the
3 statistician of a Military Court. And that's why it's not
4 admissible; is that correct?

5 A. That is not correct

6 MRS. GAY: Your Honor, I would object to the form of
7 the question.

8 THE COURT: And for purposes of the in camera hearing,
9 I will permit the question, because I can accept or not
10 accept what I, in my judgment -- I'm not a jury. So I
11 understand what he's doing, but I'll make my own decisions
12 there on this case, under the Jones case and 702.

13 BY MR. DUTREMBLE:

14 Q. And you, of course, are aware as a polygraph examiner,
15 that the United States Supreme Court has upheld the
16 exclusive polygraph examinations from the Military Courts?

17 A. It has upheld. Yes.

18 Q. And you had mentioned the congressional edict. Back
19 in the '80's you were, of course, familiar with the United
20 States Office of Technology Assessment, the study called
21 the Scientific Validity of Polygraph Testing, a research,
22 review, and evaluation, detective of memorandum in which it
23 says that the polygraph test detects deception better than
24 chance, but with error rates that could be considered
25 significant. You are familiar with that study; are you

1 not?

2 A. I am familiar with the OTA study.

3 Q. You are, also, familiar with, are you not, the study
4 that was done and published in Modern Scientific Evidence,
5 by Faigman F-a-i-g-m-a-n, Kaye K-a-y-e, Saks S-a-k-s, and
6 Sanders, in which peer review was done in polygraph
7 examinations; and the conclusion was there is simply no
8 consensus that polygraph evidence is reliable. To this
9 day, the scientific community remains extremely polarized
10 about the reliability of polygraph techniques. Are you
11 familiar with that study?

12 A. No, I'm not.

13 Q. You're not. You are, then, familiar with a study done
14 by Paul Giannelli G-i-a-n-n-e-l-l-i and Mr. Imwinkelried
15 I-m-w-i-n-k-e-l-r-i-e-d, in which they published The
16 Complete Polygraph Handbook, reporting that the overall
17 accuracy rate from laboratory studies involving the common
18 control question technique which you've described would be
19 in the range of eighty-seven percent accurate. Are you
20 familiar with that study?

21 A. Eighty-seven percent is pretty good.

22 Q. Are you familiar with that study?

23 A. I'm familiar with that study.

24 Q. Are you familiar with a study done by Iacono
25 I-a-c-o-n-o and Lykken L-y-k-k-e-n published in the -- the

1 name of the article is The Scientific Status of Research on
2 Polygraph Techniques, The Case Against Polygraph Tests,
3 which was published in one Modern Scientific Evidence, in
4 which they say that their review indicates the accuracy
5 rate of control question technique which you've described,
6 polygraph is little better than can be obtained by the toss
7 of a coin, that is, fifty percent. Are you familiar with
8 that study?

9 A. I'm familiar with both of those individuals. I did ,
10 not know that that was their report.

11 Q. Okay. Now, you testified that your test results which
12 you described to the Court were not subject to peer review;
13 is that correct?

14 A. No. I said that they had not been subject to peer
15 review.

16 Q. That's what I just asked you?

17 A. Yes. They had not been. It was not there. They,
18 certainly, can be looked by anyone.

19 Q. So you deny, prior to this hearing, sending them to
20 SLED to have SLED take a look at it?

21 A. No, I did not.

22 Q. You did not send them to the FBI?

23 A. No.

24 Q. And you are familiar with the FBI and their
25 techniques; are you not?

1 A. Yes. But I -- yes, I am.

2 Q. Are you familiar with any of their examiners. For
3 example, do you know a fellow by the name of Pete Logan?

4 A. I know Pete Logan.

5 Q. Pete Logan is a polygraph examiner?

6 A. Yes.

7 Q. Very good man -- very good examiner?

8 A. He is. He was not a polygraph examiner with the FBI,
9 though. He became a polygraph examiner after he retired
10 from the FBI.

11 Q. Okay. And you are familiar with his credentials, and
12 you know he is very good?

13 A. Yes.

14 Q. And you, also, know that Pete Logan, as good as he is,
15 has never testified in a court of law?

16 A. I understand.

17 Q. And you have not, either; have you? Before a jury?

18 A. I have testified before a jury, yes, as has Pete, I'm
19 sure.

20 THE COURT: He's already explained earlier why -- how
21 he did it and what he was doing. It was not giving the
22 results, it was other matters regarding testimony,
23 confessions.

24 MR. DUTREMBLE: Yes, sir.

25 BY MR. DUTREMBLE:

1 Q. And you did the same thing in this particular case
2 that you've done in the past where you've had to testify as
3 to the statement that was actually made, you went down and
4 interviewed the defendant; right?

5 A. I'm sorry. Repeat that.

6 Q. You did the same thing in this case that you have done
7 in the past. You went down and interviewed the defendant
8 before you ran your test?

9 A. Of course, I interviewed the defendant before I ran
10 the test.

11 Q. And you testified that she told you what she did and
12 what she didn't do?

13 A. That's correct.

14 Q. And you told us what she didn't do. Now, tell me what
15 she did?

16 A. She told me she was there. That she caught -- saw him
17 come in. After he started, that, you know, she knew what
18 was happening; and that from what I recall, that she ran
19 away. But I don't, specifically, recall exactly what she
20 told me she did. Thereafter, she said she did not help
21 kill the person.

22 Q. Did she tell you that she put a plastic bag over the
23 woman's face?

24 A. No, she did not.

25 Q. Did she tell you she had taken the keys out of her

1 pocket?

2 A. I don't recall if she told me that.

3 Q. Did she tell you that she unlocked the padlock and
4 went in and took \$1200 out of the cash drawer?

5 A. I think, she acknowledged some of the theft, if I'm
6 not mistaken.

7 Q. Did Mrs. Gay provide you with a copy of her written
8 statement?

9 A. Yes, she did.

10 Q. Did you read that statement?

11 A. I did.

12 Q. And you don't recall all those things being in there?

13 A. No.

14 Q. You didn't ask her about any of that stuff?

15 A. I'm sure that we did.

16 Q. But on your test questions, you didn't ask her about
17 any of that?

18 A. I did not ask her on that polygraph. No.

19 Q. Okay. Did you go down and -- did you ask any
20 questions of her co-defendant, Mr. B.J. Johnson, in any
21 way, shape or form?

22 A. No.

23 Q. Did you ask anybody from SLED, the Solicitor's Office,
24 or any other law enforcement agency to be present when this
25 polygraph examination was given?

1 A. Of course not. I was doing it for the defense lawyer.

2 Q. Okay. So there wasn't going to be any peer review at
3 the time this thing was taking place; was there?

4 A. No.

5 Q. Now, we've discussed the relative ranges of the
6 reliability of the polygraph, the accuracy anywhere from
7 fifty percent to your quoted ninety-eight percent. Let me
8 ask you this, sir: Isn't it true that people who are given
9 polygraph examinations can use what has been called in the
10 literature as "counter measures" to ---

11 A. That's correct.

12 Q. Okay. Explain to the Court how counter measures work?

13 A. Counter measures -- if you know the test, and you know
14 where the test question will be used, then you can inflict
15 pain, you can take deep breaths, but in reality what
16 counter measures usually do is cause distortions on the
17 chart. And when you have distortions on the charts, you
18 don't read the charts anyway, they're distortions. During
19 my association with the Navy, I ran double agents. And
20 every agency who had -- who did those, ran double agents.
21 And we were very cognizant of the fact when we got
22 distortions at certain areas. I did not see any
23 distortions on this. And I, certainly, didn't see counter
24 measures.

25 Q. And in some people you wouldn't see it; would you? If

1 you had a pathological liar, for example, or somebody who
2 had convinced themselves in their own mind that they were
3 not guilty of a crime, you wouldn't see any distortion;
4 would you?

5 A. That's correct.

6 Q. And is it also true that medication could effect the
7 blood pressure rates and things like that?

8 A. It does, but it effects it throughout the chart, it
9 doesn't effect it as a specific spot, which is what we're
10 looking at.

11 Q. So there is a variety of factors that can effect the
12 reliability of the polygraph?

13 A. Of course. Yes. That's correct.

14 Q. And as reflected in the literature that we've
15 discussed?

16 A. That's correct.

17 Q. Thank you, very much, Mr. Williams. I appreciate you
18 coming.

19 THE COURT: All right. Mrs. Gay?

20 MRS. GAY: Your Honor, I just had a few questions.

21 REDIRECT EXAMINATION

22 BY MRS. GAY:

23 Q. With regard to the question about peer review, when
24 would you see the need to do peer review?

25 A. When it was directed or asked to by the person who has

1 hired me. If the person who hired me said, Would you mind
2 taking these to -- for instance, an examiner I might know
3 in this area -- would you mind sharing this with the
4 Charleston Police Department? I would take the charts
5 down, and I would show them to Tom Meyers. If they asked
6 me about the County, I would probably show them to Lt. Sadd
7 or Mr. McHale. If it was told to take it to SLED, I would
8 take it to Skip Mitchell.

9 Q. If you said that, initially, if you and Mr.
10 Bloomingburg don't agree, you, also take it to peer review
11 sometimes?

12 A. Yes.

13 Q. And in this case did you and Mr. Bloomingburg agree?

14 A. Yes.

15 Q. And with regard to the study that you mentioned about
16 the fifty percent -- that he mentioned about the fifty
17 percent, the most recent study that you're aware of is by
18 who?

19 A. The one that they're providing with the American
20 Polygraph Association is the one that Norm Ansley has
21 given. That's 1992, but there have been other studies.
22 Dr. Yanky's reestablishing of his initial study was 1998.

23 Q. 1998?

24 A. Yes.

25 Q. And that validity scale or reliability scale was

1 somewhere in the high nineties?

2 A. Yes.

3 Q. And, I believe you said with regard to what Ms.
4 Gilliard told you -- well, with regard to your review of
5 this case, you, actually, read over her statements, the
6 co-defendant's statements, and the police report?

7 A. Yes.

8 Q. So you didn't just have her version of it before you
9 created these questions?

10 A. No.

11 Q. And these questions were designed for a specific
12 situation?

13 A. That's correct.

14 Q. Not the entire event?

15 A. We were not doing the investigation.

16 Q. And, certainly, I believe, it's my understanding that
17 when you do a polygraph, there has to be a specific
18 question that can potentially be asked, "yes" or "no"?

19 A. That's correct.

20 Q. And in the event that the answer to a question
21 wouldn't be "yes" or "no", it would be almost impossible to
22 gage anything?

23 A. Sure. Sure.

24 Q. So is it true to say -- fair to say that "yes" or "no"
25 has to be the answer to the question?

1 A. Yes. That's correct.

2 MRS. GAY: I have no further questions, Your Honor.

3 THE COURT: Anything else?

4 MR. DUTREMBLE: Nothing further, Your Honor.

5 THE COURT: Let me ask you just a couple here.

6 WITNESS: Yes, sir.

7 THE COURT: You say that you have a license?

8 WITNESS: Yes, sir.

9 THE COURT: Is that by some sort of state statute of a
10 license, or is that ---

11 WITNESS: Yes, sir, it is.

12 THE COURT: There's a state statute?

13 WITNESS: Yes, sir.

14 THE COURT: What is that code section?

15 WITNESS: I don't know the code section. I know that
16 just like a medical license or anything else, it's governed
17 by SLED.

18 THE COURT: A medical license is not governed by SLED.

19 WITNESS: I understand. But any investigative thing
20 is governed by SLED -- the firearms, those kinds of things.

21 THE COURT: All right. If you don't have a license,
22 can you administer a polygraph test?

23 WITNESS: You could, but you'd be fined and put in
24 jail, I think, in South Carolina.

25 THE COURT: So you're telling me if someone just wants

1 to -- say, I have a method, and I'm going to do this, you
2 have to have a license to do it?

3 WITNESS: Yes, sir. You do in South Carolina.

4 THE COURT: Now, where is that? Does anyone know what
5 the code section that is?

6 MR. DUTREMBLE: I assume that it would have to be the
7 SLED reg's, Your Honor. I have not seen the statute.

8 THE COURT: Someone could be prosecuted for doing a
9 polygraph if they don't have a license from SLED?

10 WITNESS: Yes, sir.

11 THE COURT: Now, you know this, because you've seen it
12 happen?

13 WITNESS: No, sir. I've never seen anyone arrested,
14 but I was told ---

15 THE COURT: Well, what regulation do you have to
16 follow under SLED? Do you know the number of it?

17 WITNESS: No, sir, I don't.

18 THE COURT: Well, do you know what the requirements in
19 that regulation are to have a license?

20 WITNESS: Yes, sir.

21 THE COURT: You do? How do you know that if you don't
22 know what the regulation is?

23 WITNESS: I filled out a request each year, and SLED
24 gives me a license. I send them money, and I send them a
25 bond.

1 THE COURT: Okay. I'm aware of that, but there must
2 be some requirements if you say it's required to have a
3 license to get the license.

4 WITNESS: I'm sure there is, but I don't know what
5 that is.

6 THE COURT: Well, how do you know you meet the
7 requirements, just because you get a license back in the
8 mail when you send the money in?

9 WITNESS: Because I went to SLED. I ran a polygraph
10 under the former head of the SLED polygraph.

11 THE COURT: Okay.

12 WITNESS: And he gave me a license.

13 THE COURT: So therefore, you're telling me that to
14 get a license, you must go then, run an exam with someone
15 there at SLED watching you?

16 WITNESS: I think, before you can get a license in
17 South Carolina, you have to complete an accredited
18 polygraph course. And there are four or five of those.
19 And I had to prove that I had done that.

20 THE COURT: All right, sir. Accredited ---

21 WITNESS: Then I ---

22 THE COURT: Now, wait one second, sir. I just want to
23 ask you questions. Don't get too antsy. So, therefore,
24 you feel that in SLED the requirements are in SLED that you
25 complete an accredited polygraph course?

1 WITNESS: That's the first thing.

2 THE COURT: Accredited by whom?

3 WITNESS: By SLED.

4 THE COURT: So SLED accredits polygraph courses?

5 WITNESS: They accept the courses, or accept the
6 polygraph training that the person says he has. They
7 either accept it or reject it.

8 THE COURT: Okay. On what basis do they accept or
9 reject it?

10 WITNESS: I have no idea.

11 THE COURT: So you don't know what courses they accept
12 and what courses they don't?

13 WITNESS: No, sir, I do not.

14 THE COURT: But you do know they accepted your course?

15 WITNESS: Yes, sir.

16 THE COURT: Do you know anybody that they ever
17 rejected their courses?

18 WITNESS: No, sir.

19 THE COURT: All right.

20 WITNESS: And thereafter, sir ---.

21 THE COURT: Go ahead.

22 WITNESS: Then you have to run so many polygraph
23 examinations under a accredited and licensed examiner.

24 THE COURT: What's accredited and licensed? What's
25 the difference between accredited and licensed?

1 WITNESS: Well, a licensed examiner.

2 THE COURT: Okay.

3 WITNESS: That it's acceptable to SLED polygraph.

4 THE COURT: All right. I want to make sure. Are you
5 adding another requirement, that he has to be licensed plus
6 accepted or just licensed?

7 WITNESS: Yes, sir. You have to be licensed, accepted
8 ---

9 THE COURT: Okay. So what's the difference between
10 licensed and accepted?

11 WITNESS: The license is the piece of paper that says
12 you can run polygraphs.

13 THE COURT: And what's accepted?

14 WITNESS: Accepted is that the examiner has completed
15 all of the requirements to obtain that license.

16 THE COURT: Well, then, therefore, licensed and
17 accepted is the same thing? You cannot get a license
18 unless you're accepted.

19 WITNESS: I don't know if they license the examiner as
20 soon as they start running polygraphs. For instance -- and
21 let me give an example. And I'm not involved in SLED. All
22 right, sir?

23 THE COURT: And, please, don't misunderstand. I'm not
24 saying you are. I have to make a review here ---

25 WITNESS: I understand.

1 THE COURT: --- about the science that you wish to --
2 that Mrs. Gay wishes to have introduced to the jury for
3 them to consider this, and consider your opinion testimony.
4 So in doing this, I have to look at what type of peer
5 review, what type of established procedure for someone to
6 reach this level so that -- say, someone -- say, I went and
7 bought me a machine at some store, and I'm going to run it,
8 and I want to come give my opinion. I want to see if
9 there's a difference. And if the license is something
10 required by law, and if it is, what law? And then number
11 two, what is the requirements to meet that law?

12 WITNESS: All right, sir.

13 THE COURT: And that's what I'm just trying to
14 determine.

15 WITNESS: Okay.

16 THE COURT: I mean, obviously, sir, you have a very
17 distinguished background, and, please, don't misunderstand
18 me there, but I've got to make sure it applies to all.

19 WITNESS: I understand. I understand.

20 THE COURT: So you're not sure what exactly the
21 standards are other than you go and you do an exam or civil
22 exam with someone from SLED who approves you or doesn't
23 approve you there?

24 WITNESS: Or someone that they authorize. For
25 instance, and I can give you an example. I think, Lt. Sadd

1 who runs for the County, went to an accredited school. He
2 ran, and he was with at that time with North Charleston;
3 and he ran polygraphs. And I think Major McHale did some
4 of his quality control here.

5 THE COURT: Okay.

6 WITNESS: And I think that he went to SLED and ran
7 polygraphs at the SLED headquarters.

8 THE COURT: Okay. That's him. But ---

9 WITNESS: Everybody has to do just about the same
10 thing.

11 THE COURT: Okay. Now, that's enough. You've
12 answered my question there. Everybody has just about the
13 same thing, but you're not sure.

14 WITNESS: I think everyone has to have an acceptable
15 examiner by SLED to oversee your polygraph examinations.

16 THE COURT: Okay. Now, when you say -- so you can't
17 go in another state and do this?

18 WITNESS: I can go into any that have reciprocity or
19 do not have state licensing.

20 THE COURT: All right. Some states do not?

21 WITNESS: That's correct.

22 THE COURT: You mentioned certain psychological things
23 that you must be aware of with the person in testing?

24 WITNESS: Yes, sir.

25 THE COURT: Do you have psychological training, like,

1 a degree in psychology?

2 WITNESS: No, I do not.

3 THE COURT: Well, how does one know the examiner has
4 that psychological acumen and ability to read the
5 individual, to know those things you talked about?

6 WITNESS: The only thing I can say, sir, is that I've
7 been dealing with people for -- since 19 ---

8 THE COURT: I'm not talking about you.

9 WITNESS: I understand what you're talking about.

10 THE COURT: Then, don't mention you.

11 WITNESS: Okay.

12 THE COURT: Just tell me how I would know the standard
13 polygraph examiner would have that. How would I know that?

14 WITNESS: When you go through the training to become
15 an examiner, you are taught certain courses in your
16 training.

17 THE COURT: Does SLED look at your psychological
18 credentials when they license you?

19 WITNESS: I think they know that I took courses in my
20 polygraph school.

21 THE COURT: Well, do they know other people did, too?

22 WITNESS: Yes, sir. They would know the regiment of
23 the school.

24 THE COURT: Well, give me how many hours of psychology
25 you take?

1 WITNESS: I think I took six hours.

2 THE COURT: How long is the polygraph school? One
3 year, two years, three years?

4 WITNESS: No. It was six months. No. It's five
5 months, but it was seven days a week, twelve hours a day
6 just about.

7 THE COURT: But six hours of that is psychology of
8 that five-month course?

9 WITNESS: Yes.

10 THE COURT: And you use that in making your assessment
11 of the individual, determine the questions you're going to
12 ask, and things of that nature?

13 WITNESS: Yes, sir.

14 THE COURT: All right. What is the discipline in your
15 organization? For example, does the American Polygraph
16 Association or -- is there a South Carolina polygraph
17 association?

18 WITNESS: There is.

19 THE COURT: Do you all have methods of delicensing
20 those in your organization or taking a license away?

21 WITNESS: I think SLED has a way to take your license
22 away.

23 THE COURT: So your organization does not?

24 WITNESS: It does not.

25 THE COURT: Your peers do not?

1 WITNESS: We have a -- we have just agreed on a rules
2 and bylaws. But we can take someone out of the
3 association, but we couldn't take their license away.

4 THE COURT: Okay. And what if someone ---

5 WITNESS: SLED would have to do that.

6 THE COURT: --- if someone were not to follow right
7 questions and all that, the question procedure and the
8 psychological stuff, could their license be removed?

9 WITNESS: I think it could.

10 THE COURT: Have you ever seen that happen?

11 WITNESS: No, sir. I have not.

12 THE COURT: You have never seen anyone lose their
13 license?

14 WITNESS: Yes, sir. I've seen people lose their
15 license.

16 THE COURT: For their methods of doing polygraph
17 exams?

18 WITNESS: Yes.

19 THE COURT: Okay. Tell me an example of that.

20 WITNESS: There was an examiner that my friend told me
21 about, who was -- he was a Federal Examiner ---

22 THE COURT: I'm talking about a state license.

23 WITNESS: No. A state license, I do not know of
24 anyone.

25 THE COURT: Okay. Do you know what methods are used

1 to determine whether someone can keep their license or not?

2 WITNESS: No, I do not.

3 THE COURT: Is there any required continuing education
4 by SLED?

5 WITNESS: No, sir. There is not.

6 THE COURT: When you said earlier that your
7 examination is more accurate with a deceptive subject than
8 with a nondeceptive subject, what does that mean?

9 WITNESS: That means that you can usually tell faster
10 or better or easier or with a person who is telling you a
11 lie about a crime than you can telling the truth about a
12 crime. They usually react -- are better reactors if
13 they're deceptive.

14 THE COURT: So if someone didn't commit a crime, and
15 said, I didn't commit a crime, it's harder to determine
16 whether they're telling the truth or not?

17 WITNESS: Yes. That's correct.

18 THE COURT: Therefore, they could have committed the
19 crime?

20 WITNESS: Sure.

21 THE COURT: Okay. You said your results are reviewed
22 by peers, and here your results were reviewed by Mr.
23 Bloomingburg?

24 WITNESS: That's correct.

25 THE COURT: Now, this says Investigative Associates of

1 Charleston. Is Mr. Bloomingburg, also, a member of that
2 business?

3 WITNESS: Yes, he is. He and I are partners.

4 THE COURT: So you all have a financial interest
5 together?

6 WITNESS: Yes, we do.

7 THE COURT: So your partner is the one who reviewed
8 this?

9 WITNESS: That's correct.

10 THE COURT: Well -- and not saying he did it here, but
11 please, understand then, how would one know that his review
12 -- someone who is in a business partnership with another
13 would not want their partner to look bad; would they?
14 Because it effects their pocketbook, also.

15 WITNESS: In reality, we do it right at that time. If
16 he does not think I've made the right call, we will run
17 more charts.

18 THE COURT: Okay.

19 WITNESS: And that is not, you know, that's just not
20 -- you know, that doesn't cost any more money.

21 THE COURT: All right. And have you and he ever
22 disagreed on the ultimate call?

23 WITNESS: Yes.

24 THE COURT: And what happens there?

25 WITNESS: We run more charts.

1 THE COURT: And do you ever end up disagreeing after
2 the whole thing is over?

3 WITNESS: No.

4 THE COURT: So ---

5 WITNESS: I don't recall ever disagreeing when the
6 final charts were run.

7 THE COURT: So you and he never have a disagreement at
8 the end?

9 WITNESS: Oh, of course, we do.

10 THE COURT: I'm talking about the end of all of it.

11 WITNESS: I'm trying to think if we've ever had one.

12 THE COURT: And if so, would one publish an assenting
13 opinion or something?

14 WITNESS: I don't think we've ever totally disagreed.

15 THE COURT: Well, what's the procedure for that being
16 done? Once you issue a final report, and polygraph
17 examiners have disagreements, say, with the peer, how is it
18 issued so that you can balance both sides?

19 WITNESS: I would imagine, if I were directed to have
20 them reviewed, then whomever would review them would just
21 give their opinion.

22 THE COURT: You've never seen that, though?

23 WITNESS: Have I ever had someone disagree with me ---

24 THE COURT: No. Issued reports? Do you have two
25 reports?

1 WITNESS: No. Not issued reports.

2 THE COURT: Now, a couple of last questions here. One
3 that one of the attorneys touched on is that -- and I don't
4 want to use a crime as serious as this, but say something
5 like speeding. You often see people in the court that will
6 go to court and say I wasn't speeding. And then you go to
7 the officer who says, Yes, you were. So you've got two
8 people saying it, and, yet, they both believe it's true;
9 right?

10 WITNESS: That's correct, sir.

11 THE COURT: But one of them is not true.

12 WITNESS: That's correct.

13 THE COURT: How do you tell which is true there, if
14 both believe they're true?

15 WITNESS: Sir, an example of this is very easy. We
16 both look out the window. We see a car go by. You say,
17 That's a good looking green Buick. And I say, You're
18 crazy. That's a gray Chevrolet. We're taking into
19 separate rooms. We're given polygraphs. We're both
20 telling the truth even though it's an Oldsmobile and it's
21 blue. The only thing that the polygraph does is what's in
22 your mind. It's not what is in fact. It's what in your
23 mind.

24 THE COURT: Yes, sir. And I understand that, but the
25 example you gave, people might have misperceived something.

1 But some people could actually believe they're not guilty
2 of something when they are, and you have no way of knowing
3 that; do you?

4 WITNESS: No, sir. I do not.

5 THE COURT: Okay.

6 MRS. GAY: Your Honor, there's just one more question
7 that I wanted to ask.

8 THE COURT: Okay. Go ahead.

9 FURTHER EXAMINATION

10 BY MRS. GAY:

11 Q. You had said at points of time you've had peer review.
12 And I think the question that you were going to ask -- the
13 Judge was asking was: Have you ever had occasions when
14 people disagreed with you?

15 A. Yes, I have.

16 Q. And when you -- if somebody disagreed with you, you
17 would give that person an opportunity to create a report
18 also?

19 A. Sure.

20 Q. And if there was a point where you and Mr.
21 Bloomingburg disagreed or you weren't sure, would you say
22 that someone -- I think your terminology is "did not use
23 deception" if you and Mr. Bloomingburg disagreed?

24 A. No.

25 Q. So you would say either "inconclusive" ---

1 A. I would say either "inconclusive" ---

2 Q. Or "used deception"?

3 A. Yes.

4 Q. But you would never say -- I guess, my question is:
5 Would you ever say "did not use deception," if you and Mr.
6 Bloomingburg disagreed?

7 A. If we did not agree, I would say that we gave no
8 opinion.

9 Q. Gave no opinion. But you would never say "did not use
10 deception"?

11 A. No.

12 Q. And, certainly, in this case, this is just you and Mr.
13 Bloomingburg, but you said that it's not required in your
14 profession to have another person there; you just chose to
15 do that?

16 A. That's correct.

17 Q. But you all have disagreed in the past?

18 A. Yes.

19 MRS. GAY: Your Honor, what I would ask ---

20 THE COURT: Anything else, Mr. DuTremble?

21 MR. DUTREMBLE: No, sir.

22 THE COURT: One thing I forgot to ask is, in looking
23 at your exam ---

24 WITNESS: Yes, sir.

25 THE COURT: Well, your synopsis about she did not

1 attempt deception, and you did have an inconclusive on
2 question A ---

3 WITNESS: Yes, sir.

4 THE COURT: But are there other questions that you
5 examined her on regarding this incident that are not in the
6 report?

7 WITNESS: No, sir

8 THE COURT: So the only questions you examined her on
9 were three questions?

10 WITNESS: That's correct.

11 THE COURT: And who determined that would be the best
12 way to make a decision regarding how far and what
13 questions? Are you the one that decides ---

14 WITNESS: Yes, sir.

15 THE COURT: --- how many questions to ask?

16 WITNESS: Yes, sir.

17 THE COURT: And why did you determine only these three
18 were important and not say the others, since you had copies
19 of her statement? How did you determine these three were
20 the appropriate questions to ask? Plus, there was only two
21 initially. Then, when it was inconclusive on the two you
22 decided to add another. I mean, did you not -- you didn't
23 consider the issue regarding the plastic bag or the issue
24 regarding the money situation or whatever was significant
25 to ask?

1 WITNESS: No, sir. Not at that time.

2 THE COURT: What standard is published in the
3 literature reviewed to determine what questions to ask?
4 And in this case, why did you only ask two?

5 WITNESS: We ask two because her attorney wanted to
6 know was there pre-planning on this. And that's what we
7 were asking questions about.

8 THE COURT: All right. So the range of the
9 examination is determined by the attorney giving you
10 guidelines?

11 WITNESS: Yes, sir.

12 THE COURT: Okay. All right. Thank you, very much.
13 (The witness leaves the witness stand.)

14 MRS. GAY: Your Honor, what I would ask you to do is I
15 have sent Brooks down, and I would like to take a break to
16 determine if I can get the statute, the actual licensing
17 statute. It's about 11:20, I know that ---

18 THE COURT: I'll accept you if you say there is one.

19 MRS. GAY: There is one, Your Honor.

20 THE COURT: Is it a statute or a regulation?

21 MRS. GAY: It's a SLED regulation, I believe --
22 statute, he says. For purposes of clarifying what he said,
23 it would have some type of guidelines that a person would
24 have to qualify in order to receive the license and also a
25 process whereby the license could be revoked if a person

1 violated.

2 THE COURT: Mr. Williams?

3 MR. WILLIAMS: Yes, sir?

4 THE COURT: Our procedure and guidelines here are you
5 can't leave until the judge says you can leave.

6 MR. WILLIAMS: I'm sorry. I thought that you said I
7 was through.

8 THE COURT: No. I'm sorry. It's the courtroom. See,
9 I have to make sure they don't need you further. So just
10 stay with us for a minute.

11 MRS. GAY: Thank you. So, Your Honor, what I'd like
12 to do is to provide that just for purposes of the Court
13 record. I believe the only witnesses that I have in my
14 case, Your Honor, are Ms. Gilliard, Mr. Leo's video, and in
15 the event that you allow Mr. Williams to testify.

16 THE COURT: Okay.

17 MRS. GAY: At 11:30 I know that Ms. Gilliard is going
18 to take a while, and all of it will take a while. So I
19 don't know if you want to do an early lunch.

20 THE COURT: No, I do not. No. What I'm going to do
21 is I'm going to probably, maybe, get their lunch orders.
22 But if you feel it's necessary to show me the regulations
23 or the statute, then I'll be glad to let you quickly get
24 that. But one thing I'm going to review in regard to this,
25 I'm going to review 702 and, of course, 402. But in

1 addition to that, the most recent case that you gave me,
2 McHoney, but the State v. Jones factor which McHoney says
3 that the Court should consider.

4 So I'm going to consider 702 and the factors laid out
5 in Jones. Also, I will consider as we do in all evidence,
6 402 and 403 in deciding whether he can testify in regard to
7 this case. Just assuming there's statutes, do you wish to
8 make any discussion of this briefly at this time as far as
9 why you feel that he should be able to testify as a result
10 should be admissible?

11 MRS. GAY: Well, Your Honor, with regard to the Jones
12 standard, I believe, that there ar publications and peer
13 review which he's discussed. There has been prior
14 application that the method of this type of evidence
15 involved in cases. There has been testimony presented that
16 in the Federal System these are used. That not necessarily
17 him, in light of current law, but his partner, he's aware,
18 has testified in a proceeding in court before. So I do
19 believe that this application has been used in this type of
20 evidence.

21 There is quality control in this profession as well as
22 in this particular person's type, what he does himself
23 which we've discussed which does ensure reliability. He
24 indicated that if in the event that his partner or person
25 doesn't agree, that they do not ever say that they believe

1 the person didn't attempt deception. That they may say
2 something different, but once the quality control -- if the
3 quality control arrises a problem, he's never going to give
4 a result that would indicate that somebody was not
5 attempting deception. I understand that there or may or
6 may not be consistency of the method with recognized
7 scientific laws and procedures.

8 However, I believe that, though the solicitor did
9 bring up some studies that indicate that the reliability
10 is, maybe, in the lower range of fifty percent and, maybe,
11 even eighty percent, as he said on the stand, eighty-seven
12 percent is still good. And the information that he has in
13 the recent '98 studies indicate -- that were commissioned
14 by the Department of Defense and the government -- indicate
15 some type of reliability scale in the upper nineties.

16 Now, certainly, there is this indication that it's
17 possible or may be more accurate in the defendant that's
18 potentially guilty as opposed to the defendant that has
19 indicated that they're not involved. But, certainly,
20 that's a matter of credibility for the testimony and
21 something that can be brought out on cross-examination. I
22 don't believe that it effects the reliability of the
23 information to say that. I think it is a factor to be
24 considered in the whole process, Your Honor.

25 The scientific community, though they do have some

1 differences of opinion as to it, I believe, that ever since
2 the early '70's this has been a recognized part of our
3 United States Government as well as many police agencies in
4 this country. He indicated that the president of the South
5 Carolina association is a member of SLED, who's employed by
6 the State of South Carolina. And, I believe, he indicated
7 a number of different people that he talked to that are
8 employed by all the different police departments in this
9 area as well as police departments across the state. The
10 national association has members from not only the federal
11 are but also state areas.

12 He said that he is subject to a licensing process. He
13 went into extensive detail about how that's done,
14 qualifications. I believe, you said, How many hours did
15 you do in psychology? And his response was, I spent five
16 months at twelve hours a day, seven days a week, training
17 on polygraphs, which also included this whole area of how
18 to read a polygraph which involves the response of humans,
19 the psychological responses, the testing that they do. I
20 believe that this is an area that is definitely scientific.
21 It's an area that is definitely reliable. Though, there
22 are issues as to that which can be brought out at
23 cross-examination. But it's recognized across this country
24 as a process that is used with defendants in criminal
25 cases.

1 And it is often used to either -- I mean, this is not
2 offered to exonerate her. You made the point that a
3 defendant, guilty person or an involved person could still
4 be testing "nondeceptive" in their opinion. And I know
5 that's something that's there for cross-examination. This,
6 as I said, does not take the guilt or innocence away from
7 the trier of the fact. It is merely a factor that can be
8 presented and helpful to the trier of fact as to something
9 related to some psychological factors that are going on in
10 her body as to how she responds to questions about this
11 incident. But he, specifically, said that there were
12 specific reasons why he asked certain questions. He was
13 not asked, Is she guilty? Is she not guilty? Or, Am I
14 innocent? Am I not innocent?

15 He asked specific questions that are relevant, and, I
16 believe, helpful to the trier of fact. We have this
17 information available. We have this information available
18 that I want to present to the jury on her behalf.

19 Pursuant to McHoney, if the Court tells us that you
20 were to make the determination on your 702 and 402 and 403
21 -- and we do believe, Your Honor -- I believe, Your Honor,
22 that we have presented the Jones factors in this case, such
23 that he should be qualified as an expert. And in this
24 case, he should be allowed to testify to his findings.
25 Certainly, the State would then be allowed to cross-examine

1 him. And, I think, that that process would show a lot of
2 the things about this area that are just like in any other
3 area where there's an expert that may or may not be
4 consistent or everybody says the same thing. I would say,
5 Your Honor, that if everybody said the same thing about
6 every aspect of any type of expert's testimony, there would
7 be no cross-examination of that expert. That expert would
8 come in and say, I believe this, and everybody would then
9 be instructed to believe it. What you say in your charge
10 to the jury about an expert -- because we've had others in
11 this case, the fingerprint expert, as well as others. But
12 they have the option to decide what part of that testimony
13 or how credible they want that testimony to be, or the
14 weight of their testimony. This is additional information
15 that will help the trier of fact in their determinations
16 ---

17 THE COURT: Which is a key factor.

18 MRS. GAY: --- and I believe that it's appropriate in
19 this case. Yes.

20 THE COURT: Okay. All right. Mr. DuTremble?

21 MR. DUTREMBLE: Thank you, Your Honor. The reason
22 this kind of testimony is not admissible is for the same
23 reasons it has not been admissible for many many years in
24 the State Courts or in the Federal Courts. And it's not
25 admissible, Judge, because primarily the problem with it is

1 it fails a third of the requirements of Rule 702. The
2 underlying science is reliable. It, also, fails the Jones
3 factor in that it cannot withstand the publication of peer
4 review to the techniques that are used. And when Your
5 Honor goes back to consider this matter, I'm going to hand
6 up to the Court the United States Supreme Court case of
7 United States vs. Scheffer S-c-h-e-f-f-e-r, which is found
8 at 523 U.S. 303. There is a detailed and exhaustive
9 discussion by the United States Supreme Court, which our
10 Court of McHoney cites in his decision as to what the
11 problems are with the reliability of the science. And all
12 of those studies that I asked Mr. Williams about, came out
13 of the Scheffer case where the Supreme Court found that
14 there are numerous publications casting doubt upon the
15 reliability. And it is because it is not reliable that the
16 Courts have consistently refused over the course of many
17 years to allow this type of scientific expert testimony to
18 come before the jury.

19 In addition, the United States Supreme Court has a
20 very good analysis of another reason that it doesn't come
21 in. And it doesn't come in, Judge, because it usurps the
22 jury's function. What you have is somebody coming in,
23 testifying before the jury that this person is credible,
24 that this person is reliable, when the testimony from the
25 witness is that even though the machine doesn't show any

1 deception, she still could have done it. That is a
2 function for the jury to determine. Because if the
3 defendant testifies that, I didn't do it, the jury gets to
4 look that person in the eye. And the jury gets to observe
5 the body language and the inflection in her voice. And to
6 allow a lie detector test to come in, takes away the
7 ability of the jury to judge the credibility of the
8 witness. And what it does, as the Supreme Court points
9 out, Judge, is it cloaks this witness with an aura of
10 invisibility. Because when somebody comes in and says, I
11 run a lie detector and this person wasn't lying, then the
12 jury's going to give it unwarranted weight by saying, Well,
13 this man who has had this training says that she's not
14 lying, then she couldn't be lying.

15 When in reality the actual test and the actual
16 testimony is, Yes, she might not be showing deception on
17 the machine, but she still could have done the crime. And
18 that's one of the primary reasons why our Courts don't let
19 it come in.

20 THE COURT: Of course, now, Mr. DuTremble, in this
21 particular case, as far as the results, question number one
22 he says he throws out or "A" which is: Did you plan to do
23 the robbery? It was inconclusive. And "B", I don't think
24 you presented evidence that they discussed choking, anyway.
25 When you think about it, I don't recall ---

1 MR. DUTREMBLE: Yes, sir. We did.

2 THE COURT: --- any evidence that before they went
3 there. I'm talking about that they got there. I thought
4 it was the thing about the -- your other witness talked
5 about the wrench he had.

6 MR. DUTREMBLE: No, sir. If you will recall when B.J.
7 testified, he said that she came down and woke him up, he
8 put on his clothing, as he described.

9 THE COURT: Yes.

10 MR. DUTREMBLE: They ran up there. And I asked him
11 what were y'all talking about? We were talking about
12 choking the lady out.

13 THE COURT: I remember that. Well, that has different
14 inferences to it, but we'll let the jury decide that. One
15 thing is it doesn't seem that the questions here, are
16 exactly -- there's no question here regarding -- other than
17 that question "B" about choking.

18 MR. DUTREMBLE: Also, Your Honor, in regard to that
19 point that Your Honor brings up, there is no question as to
20 her participation in the actual crime by putting the
21 plastic bag over her face.

22 THE COURT: Well, and that's one of the concerns I
23 have about the limited scope on some of these results in
24 that regard, even if I were to make a decision on
25 reliability. But let me review McHoney and the Jones

1 factors. And if you'll hand me the Scheffer case -- you
2 have it with you, you say?

3 MR. DUTREMBLE: Yes, sir. I have the Scheffer case.
4 And I also have a case from the 4th circuit which is
5 entitled United States of America vs. Sanchez.

6 THE COURT: Does that add any more reasoning than the
7 Scheffer case does?

8 MR. DUTREMBLE: It has less reasoning, but it confirms
9 the fact that in the 4th circuit, the results are
10 absolutely inadmissable.

11 THE COURT: Well, then, I'll just accept -- well, I
12 started to say I accept the ruling as far as accept you
13 saying that's the ruling, but I'll review it.

14 MRS. GAY: Your Honor, there is just one more thing
15 that I want to add. In this particular case, so much of
16 what he's referring to about the jury's -- usurping the
17 jury's function as to credibility and such. In this case,
18 as you know, we have an expert with regard to the
19 voluntariness of your statement. And that is, certainly,
20 something that the jury also has to consider in the process
21 of this. Not only do they have to consider whether that
22 they believe that she pre-planned it or whatever, or
23 whether her statement was voluntary. He has waived any
24 objection to Mr. Leo's testimony that is basically
25 psychological in nature, that is basically his opinion from

1 his review of the facts and his interview with the client
2 etcetera, that he has been able to cross-examine and bring
3 out those discrepancies and issues with relation to that
4 testimony. There's absolutely no difference. For what
5 it's worth, that type of testimony is -- though, considered
6 psychosocial, may not in essence be anything that's as
7 scientific in the sense that this is charts and graphs and
8 pressure and things of that nature. Mr. Leo didn't even
9 have any type of psychological instruments when he was able
10 to discuss with Ms. Gilliard the type of issues involved in
11 this case.

12 And pursuant to our agreement ahead of time, Mr. Leo
13 will testify to this jury. And so, Your Honor, I would
14 just add that to additionally comment that I believe that
15 this is appropriate under 702 and McHoney and all the
16 appropriate rulings that are out of our Court.

17 THE COURT: All right. Does your assistant have
18 something there regarding ...

19 MRS. GAY: Your Honor, I'm citing 40-53-70,
20 qualifications of licensees. A person is qualified to
21 receive a license as ---

22 THE COURT: No.

23 MRS. GAY: Would you like -- I'd like to make this a
24 Court's Exhibit.

25 THE COURT: Yes. Let me just do that. That way we

1 don't have to read it and her type it. If it's a statute,
2 you can ask me to take judicial notice of it instead of
3 making it an exhibit. I mean, if you've got a copy of it,
4 I'll look it over.

5 MRS. GAY: That would be fine, Your Honor. It's
6 40-53-70 and 40-53-80, 40-53-90. This is -- it's 40-53-70
7 at Siqua.

8 (Pause.)

9 THE COURT: Okay. I will have you, Mr. Wilson, let me
10 talk to you about the jury situation here. I'm going to
11 have you get some other things for them. Something
12 different than last time.

13 MRS. GAY: Your Honor?

14 THE COURT: Yes?

15 MRS. GAY: One thing that I've just conferred with my
16 client, I believe that the first person I'm going to call
17 in my case is Dr. Leo. So we could start that before
18 lunch.

19 THE COURT: Right. Then when lunch gets here, they
20 could take a break. It would be a good break for them to
21 take in that regard.

22 Okay. We are going to take a break for no more than
23 fifteen minutes. Then we're going to get started.

24 (WHEREUPON, there was a short recess.)

25 THE COURT: Okay. Mrs. Gay? I'm ready, Mrs. Gay?

1 Mrs. Gay, are you ready to proceed, ma'am?

2 MRS. GAY: Your Honor, I'm actually looking for Ms.
3 Gilliard's mother, who I had contemplated -- she's got
4 about five minutes worth of stuff I probably need to have
5 the jury hear before the tape starts, and I can't -- she's
6 not here. She must have walked downstairs.

7 THE COURT: Okay. Well, let's do this and see if she
8 comes back in. I'll just go ahead and go over this matter
9 here. As our Court has required, I have analyzed pursuant
10 to Rules 702 and 402, the admissibility of the polygraph
11 exam in this case. And in doing so I've not only applied
12 the standards set by 702, but also the factors that the
13 Court said that the Trial Court should consider in State v.
14 Jones, which is 273 South Carolina 723. And I don't get
15 the consideration of 403 until after I consider those
16 factors. And really not 402, because 402 is kind of the
17 conclusion thing about whether something is relevant or
18 not. Looking at that, one, scientific evidence will assist
19 the trier of fact. That I have serious concern about in
20 this particular case on the framework of the questions, as
21 well as the other information I've heard. But, go down to
22 question number two, the expert witness is qualified.
23 There is no doubt in my mind that Mr. Williams is qualified
24 under our statutes, under SLED regulations; he's a well
25 qualified individual. There is no doubt about that. The

1 underlying science is reliable. From review of material
2 that our U.S. Supreme Court discussed in the Scheffer case
3 and the information that we've had of both sides here, it
4 is obvious that almost, I think, as the Court's indicated
5 polarized thought in this area. And that the scientific
6 community is in fact, on two different extremes. And my
7 finding in this particular matter is that because of those
8 two extremes, balancing those things out, I find that the
9 underlying science has not been established to be reliable.
10 Further, I'm concerned about the quality control procedures
11 that are used to ensure reliability. Not only in this
12 particular situation where the quality control really is
13 someone else within the office, the same business, but of
14 the general practice, itself, haven't been shown that there
15 is quality control sufficient to ensure reliability. And
16 for those reasons, two reasons under 702, I don't feel that
17 this evidence in this case that polygraph evidence would
18 assist the trier of fact. And the third element, I don't
19 find the underlying science is reliable under 702, as well
20 as the factor in Jones that requires that the quality
21 control procedures are used to ensure reliability. I don't
22 feel that's been established in this case. And for that
23 reason I will not permit the introduction into evidence of
24 the results of the polygraph exam in this case.

25 Now, Mrs. Gay, do you have enough of these matters

1 marked as Court's Exhibits for purposes of further review
2 later on? I've got Mr. Bloomingburg's affidavit, and I've
3 got the credentials of Mr. Williams.

4 MRS. GAY: Right. We need to get this ---

5 THE COURT: Well, you can make copies of that and
6 substitute that later. I'm sure that the State doesn't
7 object to go ahead and let you make your copies of it.

8 You don't object to her submitting that later as a
9 Court Exhibit; do you?

10 MR. DUTREMBLE: No. I do not.

11 THE COURT: Okay. Now, at this time, Mrs. Gay, do you
12 need Mr. Williams to stay?

13 MRS. GAY: No, sir.

14 THE COURT: Well, what about -- he might want these
15 documents back.

16 MRS. GAY: Well, can I confer with him for just a half
17 a second?

18 THE COURT: Go ahead.

19 MRS. GAY: Plus, I need to find my client's mother. I
20 don't know what happened to her.

21 THE COURT: Now, do you have your tapes set up?

22 MRS. GAY: The tapes are here if Mr. Bostic is here
23 ready to go.

24 THE COURT: Are they set up in the machine so that
25 when the witness finishes, we can let things begin?

1 MR. BOSTIC: I'm checking to make sure they're rewound
2 and everything.

3 MR. DUTREMBLE: Your Honor, please, before we begin
4 that can I have one matter heard?

5 THE COURT: Yes.

6 MR. DUTREMBLE: In light of your ruling excluding
7 evidence of the polygraph examination, I would ask the
8 Court to instruct Counsel and the defendant that at no time
9 during her examination she can refer to the polygraph
10 examinations in any way, shape, or form.

11 THE COURT: Mrs. Gay?

12 MRS. GAY: I have to ask Dale something. Hold on.

13 (The attorneys confer.)

14 MRS. GAY: Your Honor, when you read through this
15 transcript, because I know you did ---

16 THE COURT: Yes.

17 MRS. GAY: --- I just want to make sure that it is not
18 mentioned in there.

19 THE COURT: I didn't see it anywhere. After page 89
20 is when they begin talking about what is reviewed in this
21 case.

22 MRS. GAY: I'll do a quick review of page 89. I will
23 tell you ---

24 MR. DUTREMBLE: I'll check.

25 MRS. GAY: Also, it wouldn't be anywhere the first few

1 pages that would get us to the first -- lunchtime. Because
2 he didn't discuss anything about Ms. Gilliard until the
3 end.

4 THE COURT: I know.

5 MRS. GAY: It does not mention it, Your Honor.

6 THE COURT: I don't recall seeing it, either.

7 MR. DUTREMBLE: So in light of that, Your Honor, I
8 know Dr. Leo won't mention it, and I would like the Court
9 to instruct the defendant not to mention it as well.

10 THE COURT: Mrs. Gay, his motion is that you make sure
11 your client understands not to mention it, too. Just make
12 sure she understands that.

13 (The attorney confers with her client.)

14 MRS. GAY: Thank you, Your Honor.

15 THE COURT: Do you have it communicated to her?

16 MRS. GAY: Yes, sir.

17 THE COURT: Now, Mrs. Gay, has your client decided,
18 yet, about whether she wishes to testify or not?

19 MRS. GAY: Your Honor, it is my understanding at this
20 point -- we will discuss it, again, during the lunch break
21 -- but she does wish to testify.

22 THE COURT: Well, why don't we just wait until we get
23 back from lunch then. And you let her continue to consider
24 that. Okay.

25 (The attorneys confer about the tape.)

1 THE COURT: You'll have time during lunch to review
2 the second one. Obviously, we're not going to get to the
3 second one this morning.

4 MR. BOSTIC: Judge, do you want me to go ahead and
5 check it while we're sitting here.

6 THE COURT: Three is when that ends. So the first
7 tape was two hours long. So we're not even going to see
8 the first tape.

9 MR. BOSTIC: We're not going to watch the first tape?

10 THE COURT: No. Not completely before lunch. Go ahead
11 and back it up and let's get going here.

12 Okay. Mrs. Gay, are you ready for the jury?

13 MRS. GAY: Yes, sir.

14 THE COURT: Do you have your witness here?

15 MRS. GAY: Yes, sir.

16 THE COURT: Bring the jury in, please.

17 (WHEREUPON, the jury returns to the courtroom.)

18 BAILIFF: All present, Your Honor.

19 THE COURT: All right. Ladies and gentlemen of the
20 jury, we're now ready to proceed from the defense. Mrs.
21 Gay, are you ready for your first witness, ma'am?

22 MRS. GAY: Yes, Your Honor. I would call Ms. Emily
23 Gilliard.

24 THE COURT: All right. Ms. Gilliard, come around
25 please.

1 EMILY GILLIARD, being first duly sworn,
2 testified as follows:

3 THE CLERK: Please, be seated. Please, give your full
4 name to the Court and spell your last.

5 WITNESS: Emily Gilliard. G-i-l-l-i-a-r-d.

6 THE COURT: All right. Your witness, Mrs. Gay.

7 MRS. GAY: Thank you.

8 DIRECT EXAMINATION

9 BY MRS. GAY:

10 Q. Ms. Gilliard, what is your relationship to my client,
11 Kandy?

12 A. She is my second child.

13 Q. And did you in January of 2000, live in the home with
14 her?

15 A. Yes, ma'am.

16 Q. And are you employed, ma'am?

17 A. Yes, ma'am.

18 Q. Where are you employed?

19 A. At Health Force.

20 Q. Were you employed with Health Force in January of
21 2000?

22 A. Yes, ma'am.

23 Q. Can you tell the jury a little bit about your schedule
24 at Health Force?

25 A. Sometime I do swing-shift. Okay. If I go to work,

1 like, at 7:00 in the morning, I'll have cases sometime
2 until 8:00 in the afternoon. And every other weekend I'll
3 work from 3:00 til 11:00.

4 Q. And when you say "swing-shift" and things like that,
5 what are your responsibilities and duties where you work?

6 A. Okay. My duties are caring for the client. Do the
7 things that they can't do, like, a little housekeeping,
8 make meals and stuff like that.

9 Q. When you say "the client" are they well people or sick
10 people?

11 A. They're sick people.

12 Q. So pursuant to your duties at your work, you take care
13 of sick people?

14 A. Yes, ma'am.

15 Q. And did you have occasion to talk to Sargent Hagge on
16 January 9th?

17 A. Yes, ma'am.

18 Q. Or, I guess, between January 8th and January 9th of
19 2000?

20 A. Yes, ma'am.

21 Q. And did you have occasion to talk to him about Kandy
22 being at the police department?

23 A. Yes, ma'am.

24 Q. Was this conversation that you had -- well, let me ask
25 you a question. Do you remember your work schedule that

1 day?

2 A. It was 3:00 til 11:00.

3 Q. So what time would you have gotten off work?

4 A. Eleven.

5 Q. And was that pretty common that you left at 11:00, or
6 would you usually stay late?

7 A. I usually wait until my reliever gets there.

8 Q. And that's some time around 11:00?

9 A. Yes, 11:00.

10 Q. So on the day that you spoke to Sargent Hagge, do you
11 remember if you spoke to him -- where you were when you
12 actually spoke to him?

13 A. Where I was?

14 Q. Yes.

15 A. I was at my work. I was on the job.

16 Q. And what means of communication did you have with him?
17 Were you speaking to him in person, or were you speaking to
18 him on the phone?

19 A. I called him -- well, I called at the policeman
20 station over the phone.

21 Q. You were on the phone?

22 A. Yes.

23 Q. And when you say the "policeman station" is that the
24 City of North Charleston Police Department?

25 A. Yes, ma'am.

1 Q. And this phone that you were using, would that have
2 been at your house, or would it have been at the house of
3 your patient?

4 A. It was at West Ashley Crossing Nursing Home.

5 Q. So it's at the nursing home?

6 A. Yes. He's in a nursing home.

7 Q. And you were actually using their phone?

8 A. Right.

9 Q. So when you talked to him, would it have been before
10 or after you got off work?

11 A. That was before I got off from work.

12 Q. And what was your understanding of your conversation
13 with Sargent Hagge that night?

14 A. Okay. I received a call saying that the detectives
15 had picked up Kandy and took her for questioning. So I
16 asked her, I said, What? So I called down to the policeman
17 station, and I spoke to a Sargent Hagge.

18 Q. And how did you know it was Hagge?

19 A. He identified himself.

20 Q. Sargent Hagge identified himself on the telephone to
21 you?

22 A. Yes, ma'am.

23 Q. And what was your understanding -- I don't want you to
24 tell me what he said. What was your understanding of that
25 conversation?

1 A. Okay. The conversation -- I asked him a question, and
2 he told me that Kandy was there sleeping.

3 Q. Was where sleeping?

4 A. At the policeman station.

5 Q. At the police department?

6 A. The department. Yes.

7 Q. And what did you say at that point?

8 A. I said, Sleeping? I said, Is she sleeping on her own?
9 So he said, What do you mean? So I said -- well, I left it
10 alone. I said, Well, when she wakes up, tell her to call
11 me and let her know that her mother loves her.

12 Q. Okay. And did you have any other occasion -- or did
13 you hear from Kandy, pursuant to that message?

14 A. No, ma'am.

15 Q. So did she ever call you?

16 A. No, ma'am.

17 Q. And so what did you do next?

18 A. Okay. Thirty-five minutes or forty minutes went by.
19 So Kandy didn't call, so I called back down there. And I
20 spoke to Sargent Hagge, again.

21 Q. And how did you know it was Sargent Hagge?

22 A. He identified himself, again.

23 Q. Was it the same voice that you had spoken to before?

24 A. Yes, ma'am.

25 Q. And so what was the gist or of your understanding of

1 this conversation?

2 A. Okay. I asked him where Kandy is. He said, Kandy
3 already walk gone home. I said, Walk gone home? I said,
4 Nobody couldn't give her a ride home?

5 Q. So was it your understanding that Kandy had been
6 allowed to leave the police station?

7 A. Yes, ma'am.

8 Q. Was that true?

9 A. That was an untruth.

10 Q. When you say an "untruth" what does that mean?

11 A. That Kandy wasn't home.

12 Q. So did she ever leave that night and walk home?

13 A. No, ma'am. Kandy never left and walked home.

14 Q. But Sargent Hagge told you that she had?

15 A. Right. She had walked and left.

16 Q. If you had known that Kandy was still at the police
17 station, what would you have done?

18 A. Oh, I would have run down there.

19 MRS. GAY: I have no further questions.

20 THE COURT: All right. Mr. DuTremble?

21 CROSS-EXAMINATION

22 Q. Did you run down on January 5th when your daughter was
23 at the police station?

24 A. I didn't know. I wasn't aware of knowing they was at
25 the policeman station.

1 Q. You didn't know anything about it on January 5th?

2 A. No, sir.

3 Q. All right. And what time of evening was this when you
4 were talking to Detective Hagge?

5 A. About -- maybe 9:30, 10:00.

6 Q. 9:30 or 10:00. Are you sure about that time?

7 A. I can't be certain about the time.

8 Q. Could it have been later?

9 A. No. It should have been right around that time. But
10 I'm not sure about the time.

11 Q. Okay. Now, from January 5th, when your daughter first
12 talked to police to January 9th when she gave the police a
13 confession, did Kandy tell you anything about what took
14 place down there in The Game Room?

15 A. No, sir.

16 Q. Was your daughter employed at this particular period
17 of time?

18 A. No, sir.

19 Q. During this particular time, did B.J. Johnson continue
20 to come in and out of your home?

21 A. I told B.J. he could come to my house when I'm
22 present, but when I'm not home, I'm don't want him there.

23 Q. So while you were home from January 5th to January
24 9th, did B.J. periodically come to your home?

25 A. No, sir. I didn't come on the 5th, neither the 9th.

1 Q. Okay. Now at any point in time from January 5th to
2 January 9th did your daughter tell you that B.J. had been
3 involved in what had taken place at The Game Room?

4 A. No, sir.

5 Q. Did she tell you that she had received money from a
6 robbery that took place at The Game Room?

7 A. No, sir.

8 MRS. GAY: Your Honor, she says -- asked and answered
9 -- she said that she never told her anything.

10 THE COURT: This is cross-examination. You may
11 continue, sir.

12 BY MR. DUTREMBLE:

13 Q. Did she tell you that she had been present when Dawn
14 Russ was robbed at The Game Room and had placed a plastic
15 bag over the lady's face?

16 A. No, sir.

17 THE COURT: And, Mr. DuTremble, I am getting to the
18 point now, I may start sustaining objections in that
19 regard.

20 MR. DUTREMBLE: I understand, sir. Thank you.

21 BY MR. DUTREMBLE:

22 Q. And, of course, you being her mother, ma'am, you do
23 love your daughter; don't you?

24 A. I sure do.

25 Q. And you don't want to see her get in any trouble?

1 A. That's right.

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

3 THE COURT: All right. Redirect?

4 REDIRECT EXAMINATION

5 BY MRS. GAY:

6 Q. When you had this telephone call with Sargent Hagge,
7 what level of certainty do you have that the phone call
8 occurred while you were still at work?

9 A. I was concerned about Kandy.

10 Q. My question is how sure are you about the fact that
11 the phone call that you had with Hagge occurred while you
12 were at work?

13 A. Okay. When he told me that Kandy had already walked
14 gone home ---

15 Q. I'm asking you when you first called him, where were
16 you physically when you were talking to him on the phone?

17 A. I was at work.

18 MRS. GAY: I have no further questions, Your Honor.

19 THE COURT: Anything else?

20 MR. DUTREMBLE: Nothing further, Your Honor.

21 THE COURT: Okay. You may step down, ma'am. Thank
22 you, very much.

23 (The witness leaves the witness stand.)

24 THE COURT: All right. Your next witness, Mrs. Gay?

25 MRS. GAY: Your Honor, at this time I would call

1 Professor Richard Leo. I believe that he -- he's from
2 Lagoonal Beach, California, and we have a video tape of his
3 testimony.

4 THE COURT: Do you have a copy of the transcript, or
5 did you give it to the court reporter?

6 MRS. GAY: She has the certified copy, sealed copy.

7 THE COURT: Let me hold the sealed one. I just want
8 to be able to tell the jury the date and time, and
9 everything else.

10 Ladies and gentlemen of the jury, the defense has
11 called as a witness a Dr. Richard Leo. Now, in trial I
12 told you that your consideration of matters can be
13 consideration of testimony, witnesses on the witness stand,
14 as well as exhibits introduced in the trial. Also, I
15 mentioned briefly that you may consider a deposition.
16 Depositions occur where either side calls a witness before
17 trial. And the witness is put under oath. Usually it's at
18 an office. Many times it's at the witness' own office or
19 one of the attorneys' office. That witness is put under
20 oath. There is a certified court reporter for that area
21 there who takes everything down verbatim, just like this
22 lady here does in the courtroom. And the person is then
23 asked questions. Both sides have the opportunity to ask
24 any and all questions they wish.

25 Now, many times in a deposition that court reporter

1 then later types it all up, transcribes it, seals it in an
2 original that is sealed and only the Court, I, can open it.
3 Each side was given copies. The witness was also given an
4 opportunity to view and make any corrections. The
5 deposition can be used in court. Sometimes a deposition is
6 used in court if they depose someone, and the person
7 actually comes and testifies. You look at the deposition
8 and compare it with what they said -- the deposition to
9 what they say when they actually testify. Other times you
10 use a deposition if for some reason the witness cannot be
11 here.

12 For example, our rules say that if a witness is over a
13 hundred miles away, and you give the other side notice,
14 then you can go and depose that person at their place of
15 business or whatever else and use that deposition in lieu
16 of the person coming to trial. And sometimes what they
17 would do is they would read the deposition to the jury. In
18 this case, the person has been videotaped. So in addition
19 to it written here in a written transcript, there's also a
20 videotape of it. And you'll see that on the screen. The
21 two attorneys, Mr. DuTremble and Mrs. Gay, were not there.
22 This person was in California. Through the magic of our
23 current systems of telecommunications and all that, they
24 have the video, but they both were on the phone.

25 Am I right, you both were on the phone or one of you

1 were there?

2 MRS. GAY: Your Honor, we were both in a room similar
3 to this at a table where they had two-way cameras.

4 THE COURT: Okay. So actually, the person being
5 deposed could actually see them, they could see him, and
6 they had the various means of communicating by asking the
7 questions. So you will see him on the screen, but you will
8 hear their questions. I don't think you'll, from what I
9 saw, see them.

10 Now, ladies and gentlemen, when a deposition is
11 introduced in trial, it becomes evidence. And you can
12 consider it as evidence as if the person were here live,
13 testifying under oath. This is the deposition of Richard
14 A. Leo, taken on the 23rd of May, just last week, at 2:08
15 p.m.

16 Now, this deposition is rather long. I've reviewed
17 it, myself, on Tuesday afternoon. And so it's rather long.
18 So what I'm going to do is this: We're going to let you
19 watch the deposition until your lunch arrives. It will be
20 about an hour or so. Then, we're going to let you take a
21 break and have lunch. Then, you'll come back and watch the
22 rest of the deposition.

23 Now, I do know that it is many times difficult when
24 you're sitting watching something there for that long
25 period of time, instead of someone live, sometimes to have

1 a tendency not to pay as close attention, but you should
2 pay as close attention to all witnesses whether they're by
3 video or whether they're here present. So you have a duty
4 to pay attention, and listen in that regard.

5 So as I understand, Mr. DuTremble, you have no
6 objection to the deposition of Mr. Leo being shown by
7 video?

8 MR. DUTREMBLE: That's correct.

9 THE COURT: All right. I'm going to hand the original
10 back to the court reporter. And so she can have it, then
11 she won't have to type down what he's saying. Again, she's
12 already got it typed here.

13 And as I recall, there are no matters other than what
14 I have already discussed regarding as far as the experts or
15 anything of that nature. Everyone agrees to the total
16 deposition as it is now?

17 MR. DUTREMBLE: Yes, sir. I saw nothing.

18 MRS. GAY: Yes, sir. I saw nothing, either; but
19 during lunch, I'll review it.

20 THE COURT: We'll review it, again. All right.

21 Ladies and gentlemen -- if you would, Mr. Bostic, draw
22 the screen down, let's make sure the sound level is there.
23 Now, ladies and gentlemen I have reviewed it already. And
24 I have an office back here, and I may step back here every
25 once in a while. But, please, don't let that indicate to

1 you anything at all, because I have already reviewed it,
2 myself.

3 (WHEREUPON, the videotape deposition of Dr. Leo was
4 played for the jury.)

5 THE COURT: All right. Ladies and gentlemen, I've
6 tried to see if lunch is here, yet; but it's not. But
7 let's go ahead and break now for a few minutes. What I'd
8 like to do is you all have lunch, and we'll be on your
9 schedule. Take at least thirty minutes and maybe more, but
10 you let us know when you all are ready to come back in and
11 we'll continue on. If you need to walk outside or
12 whatever, Ms. Pulliam, you can let them do that as long as
13 a Bailiff is aware and can walk outside with everyone. But
14 thirty minutes minimum, but after that when you all are
15 ready, we're going to be ready.

16 And Counselors, you all be aware of that. So you've
17 got thirty minutes if you want to run and get a sandwich.
18 But other than that, after that we're going to be ready
19 when you all are ready. So when you all are ready to come
20 back in after thirty minutes, you all let us know. Please,
21 do not discuss the case. Go to your jury room, and I'll
22 have the bailiff give you an idea about your lunch when
23 it's going to be here. It should be any minute now.

24 Everyone else, remain seated.

25 (WHEREUPON, the jury retires to the jury room for the

1 lunch break.)

2 THE COURT: Mr. Bostic, what was the time when you cut
3 that on?

4 MR. BOSTIC: Your Honor, I'm not sure. I'll check.

5 THE COURT: Because I know the first tape goes to
6 4:03.

7 MR. BOSTIC: 3:08.

8 THE COURT: That means an hour on that tape left.

9 MRS. GAY: No, Your Honor. What happens is we had
10 taken some breaks at some points where time did pass.

11 THE COURT: Okay. Not much, though. Every break I
12 saw when I was looking at it, every break only lasted like
13 three or four minutes. It seemed to me the ones I saw, on
14 the first part, anyway.

15 In any event, the second tape is about an hour; isn't
16 it?

17 MRS. GAY: I haven't seen the tapes, themselves, other
18 than what I saw here.

19 MR. DUTREMBLE: We rested at 5:46, Your Honor.

20 THE COURT: All right. The second tape is an hour and
21 a half, then. Okay. If you all would, be ready to come
22 back in here at two o'clock, anyway.

23 MR. DUTREMBLE: Yes, sir.

24 MRS. GAY: Thank you, Your Honor.

25 THE COURT: Two o'clock.

1 (WHEREUPON, court recessed for lunch.)

2 THE COURT: All right. Is everyone ready?

3 MRS. GAY: Yes, sir.

4 MR. DUTREMBLE: Yes, sir.

5 THE COURT: All right. Where is Mr. Bostic?

6 MR. DUTREMBLE: Here he is, Your Honor.

7 THE COURT: All right. You can't pull the screen
8 down, but go ahead and make sure everything is ready.

9 Does anybody need anything to be put on the record, if
10 not I'm going to let her walk down with her equipment.

11 MR. DUTREMBLE: Nothing from the State.

12 THE COURT: Oh, no. We do have something. I got a
13 message. This needs to be on the record. Who handed me
14 this?

15 BAILIFF: The Foreperson.

16 THE COURT: I know. But who handed it to me? You or
17 which bailiff?

18 BAILIFF: Ms. Parker did.

19 THE COURT: Ms. Parker? All right. Ms. Parker gave
20 me this not during lunch, brought it to my chambers. It is
21 a message signed by the Foreperson. It says, One of the
22 jurors -- it just says juror and then the juror number --
23 has reported to the Foreperson, who is the person writing
24 this note, that the mother of the defendant is a member of
25 his church. He recognized her when he saw her on sight.

1 I take it that means he recognizes her by her seeing
2 her, but did not recognize the name. What do you all wish
3 to do?

4 MR. DUTREMBLE: If Your Honor would just inquire of
5 that one particular juror whether or not that makes a
6 difference in his or her ability to give both sides a fair
7 and impartial trial, I would be satisfied with that.

8 THE COURT: Mrs. Gay?

9 MRS. GAY: That would be fine, Your Honor.

10 THE COURT: All right. Bring Juror 126 out. I'm not
11 sure what name that person is. Hold on. I can tell you
12 what name. That's Mr. Mazyck.

13 (WHEREUPON, Juror 126, Mr. Mazyck, is brought before
14 the Court and note is marked as Court's Exhibit Number 14.)

15 THE COURT: Mr. Mazyck, how are you doing this
16 afternoon, sir?

17 JUROR: Yes, sir.

18 THE COURT: Did you have a good lunch?

19 JUROR: Yes, sir.

20 THE COURT: Good, sir. I have a message here from the
21 Foreperson that you stated that you recognized Ms. Gilliard
22 on sight as being a member of your church; is that right
23 sir?

24 JUROR: Yes, sir.

25 THE COURT: What church do you go to?

1 JUROR: Old Branch.

2 THE COURT: Now, is that a large church or a small
3 church?

4 JUROR: It's a large church.

5 THE COURT: Okay. Do you know her personally?

6 JUROR: No. Just by seeing her there.

7 THE COURT: All right. Do you feel the fact that she
8 goes to the church that you go to, do you feel that that in
9 any way would effect your decision in this case?

10 JUROR: No, sir.

11 THE COURT: Would it in any way effect the way that
12 you look at testimony or witnesses at all?

13 JUROR: No, sir.

14 THE COURT: It would not interfere at all with your
15 decision in the case?

16 JUROR: No, sir.

17 THE COURT: Whatever your decision you make, will be
18 make regardless of the fact that she goes to the church?

19 JUROR: Yes, sir.

20 THE COURT: So going to your church would have nothing
21 to do with that decision?

22 JUROR: No, sir. I come to that conclusion because I
23 wanted you to know what I know.

24 THE COURT: But you didn't know the name when I
25 mentioned the name?

1 JUROR: No.

2 THE COURT: Just when you saw her by sight.

3 All right. Has anyone in your church tried to contact
4 you or call you about this case?

5 JUROR: No, sir. I don't know anything about this
6 case.

7 THE COURT: Do you feel you would have any pressure
8 from church members about this case, one way or the other?

9 JUROR: No.

10 THE COURT: Okay. If you would, please, step back in
11 the jury room. No. Step back in that door right there,
12 please.

13 (The juror complies.)

14 THE COURT: Any other questions from the State?

15 MR. DUTREMBLE: Nothing further from the State, Your
16 Honor.

17 THE COURT: From the defense?

18 MRS. GAY: No, Your Honor.

19 THE COURT: All right. So does anyone object to him
20 remaining on the jury?

21 MR. DUTREMBLE: The State does not.

22 THE COURT: Defense?

23 MRS. GAY: No, Your Honor.

24 THE COURT: All right. Good. Tell him he's still on
25 the jury.

1 Okay. Are you ready?

2 MR. BOSTIC: Yes, sir.

3 THE COURT: All right. Tell me the time situation,
4 again.

5 MR. BOSTIC: It was 3:16, Your Honor.

6 THE COURT: Okay. Good. So I'll know in my mind.
7 Okay. Good. Bring the jury in, please.

8 (WHEREUPON, the jury returns to the courtroom.)

9 BAILIFF: All present, Your Honor.

10 THE COURT: Okay. Ladies and gentlemen, before we
11 begin again in the afternoon, here, did anyone hear
12 anything about this case, discuss it with anyone at all?
13 If so, let me know now.

14 Any polling requested by the State or the defense?

15 MR. DUTREMBLE: No, Your Honor.

16 MRS. GAY: No, Your Honor.

17 THE COURT: All right. Ladies and gentlemen, as you
18 recall, you are listening to a video deposition of Dr.
19 Richard Leo. We'll continue that now.

20 Let me just give you some information. There's two
21 tapes. This tape that you're seeing now has about
22 thirty-five or forty minutes left on it. Then, the
23 gentleman here in the front will put the other tape in.
24 The court reporter and I are going to do another hearing in
25 Courtroom A. I had one scheduled at 2:30. So instead of

1 interrupting this trial, I'm going to let this thing go on
2 with you all continuing watching the video. And we're
3 going to do the short hearing in Courtroom A. But don't
4 let that in any way interfere with you. The clerk's going
5 to let me know if something happens with the tape, or
6 anything else. And I'll be gone about thirty-five or forty
7 minutes. But he'll slip the other tape in as soon as the
8 first one is through. I'll probably give you a break at an
9 appropriate time in the tape, or either after about an hour
10 of watching it, we'll give you a break. So, please, be
11 aware of that. Okay.

12 So are you ready to proceed again? And when he
13 starts, I want everyone to verify that it's at the
14 appropriate place. If it is not, and you want me to back
15 it up or move it forward, let me know. If not, I'm going
16 to assume that everyone agrees that's the appropriate place
17 to start.

18 (WHEREUPON, the videotape deposition of Dr. Leo was
19 started to determine the appropriate starting place.)

20 MR. DUTREMBLE: Yes, sir.

21 MRS. GAY: Yes, sir.

22 THE COURT: Okay.

23 (WHEREUPON, the continuation of the videotape
24 deposition of Dr. Leo was played for the jury.)

25 THE COURT: Okay. Ladies and gentlemen, we'll take a

1 refreshment break. Just for a few minutes, stretch out,
2 use the restroom, get a drink of water. If you want to
3 bring a drink of water or drink back out with you, feel
4 free to do so.

5 (WHEREUPON, the jury retires to the jury room.)

6 THE COURT: That tape goes to 5:46, so we've got
7 a little over an hour to go, then.

8 MRS. GAY: Your Honor, I have another copy of these
9 tapes in my car. I sent my investigator to go get it to
10 try to see if the other tape, itself, might be of better
11 quality. I would hate to think that that's the best we
12 get. And I do have another one to check.

13 THE COURT: Yes. And let me see you all in chambers,
14 too.

15 (WHEREUPON, there was a short recess.)

16 THE COURT: Everyone ready?

17 MRS. GAY: Yes, sir.

18 MR. DUTREMBLE: Yes, sir.

19 THE COURT: Bring the jury in, please.

20 (WHEREUPON, the jury returns to the courtroom.)

21 BAILIFF: All present, Your Honor.

22 THE COURT: Okay. If everyone's ready, we will now
23 proceed. We replaced the tape with another tape that
24 doesn't have that sound in it, that background sound. So
25 you should be able to hear it better. Let's proceed now on

1 the testimony.

2 (WHEREUPON, the continuation of the videotape
3 deposition of Dr. Leo was played for the jury.)

4 THE COURT: All right. Ladies and gentlemen of the
5 jury, because of the hour -- there's a short bit of the
6 trial left. There's not much before it's going to be put
7 in your hands. But I'm cognizant of human nature, and you
8 all have been listening and watching all day. So we'll
9 finish this thing up tomorrow morning, and it will be in
10 your hands tomorrow. I'm going to let you go home.

11 Now, let me ask you this. I'm going to let you all
12 choose at this time. Who wants to come in at 8:30. Okay,
13 two, three? Who wants to come in at 6:00? Who wants to
14 come in at 9:00? Okay. So you all would like to come in
15 at 8:30, so we can get going.

16 Let me talk to Counsel a minute. You all come
17 forward.

18 (WHEREUPON, there was an off-the-record bench
19 conference in the presence of the jury, but out of the
20 hearing of the jury.)

21 THE COURT: Okay. We'll see you all tomorrow at 8:45.
22 We'll give you time to arrive, because we'll probably start
23 bringing you out here at 9:00. So be here at 8:45 to make
24 sure everybody's here. Because sometimes we can't really
25 start some things until I know everybody's back there. So

1 you all be here at 8:45. Do not discuss this case. Do not
2 read anything. No local news. See you tomorrow at 8:45.

3 Everyone else, stay where you are.

4 (WHEREUPON, the jury leaves the courtroom for the
5 evening break.)

6 THE COURT: Okay. Now, as I understand, Mrs. Gay, you
7 have at the most one witness left?

8 MRS. GAY: Yes, sir.

9 THE COURT: Okay. And we'll decide on that tomorrow
10 morning?

11 MRS. GAY: Yes, sir.

12 THE COURT: Now, you all probably need to be thinking
13 tonight about various charges to give. I don't really see
14 too much in this case to have any unusual type charges or
15 charges out of the ordinary in the case, but all the
16 testimony's not in. So I'll make the decision on that
17 after all the testimony is in, but it seems to me at this
18 stage credibility issues are there, expert witnesses, those
19 type of situations, and the charge on the actual
20 allegations. But let me wait and hear all the testimony
21 before I decide, but you all knowing what all the testimony
22 is going to be, may be thinking now about what the
23 potential charges that you want the jury to have. I would
24 hope that we could start charging the jury by no later than
25 about 10:30 to 11:00 tomorrow morning. So they will have

1 it by lunchtime or at least somewhere around lunchtime. I
2 would like for us to shoot for that period of time.

3 You don't anticipate an rebuttal witnesses; do you,
4 Mr. DuTremble?

5 MR. DUTREMBLE: Not at this point in time, Your Honor.
6 No, sir.

7 THE COURT: All right. Good. We'll see you all then
8 tomorrow morning.

9 (WHEREUPON, court is recessed for the evening break.)

10 (The following is reported on June 1, 2001.)

11 THE COURT: Okay. Everyone be seated, please.

12 Mrs. Gay, you ready to proceed?

13 MRS. GAY: Yes, sir. Your Honor, before we bring the
14 jury out, we had a stipulation, and I couldn't remember
15 after Mr. Leo testified -- I couldn't remember what the
16 stipulation actually was.

17 Did you ever write it down, Dale?

18 MR. DUTREMBLE: No.

19 MRS. GAY: We had stipulated that Ms. Gilliard, Emily
20 Gilliard, had found the mask. And, I believe, that we said
21 in Cookie's closet. That is what we need to make sure is
22 in the stipulation. Because Mr. Leo said, in Ms.
23 Gilliard's closet, but he didn't give any specifics on
24 which Ms. Gilliard it was.

25 THE COURT: Do you want the court reporter to find

1 what that stipulation was?

2 Can you find it Madam Court Reporter? Do you remember
3 where it was? It was a stipulation yesterday afternoon. I
4 think right at the end -- I think, it was -- was it at the
5 end of the evening, day before yesterday?

6 MR. DUTREMBLE: That would be correct as to the
7 stipulation, Your Honor. It was found in Cookie's closet.

8 THE COURT: Well, I know that. I'm just trying to
9 make sure we read it to see what you said. But it seemed
10 like we did this at the end of Wednesday evening, because
11 you had that one witness you were thinking about calling.

12 MR. DUTREMBLE: Yes, sir.

13 THE COURT: So look at the very end of Wednesday
14 evening.

15 (WHEREUPON, the stipulation could not be located at
16 this time.)

17 THE COURT: Then I'll just say to the jury to make
18 sure the stipulation made the other day, we want to make
19 sure it's clear. But I want to read this as stipulation.
20 And then I would say the following: The mask, marked as
21 Exhibit 27, and referred to by some as the "gorilla mask,"
22 was turned over to police by Emily Gilliard who reported
23 she found it in her daughter, Cookie's closet.

24 MRS. GAY: Yes, sir.

25 THE COURT: Is that correct?

1 MRS. GAY: Yes. That's fine.

2 MR. DUTREMBLE: Yes, sir.

3 THE COURT: All right. I'll just make sure that
4 stipulation is clear.

5 All right. Anything else before we get started?
6 Anything from the State?

7 MR. DUTREMBLE: No, sir.

8 THE COURT: From the defense?

9 MRS. GAY: I believe you said in chambers, Your Honor,
10 that you were going to discuss ---

11 THE COURT: I'm going to talk to your client. But
12 anything else before that?

13 MRS. GAY: Your Honor, I would like to renew all my
14 motions for a directed verdict at this point.

15 THE COURT: Well, your case is not over, yet. You can
16 do that at the end of your case; can you not?

17 MRS. GAY: That's correct. I just want to make sure I
18 did it right. That's all.

19 THE COURT: All right. If you would, Ms. Gilliard,
20 please stand up, please, ma'am.

21 (The defendant stands.)

22 THE COURT: Ms. Gilliard, I discussed with you
23 briefly, yesterday, about your rights to testify and not to
24 testify. As you recall, I informed you if you chose not to
25 testify, I would instruct the jury not to hold it against

1 you; not even to consider it in their deliberations. And
2 that I would remind the jury the burden is on the State to
3 prove you guilty, not on you to prove yourself innocent.
4 And that they could not in any way hold adverse to you the
5 fact, or consider adverse to you the fact you didn't
6 testify. I'd even instruct them not to discuss it in the
7 jury room, if you wanted me to. I also informed you had a
8 right to testify. And let you know that if you chose to
9 testify, of course, you'd be under oath, and you'd be
10 required all questions relevant to this case.

11 Further, Ms. Gilliard, we discussed the fact that
12 there are no prior records. So nothing will be introduced
13 about any prior convictions. The CDV conviction will not
14 be introduced against you at all, unless for some reason
15 you brought that issue up.

16 So do you understand those rights, ma'am?

17 DEFENDANT: Yes, sir.

18 THE COURT: Have you had enough time to think about
19 what you wish to do in this matter? Have you had enough
20 time, is my question?

21 DEFENDANT: Yes, sir.

22 THE COURT: All right. Now, do you have any questions
23 of me at all about your rights to testify or not to
24 testify?

25 DEFENDANT: No, sir.

1 THE COURT: All right. Have you made a decision in
2 that regard?

3 DEFENDANT: Yes, sir.

4 THE COURT: All right. Is this decision your
5 decision?

6 DEFENDANT: Yes, sir.

7 THE COURT: It's not your lawyer's, it's not your
8 family's, but it's your decision?

9 DEFENDANT: Yes, sir.

10 THE COURT: All right. And what is that decision,
11 ma'am.

12 DEFENDANT: My decision is to testify to something
13 that I did not do.

14 THE COURT: Okay. Your decision is to testify?

15 DEFENDANT: Yes, sir.

16 THE COURT: All right. Now, Ms. Gilliard, and you
17 tell me that's your decision?

18 DEFENDANT: Yes, sir.

19 THE COURT: All right. I find you make a free and
20 voluntary decision to testify after being informed and
21 understanding your rights to testify or not to testify.
22 You may be seated, ma'am.

23 MRS. GAY: Your Honor, I hate to inconvenience the
24 Court, but can I go run in the restroom real quick?

25 THE COURT: Go ahead.

1 (WHEREUPON, the Court speaks to three gentlemen
2 concerning their 403's.)

3 THE COURT: All right. Are you ready to proceed, Mrs.
4 Gay?

5 MRS. GAY: Yes, sir.

6 THE COURT: All right. Bring the jury in, please.

7 (WHEREUPON, the jury returns to the courtroom.)

8 THE COURT: Ladies and gentlemen of the jury, before
9 we get started, did anyone hear anything about this case,
10 discuss it with anyone, since you left last evening? If
11 so, let me know, now.

12 Okay. Any polling requested? Hearing no polling
13 requested, ladies and gentlemen, the other day on Wednesday
14 I think it was, I gave you a stipulation. I told you a
15 stipulation is something you can accept as fact. And the
16 attorneys have asked that we repeat the stipulation, just
17 in case it may or may not have had -- just to make sure
18 it's got the correct information. So, if, in fact, what
19 I'm going to tell you now is different than what I told you
20 Wednesday, accept what I'm going to say now. But if it's
21 the same, there were no problem. We could have just looked
22 up from the court reporter all the information and got it,
23 but it would be quicker to do it this way, instead of
24 asking her to look it up and read back what we said.

25 But the mask, marked as Exhibit 27, referred to by

1 some as the "gorilla mask," was turned over to the police
2 by Emily Gilliard, who reported she found it in the closet
3 of her daughter, Cookie Gilliard. Okay. And that may have
4 been what I said Wednesday. If it was, fine. If it
5 wasn't, this is what you accept as fact that the mask was
6 turned over to the police by Emily Gilliard, who said she
7 found it in the closet of her daughter, Cookie Gilliard.

8 Is that the correct stipulation, Mr. DuTremble?

9 MR. DUTREMBLE: It is, Your Honor.

10 THE COURT: Is that the correct stipulation, Mrs. Gay?

11 MRS. GAY: Yes, sir.

12 THE COURT: All right. Then, we shall proceed.

13 Mrs. Gay, your next witness for the defense, please?

14 MRS. GAY: Thank you, Your Honor. I would call Ms.
15 Kandy Gilliard.

16 KANDY GILLIARD, being first duly sworn
17 testified as follows:

18 THE CLERK: Please, be seated. Please, state your
19 full name for the Court, and spell your last.

20 WITNESS: Kandy Latrice Gilliard. Gilliard,
21 G-i-l-l-i-a-r-d.

22 THE COURT: All right, Mrs. Gay.

23 DIRECT EXAMINATION

24 BY MRS. GAY:

25 Q. Kandy, we've all been here for days at this point.

1 Did you and B.J. go and rob Dawn at the poker parlor that
2 night?

3 A. No, ma'am.

4 Q. Did you and B.J. have a plan to rob Dawn at the poker
5 parlor that night?

6 A. No, ma'am.

7 Q. Did you want to steal money from Dawn from the poker
8 parlor that night?

9 A. No, ma'am.

10 Q. Did you know that there was money there?

11 A. Yes. I knew that money was there.

12 Q. And had you seen the money?

13 A. I saw her make payoffs, but I didn't see the actual
14 amount of money that she had.

15 Q. And had you been to the poker parlor and seen money in
16 the past?

17 A. Yes, ma'am.

18 Q. I know that the information in this trial says that
19 you knew Dawn. How long had you known her?

20 A. For about seven months. I don't know the exact amount
21 of months or the time that I had known her, but I knew her
22 for a while from working at The Game Room.

23 Q. And were you friendly with her?

24 A. Yes, ma'am.

25 Q. And how often would you see her at The Game Room?

1 A. Probably about four or five nights out of the week,
2 sometimes. And sometimes when I would get off work I would
3 go by there. And sometimes I would take her food or buy
4 her cigarettes, etcetera. Just sit down and talk to her.

5 Q. So four or five nights out of the week during a period
6 of how long did you see her at the poker parlor?

7 A. For about seven months since I started knowing her.

8 Q. Well, did you go to the poker parlor before she
9 started working there?

10 A. Yes, ma'am.

11 Q. So how long had you been going to this particular
12 place?

13 A. Well, I went in -- before I even turned twenty-one, I
14 was going inside there.

15 Q. And how old are you, now?

16 A. Twenty-three.

17 Q. And how old were you then?

18 A. Twenty-one.

19 Q. Where did you live in proximity to this place?

20 A. About two or three blocks behind Gas Lite Square where
21 the video parlor room is located.

22 Q. Now, that night, you said that you knew that she was
23 making payoffs and had money?

24 A. Yes, ma'am.

25 Q. Had she made payoffs and had money on other occasions

1 when you had been there?

2 A. Yes.

3 Q. What was her normal schedule; do you know?

4 A. Schedule of working?

5 Q. Right.

6 A. I would say 6:00 in the afternoon til 6:00 in the
7 morning, or a later than 6:00. No. It would be later than
8 6:00. Like, 7:00 or 8:00 in the morning.

9 Q. So she would work til about 7:00 or 8:00 in the
10 morning?

11 A. Yes, ma'am.

12 Q. And when you sat around with Dawn in the past, was it
13 day or night when you were with her?

14 A. Night.

15 Q. Did you ever hang out with Dawn at the poker parlor
16 during the day?

17 A. It was probably -- I'd say probably twice or three
18 times that she would have to take somebody else's shift.
19 But yes, to your question is yes.

20 Q. So there were occasions when you were with her during
21 the day?

22 A. Yes.

23 Q. But would you say that the majority of the times you
24 were with her it was nighttime?

25 A. Yes, ma'am.

1 Q. And I believe the information that we have is this was
2 a twenty-four-hour poker parlor?

3 A. Yes.

4 Q. And when you were there at night with her on other
5 occasions, what type of activities would you and she do?

6 A. We would sit down and talk. And sometime if I'm the
7 only one inside there with her or another customer that's
8 regular, she will sit down and play the video poker games
9 with us. I mean, she knows that she is not supposed to,
10 but being that all of us knew each other and was there
11 playing, she would play with us. And sometime she'll have
12 me or another person just sit down inside the office and
13 watch television.

14 Q. Okay. When you say the office, I believe, that's the
15 place is the cashier office?

16 A. Yes, ma'am.

17 Q. Okay. I'm going to show you what's been marked as
18 State's Exhibit 4. Can you describe to the jury what area
19 you would be talking about that you were sitting and
20 watching t.v.?

21 A. This.

22 Q. And this is the area right here that's got the
23 machines?

24 A. Yes, ma'am.

25 Q. So this is where the t.v. was and the cashier area?

1 A. Yes, ma'am.

2 Q. And so how many occasions had you been there sitting
3 with her at night watching t.v.?

4 A. Just about every time I go there. If I run out of
5 money, or if I'm waiting on somebody to come and get me or
6 whatever, she'll allow me to sit inside the office with her
7 and watch television; and we'll sit down and talk.

8 Q. And that's where the money is is inside the office?

9 A. Yes, ma'am.

10 Q. And had there ever been occasions where you had
11 actually slept there?

12 A. Yes.

13 Q. And if you slept there, where would you sleep?

14 A. Either inside the room with her, or in the lounge area
15 where they would have, as stated on Exhibit 4, the lounge
16 area. If other customers were there, she would have me
17 inside the lounge area, because she knew that no one was
18 allowed inside there. Other customers couldn't see a
19 customer inside the lounge area -- I mean, inside the
20 cashier office.

21 Q. And this place you said was a twenty-four-hour place.
22 Would customers come there pretty much all night long?

23 A. Yes. Throughout the day and night.

24 Q. And when you were there either sleeping or watching
25 t.v. with her, how often did somebody come there in the

1 middle of the night?

2 A. Very often. Even between the hours -- all through the
3 night, midnight, mid-morning they would come in.

4 Q. And you was these people coming in and out when you
5 were there?

6 A. Yes.

7 Q. And when you were -- the customer, I believe, we had
8 this concept of a regular customer, or somebody who came
9 there often. There were a number of regular customers that
10 you knew; weren't there?

11 A. Yes.

12 Q. Would some of those regular customers come at all
13 hours of the night?

14 A. Yes.

15 Q. And if you were in the poker parlor, the door was
16 normally locked; wasn't it?

17 A. Yes, ma'am.

18 Q. And how did the door -- how did somebody come in the
19 poker parlor if they came at the middle of the night?

20 A. They would have to press the buzzer. And she would
21 always tell us to make sure we stand in front of the door
22 so that the security camera can see us.

23 Q. Okay. So you're aware that there was a security
24 camera there?

25 A. Yes, ma'am.

1 Q. And you were aware that the security camera was
2 supposed to be seeing the people at the door?

3 A. Yes, ma'am. And she wouldn't let you in, unless she
4 see you standing directly in front of the door where the
5 camera can see you at.

6 Q. And so on the night that this happened, I believe,
7 that Ms. Meyers, who is the oriental woman that testified
8 earlier, you had seen her that night; didn't you?

9 A. Yes, ma'am.

10 Q. And she'd seen you?

11 A. Yes, ma'am.

12 Q. You talked to her?

13 A. Uh-huh.

14 Q. Had she seen -- was that a "yes"?

15 A. Yes, ma'am.

16 Q. Had she seen you back in the office with Dawn?

17 A. Yes. When I first walked in, I went to give Dawn the
18 antibiotic -- is what my reason was going there for because
19 she had kept asking me about it, and I had forgotten about
20 it. Because she didn't have insurance in other words. And
21 she had some type of sinus infection or something, and she
22 told me that she had needed antibiotics. And I had a lot
23 of tonsil problems, and I had antibiotics left over. And I
24 told her I would give them to her.

25 Q. And I'm going to show you what's been marked as

1 State's Exhibit 21, and ask if you can identify it?

2 A. Yes, ma'am. This is amoxicillin that my doctor, Dr.
3 Gibbs, prescribed to me for my tonsil problem.

4 Q. And is this the item that you brought to Dawn?

5 A. Yes, ma'am.

6 Q. And that was about what time?

7 A. About 11:30.

8 Q. Now when you left your house that night and went over
9 to the poker parlor, did you bring any gloves with you?

10 A. No, ma'am.

11 Q. Did you ever go to your house and get any type of
12 gloves?

13 A. No, ma'am.

14 Q. Did you ever go to your house at all that night?

15 A. No, ma'am. Not after leaving, I did not go back.

16 Q. So once you brought the medicine to her and went to
17 the poker parlor, you never went back to your house at all?

18 A. No, ma'am. No.

19 Q. So did you ever go there and wake up B.J. and ask him
20 to come with you back to the poker parlor?

21 A. No, ma'am.

22 Q. Did you ever talk to B.J. at all, before he got there
23 that night?

24 A. No, ma'am.

25 Q. How did you normally get home from the poker parlor?

1 A. My sister, Cookie -- we had a Chow dog. And either
2 she would come and meet me with the dog, because there were
3 other dogs inside the neighborhood -- and either she would
4 come and meet me with the dog, or I'll catch a cab, or her
5 and B.J. would come and meet me. B.J. have came to the
6 video poker parlor place and meet me by himself before.
7 And my mom had picked me up several times from there, too.

8 Q. And so if somebody was coming to meet you if they ---

9 A. Oh. Excuse me. And sometimes the customers -- a
10 regular customer that know me, they would take me home if I
11 was there and didn't have a ride or somebody to come and
12 get me.

13 Q. And on this night, did you have anybody -- did you
14 arrange to have anybody to come meet you there?

15 A. No, ma'am. As a matter of fact, I had paged my mom,
16 but she never called back. And then I paged Cookie, and no
17 one called back. And then I called home, and no one
18 answered. The answering machine kept coming on. So I just
19 figured I would have to stay there.

20 Q. Okay. And if you figured you would have to stay
21 there, what would you have done there?

22 A. Slept. I would have slept there until the next
23 morning when it was daylight, and I would have walked home.

24 Q. And was Dawn actually sleeping that night?

25 A. She was dozing off. Both of us were dozing off.

1 Q. Now dozing off. Does that mean she was asleep?

2 A. No, ma'am.

3 Q. So if somebody had rang the bell, she would have --
4 what would she have done?

5 MR. DUTREMBLE: Objection, Your Honor. It calls for
6 speculation.

7 THE COURT: Well, you can ask her from her
8 observations what happens at the parlor when somebody rings
9 the bell?

10 BY MRS. GAY?

11 Q. In the past, from previous experiences, if somebody
12 rang the bell while she's dozing, what would have occurred?

13 A. Either she would have gotten up and opened the door,
14 and there were times when she had told me to get up and
15 open the door, because I know the customers, also, from
16 being there so much.

17 Q. Now, let's talk about B.J. for a minute. How do you
18 know B.J.?

19 A. He was dating my little younger sister, Cookie --
20 Demetrice Gilliard.

21 Q. And was he staying with y'all?

22 A. That wasn't his place of residence, but my sister
23 allowed him to stay there after my mother had told him
24 several times that he couldn't stay there. But he would
25 still come back. And sometimes he would be in the room,

1 and we didn't even know.

2 Q. And where would he stay when he was at hour house?

3 A. In Cookie's room.

4 Q. Were you scared of B.J.? I'm just talking about in
5 general.

6 A. To a certain extent. Yes, ma'am.

7 Q. And had you seen him beat your sister?

8 A. Yes, ma'am. And gotten hostile with her. And at one
9 point, as I understand it, the police had to been called
10 out to the house several times where he would -- he had
11 choked her one time, and he had beat her with a bat. He
12 took the bat from her, and beat her with the bat. And
13 yelling at her and different things.

14 Q. Had you, actually, observed any of this, yourself?

15 A. The one with the bat. But the one when he was choking
16 her, I was at work at the time, and she had told me about
17 it when I came home.

18 Q. And you said the police had been called?

19 A. Yes, ma'am.

20 Q. Did you know that he had some mental problems?

21 A. I knew that he was off, and I knew that he wasn't --
22 his mind didn't register all the way, to me. Yes. In
23 other words, yes. After meeting his mom and knowing that
24 he was getting a medicaid card and a check, SSI check, I
25 knew that something had to been wrong with him, because

1 anybody that get a medicaid card and SSI check at the age
2 that he is, something has to be wrong.

3 Q. So you did know he was supposed to be on some
4 medicine?

5 A. Yes.

6 Q. Did you know if he was taking any medicine?

7 A. I never seen him taking any medication while the times
8 that he was at our house. And I never heard him mention
9 anything that he was taking any. I knew that he said he
10 was supposed to be taking it, but he never said why he
11 wasn't. But, yes. I knew that he was supposed to be
12 taking it.

13 Q. Had you ever seen him just get mad?

14 A. I observed a couple of times when my sister -- when
15 guys, my sister friends, would call on the telephone and
16 he'll get mad and snatch the phone cord out the wall, and
17 yelling at her and different stuff like that. Yes.

18 Q. So most of what you saw was between him and her?

19 A. Yes, ma'am.

20 Q. Cookie -- I mean, Kandy, have you ever been beaten by
21 a man?

22 MR. DUTREMBLE: Objection. Your Honor that has no
23 relevance to this case.

24 THE COURT: I sustain. You might better approach,
25 Mrs. Gay.

1 (WHEREUPON, there was a bench conference in the
2 presence of the jury, but out of the hearing of the jury.)

3 THE COURT: You're getting close to opening the door.
4 You understand that; don't you?

5 MRS. GAY: Yes, I do. That's what I talked about
6 earlier. That was the only question I was going to ask. I
7 think it goes to her state of mind as she had been a
8 victim.

9 THE COURT: I'm going to sustain the objection.
10 (The following was reported in front of the jury.)

11 THE COURT: I'm going to sustain the objection
12 BY MRS. GAY:

13 Q. Kandy, the day after this whole incident occurred and
14 happened, this terrible incident, did you talk to the
15 police?

16 A. Yes, ma'am.

17 Q. Did you tell them what happened that night?

18 A. No, ma'am.

19 Q. Why didn't you tell them what happened the day or the
20 morning that all this happened?

21 A. Because B.J. had told me not to tell on him. And from
22 what I had seen that night, I didn't want him to harm my
23 sister or my mother or me.

24 Q. And that's why you didn't tell them on the 5th, when
25 they were talking to you after it happened, what happened?

1 A. Yes, ma'am.

2 Q. That day when they were talking to you, was it during
3 the day or night that they were talking to you?

4 A. During the daytime.

5 Q. Did they tell you anything about your rights or your
6 Miranda? We have talked about that a lot. Did they tell
7 you any of that stuff that day?

8 A. No, ma'am.

9 Q. Did they give you a written thing that they wrote that
10 day, the day that it happened?

11 A. Miranda?

12 Q. No. The actual statement on the 5th?

13 A. Yes.

14 Q. Okay. Did you sign it?

15 A. Yes, ma'am. I signed it.

16 Q. Did you take it home?

17 A. Yes, ma'am.

18 Q. On the 9th -- we have spent three days talking about
19 this statement, or this time that you talked to the police
20 on the 9th. Do you remember that time on the 9th?

21 A. The night that they came and got me?

22 Q. Yes. Do you remember that?

23 A. I don't know the exact time.

24 Q. But you do remember that? I'm not asking you
25 specifics.

1 A. Yes, ma'am.

2 Q. I'm going to hand you a statement. Well, first of
3 all, I'm going to hand you State's Exhibit 1. Can you
4 describe to me what State's Exhibit 1 is?

5 A. Advice of Constitutional Rights.

6 Q. Okay. And what time in the morning did they give you
7 this? Do you remember?

8 A. It doesn't have a time on it, but they gave it to me
9 the same time they gave me the statement to sign.

10 Q. Okay. And is your signature on it?

11 A. Yes, ma'am.

12 Q. Could you read for the jury your signature in both of
13 those places?

14 A. What I signed to?

15 Q. That is your signature, right, in two places?

16 A. Yes, ma'am.

17 Q. And I'm going to show you State's Exhibit 2.

18 MRS. GAY: I'm going to ask Mr. DuTremble one thing.
19 Isn't this part of State's Exhibit 2; it was attached to
20 the other one.

21 MR. DUTREMBLE: Yes.

22 THE COURT: That sheet is part of that sheet there.

23 MRS. GAY: No. They go together.

24 THE COURT: That's not what we had initially. You all
25 approach, please. I has suggested you all to mark that

1 separate, but you didn't.

2 (WHEREUPON, there was a bench conference in the
3 presence of the jury, but out of the hearing of the jury.)

4 THE COURT: Let me just have the rights warning sheet,
5 itself. As I recall, this was attached to this initially.

6 MR. DUTREMBLE: It should be attached to 2.

7 THE COURT: Well, it was attached to that, that's why
8 I asked you. Do you have an objection if he puts this in
9 as State's Exhibit at this time? Do you want to just mark
10 it separately?

11 MR. DUTREMBLE: Yes, sir.

12 MRS. GAY: No problem, Your Honor.

13 THE COURT: What number are we on?

14 COURT REPORTER: Number 34.

15 (The following was reported in front of the jury.)

16 THE COURT: All right. There is no objection that
17 that other sheet there that's been attached to one of these
18 two sheets, now is marked separately as State's Exhibit 34.
19 It's the sheet with question that were written down by the
20 officers. And the officers testified that the defendant
21 wrote responses to.

22 (State's Exhibit Number 34 marked for identification
23 and received in evidence.)

24 BY MRS. GAY:

25 Q. Kandy, I'm going to show you what's State's Exhibit 2

1 and ask you if you can identify it? What is it?

2 A. The statement that Detective Deckard wrote up on
3 January 9th.

4 Q. And these pieces of paper right here, what time did
5 they say they were done?

6 A. At 7:45.

7 Q. And is that a.m. or p.m?

8 A. That's a.m.

9 Q. And is your signature on this statement, on this piece
10 of paper on the bottom?

11 A. Yes, ma'am.

12 Q. And is your signature on all of these pieces of paper?
13 One, two, three, four, five -- well, five in this exhibit?

14 A. Yes, ma'am.

15 Q. Okay. And at the very end of this page on page four,
16 is that your signature right there?

17 A. Yes, ma'am.

18 Q. And is there a part of this that's got your own
19 handwriting on it?

20 A. Yes, ma'am.

21 Q. And I'm going to show you what's State's Exhibit 34.
22 Can you tell me what this is?

23 A. These are the questions that Detective Deckard asked
24 me -- he wrote down the questions, and asked me to answer
25 it.

1 Q. And what time on the 9th, is this piece of paper done?

2 A. At eleven o'clock.

3 Q. And does that have your signature on it?

4 A. Yes, ma'am.

5 Q. And does that have some of your own handwriting on it?

6 A. Yes, ma'am.

7 Q. Okay. What I'm going to do, is I'm going to have you
8 read to the jury everything that's on these pieces of
9 paper. Okay?

10 A. All right.

11 Q. And we know that these are some pieces of paper. And
12 I want you to say to the jury what's written on that piece
13 of paper?

14 A. Okay. It says, this statement is given on January 9th
15 of 2000, at 7:45 a.m.

16 THE COURT: I'm afraid it's hard to hear.

17 MRS. GAY: I'm sorry.

18 BY MRS. GAY:

19 Q. Do you want to speak up just a little bit?

20 A. It says: This statement is given on January 9th of
21 2000, at 7:45 a.m. at the North Charleston Police
22 Department. This statement is written for me by Detective
23 Deckard at my request as I tell it to him. At about 11:30
24 p.m. or twelve o'clock a.m., on January 4, 2000, I went to
25 The Game Room on Rivers Avenue next to Alex's to give Dawn,

1 the attendant, some antibiotics for her cold. I had known
2 Dawn for about six or seven months from going to The Game
3 Room to play video poker. I played the poker machine for a
4 little while.

5 Then, after a Korean lady left, Dawn came out of the
6 office and played for a little while, also. After we
7 played, we sat down in the office and watched t.v. Both of
8 us starting dozing off, but I made a phone call. I paged
9 my sister's pager for somebody to come meet me. No one
10 called back. So, I guess, B.J. walked straight up there.
11 I heard tapping on the window, and saw B.J., Benjamin
12 Johnson, at the door with a red, black, and yellow mask
13 with furry hair on his head.

14 I let him in thinking we were only going to hit her
15 for money, because we talked about it before. I let him
16 in, and he asked me if we were still going to do it; and I
17 shrugged my shoulders. And he said, She's going to see us.
18 I ran to the back and got a trash bag off a roll of bags in
19 the back by the microwave. I ran back to the office with
20 the bag to cover her face so she wouldn't see us. B.J.
21 when he first went to the back and wanted to use a monkey
22 wrench. Then I told him, No. Because I all we wanted was
23 the money. We didn't want to hurt her.

24 B.J. got the cord out of the trash bag. They had a
25 bunch of cords in them. And then said, I'll use this; it

1 won't hurt her. First, B.J. went back to the office and
2 put the cord around her neck. And she looked like she was
3 turning around to see us. So I took the bag and put it
4 around her head -- I didn't put it over her head -- so she
5 couldn't see us. I dug in her pocket and got the money out
6 of her right pocket, I think, and got the key out of her
7 left pocket. After I got the money and key out of her
8 pocket, she fell to the floor. And, I think, the chair
9 fell, too.

10 B.J. was kneeling down over her. And I was trying to
11 get the money, and rushing to get out. I unlocked the lock
12 with the key and took all the money, and ran toward the
13 bicycle and left through the front door. I was gagging as
14 I went home. And as I was halfway home, B.J. caught up
15 with me. And we went to the house. When we got in the
16 house, we went to my room and took the money, which was in
17 bundles, and divided it. About 4:00 a.m. I asked my mom if
18 I can use her car to get cigarettes. She said, Bring my
19 damn car right back, too. And I left.

20 Before I went to get cigarettes, I stopped at Alex's
21 and placed my order for a double order of hashbrowns with
22 cheese and sausage patties. Then I went to Amoco and got
23 two packs of Newports and a lighter. I went back to
24 Alex's, picked my order up, and went back home. I tried to
25 eat the hashbrowns and sausage, but, to me, it was greasy.

1 I stayed in my room for the rest of the morning. Me and
2 B.J. talked and he said that he thinks she might be dead.

3 Later that day, the police picked me up from Brian
4 Johnson's house in Goose Creek, where me and B.J. went
5 because we were scared and didn't know what was going to
6 happen. We took North Area Cab from Gas Lite Square to the
7 mall, then to Brian's house. We sat there for a little
8 while and I talked to Mr. Bob while we were there. We
9 played cards and was watching Rap City or whatever it was.
10 That's when the detective called me back.

11 Me and B.J. panicked and put all of the money in a
12 plastic bag and Brian took it out to the tree in the
13 backyard and hid it. I sat there and waited on the
14 detective to come. Then they brought me to the police
15 station the next day. Me and B.J. talked about how we were
16 scared and he didn't mean to do it. I asked him what
17 happened to the money, and he said, Brian had it. I didn't
18 talk to B.J. again after that.

19 When B.J. came in The Game Room, he had on black
20 jeans, a black hoody, and the ugly mask. He had gloves on
21 his hands. I was wearing a black sweater, blue jeans, and
22 green Reeboks. This is my statement truthfully and honest.
23 I am sorry. Please, for give me. We, in parenthesis, I
24 never meant for it to happen like this. I just only wanted
25 the money.

1 And it's signed, Kandy Gilliard. And at the bottom
2 it's signed Detective Deckard. And my signature.

3 Q. And this State's Exhibit 34, can you read that?

4 A. This says, This statement is given on January 9th of
5 2000, at eleven o'clock, North Charleston Police
6 Department. And the first question says, Where did you
7 take the money from. And I have in my own handwriting, I
8 took the money from black file cabinet and Dawn's pocket.
9 Question number two, How much money was taken? Around
10 \$1200. Question number three, What did you do with the
11 padlock? I dropped it. And question number four, What was
12 the plan for splitting up the money afterward? And it has
13 half and half.

14 Q. Now, on this statement, on this piece of paper, that's
15 State's Exhibit 2, I want you to look through it and tell
16 me if there's places where K.G. is written above some of
17 the words.

18 A. On page number 2, there's K.G. written on top of a
19 word.

20 Q. Do you remember putting that there?

21 A. I do remember signing one or two places -- initialling
22 one or two places, but I don't remember at the time what I
23 initialled being at the state of mind that I was in when
24 the detective was talking to me.

25 Q. Okay. That's what I wanted to talk to you about. We

1 know these pieces of paper exist. And we know these pieces
2 of paper have your name on it?

3 A. Yes.

4 Q. And we know that -- you're not saying to the jury that
5 this is not your name, and this is not your signature?

6 A. No, ma'am.

7 Q. And you're not saying to the jury that you didn't put
8 your name on the bottom of these pieces of paper?

9 A. No. I'm not saying that I didn't put my name on the
10 bottom of each of those papers.

11 Q. And you're not saying that you didn't put your name
12 twice on this piece of paper, State's Exhibit 1?

13 A. No. I'm not saying that I didn't put my name on that.

14 Q. Or State's Exhibit 34, that you didn't put your name
15 on there?

16 A. No.

17 Q. I want you to take a minute, if you need to, and I
18 want you to tell the jury where your head was at 7:40 in
19 the morning, on January 9th, when you put your name on
20 these pieces of paper? You referred to it as your state of
21 mind.

22 A. That night after being questioned and held inside a
23 small room at North Charleston Police Department where
24 Detective Deckard and Detective Hagge had questioned me,
25 and was wanting me to tell him who had done this to my

1 friend, Dawn, as they said to me. I was crying. I was
2 under the impression that after Detective Hagge told me
3 that he didn't want my children to end up like Dawn,
4 motherless.

5 Q. Let me ask you a question. Why did he say that to
6 you?

7 A. Because he said that he had been to my kids'
8 grandmother house, which is [REDACTED], and visited
9 there. And he knew that I had two children -- and he told
10 me this because he felt like I knew something about what
11 had happened at the scene where Dawn Russ was robbed and
12 murdered.

13 Q. Now, when you say that he talked to you about your
14 children, did you see pictures of his kids? Did he talk to
15 you about his kids?

16 A. After he asked me to tell him who had done this to
17 Dawn, I was crying and I asked him to use the restroom.
18 And he didn't want me to use the restroom. He wanted me to
19 tell him who had done this, first. And I kept crying, and
20 he said, Well, if I let you use the restroom, will you tell
21 me who did this. And I said, Yeah, that I may use the
22 restroom. When I got out of -- he was standing outside of
23 the door of the restroom, when he walked me across the hall
24 to use the restroom. And when I walked back in with him,
25 he lead me to his desk and he showed me the picture on his

1 desk, where -- if I'm not mistaken -- there was two
2 children, a dog, and the wife -- if I'm not mistaken -- on
3 the picture.

4 Q. And so after he showed you pictures of his kids --
5 well, let me back up a minute. After he showed you
6 pictures of his kids, what did he say about your kids?

7 A. That he didn't want the person to harm my children.
8 And he wanted me to tell him who had done it, and I didn't
9 have to be afraid, because he would see to it that I get
10 put in a witness protection custody, and my children could
11 come with me.

12 Q. And so how did you feel at that point after he talked
13 to you about your kids?

14 A. I was terrified, because, yes, I did know who had done
15 it. And I did know that B.J. knew where my children was
16 at, and my mom and my sister, and anybody else of my
17 family. Detective Hagge had me under the impression that
18 he had already known what had happened, he just wanted me
19 to tell him who had done it.

20 Q. When you said that he had already known what had
21 happened -- you're a relatively small person; aren't you?

22 A. Yes, ma'am.

23 Q. What was Dawn's size compared to your size?

24 A. She was a about my height, and she probably wore about
25 three hundred pounds. And Detective Hagge had told me that

1 he knew that I couldn't have done it because of my weight.
2 And he told me, he said, Help us. Tell us who did this to
3 your friend, Dawn.

4 And he asked me if a man was there with me. And I
5 told him, no. But after we got back in the room and he
6 told me to tell him who had done this and I began writing
7 out -- he said, If you don't want to tell me, he said, just
8 write it on this piece of paper. And it was a piece of
9 yellow, legal paper like that. And I started writing B-e-n,
10 and he said, Benjamin Johnson; right? And I was crying,
11 and I said, Yes, sir. And he said, Don't worry.
12 Everything's going to be okay.

13 Q. And that's what he told you?

14 A. Yes, ma'am.

15 Q. And so do you remember when he brought Deckard in to
16 actually write stuff on paper? Do you remember that?

17 A. Yes. After I had spoken to him.

18 Q. Do you remember -- did you write this?

19 A. Detective Deckard wrote it as I was speaking to him.

20 Q. And when you were speaking, did you know what he was
21 actually writing on this piece of paper?

22 A. No, ma'am. Because he never read it back to me. And
23 I never read over it. He just told me to sign it and that
24 I can go home. He said, Sign these -- he brought me, like,
25 four or five papers. There was separate papers with carbon

1 copies. And he told me to sign it along with the Miranda
2 form. And he said, Sign it. And then he told me to
3 initial it and I can go home.

4 Q. He told you you could go home?

5 A. Yes, ma'am.

6 Q. Let's talk about when you first got there. What time
7 did you get there?

8 A. I said it was around 11:00, 11:30.

9 Q. And when you -- about 11:00 or 11:30 where were you?

10 A. At my uncle and his girlfriend's house on Oakwood
11 Avenue.

12 Q. And did they take you anywhere else before you left
13 that house and went to the North Charleston Police
14 Department?

15 A. No, ma'am.

16 Q. And how did you get there?

17 A. By one of the officers that came there.

18 Q. And when you came to the North Charleston Police
19 Department, was an officer with you?

20 A. Yes, ma'am. The officer that -- it was four of them.
21 All of them drove behind each other. The one that ---

22 Q. So there were four separate cars?

23 A. Yes, ma'am.

24 Q. So four police cars leave your uncle's house and take
25 you to the police station?

1 A. Yes, ma'am.

2 Q. So when you got to the police station, was there ever
3 an occasion where an officer wasn't really close by?

4 A. No, ma'am. When I first got there, they took me
5 upstairs to an open room where the detectives -- all of
6 their little stations are. They took me inside that room,
7 at a table similar to this. And they had me sitting there.
8 And I asked the tall, kind of bald-headed guy, I asked him
9 what was taking so long, and he told me that he had to page
10 somebody; and they had to come from home.

11 Q. And so the first person you talked to, was that
12 Deckard, the dark-haired guy?

13 A. Yes, ma'am.

14 Q. Did you remember his name?

15 A. At the time? No, ma'am. I only know his name, now,
16 because of going through all of this.

17 Q. And that person, when he first came in, did he tell
18 you any of these things -- we're calling them Miranda
19 rights -- did he say anything like that to you, verbally?

20 A. No, ma'am.

21 Q. Did he ever give you anything in writing at that
22 point?

23 A. No, ma'am.

24 Q. And did you hear that you had the right to remain
25 silent from anybody in that room?

1 A. No, ma'am.

2 Q. Did you ever tell them you wanted to give that up and
3 talk to them?

4 A. No, ma'am. Because he had initially told me that I
5 was a witness, and they just wanted to know what I knew,
6 what I saw, and so on and so forth the night of this
7 happening.

8 Q. Did he ever tell you that you had a right not to talk
9 to them?

10 A. No, ma'am. He never told me that. He never said, You
11 don't have to talk to us. This is totally up to you, if
12 you want to speak to us. And when the police officers came
13 to get me from my aunt house on [REDACTED], they never
14 said, Will you voluntarily come down to the police
15 department and talk to us. They never said that. They
16 said, We were told to come -- to track you down that you
17 may come down to the police department, so someone can talk
18 to you.

19 Q. So you were never given an option of whether or not
20 you had to get in that police car?

21 A. No, ma'am.

22 Q. So once you got in the police car, were you ever given
23 an option to leave that room?

24 A. No, ma'am. And may I add that when I left out the car
25 -- when I pulled up in the yard, all these police cars came

1 blocking me in from behind at the trailer. And I went
2 inside, and they were calling my name. And I went inside
3 the house to wake up Dana, which is my uncle girlfriend.
4 She was asleep. And I can hear the police, around in the
5 back of the trailer where her room is, talking. And I
6 heard one of them say, I'm on the left side, or something
7 like that. They were talking on their radio. And I can
8 hear them talking on the outside. And then, I went back
9 out there, and I asked them why was they harassing me. He
10 said they weren't harassing me, that they were told to come
11 down -- to track me down that they may bring me in for
12 questioning.

13 Q. So you were told you were being brought in for
14 questioning?

15 A. Uh-huh.

16 Q. But this person -- this first person you saw, he never
17 told you any of this stuff about having the right to not
18 talk to them?

19 A. No, ma'am.

20 Q. Did he ever tell you you had a right to have an
21 attorney or to consult with an attorney?

22 A. No, ma'am. And when I did ask for one ---

23 Q. Well, before you get there, did you ever ask to go
24 home?

25 A. Yes, ma'am.

1 Q. Am what did -- you don't have to tell me exactly what
2 Deckard said, but what was your understanding after you
3 asked to go home?

4 A. That I was there being questioned, and that,
5 apparently, I wasn't leaving until I told them what I knew.

6 Q. That was your understanding?

7 A. Yes, ma'am.

8 Q. And you said something about when you asked for an
9 attorney -- did you talk to him about an attorney? Mr.
10 Deckard?

11 A. I said, Do I need an attorney? And he said, No. You
12 don't need no attorney. No need for one.

13 Q. Excuse me?

14 A. No need for one.

15 Q. Did he ever tell you an attorney wouldn't be able to
16 help you?

17 A. No, ma'am.

18 Q. So you, specifically, asked about an attorney?

19 A. Yes, ma'am.

20 Q. Okay. Kandy, if you had known at that point that you
21 had a right to remain silent, and that you had a right to
22 have an attorney or talk to an attorney, would you have
23 talked to Deckard at all?

24 A. No, ma'am.

25 Q. And after -- we know that Deckard's conversation with

1 you lasted for several hours; didn't it?

2 A. Yes, ma'am.

3 Q. And during that conversation, I think, you've said
4 that he told you you were just a witness. And did he
5 scream at you?

6 A. Yes, ma'am. At the point where -- when he started
7 showing me pictures, he was talking to me and then he said
8 ---

9 Q. So he was showing you pictures. Pictures of what?

10 A. Of Dawn.

11 Q. So he was showing you pictures. Was this in the first
12 part of it or at the end of it, or in the middle?

13 A. Like, in the middle.

14 Q. So after he's talked to you, I think, you -- did he
15 ---

16 A. He was talking to me. And he was asking me where I
17 lived at, and had I ever lived anywhere else; and were my
18 parents together; and did I have children, and were they
19 from the same person; and have I ever sold my body; where
20 all I ever worked at, stuff like that he was asking me.

21 Q. Okay. And then after that, you said that he showed
22 you some pictures. And tell me a little bit about how --
23 okay. The whole process that we're talking about is how
24 you felt during that period of time. How did you feel
25 during these several hours of Deckard's questioning you?

1 A. Well, he was talking to me. And as he was talking to
2 me, he began to get hostile; and his face was turning red.
3 And he was chewing tobacco and spitting inside a cup. And
4 he was talking to me and asking me questions. And then he
5 went back to The Game Room. What did I see? What did I
6 know? How much -- how often did I go there? And different
7 stuff like that.

8 And then, he said, So are you going to tell me who did
9 this to Dawn or not? And as I was crying, he said -- he
10 took out this manila envelope and he took out the pictures,
11 and he put it on the desk face up. And he said, See this?
12 See this? Tell me who did this. Tell me who did this.
13 Tell me who did this to Dawn. And I was crying. And I
14 said, I don't want to talk to you. And he said, I don't
15 care who you want to talk to you. You are going to tell me
16 who did this to Dawn. And I was crying. And he was
17 showing me the pictures. He said, See this? And I said, I
18 didn't leave her like that. And he said, Tell me who did
19 this to Dawn. And I said, I don't want to talk to you no
20 more.

21 And that's when he finally left out the room, and
22 Detective Hagge came. I never asked him to speak to anyone
23 else. I said, I don't want to talk to you. I never said,
24 I want to speak to your supervisor, or however he said it.
25 I never said that. He sent this guy in, who I later

1 learned that it was Detective Hagge.

2 Q. And this was how long later after Deckard's in there
3 screaming at you and telling you you know things. How long
4 -- what kind of time frame passed?

5 A. That he left me in there by myself?

6 Q. No. Between the time he started and the time that
7 Sargent Hagge came in?

8 A. I don't know the exact -- the length of time. I know
9 it was a while, but I never at any point was around a clock
10 to know how long. And I had been dozing off. And a couple
11 of times they had to wake me up. And one would switch off
12 and the next one came in, Detective Hagge and Detective
13 Deckard.

14 Q. During the time from the time the police put you in
15 the police car til when you said that you asked Hagge to go
16 to the bathroom, had you ever been allowed to leave that
17 room?

18 A. No, ma'am.

19 Q. And had you ever been given anything to eat?

20 A. No, ma'am. They offered me a soda, but that was at
21 the beginning, and I told them I didn't want a soda. And
22 then when I came from using the restroom, Detective Hagge
23 had gotten some water in a little cup.

24 Q. And when Detective Hagge came in, do you remember him
25 at any point in time, ever telling you about any of these

1 rights?

2 A. No, ma'am.

3 Q. So did he ever verbally or -- "verbally" just means
4 did he tell you, or pull out a little card out of his
5 pocket or anything like that and tell you anything about
6 the fact that you had a right to remain silent?

7 A. No, ma'am. Because when Detective Hagge was speaking
8 to me, at that point, he still -- he was saying that I was
9 just a witness, and he wanted me to be as much help as
10 possible to helping them with what had happened to Dawn.
11 And he told me that I was just a witness, and that's what
12 my impression was.

13 Q. So he never told you that you had a right to not talk
14 to him?

15 A. Huh-huh.

16 Q. Did he ever tell you that you had a right to an
17 attorney?

18 A. No, ma'am.

19 Q. Did he ever tell you that you had a right to say, I
20 don't want to talk to you anymore; I want to go home?

21 A. No, ma'am.

22 Q. And the type of things that Hagge talked to you about,
23 and you're crying -- he's already beat on you ---

24 MR. DUTREMBLE: Objection, Your Honor. She never
25 testified that he beat on her.

1 MRS. GAY: I apologize, Your Honor.

2 MR. DUTREMBLE: There's nothing in the record to that
3 effect.

4 THE COURT: I sustain the objection.

5 BY MRS. GAY:

6 Q. He's already yelled at you?

7 A. Yes

8 MR. DUTREMBLE: Objection, Your Honor. I don't
9 believe there is any testimony in the record that Hagge
10 yelled at her at all.

11 MRS. GAY: No. I said, Deckard.

12 MR. DUTREMBLE: The testimony was Deckard.

13 THE COURT: Are you talking about Deckard?

14 MRS. GAY: Yes. Yes. I was talking about Deckard.

15 THE COURT: Continue on.

16 BY MRS. GAY:

17 Q. You're already crying, having been talked to from
18 Deckard?

19 A. Uh-huh.

20 Q. And Hagge comes in. What type of things did he say to
21 you?

22 A. He told me -- well, he was basically speaking to me
23 about my children. And he told me that he already seen my
24 children, and had been by their grandmother house on Craig
25 Avenue. And he told me that he wanted me to help them with

1 what had happened to Dawn, and that I would be a big help
2 to them. And he told me that he would recommend, when I go
3 in front of the Judge ---

4 Q. Okay. Let me ask you a question. When you go in
5 front of the Judge, is that after he told you he was
6 arresting you?

7 A. No, ma'am. Well, it was before and afterwards.

8 Q. And so at the point where you actually put your names
9 on these pieces of paper, which was about 7:45 in the
10 morning, had you slept much during that night?

11 A. No, ma'am. Actually, I was up since that morning.
12 The morning of the night that they came and got me, I was
13 up ever since then. And I was drinking. And they came to
14 pick me up right after I had came in. But before we get to
15 what you just asked me, when Detective Hagge ---

16 MR. DUTREMBLE: Objection, Your Honor. There's no
17 question. There's no question posed to the witness.

18 MRS. GAY: I'll ask a question.

19 THE COURT: I'm going to let her answer it, anyway.
20 You may continue on.

21 BY MRS. GAY:

22 Q. Is there anything else you'd like to tell me?

23 A. Before we went back to the room, when Detective Hagge
24 was walking me from the restroom, he asked me did I believe
25 in God. And at this point, I felt as if he was saying,

1 It's okay. I mean, I was raised up, brought up in school
2 to think, to know that you can trust police officers. You
3 can trust detective. They are there to help you. But
4 being after all of this happened...

5 Q. Well, let me ask it this way: Do you believe that
6 they promised you something?

7 A. Yes, ma'am. Detective Hagge.

8 Q. Do you believe that they said something about some
9 form of leniency?

10 A. Yes, ma'am.

11 Q. Were you in fear at that point?

12 A. Yes, ma'am.

13 Q. Fear of who?

14 A. Fear of B.J. knowing that he was out there, and
15 knowing that I was there talking to the police. And
16 knowing that he -- after all this had happened, on the 5th,
17 when I first went to talk to the detectives, that he told
18 me not to get him in any trouble, and don't tell anybody.
19 And after Detective Hagge had brought all this to my
20 attention that he's out there, and he can harm my children
21 and my family, that's when I really became just out of it
22 whereas I wanted help.

23 And Detective Hagge gave me the impression that he was
24 there to help me, when he told me that he would put me and
25 my children in a witness protection.

1 Q. When you say "help," you're talking about help --
2 protection from B.J.?

3 A. Yes.

4 Q. So when you, actually, put your name on these pieces
5 of paper, you're talking and Deckard's writing?

6 A. Yes, ma'am.

7 Q. Did you have any idea at that time, what he was
8 actually writing?

9 A. No, ma'am.

10 Q. Did you choose the words that were put on this piece
11 of paper?

12 A. No, ma'am.

13 Q. Did you review sentence by sentence or line by line
14 what he was writing on this piece of paper?

15 A. No, ma'am. I never read over it, and he never read it
16 back to me. He just told me to sign it.

17 Q. Okay. And when you signed it, tell me, again, why did
18 you sign it?

19 A. Because he told me that -- he told, he said, Sign
20 these papers and you can go home -- whereas I had already
21 asked him if I can go home. And after he told me I could
22 sign those papers, I thought he was going to let me go
23 home.

24 Q. So you thought that if you signed the papers, you
25 would go home?

1 A. Yes, ma'am.

2 Q. And this part, at the very bottom of page four of
3 State's 1 or State's 2, this part that's in your
4 handwriting, why did you write that?

5 A. I wrote it because after the questioning, Detective
6 Hagge came back inside the room after Detective Deckard
7 had already written the statement out. And, I guess, he
8 came back to see if we were through or whatever. And he
9 was speaking to me, and he said, Well, since it wasn't
10 planned or any of that -- he said, You didn't ---

11 Q. Well, let me ask you a question. You wrote that out;
12 didn't you?

13 A. Because Detective Hagge had told me. Yes.

14 Q. And these questions that you wrote on State's Exhibit
15 -- or the things that you wrote on State's Exhibit 34, did
16 you talk to the detectives during the period of time about
17 the facts of this case, while you were looking at this
18 piece of paper?

19 A. No. This was brought in afterwards. And the
20 questions were already written down. Detective Deckard
21 brought them back in separately.

22 Q. Well, let me ask you a question. Did you have any
23 idea how much money was taken that night?

24 A. No, ma'am. The detective told me how much money was
25 missing.

1 Q. And when you wrote \$1200, is that after the detective
2 told you how much was missing?

3 A. Yes, ma'am.

4 Q. And when you wrote "half and half," can you tell the
5 jury why you wrote "half and half" right there?

6 A. I wrote "half and half" on question number four, when
7 it says, What was the plan for splitting up the money
8 afterwards? The detective had asked me how much money did
9 I get, or what had happened with the money afterwards. And
10 I told him that B.J. had given me half of the money --
11 well, which I thought was half. And he said, Well, write
12 that down on the paper.

13 Q. And so you did spend some of the money; didn't you?

14 A. Yes, ma'am, I did.

15 Q. And you knew that money came from the robbery; didn't
16 you?

17 A. Yes, ma'am.

18 Q. Kandy, I want you to go back to the night that this
19 happened. That's the 5th?

20 A. Uh-huh.

21 Q. We've already talked about some of this stuff. And I
22 want you to tell me -- tell the jury -- okay. First of
23 all, before we do that, you know you're under oath, today;
24 don't you?

25 A. Yes, ma'am.

1 Q. And what does that mean to you?

2 A. That means that I cannot sit here and tell the jurors
3 or the Court or the Judge a lie. And I have to tell the
4 truth about what happened the night that this occurred.

5 Q. Okay. And on the time that you signed your name, and
6 stuff like that, there wasn't any oath in that process; was
7 there?

8 A. No, ma'am.

9 Q. Okay. And today there is; right?

10 A. Yes, ma'am.

11 Q. And I want you to tell the jury today, on January 5th,
12 when you were sitting there haven't taken the antibiotic to
13 Dawn, tell us exactly what happened.

14 A. On the night of January 5th, I had called to The Game
15 Room and I spoke to Dawn; and I asked her was my mother
16 around there, because my mom usually goes to The Game Room,
17 too, and play video poker. And she told me, no. Well, I
18 called back a couple of minutes later or something like
19 that -- and it may have been the first time when I spoke to
20 her when she asked me was I still going to bring her the
21 medication, which was the antibiotic, because she didn't
22 have any type of hospitalization, insurance, or anything.
23 And I told her, yes, because I had been having a lot of
24 problems with my tonsils which are already removed. But
25 the doctor had to keep prescribing me antibiotics, that I

1 may get well.

2 And throughout that I told Dawn that I would bring it
3 to her. So that same night, I took the medication to her,
4 and she gave me five dollars. When I got there -- I didn't
5 ask her for any money for the medication; she just gave it
6 to me when I got there. And she told me, thank you. When
7 I got there, there was a Korean lady there, and there was a
8 blue car outside in the parking lot.

9 And I was sitting playing the poker machine, and then
10 my money had ran out. And after the Korean lady left, Dawn
11 came out and she was playing poker, also. After Dawn
12 didn't want to spend any more money, she invited me inside
13 the cash office inside the room to watch television. And
14 at that time, both of us were dozing off. But I had
15 already been calling home. And I paged my sister that
16 someone may come and meet me. Because when I was calling
17 home, the answering machine kept coming on, and no one
18 answered.

19 Well, I kept dozing off, and Dawn was dozing off, also
20 ---

21 Q. Do you have any idea what time of the night this is?

22 A. I can give an approximate time, but I don't know the
23 exact time that it was.

24 Q. What time do you think it was?

25 A. About 12:30, one o'clock.

1 Q. Okay. Go ahead.

2 A. And, well, to get to the part where I heard the
3 tapping on the window ---

4 Q. Well, let me ask you a question. Was Dawn asleep?

5 A. She had been dozing off, but she wasn't asleep. I had
6 seen times where she have actually been asleep and hard to
7 wake up than just dozing off when she would hear -- she
8 would even hear sometimes when a commercial would come on
9 or something, or when the telephone rang, or when someone
10 was at the door. So, no, she wasn't asleep.

11 Q. Go ahead.

12 A. And I heard the tapping at the window and at the door,
13 actually. It's a door and then it's a big glass window on
14 the side of it.

15 Q. So I'm going to show you this diagram, again, real
16 quick. You're in this cashier office, and this door is
17 over here; right?

18 A. Uh-huh.

19 Q. I think there's a little "A" on State's Exhibit 4?

20 A. Uh-huh.

21 Q. And so you're back here in the cashier's office,
22 watching t.v. with her?

23 A. Uh-huh.

24 Q. Okay. And you hear the tapping over here. What
25 happened next?

1 A. Well, to make it clear to the jury how the door is set
2 up, the door is like right here. And directly across is --
3 you can see the entrance door, which is pure glass. You
4 can see straight through it. Well, I heard the tapping on
5 the door, and I got up. Because while you're sitting in
6 the office, you can see through the system camera, but I
7 couldn't see who it was. And I got up, and it was B.J.
8 And how I knew that it was B.J. -- he did have on the mask
9 -- but how I knew it was him is because he used to use that
10 same mask to run around the house chasing and scaring my
11 children.

12 Q. So let me ask you a question. Was the door locked at
13 that point?

14 A. Yes, ma'am.

15 Q. Did you unlock it?

16 A. Yes, ma'am.

17 Q. And you unlocked it because you knew that that was
18 B.J.?

19 A. Yes, ma'am.

20 Q. Okay. Go ahead.

21 A. And when I opened the door, I thought that he had come
22 to meet me -- and remind you that this was in January. It
23 was cold. And I didn't know that he had come to rob the
24 place. All I knew is he had on gloves. And I only knew
25 that because after standing in the door talking to him,

1 when I looked down, I saw him had a glove and a monkey
2 wrench inside his hand.

3 Well, when I opened the door, B.J. had this monkey
4 wrench in his hand, and he told me he was about to get the
5 place. And when he said, "get the place" I interpreted it
6 as robbing it. And he told me that I was going to help
7 him. Well, he told me he was going to knock Dawn out with
8 the monkey wrench. And as I'm standing through the
9 entrance of the door, and he's standing on the outside, he
10 was saying he was going to knock her out. I said, No.
11 Don't do that. Don't hurt her.

12 And he's holding up this wrench and saying, I'm going
13 to knock her ass out. And he told me I was going to help
14 him get the F'ing money. So as he's trying to get in --
15 can I stand up? Is it okay if I stand up?

16 THE COURT: Sure. Stand up.

17 WITNESS: As he was trying to get through the door to
18 come in and rob the place, he has this monkey wrench up and
19 say, I'm going to help him get the F'ing money. And I'm
20 backing in, telling him, No. Don't hurt her.

21 You know, I didn't want him to hurt her. And at this
22 point I was feeling scared. And if I didn't do what he
23 wanted me to do, or at least cooperate with him, there was
24 a possibility that he probably would have knocked me out,
25 or hit me or harmed me in some way, if I didn't do what he

1 said he was going to do.

2 BY MRS. GAY:

3 Q. Well, let me ask you a question. What did he actually
4 -- okay. I know that he's got the mask on his face. Was
5 there ever an occasion where you saw his face?

6 A. Yeah. When he lift up the mask to tell me that I was
7 going to help him, after he said that he was going to knock
8 her out. And when he upped the mask, and he left it off --
9 he took it off to about right here. And his eyes were
10 bloodshot red with white stuff coming from his mouth.

11 Q. Okay. So his eyes, how did they make you feel when
12 you saw him?

13 A. I got scared to the point where I had already seen
14 B.J. got hostile and -- how would you describe it --
15 violent with my sister. And I knew that if he said he was
16 going to do it, he was going to do it. And my feelings
17 were he had already had the intentions to hurt her, because
18 he said he was going to knock her out with this -- he said
19 it was grip pliers, I said it was -- all I knew it was --
20 all I know that it was a tool that could hurt her.

21 Q. And what did you think about what he could do to you?

22 A. I thought that if I didn't do what he told me to do,
23 that he was going to harm me in some type of way, because
24 when he upped the mask and told me that I was going to help
25 him, and I was going to get the F'ing money, that something

1 was wrong. Either he was on type of drugs or something. I
2 had never seen his eyes the way that it was. I never seen
3 white stuff foaming from his mouth. I seen him act violent
4 and get loud and stuff, but this I had never seen. And it
5 was scary.

6 Q. And so what did he tell you to do?

7 A. He told me to -- as I was backing in, he told me that
8 I was going to help him. And I said, No. I said, I don't
9 even want her to see me. I said, No. No. And I was
10 scared. And at this time my mind is going in fifty
11 different directions. If I don't help him, then he going
12 to knock her out. He's going to knock her out.

13 Well, he looks down -- and this is the entrance of the
14 -- where's the board? I forgot the name. Well, where all
15 the furniture and stuff that Mr. Bob had moved from the
16 other game room. This is the door that he's backing into
17 as I'm telling him, No. Don't hurt her. And I told him
18 that I didn't want her to see my face, and he told me to go
19 get a bag. I didn't know that he wanted the bag for me to
20 cover her face. I thought he wanted the bag for money, or
21 whatever he was going to do at the time.

22 Well, he picks up this extension cord. I saw when he
23 got the extension cord. And by the time I got back with
24 the bag from out the break room, he had already had this
25 cord looped around and pulling it -- pulling Dawn back in

1 the chair like this. And she was leaning like this. And I
2 was telling him to get off her. I said, No. And he said,
3 Get the F'ing money. Get the F'ing money. And he was ---

4 Q. Kandy, let me ask you a question. When you turned
5 around, and you go and get the bag like he told you to, not
6 knowing what he was going to do with it, and you turned
7 around and you saw him doing that, what did you do?

8 A. I started freaking out, basically. I knew that I
9 started throwing up -- it was like liquid type stuff. I
10 started throwing and I was getting nausea. And just my
11 mind was -- all I knew was he was doing something wrong,
12 and I didn't like it.

13 Q. So what did you do?

14 A. I did what he told me to. And when I had the bag, he
15 told me to cover her face. But when I went to cover her
16 face -- and he has her back like this inside the chair --
17 as I went to cover her face, she snatched the bag down and
18 the bag fell to the floor. And she was trying to restrain
19 -- she was trying to lift up out of the chair. And she
20 fell back in the chair and then she lift up to the chair
21 and fell to her knees, first.

22 Q. Okay. And let me ask you a question. Did you ever at
23 any time touch him at all?

24 A. Yes. When I was trying to pull him off of her. And
25 then he was telling me, Get the F'ing money. Get the F'ing

1 money. And he was screaming and telling me to get the
2 money. So I figured -- well, my mind going in fifty
3 different directions, him doing this, he's saying, Get the
4 F'ing money. I'm thinking, okay, get the money and he's
5 not going to hurt her. So as he was doing this, I
6 remembered that she had the key inside her pocket. And he
7 had her on the ground at this point.

8 And is there any way that I can show how he had her?

9 Q. If you want to. Sure.

10 (WHEREUPON, the defense attorney's assistant is used
11 for demonstration purposes.)

12 A. Well -- okay. You got to lay down. Well, she -- at
13 first, he had her like this. And he was pulling the cord
14 and I was crying and he kept telling me, Get the F'ing
15 money. Get the F'ing money. Well, I'm trying to dig
16 inside her pockets to see where the key was so that I can
17 get the key and the money that he wouldn't hurt her. And
18 when I finally did find the key, she was still wrestling
19 him. When I finally did find the key -- when I turned back
20 ---

21 Q. If you want to -- don't turn your back to the jury?

22 A. Oh. Excuse me. When I turned back from getting --
23 from opening the cabinet, he was on her like this. He was
24 pulling her -- he was pulling her upwards like this. I
25 kept telling him, Don't hurt her. Don't hurt her. And at

1 one point I had to leave the cabinet, because I can hear
2 her gagging. And that's when the mask ripped. And I was
3 telling him, Don't hurt her. Don't hurt her. And he kept
4 yelling, Get the fucking money. Get the fucking money.
5 And I went and I got the money. And some of the money fell
6 on the floor inside of the office.

7 And you can get up now, Brooks. Thank you.

8 (The assistant complies.)

9 WITNESS: And some of the money fell on the floor
10 inside of the office. And he told me to wait on him, but
11 my main concern was getting out after seeing him do this to
12 her ---

13 BY MRS. GAY:

14 Q. Let me ask you a question. Was there any point in
15 your mind where you thought that he might do something like
16 that to you?

17 A. Yeah. After I seen him doing that to her, I said, Oh.
18 I mean, my mind was just cloudy. My mind was cloudy. I
19 was thinking all kind of thing. All I wanted to do was get
20 home, and get out of his presence.

21 Q. So when you actually got the money out, where did you
22 put the money?

23 A. Inside my black leather shoulder pocketbook.

24 Q. And what did you do at that point?

25 A. I got the bicycle and I was going to ride the bicycle

1 forgetting that it had a flat tire. I was trying to get
2 away from him.

3 Q. Let me ask you a question. Had you known that it had
4 a flat tire when you got there?

5 A. Well, on the way there, the bicycle tire was flat,
6 yes, because all I wanted to do -- all I left home to do
7 was to go take her the medicine and to go right back home.

8 Q. So after all of this is over, and you've gotten the
9 money and put it in the pocketbook, what happened next?

10 A. I'm running. I'm running through the back side of the
11 building and throwing up, vomiting. And when you get about
12 half way inside -- before you get to my house and after you
13 get out the video poker place, I dropped the bicycle and I
14 dropped the pocketbook, just running and wanting to get
15 home. And I'll say about -- I don't know exactly how long
16 it was. I don't know the length of time it was, B.J. ran
17 behind me and he was calling my name. And I had my, you
18 know, those key rings -- the loops that you can have your
19 keys on. Well, I had my house key and a set of my kids'
20 daddy car keys and stuff like that on my key ring around my
21 neck. And I was running, and B.J. came behind me, and I
22 opened the door to the house. I was fumbling, trying to
23 get the door opened at the house. And I opened the door
24 and he brought in the pocketbook. And the bike was on the
25 side of the -- well, when you walk through the gate, the

1 bike was, like, on the street side. He dropped it on the
2 street side in front of our house.

3 Q. And so when you got home, he came in right after you?

4 A. Yes, ma'am.

5 Q. Did he say anything to you?

6 A. I asked him if Dawn was okay. And he said he thought
7 so.

8 Q. And did he say anything to you about telling anybody
9 about it?

10 A. He told me not to tell anybody. He asked me not to
11 please get him inside no trouble.

12 Q. And what was your feeling about what would happen to
13 you if you told anybody?

14 A. That he would probably do the same thing to me or my
15 sister, which is Cookie, who he was seeing. And he was in
16 the room with her. He would probably do the same thing to
17 her, too. One of us.

18 Q. When you went home, did you check on Cookie?

19 A. Yes, ma'am. And I, also, checked on my mother.

20 Q. Now, we know that you, at the time that B.J.'s hurt
21 your sister and all these different things, right now today
22 are you afraid of B.J.?

23 A. Yes, ma'am. Due to the fact of while we were in jail,
24 several times ---

25 MR. DUTREMBLE: Objection, Your Honor.

1 MRS. GAY: Your Honor, I believe it's ---

2 THE COURT: You all approach, please. I tell you what
3 at this time why don't we do this so we can go through --
4 finish the direct and cross. Let me let you all take a
5 break at this time. If you all would, step to the jury
6 room for a few minutes. And we'll bring you back out in a
7 few minutes.

8 (WHEREUPON, the jury retires to the jury room.)

9 THE COURT: Everyone else, remain seated, please,
10 until the jury leaves. Court is not adjourned. I have
11 matters to handle. We don't need people walking around too
12 much and all.

13 A couple of things here. Let's discuss this issue.
14 What do you want to bring up, Mrs. Gay, about what?

15 MRS. GAY: Your Honor, I don't believe it's a hearsay
16 situation, but she has knowledge of threats while she's
17 been in the jail from B.J.

18 THE COURT: Well, proffer what you want to proffer me
19 about it.

20 Make sure that door is closed.

21 (The following was proffer testimony outside the
22 presence of the jury.)

23 BY MRS. GAY:

24 Q. Kandy -- and this is a proffer, so I'm going to ask
25 you -- have people told you in the jail that B.J. has

1 threatened you?

2 A. To kill me. Because he said that I ---

3 Q. I didn't want to know "because." But there have been
4 people in the jail who said this to you?

5 A. A number of people.

6 Q. And have specific people said that they've seen him
7 and he's sent messages back to you?

8 A. Yes, ma'am.

9 MRS. GAY: Now, Your Honor, I wasn't going to ask,
10 specifically, did somebody say this to you, but is it your
11 understanding. And I believe it's important and it's
12 relevant. And it needs to be out. You know, it needs to
13 be before the jury.

14 THE COURT: Why don't you call the people who have
15 told this to her?

16 MRS. GAY: Well, Your Honor, I think that if I -- I
17 guess, I could, but then, again, I think she could testify
18 to her understanding just as well. It's her -- she has
19 knowledge and it's her understanding that he has said these
20 things.

21 THE COURT: Well what effect -- what I'm trying to
22 find out, ma'am, is this, Mrs. Gay, at this stage when
23 they're both in jail, they both have signed statements.
24 She, of course, says hers is not true, it was forced. He's
25 got his statement signed. He's -- I'm wondering what's the

1 purpose here? Are you trying to allege that he was trying
2 to get her not to testify against him?

3 MRS. GAY: Well, Your Honor, I think that it goes to
4 her state of mind then, and it goes to her state of mind
5 now.

6 THE COURT: Threatened to do what if what? What was
7 the communication? Threatened to do what if she did what?

8 MRS. GAY: I think it's ---

9 BY MRS. GAY:

10 Q. Well, Kandy, what did he actually say to someone?

11 A. That I got him locked up, because I told on him. And
12 he was going to kill my a-s-s. And at one point he said --
13 he told someone that he was going to kill me and his
14 brother, Brian.

15 THE COURT: All right. Position of the State?

16 MR. DUTREMBLE: Judge, under Rule 403, that has
17 absolutely no relevance to any matter that this jury has
18 under their consideration today. It doesn't make more or
19 less probable whether or not this woman was involved in the
20 murder of Dawn Russ and the robbery of Dawn Russ. This is
21 totally collateral matter taking place after the fact of
22 the crime. It has absolutely nothing to do with what the
23 jury are going to be considering, today.

24 THE COURT: Okay. Do you want to say anything else
25 about it, Mrs. Gay?

1 MRS. GAY: Yes, Your Honor. I think that her state of
2 mind and her fear of B.J. has been -- is a consistent thing
3 throughout the case and is what the jury is considering at
4 this point. And it's, certainly, what she believes, now,
5 about still having a fear of him is absolutely relevant to
6 whether or not she had fear of him enough to coercively or
7 involuntarily participate in an act with him.

8 THE COURT: Well, Mrs. Gay, I'm trying my best to give
9 you as much leeway here as I can in that regard, but I just
10 don't see how in the world that can be relevant. And even
11 if it is relevant, it's just adding other issues that
12 really have nothing to do with this. Plus, you made no
13 effort to bring the people in who said that they did that,
14 or they had talked to her in that regard. It just seems.

15 No. I'm going to sustain the objection. The
16 objection is sustained.

17 The issue, also, that you brought up earlier. We
18 might as well do that. You came up and told me at the
19 bench you wanted to only ask her one question about had she
20 ever been beaten by a man. And I assume that her response
21 was going to be, Yes. And that was as far as you wanted to
22 go?

23 MRS. GAY: Yes.

24 THE COURT: That's it?

25 MRS. GAY: Yes.

1 THE COURT: All right. Well, if that was all the
2 question was going to be and that was all the answer was
3 going to be, I find under Rule 403 that would, in my mind,
4 would not be appropriate to be introduced in this trial.
5 You have introduced her fear of B.J., himself. I have
6 permitted you to go into that regard. And you have a right
7 to. But the other question, I just felt would have been,
8 may be confusing to the jury, and bring up issues that have
9 nothing to do with this trial.

10 So that's why I sustained the objection on 403, since
11 it was just a one time situation, not showing some pattern
12 that maybe in her life she has fear and things of that
13 nature because of having some sort of constant situation of
14 being beaten. Another thing, too -- and I'll be honest
15 with you -- I was concerned that you were getting close to
16 the opening of the door.

17 MRS. GAY: Yes, sir.

18 THE COURT: And I wanted to make sure you understood
19 that. When you brought that up to the bench, I told you
20 that, too. And then, of course, we went on to other
21 matters.

22 MRS. GAY: Your Honor, just to proffer it, because of
23 the opening-the-door question, which is the ---

24 THE COURT: I didn't say you had. I said, I just
25 wanted to make sure you are aware that you may be. I

1 didn't say that you had.

2 MRS. GAY: I know that, Your Honor. And, Kandy -- may
3 I proffer just some information?

4 THE COURT: Sure.

5 BY MRS. GAY:

6 Q. Ms. Gilliard, have you ever been beaten by a man?

7 A. Yes.

8 Q. Have you ever been beaten by a man on more than one
9 occasion?

10 A. Yes.

11 MRS. GAY: And that I do believe would be relevant in
12 this case, Your Honor. There was a reason why I was going
13 to limit it to one question, in the light of the fact that
14 it would open the door. I would ask you to allow me to ask
15 her those two questions. And ask a ruling about whether or
16 not you believe I would then open the door to her
17 conviction? As a victim, she's got one set of issues. As
18 a criminal defendant charged as an impeachable conviction,
19 I don't believe that it's a relevant situation. Just
20 because she has been a victim in the past, I don't believe
21 that it opens the door for her, having been charged.

22 THE COURT: Well, there's two issues there. You've
23 got to take one at the time. And I haven't made the ruling
24 on the issue about whether it will open the door or not. I
25 just sustained the objection about the question. And you

1 told me initially it was one question. Now, you have two
2 questions. One, must, obviously, be curious as to after I
3 mentioned something then and now it's two questions.

4 Mr. DuTremble, a response to that?

5 MR. DUTREMBLE: If Your Honor please, if she's going
6 to get into the question about whether or not she was
7 beaten by a man, that opens the door as to how the beating
8 came about. Who was the aggressor? Who was the victim?
9 Were the police called? Who was arrested? Was anybody
10 arrested? Have you ever been involved in an altercation,
11 where you, in fact, were accused of being the aggressor?
12 Do you have a temper? Do you start fights? Things of that
13 nature, which kind of opens the door which Your Honor tried
14 to keep closed.

15 Now, if she wants to open that door, and Your Honor
16 will allow me, I'll be happy to walk through it. But I
17 think Your Honor's ruling is correct that to allow her to
18 pose these questions in just this isolated vacuum and not
19 allow me to explore it further, really hamstring the State
20 and it's not fair. So we would ask Your Honor to rule as
21 you have ruled. Keep it out. And let's move on with the
22 trial.

23 THE COURT: I do feel that the matters do not seem to
24 be relevant in the way you have done it, Mrs. Gay, but if
25 you wish to ask those questions, you may. But I do believe

1 that if you ask those questions, you'll be opening the door
2 about her CDV conviction.

3 MRS. GAY: Yes, sir. I understand.

4 THE COURT: Okay. So if you want to ask the
5 questions, you can.

6 All right. So we all can come back and go through the
7 -- finish the direct and the cross, we're going to take a
8 break.

9 Now, I need to let you know something, ma'am.
10 Obviously, you have a right to talk to your attorney. No
11 one's going to stop you from talking with your attorney.

12 And, Mrs. Gay, you need to listen to this. Mrs. Gay?

13 MRS. GAY: Yes, sir.

14 THE COURT: It would be inappropriate to be discussing
15 testimony, like, what did I leave out? What do I need to
16 have? What are your other questions going to be? Things
17 of that nature.

18 Mrs. Gay, you understand that; do you not?

19 MRS. GAY: Yes, sir.

20 THE COURT: Okay. So I'm not stopping you from
21 talking to your attorney, but you cannot discuss testimony
22 and that type of situation during the break.

23 WITNESS: Okay.

24 THE COURT: All right. It is now ten minutes til
25 11:00. We will start back up at 11:00. Listen everyone in

1 the audience, this is not a closed courtroom, and I'm not
2 stopping from coming in and out. But it sure is a lot
3 better if most everybody is going to be here is here at
4 11:00, so that we don't end up having the jurors be
5 distracted by somebody walking in and walking out. So try
6 to be here back at 11:00, or at least a couple minutes
7 after 11:00 if you want to continue watching the trial in
8 regard to this. But we're going to take ten minutes.

9 (WHEREUPON, there was a short recess.)

10 THE COURT: All right. Ready to proceed?

11 MR. DUTREMBLE: Yes, sir.

12 MRS. GAY: Yes, sir.

13 THE COURT: All right. Bring the jury out, please.

14 (The witness returns to the stand.)

15 (WHEREUPON, the jury returns to the courtroom.).

16 BAILIFF: The jury is all present, Your Honor.

17 THE COURT: All right. Ladies and gentlemen, we'll
18 now continue with further examination of the witness.

19 You may proceed, Mrs. Gay.

20 MRS. GAY: Thank you, Your Honor.

21 CONTINUED DIRECT EXAMINATION

22 BY MRS. GAY:

23 Q. Kandy, when you went to the poke parlor that night,
24 you brought this bottle; didn't you?

25 A. Yes, ma'am.

1 Q. And this bottle was left at the poker parlor by you;
2 wasn't it?

3 A. Yes, ma'am. Because I had given it to Dawn.

4 Q. I can't hardly hear you.

5 A. Yes, ma'am. Because I had given it to Dawn.

6 Q. And you never, as you were running out the poker
7 parlor, grabbed this bottle of pills with your name on it;
8 did you?

9 A. No, ma'am.

10 Q. And people -- you had seen people at the poker parlor.
11 I think you said the oriental woman was there with Dawn?

12 A. Yes, ma'am.

13 Q. And she was the last person at the poker parlor?

14 A. Yes, ma'am.

15 Q. And these green tennis shoes that are in evidence,
16 these lime-green tennis shoes, you were wearing them all
17 day that day; weren't you?

18 A. Yes, ma'am.

19 Q. And you were wearing them when you saw the oriental
20 lady; weren't you?

21 A. Yes, ma'am.

22 Q. And you were wearing them when B.J. got there; weren't
23 you?

24 A. Yes, ma'am.

25 Q. You didn't ever take them off at any point, these

1 lime-green tennis shoes?

2 A. Huh-huh.

3 Q. Prior to going there to talk to Dawn, had you by
4 yourself planned to rob Dawn?

5 A. No, ma'am.

6 Q. Had you at any point talked to B.J. that night about
7 robbing Dawn?

8 A. No, ma'am.

9 Q. When you saw B.J., he was wearing this mask?

10 A. Yes, ma'am.

11 Q. And he, also, had on a pair of gloves?

12 A. Yes, ma'am.

13 Q. Did you have a mask?

14 A. No, ma'am.

15 Q. Did you have any gloves?

16 A. No, ma'am.

17 Q. Did you go home and get a mask or gloves?

18 A. No, ma'am.

19 Q. When you saw B.J., did you freely agree to help him?

20 A. No, ma'am. I only -- I did it because he was yelling
21 at me, and I saw what -- I knew what he wanted to do to
22 Dawn, and I told him not to hurt her. And then that's when
23 he started screaming, telling me to get the F'ing money,
24 and I'm going to help him. And I just...

25 Q. You just what?

1 A. I just berserked out.

2 Q. What?

3 A. I just berserked out.

4 Q. You berserked out?

5 A. Yes, ma'am. To the extent where I didn't want him to
6 hurt her.

7 Q. And what about you?

8 A. I didn't want him to hurt me, either.

9 Q. And so when you got the trash bag, did you know he
10 wanted you to put it over the lady's head?

11 A. No, ma'am. I thought he wanted it for the money. He
12 said he was going to rob her.

13 Q. And did you ever plan to do any of that?

14 A. No, ma'am.

15 MRS. GAY: I have no further questions, Your Honor.

16 THE COURT: All right. Cross-examination, Mr.

17 DuTremble?

18 MR. DUTREMBLE: Thank you, Your Honor. May it please
19 the Court.

20 CROSS-EXAMINATION

21 BY MR. DUTREMBLE:

22 Q. Ms. Gilliard, you told your lawyer that you didn't
23 plan to rob this lady, but you knew she had money on her to
24 make payoffs. But you also knew, didn't you, exactly where
25 she kept that money?

1 A. I knew where she kept the money because I had been
2 there when she made payoffs.

3 Q. Sure. And you knew that they had the cash drawer in
4 the black filing cabinet; didn't you?

5 A. I knew that they had the money inside the black filing
6 cabinet.

7 Q. Okay. So you knew -- and when B.J. told you to get
8 the money, as you've described, you knew exactly where to
9 go; didn't you?

10 A. That's the only money that is kept inside the poker
11 parlor.

12 Q. Other than the fact that Ms. Dawn had some money in
13 her pocket that was taken, that's the only money they keep
14 is in that black filing cabinet; correct?

15 A. That I know of.

16 Q. And you knew about that. And you knew -- and you
17 testified on direct, that The Game Room, the place that was
18 robbed, the place that was in a little strip shopping
19 center called Gas Lite Square; correct?

20 A. Next to Gas Lite Square. Yes.

21 Q. And you live right behind it, about two blocks; right?

22 A. About two or three blocks.

23 Q. And you knew that; right? And you know where it is,
24 but you, also, know that Brian Johnson doesn't live two or
25 three blocks behind Gas Lite Square; does he?

1 A. Brian Johnson?

2 Q. Brian Johnson.

3 A. Does not live -- no.

4 Q. That's right. He lives way out in Goose Creek;
5 doesn't he?

6 A. Uh-huh.

7 Q. And you've never been to the poker parlor with Brian
8 Johnson; have you? You've only been there with B.J.?

9 A. I've never been there with Brian. But I don't know if
10 Brian ever visited the poker parlor with B.J. or my sister,
11 or my mom. I don't know.

12 Q. You don't know?

13 A. Huh-huh.

14 Q. There is no evidence in the record that he's ever even
15 been there; right?

16 A. Not that I know of.

17 Q. Okay. But Brian Johnson knows about Gas Lite Square;
18 doesn't he?

19 A. Yes. He knows about over there. Yes.

20 Q. But Brian Johnson knows about Gas Lite Square because
21 when you went there to his house on January 9th, you told
22 him you had done some dirt at Gas Lite Square, and you
23 killed a bitch up there; didn't you?

24 A. No, sir. I did not.

25 Q. Did not. And you were able to go in there with Ms.

1 Dawn and talk with her in a friendly fashion. You were
2 able to play the video poker games with her money sometimes
3 as you described it. And you were able to go back in the
4 cashier's office and watch television with her from time to
5 time; weren't you?

6 A. Yes.

7 Q. And you were able to do that because you were her
8 friend; correct?

9 A. Yes.

10 Q. And not everybody who went to the poker parlor,
11 whether they were regulars or just came in once or twice,
12 had the same privileges that you had; did they?

13 A. A couple of the --

14 MRS. GAY: Objection, Your Honor.

15 THE COURT: Excuse me, sir.

16 Ma'am. Ma'am, if you all would, please, be seated.

17 This walking in and out -- if you're going to come in, come
18 in and sit down, please.

19 MRS. GAY: Your Honor, I would object to speculation.

20 How does she know what ---

21 THE COURT: Well, because of the distraction, I didn't
22 get to hear the question.

23 Do you want to ask the question, again?

24 BY MR. DUTREMBLE:

25 Q. The question was, that not every regular customer had

1 the same privileges with Ms. Dawn that you did; did they?

2 MRS. GAY: I would object, Your Honor.

3 THE COURT: If your question is from her observations?

4 MR. DUTREMBLE: Yes, sir.

5 THE COURT: She can say from her observations.

6 WITNESS: From my observation, about four or five
7 other regular customers had the same privilege that I have
8 with Ms. Dawn and other attendants, room attendants, at The
9 Game Room. Yes.

10 BY MR. DUTREMBLE:

11 Q. And the reason those people and yourself had those
12 privileges, was because Ms. Dawn had their friendship and
13 your friendship. And Ms. Dawn had their trust and your
14 trust; didn't she?

15 A. Yes.

16 Q. And so when you came into The Game Room, Ms. Dawn had
17 no reason to fear or to suspect you; did she?

18 A. No.

19 MRS. GAY: Your Honor, I would object. How does he
20 know -- I mean, she can't give an opinion as to what Ms.
21 Dawn thought.

22 THE COURT: Well, I assume you're asking from her
23 opinion.

24 MR. DUTREMBLE: Her opinion. Yes, sir.

25 THE COURT: She can answer in her opinion.

1 In your opinion.

2 Do you want to ask your question, again?

3 MR. DUTREMBLE: Yes, sir. I will.

4 BY MR. DUTREMBLE:

5 Q. In your opinion, when you came in The Game Room, Ms.

6 Dawn had no reason to fear or mistrust you; did she?

7 A. I couldn't really answer that, because on a job like
8 that, you're supposed to know what you're supposed to do
9 and what you're not supposed to do. I used to work at a
10 place just like it.

11 Q. And you know what you're supposed to do and what
12 you're not supposed to do, you know that you're not
13 supposed to take people you don't know back in the
14 cashier's area; correct?

15 A. That's up to the attendant.

16 Q. And you wouldn't do that; would you?

17 A. Well, it all depends on who it was.

18 Q. It all depends on who it was. That's absolutely
19 correct. And when it was you, it was okay, because she
20 knew and trusted you; didn't she?

21 A. I couldn't answer that. She would have to.

22 Q. And I believe you testified to the way Dawn could tell
23 who was at the door, was because there was a video camera
24 that would show whoever was buzzing to get in; correct?

25 A. Yes, sir.

1 Q. And back there in the cashier's room, there was
2 actually a little monitor where she could see who it was;
3 correct?

4 A. Yes.

5 Q. And so State's Exhibit Number 7, on the desk there's
6 that little video monitor that she could watch; correct?

7 A. Uh-huh.

8 Q. And so if she didn't know somebody, she didn't have to
9 let them in; right?

10 A. Well, she would still walk to the door, because you
11 can't see exactly who it is from the monitor. All you can
12 see is a person. And she would say, Step in front of the
13 door, in front of the camera so that the video surveillance
14 could see.

15 Q. So that was a security precaution so she could see who
16 she wanted to let in and who she did not want to let in;
17 right?

18 A. She would still go to the door if she didn't recognize
19 the person that stood in front of the camera from the desk.
20 She would still go to the door.

21 Q. Right. She would go to the door. If she didn't want
22 them in there, she didn't have to unlock that door; did
23 she?

24 A. No.

25 Q. Okay. And she had additional security back there int

1 he cashier's room, because there was a door that you could
2 close and double lock; right?

3 A. Uh-huh.

4 Q. And if you went in there and closed and double locked
5 that door, the only thing that you could see out of was
6 that glass window; correct?

7 A. Uh-huh.

8 Q. And that glass window just had a little opening
9 underneath it where you could slide money under it, but you
10 couldn't get through it; right?

11 A. Yes. That was very rarely used. Very rarely used.
12 Even when customers were inside there, the door to the
13 cashier's office would still be opened.

14 Q. Yes, ma'am. And in State's Exhibit 6, we can see the
15 door with the double lock and we can see the glass window;
16 can't we?

17 A. Yes.

18 Q. And so if you close the door and double lock it, the
19 window is there, and it's only opened wide enough to just
20 slide some bill under; right?

21 A. Yes.

22 Q. Can't stick your hand under there; right?

23 A. I never tried. I don't know.

24 Q. You can't stick a gun under there; right?

25 A. I don't know. I never tried to.

1 Q. Never tried. But this fellow, B.J., who you told the
2 jury all about and described as being a little off with
3 some mental problems -- and you described him as being
4 violent -- that's the fellow you chose to help rob this
5 place; isn't it?

6 A. No, sir.

7 Q. Because Dawn was too big for you to take on alone;
8 wasn't she?

9 A. No, sir.

10 Q. She outweighed you by about two hundred pounds; didn't
11 she?

12 A. She outweighed me by two hundred pounds. Yes.

13 Q. Right. So you were going to need some help to get
14 those keys away from her; weren't you?

15 A. No, sir.

16 Q. And so the guy you needed was a guy who was a little
17 off, and who was a little violent, because he's the kind of
18 guy that could overpower her; isn't he?

19 A. No, sir.

20 Q. Well let me ask you this, ma'am: You testified in
21 front of this jury that on January 5th you had occasion to
22 go down and speak with the police officers; is that
23 correct?

24 A. Yes.

25 Q. And they called you up when you were at Brian's house

1 out in Goose Creek; didn't they?

2 A. Yes.

3 Q. And that's the same Brian Johnson who testified here a
4 couple of days ago; right?

5 A. The same Brian Johnson.

6 Q. The same Brian Johnson. And the detectives asked you
7 if they could come talk to you; didn't they?

8 A. Yes.

9 Q. And they came out and they gave you a ride to the
10 police station; didn't they?

11 A. Yes.

12 Q. They didn't put you in handcuffs; did they?

13 A. They did not put me in handcuffs.

14 Q. Okay. They didn't search you before they put you in
15 the car; did they?

16 A. No. They didn't search me.

17 Q. They didn't tell you you were under arrest; did they?

18 A. No, sir.

19 Q. They didn't beat up on you in any fashion; did they?

20 A. No.

21 Q. And they took you down to the police station; right?

22 A. Uh-huh.

23 Q. And it was you and the police in the police station;
24 right?

25 A. Yes.

1 Q. No B.J. Johnson anywhere around; was there?

2 A. We had left B.J. at Brian's house. And before we had
3 left, when I told him that the detective was coming, B.J.
4 started panicking and he told me, please don't tell on him.
5 He was begging me not to tell on him and ---

6 Q. And -- I'm sorry. I didn't mean to interrupt you. Go
7 ahead.

8 A. And when the detective got there, he went and hid
9 inside the back room.

10 Q. Went and hid inside the back room?

11 A. When the detective asked Brian where B.J. was, B.J.
12 say he was in the back room. And when the detective walked
13 forward inside the house, B.J. came up to the door. And
14 the detective asked him why he was back there, and B.J.
15 said he was just chilling out.

16 Q. B.J.'s just chilling out after the murder; right?

17 A. Uh-huh.

18 Q. Actually, a murder and a robbery; right? This is the
19 same robbery that you got some money in; right?

20 A. That was the same robbery that B.J. gave me money out
21 of. Yes.

22 Q. How much money did he give you?

23 A. I'm not sure what B.J. gave me.

24 Q. You're not sure.

25 A. All I know is he took the bundles and he gave me what

1 he said was half, and that's what he said.

2 Q. Well, how much is half of \$1200, ma'am?

3 A. Half of \$1200 is \$600, but I never had \$600 in my
4 possession.

5 Q. Well, I just asked you how much money you got, and you
6 told me you didn't know; you got half. Isn't half of
7 \$1200, \$600?

8 A. Yeah. But that's not half. You asked me how much
9 money did I get.

10 Q. That's right. And you said you didn't know?

11 A. Well, it wasn't more than \$200. I don't know the
12 exact amount, sir.

13 Q. Well, is \$200 half of \$1200, ma'am?

14 A. No, sir.

15 Q. And you wrote on your statement half and half; didn't
16 you?

17 A. When the detective told me to.

18 Q. The detective told you to do this. So he made all
19 that up. How would the detective know how the money was
20 distributed?

21 A. The detective spoke to me, and I answered him. And he
22 asked me what happened to the money after we got back home
23 when Dawn had gotten robbed, and I told him.

24 Q. You told him that you split it up?

25 A. I told him that B.J. gave me half of the money, which

1 he said was half.

2 Q. Oh. Which B.J. said was half?

3 A. Yes. I told the detective what was said.

4 Q. I see. I see. So B.J.'s half is \$200, now; right?

5 For today's purposes, half of the money is now \$200?

6 A. B.J. half he said he gave half to me and he took half.

7 Q. Okay.

8 A. That's what B.J. said.

9 Q. All right. You recognize this statement bearing your
10 signature as a statement you gave the police on January 5th
11 of the year 2000; don't you?

12 A. Yes, sir, I do.

13 Q. All right. How many pages is that statement?

14 A. Five.

15 Q. Did you sign that statement?

16 A. Yes, sir, I did.

17 Q. Did you sign each and everyone of those five pages?

18 A. Yes.

19 MR. DUTREMBLE: All right. If Your Honor please, I'm
20 going to offer this statement into evidence at this time.

21 THE COURT: Any objection?

22 MRS. GAY: I have a copy of it. No objection.

23 THE COURT: All right. Number 35?

24 COURT REPORTER: Yes, sir.

25 MRS. GAY: Well, Your Honor, may we approach for a

1 minute?

2 THE COURT: Okay.

3 (WHEREUPON, there was an off-the-record bench
4 conference in the presence of the jury, but out of the
5 hearing of the jury.)

6 THE COURT: All right. So you don't object?

7 MRS. GAY: No.

8 THE COURT: All right. No objection to the statement.
9 So it is State's 35.

10 (State's Exhibit Number 35 marked for identification
11 and received in evidence.)

12 BY MR. DUTREMBLE:

13 Q. Ms. Gilliard, you've already told us that the police
14 came, and they didn't arrest you; and they didn't put you
15 in cuffs. They, simply, gave you a ride down to the police
16 station, and asked you some questions. And the questions
17 they asked you are found in State's Exhibit Number 35, your
18 statement; aren't they?

19 A. What the police asked me, yes.

20 Q. Yes. And what you told them in your statement was
21 that you lived at 5601 West Boland Circle, and you knew a
22 lady named Dawn; right?

23 A. Yes. It does state that I live at 5601 West Boland
24 Circle.

25 Q. And that you know a lady ---

1 A. And here it has -- okay. Yes.

2 Q. And that's the very same thing you told the police
3 when they were asking you background questions in your
4 January 9th statement; isn't it?

5 A. Uh-huh.

6 Q. Okay. So there is no problem with that statement; is
7 there? The police didn't have to browbeat you, coerce you,
8 threaten you, promise you six months in prison, to get you
9 to tell them where you lived and that you knew Dawn worked
10 at The Game Room; did you?

11 A. No, they didn't.

12 Q. And you told them the same thing when they asked you
13 background questions four days later; didn't you?

14 A. When they asked the background questions -- when they
15 asked these questions, but they didn't pressure me and ask
16 me -- and was telling me that I knew what had happened to
17 Dawn on January 5th. No, sir.

18 Q. Okay. And we're going to talk about that. And on
19 January 5th you told him them that on that day January 5,
20 2000, about midnight, you left your house on West Boland
21 and walked to The Game Room; right?

22 A. Uh-huh.

23 Q. Same thing you told them in your confession; right?
24 Same thing you told them in your confession four days
25 later; right?

1 A. Yes.

2 Q. Then you told them, Before I left the house, I called
3 up to The Game Room and told Dawn that I was going to bring
4 her some antibiotics. And that's the same bottle of pills
5 we have in evidence; correct?

6 A. Yes.

7 Q. I rode B.J.'s bike to The Game Room, because he and my
8 sister, Demetrice Gilliard were sleeping?

9 A. Yes.

10 Q. Same thing you told the police in your statement four
11 days later, that you took the bike up to The Game Room;
12 right?

13 A. Yes.

14 Q. You told them how you got there: I left the bicycle
15 out front when I first got there. And that's just like the
16 Korean lady said, right, Ms. Meyer?

17 A. Uh-huh.

18 Q. Okay. When I walked in The Game Room, Dawn unlocked
19 to door and let me in. And that's because she knew you;
20 right?

21 A. Yes.

22 Q. Knew who you were. You were her friend. You saw the
23 oriental lady playing the poker machines. You gave Dawn
24 the antibiotics, and she took two of them. Then she gave
25 you five dollars for the medicine, and you played the

1 machines; correct?

2 A. Yes.

3 Q. And you saw Dawn sitting at the desk writing a photo
4 -- I'm sorry -- writing a letter to her son; correct?

5 A. Yes.

6 Q. And if you look at State's Exhibit Number 9, there is
7 a letter laying on the desk from Dawn Russ to some fellow
8 named John somebody; right?

9 A. Uh-huh.

10 Q. That's the letter she's writing to her son?

11 A. (The witness nods her head in the affirmative
12 response.)

13 Q. And that's true; right?

14 A. Yes.

15 Q. I mean, everything we talked about so far is true;
16 right?

17 A. Yes.

18 Q. Okay. Let's see. You saw the oriental lady playing
19 poker machines. You took two of your antibiotics. And
20 then, let's see, the oriental lady left. And Dawn was
21 letting her out, and said, You can bring your bike inside
22 if you want to. Right?

23 A. Because the oriental lady had almost -- or did step on
24 it, and she was asking whose it was; and Dawn told me to go
25 ahead and bring it in.

1 Q. Right. Just like the oriental lady said on the stand;
2 right?

3 A. Yes.

4 Q. That's the same bike you told the police about in your
5 statement -- in your confession four days later; correct?

6 A. Uh-huh.

7 Q. Okay. Went outside and got my bike, and brought it in
8 by the couch. And Dawn locked the door back behind me.
9 You went back to the poker machines and played some more.
10 You finished playing and watched Dawn playing for a while;
11 right?

12 A. Uh-huh.

13 Q. All right. On the next page, it says, We went back to
14 the office and watched some t.v.; correct?

15 A. Yes.

16 Q. All right. And that's the same thing you told the
17 police in your statement four days later, that you watched
18 t.v. with Dawn; right?

19 A. Yes.

20 Q. Okay. And that's true; isn't it?

21 A. Yes.

22 Q. Okay. You were watching some undercover cop show, and
23 she was talking about her daughter was still giving her
24 problems, because she's got kids, too; right?

25 A. Yes.

1 Q. You got kids and she's got kids; right?

2 A. Uh-huh.

3 Q. Dawn was falling asleep, so she asked me if I wouldn't
4 mind leaving because she was falling asleep. So I said,
5 Sure; right?

6 A. Yes.

7 Q. And four days later in your statement when Dawn fell
8 asleep, that's when y'all came and got her; wasn't it?

9 A. No, sir. She started dozing off, and that's when I
10 began to page and call someone to come and get me.

11 Q. All right. You rode the bike home, and then you
12 called your friend Benjamin Johnson. That's the same
13 Benjamin Johnson that you convinced to lie for you; isn't
14 it?

15 A. That's not Benjamin Johnson. That's Brian Johnson.

16 Q. Or Brian Johnson. I'm sorry.

17 A. No. Brian had told me to tell the police that -- when
18 I told them that the detective was coming over, after I
19 spoke to Mr. Bob, Brian panicked. And he said to give him
20 the money, and he was trying to tell me what to tell the
21 detective, because B.J. was telling me, don't get him in
22 any trouble.

23 Q. Right. B.J. didn't want you to get Brian involved in
24 this thing, because Brian didn't have anything to do with
25 the murder and robbery; did he?

1 A. No. Brian didn't have anything to do with it.

2 Q. Right.

3 A. B.J. told him everything. And B.J. told him that --
4 Brian told B.J. to give him all of the money. And B.J.
5 told me not to get him in any trouble. And that's when
6 Brian told me to tell the detectives that he was on the
7 telephone with me.

8 Q. Well, how would Brian know that you needed an alibi?
9 And how would Brian know to concoct a story about being on
10 the telephone with you for a particular time period, unless
11 you told him?

12 A. His brother B.J. was present, also, and they had
13 spoken.

14 Q. But you, also, were present, and you had spoken with
15 Brian as well; correct?

16 A. No, I didn't.

17 Q. And the reason Brian's in trouble is because you
18 convinced him to tell the cops a lie about providing a
19 telephone alibi for you. And then you convinced him to go
20 out and put the money in the backyard in a plastic bag and
21 hide it; isn't that right?

22 A. No, sir. That is not correct.

23 Q. And if it hadn't been for you and your cohort, B.J.,
24 poor Brian wouldn't be in jail now; would he?

25 A. No, sir. That is not correct.

1 Q. It's your fault and B.J.'s fault that Brian's in jail,
2 because he didn't have a thing to do with robbery and
3 murder; did he?

4 A. No, sir. That is not correct.

5 Q. He didn't have anything to do with murder and robbery;
6 did he?

7 A. He didn't have anything to do with the murder and the
8 robbery. No.

9 Q. All right. Then you say, I called my friend, Brian
10 Johnson, at his mother's house and talked to him for about
11 an hour. But that was not true; was it?

12 A. That's what Brian had told me to tell them.

13 Q. But that's not true; is it?

14 A. No. It's not true.

15 Q. So that part -- that's the first thing we find in your
16 statement of the 5th that's not true; correct? Correct?

17 A. Uh-huh.

18 Q. Okay. About four o'clock in the morning, I got in my
19 mother's car and drove to Alex's. At Alex's I placed my
20 order -- double order of hashbrowns with cheese, sausage
21 and a cup of ice. That's exactly what you did; isn't it?

22 A. Yes.

23 Q. And that's exactly what you told the police you did
24 four days later on the 9th in your confession; right?

25 A. Yes.

1 Q. And that's the same thing that Sharon Rosenbaum
2 testified to; right? You came to Alex's and got your order
3 of hashbrowns, which is your normal order; correct?

4 A. Yes.

5 Q. And Alex's, of course, is basically right across the
6 street from The Game Room; right?

7 A. Yes.

8 Q. So you don't have to go very far to go to Alex's; do
9 you?

10 A. From The Game Room?

11 Q. Yes.

12 A. No.

13 Q. Or either from your house. It's not very far from
14 your house, either; is it?

15 A. It's longer from my house than from The Game Room.

16 Q. Yes. But not very far; is it? Let's see, you got
17 your order and left; you took your food home, and you ate
18 it; right?

19 A. No. I didn't eat it.

20 Q. Well, you say in your statement, I took my food home
21 and ate; correct? At the bottom of the page.

22 A. I did not eat it.

23 Q. Isn't that what you told the police: I took my food
24 home and ate it?

25 A. I did not eat it. And it was still ---

1 Q. That's not my question, ma'am. Did you tell the
2 police on January 5th that you took your food home and ate
3 it?

4 A. No, sir. I couldn't have told them that when I didn't
5 eat it.

6 Q. Would you read that bottom line for me, please, ma'am?

7 A. I know what the bottom -- the bottom line says I took
8 my food home and ate it.

9 Q. So now, you're telling this jury that's a lie?

10 A. I did not eat the food. The food was still there even
11 when the detectives kicked my door in.

12 Q. All right. We can assume that that's the second part
13 of this statement that it's not true to the police;
14 correct?

15 A. Yes.

16 Q. All right. Let's see. About seven o'clock the phone
17 rang, and you woke up your sister and you woke up B.J. who
18 was in bed with her; correct?

19 A. It was for my mom. And I woke up my mom. And I woke
20 up my sister and her boyfriend, B.J., Benjamin Johnson, who
21 was lying in the bed, too. Yes.

22 Q. Okay. So B.J. was there, just like he said, when you
23 woke him up at 2:30 in the morning with his sister?

24 A. I didn't wake B.J. up at 2:30 in the morning.

25 Q. All right. B.J. called his mom and then after your

1 little cousin -- so he could go to the hospital and see his
2 grandfather; right? And then you and B.J. left because you
3 were going to catch the buss, but you missed the buss. It
4 went by. So you caught a North Area Cab to the mall;
5 right?

6 A. B.J. had told me that he was going to pay his pager
7 bill. And he told me that -- well, whoever he had spoke to
8 on the telephone -- he told me that I was going with him.

9 Q. Okay. So you went to the ---

10 A. And where we were going ---

11 Q. --- bus stop with him; right?

12 A. I was walking with B.J.

13 Q. So you walked to the bus stop with him, where the bus
14 went by. So then you had to go catch a cab; right?

15 A. The cabs were sitting out there. And the bus -- I
16 don't remember if a bus went by or not, but I knew that the
17 cabs were sitting there in front of the bus stop, in front
18 of Gas Lite Square.

19 Q. All right. So you took the cab to the mall; right?

20 A. Yes.

21 Q. With B.J.?

22 A. Where he said he was going to get a gift for his
23 grandfather, because he had went back inside the hospital.

24 Q. But the stores were closed. So then you went into the
25 McDonald's; correct?

1 A. B.J. went to McDonald's and bought him something to
2 eat.

3 Q. And you went with him?

4 A. I couldn't eat. I was there with him, but I couldn't
5 eat.

6 Q. All right. You just had an orange juice; right?

7 A. And I didn't even drink the orange juice.

8 Q. But you were there with him?

9 A. Yeah.

10 Q. He bought something to eat and you bought an orange
11 juice; correct?

12 A. He bought it.

13 Q. He bought it. Did he buy it with that stolen money?

14 A. Apparently, yes.

15 Q. Okay. You called the cab, a North Area Cab -- picked
16 us up out front of the food court at the mall, and you went
17 to B.J.'s grandmother's house in Goose Creek; correct?

18 A. Yes.

19 Q. All right. Just you and B.J. rode to his
20 grandmother's house in Goose Creek; right?

21 A. Yes.

22 Q. And B.J. and his bother, Brian, were there. And they
23 left the house and came back later; correct?

24 A. Yes.

25 Q. And that's what you told Brian while he was there,

1 that you had done some dirt as Gas Lite Square and you
2 killed a bitch; correct?

3 A. No, sir.

4 Q. Well, most of this statement is pretty much true;
5 isn't it, ma'am?

6 A. Yes.

7 Q. And it's mostly just background stuff; isn't it?

8 A. Yes.

9 Q. And the only part you left out was about the murder
10 and robbery; correct?

11 A. I didn't -- yes.

12 Q. Okay. And these are the general kind of background
13 questions that Detective Deckard was asking me when he
14 brought you in on the 9th; wasn't it? Just background
15 stuff about who you were, where you had been, where you had
16 gone, who you had seen, things like that; correct?

17 A. Yes.

18 Q. Okay. And this is the statement that you gave to a
19 police detective on January 5th, when it was just you and
20 the policeman in the safety of the police station; right?

21 A. And besides B.J. being out there with my sister and my
22 children and my family. Yes.

23 Q. Exactly. And if you had bothered to tell the police
24 what had happened on the 9th, when you were there on the
25 5th, the police could have gone out and arrested this bad

1 guy, B.J.; couldn't they?

2 A. If they had known where he was.

3 Q. Right. And if you had told them where he was, and if
4 you had told them what he had done, they could have gone
5 out and caught this guy; right?

6 A. And suppose I didn't tell him -- suppose I did have
7 told them where B.J. was and what he had done, and suppose
8 he had got suspicious or thought that I had told them and
9 went and hurt my children or my sister or my mother?

10 Q. Well, guess what, Ms. Gilliard, when you did tell them
11 who he was and what he had done, they went right out and
12 arrested him, immediately; and he didn't hurt you, and he
13 didn't hurt your children; and he didn't hurt your mama;
14 did he?

15 A. That's not what my state of mind was at the time.

16 Q. On January 5th your state of mind was just peachy;
17 wasn't it?

18 A. No, sir, it wasn't.

19 Q. You didn't have anything to worry about, because
20 nobody had accused you of any crime at all; had they?

21 A. No one had accused me.

22 Q. Nobody had accused of any crime. As a matter of fact,
23 the foul deed had been done hours earlier, and this bad
24 guy, B.J., had not done a thing to you; had he?

25 A. No. He hadn't done anything to me.

1 Q. No. And he hadn't done a thing to your children; had
2 he?

3 A. No. But in my mind, I was thinking that.

4 Q. In your mind. But in reality, none of it happened;
5 did it?

6 A. Afterwards, now today, we can say that. Yes.

7 Q. Okay. And on the 5th it didn't happen, on the 6th it
8 didn't happen, on 7th it didn't happen, on the 8th it
9 didn't happen, and on the 9th it didn't happen; did it?

10 A. No, sir.

11 Q. Okay. And you had the golden opportunity there and
12 then, when the police said, Please, help us. Tell us who
13 has done this terrible thing. You had the golden
14 opportunity to have this man snatched up off the streets
15 and arrested, and you didn't even bother to tell them about
16 him; did you?

17 A. No, sir. I did not tell them.

18 Q. And you were not under arrest. You were not even a
19 suspect at that time. You were just a witness who might
20 have some information who could help the police; correct?

21 A. That's what the officers told me.

22 Q. That's what the officers told you. And you told this
23 jury from the stand, that detectives are people that you
24 know that you can trust?

25 A. I thought that I can trust.

1 Q. And you could have trusted them on the 5th; couldn't
2 you?

3 A. Yes.

4 Q. Yes. You could have trusted them on the 5th to go out
5 and arrest the bad guy; right?

6 A. I couldn't trust B.J. knowing that he was out there.

7 Q. You couldn't trust B.J., so you had to trust the cops,
8 because the cops are the ones that could go get him; right?

9 A. Sometimes they could and sometimes they can't.

10 Q. And they did in this case on the 9th, when you finally
11 got around to telling them about it. They went out and got
12 him; didn't they?

13 A. From my understanding, B.J. turned himself in.

14 Q. But he never hurt anybody, and he was arrested and he
15 was charged; correct?

16 A. That I know of.

17 Q. And if you had told them four days earlier, all that
18 could have happened four days sooner; couldn't it?

19 A. It probably could have.

20 Q. Probable could have. Now, let's talk a little bit
21 about what you told this jury about how this confession was
22 taken four days later. But before I do that, let me ask
23 you this, ma'am: Even after leaving the police department
24 on the 5th, without telling them what had happened, you
25 never picked up the telephone on the 6th, the 7th, the 8th,

1 or the 9th, and attempted to contact any police officer for
2 any reason; did you?

3 A. I didn't attempt to contact anyone, but Detective
4 Perry was coming to my house and he was talking to my mom.
5 And I told him -- he asked me if I would do a photo
6 line-up. And I told my mom that I did not want the person
7 that had done this to Dawn to do it to me.

8 Q. So you mean Detective Perry actually came out after
9 you had been to the police station and given him that
10 statement on the 5th?

11 A. Yes.

12 Q. He came back to your house?

13 A. Uh-huh.

14 Q. And you still didn't tell him?

15 A. I wasn't ---

16 Q. This story that we finally heard from you, today,
17 about what happened?

18 A. I wasn't there. And I spoke to my mom.

19 Q. You spoke to your mom. So you knew Detective Perry
20 was there, correct?

21 A. And I spoke to Detective Perry, also, on the
22 telephone.

23 Q. You spoke to him on the phone, and you still didn't
24 tell him this story that you finally got around to telling
25 the jury today, sixteen months later; did you?

- 1 A. No, sir. I was scared.
- 2 Q. You were scared. Well, don't you think, ma'am, that
- 3 the one institution in America that can protect you from
- 4 bad guys are the police?
- 5 A. Sometimes. And we, also, know that the police go
- 6 against us.
- 7 Q. Sure. The police go against you when you're wrong and
- 8 when you're guilty; don't they?
- 9 A. No. No, sir.
- 10 Q. And the police are better equipped to protect you from
- 11 the bad guys than you are to protect to yourself from the
- 12 bad guys; aren't they?
- 13 A. Yes.
- 14 Q. That's what they're there for; isn't it, Ms. Gilliard?
- 15 A. Some of them.
- 16 Q. Okay. And Detective Perry you like; don't you?
- 17 A. Yes.
- 18 Q. He's a good guy; isn't he?
- 19 A. From what I saw. Yes.
- 20 Q. He's a good cop; right?
- 21 A. Yes.
- 22 Q. You could trust him; right?
- 23 A. Yes.
- 24 Q. He was a detective; right?
- 25 A. Yes, sir.

1 Q. He was the guy that could have taken care of B.J.;
2 right?

3 A. He was the guy that possibly could have taken care of
4 B.J.

5 Q. And you didn't even bother to tell this guy, who is a
6 good cop, a cop that you like, what you know about what
7 happened on that day on the 9th; did you?

8 A. No, sir. I did not tell him.

9 Q. Now, on 9th -- we're going to talk about your
10 statement a little bit. On the 9th, you showed up over at
11 Dana Nelson's house about eleven o'clock; is that correct?

12 A. Around that time. Yes. I don't know the exact time.

13 Q. You don't know the exact time, so it could have been
14 later than that; right?

15 A. I don't think that it was later than that. No, sir.
16 It very well could have been. But no, sir.

17 Q. It very well could have been. But you weren't there
18 at eleven o'clock or whatever time it was because you were
19 getting off work; were you?

20 A. No. I wasn't getting off of work.

21 Q. Right. You had been out drinking; right?

22 A. I was out, and I had something to drink. Yes.

23 Q. Because you don't have a job; do you?

24 A. I wasn't working at the time of this incident when it
25 occurred. No.

1 Q. And you told the jury that four cop cars pulled in
2 behind you, and you went on into the trailer; right?

3 A. Yes.

4 Q. And when you went on into the trailer, you heard the
5 police officers calling your name, but nobody came and put
6 in that door and kicked that door open; did they?

7 A. They couldn't have done that.

8 Q. Couldn't have done that?

9 A. No.

10 Q. Because you weren't a suspect, you were just a
11 witness; right?

12 A. Well, that's what the detective told me. Yes.

13 Q. Sure. Matter of fact, that's what they told you --
14 that's what those four police officers told you. Can you
15 come down to the station, because you might have some
16 information that might be helpful to us; right?

17 A. The words that the officers said to me was: We were
18 ordered to come and find you that you may come down to the
19 station and talk to someone.

20 Q. Didn't you previously testify, ma'am, that what they
21 told you was: You could be a witness as to what happened
22 to Dawn. Would you come down to the police station and
23 talk to them?

24 A. I had something to drink. It could have been said.
25 Yes.

1 Q. It could have been said that way?

2 A. Yes.

3 Q. As a matter of fact, four police officers didn't
4 transport you to the station. Only one -- Officer Heis
5 transported you; didn't he?

6 A. Yes.

7 Q. And he was nice to you; wasn't he?

8 A. We didn't even really talk.

9 Q. Okay. But he didn't put you in handcuffs; did he?

10 A. No, sir.

11 Q. He didn't put you in any belly chains, like you see
12 people in the hallway; did he?

13 A. No, sir.

14 Q. He didn't threaten you in any way?

15 A. No, sir.

16 Q. He didn't tell you that you were going to talk or you
17 were going to have bad things happen to you; did he?

18 A. No, sir.

19 Q. He didn't even search you to see if you had weapons;
20 did he?

21 A. No, sir.

22 Q. Because you were just a witness; correct?

23 A. From what they told me.

24 Q. Sure. And so they take you down to the police
25 station, and they seat you at a table in a chair, like

1 we're seated here today; correct?

2 A. Yeah.

3 Q. They even asked you if you wanted a soda; didn't they?

4 A. Yes.

5 Q. And nobody was mistreating you; were they?

6 A. No, sir.

7 Q. And it really wasn't any different than it was on
8 January 5th when they did the same thing and took you down
9 to the police station; was it?

10 A. And they put me inside the room, and was pushing me
11 and kept leaving me and came back and leave again. Yes.

12 Q. Okay. And that's what happened on the 5th. They took
13 you to the police station. They took you up to the third
14 floor, the Detective Division, and they put you in a little
15 room where they talked to you in private; correct?

16 A. But it was two different rooms. Yes.

17 Q. Two different rooms, but the same kind of rooms;
18 weren't they?

19 A. They were two different rooms, so they weren't the
20 same kind of rooms.

21 Q. Well, it had a chair and a table in it; didn't it?

22 A. There were desks and computers and stuff inside of the
23 room.

24 Q. Okay. But it wasn't a cell; was it?

25 A. No, sir.

1 Q. And they didn't chain your wrists down to the table;
2 did they?

3 A. No, sir.

4 Q. And they didn't lock your ankles to the chair legs;
5 did they?

6 A. No, sir.

7 Q. And they didn't threaten you, and they didn't pull out
8 their guns and put them on the table; did they?

9 A. No, sir.

10 Q. And they were being just as nice to you on the 9th as
11 they were to you on the 5th, when Detective Deckard showed
12 up and started talking with you about the background
13 questions; wasn't he?

14 A. At that part, yes.

15 Q. Okay. And, basically, what he wanted to know was
16 things that might help the police figure out who the
17 murderer was; correct? He wanted background information,
18 maybe, what had you seen? Had you seen any strange cars?
19 Had you seen any strange people? Had anybody been in The
20 Game Room that you didn't recognize before? Those kind of
21 things; right?

22 A. Yes.

23 Q. Okay. And he's trying to figure out who had done this
24 terrible crime, but he's not saying to you, You, Ms.

25 Gilliard, did that terrible crime. Is he?

1 A. No. He never said that.

2 Q. So as time went on -- I believe you previously
3 testified that you asked him, at some point in time, When
4 can I go home? And he responded to you, You can go home
5 anytime, but we would like to find out what happened to
6 your friend, Dawn; correct?

7 A. As he stated. Yes.

8 Q. Okay. And so it was clear that he still had not
9 accused you of committing any crime; had he?

10 A. No, sir.

11 Q. All right. And so y'all talked, and at some point in
12 time you testified that he got angry with you. And maybe
13 he did get angry, but even if he got angry my question to
14 you is: You still didn't confess to this murder; did you?

15 A. Because I did not commit a murder.

16 Q. Okay. You still didn't confess to any crime; did you?

17 A. No, sir.

18 Q. Okay. And then because for whatever reason, he leaves
19 the room. And he's gone for a while; right? And then a
20 new fellow comes; correct?

21 A. Yes, sir. The same man that was sitting outside the
22 door listening to Detective Deckard as he was questioning
23 me.

24 Q. That would be Mr. Hagge, who was here earlier;
25 correct?

1 A. Yes, sir.

2 Q. And after Detective Deckard got up and left the room,
3 and before Detective Hagge arrived back in the room, you
4 were just there alone; weren't you?

5 A. Yes. I was there dozing off and could hear people
6 talking on the outside of the door. Yes.

7 Q. And nobody came in and said, Well, you're here alone,
8 Ms. Gilliard, we're going to have to put you in handcuffs;
9 give me your hands; did they?

10 A. No, sir.

11 Q. And they didn't come in there and they didn't shackle
12 you to the table or the chair; did they?

13 A. They didn't have to. They had officers -- well,
14 people on the outside of the door while I was inside the
15 room.

16 Q. Sure. And so since you weren't handcuffed and you
17 weren't shackled all you had to do was walk up, turn the
18 doorknob, open the door, walk out in the hallway; correct?

19 A. From what I had gathered when they had me inside that
20 room, that I was detained; that I was, basically, there for
21 being questioned. And I have never been in a position
22 where a police officer had set me down inside a room and is
23 questioning me. I have never been in that position. So I
24 didn't know what to look for.

25 Q. Ms. Gilliard, you had been in the exact same position

1 four days earlier when Detective Perry took you in there,
2 sat you down in a room similar to that, and asked you
3 questions?

4 A. And Detective Perry took me home.

5 Q. Right. And Detective Perry took you home ---

6 A. After he was finished talking to me.

7 Q. Right. Exactly. Which is exactly what was going to
8 happen on the 9th, except for the fact that you confessed
9 to participating in a murder and robbery. And you don't
10 expect anybody who has confessed to murder and robbery to
11 just get up and walk out the door; do you?

12 A. I did not confess to it. No, sir, I didn't.

13 Q. But you don't expect anybody who has confessed to
14 crimes like that to have the police just say, Well, now,
15 ma'am, you can go on home. Do you?

16 A. No. Not if ...

17 Q. No. That wouldn't make any sense; would it?

18 A. But if a detective ---

19 Q. That wouldn't make any sense; would it, ma'am?

20 A. No, sir.

21 Q. It wouldn't?

22 A. No, sir.

23 Q. So what happened is that you asked them, When can I go
24 home? The response is, Anytime, but I'd like to find out
25 what happened to your good friend, Dawn.

1 And you make no attempt to get up from the table,
2 either when Detective Deckard's there or when you're alone
3 in the room to walk out the door and go home; do you?

4 A. When I did, that's when he told me that I wasn't -- he
5 don't care who I wanted to talk to; that I was going to
6 tell him what had happened.

7 Q. Well, even if he did say that -- let's just assume
8 that that's true. Even if he did say that he didn't care
9 who you wanted to talk to, he got up and left that table
10 and went and got somebody else for you to talk to; didn't
11 he?

12 A. After he was there still talking to me for about five
13 or ten minutes afterwards.

14 Q. So you didn't have to confess to Detective Deckard,
15 and you didn't confess to Detective Deckard; did you?

16 A. If I was free to go home, he would have allowed me to
17 go home.

18 Q. And you never got up and tried to go home; did you?

19 A. And he never offered me ---

20 Q. You never picked up your bag and said, Detective
21 Deckard, I'm going home; call me a cab; did you?

22 A. Detective Deckard never offered me to leave or any of
23 that. I didn't know that I was just free to get up and go
24 when a police officer -- when police officers took me to
25 the station.

1 Q. You were just as free at that point in time when you
2 had not been placed under arrest, as you were on January
3 5th, just four days earlier, when you were with Detective
4 Perry; weren't you?

5 A. That day on the 5th, it had seemed totally different
6 than on th 9th.

7 Q. But the exact same thing happened; didn't it? A
8 detective came and asked you questions on the 5th and a
9 detective came and asked you questions on the 9th; didn't
10 he? Didn't he?

11 A. You said a detective came?

12 Q. Ma'am, are we going to mince words, or are you going
13 to answer my question? Did a detective ask you questions
14 on the 5th?

15 A. I would like for you to clarify that question, sir.

16 Q. Did a detective ask you questions on the 5th?

17 A. Yes, he did.

18 Q. Did a detective ask you questions on the 9th?

19 A. Yes, he did.

20 Q. The exact same thing happened; correct? On the 5th
21 you didn't give a confession to Detective Perry; did you?

22 A. No, sir, I didn't.

23 Q. And on the 9th you didn't give a confession to
24 Detective Deckard; did you?

25 A. I told him what had happened.

1 Q. You didn't tell Detective Deckard that, at this point
2 in time; did you?

3 A. No, sir.

4 Q. Now, let's talk about what happened later on.
5 Detective Deckard leaves the room, and he leaves you there
6 alone for a period of time. And then Detective Hagge comes
7 in; correct?

8 A. Yeah.

9 Q. And Detective Hagge talks to you for a period of time;
10 doesn't he?

11 A. Yes, sir.

12 Q. And once again, he doesn't accuse you of any crime;
13 does he?

14 A. No, sir. He told me that I had knew who had done it.

15 Q. Right. And I think what you testified previously was
16 you said you had to go to the bathroom. He allowed you to
17 go to the bathroom. But when you came back from going to
18 the bathroom, he said, Can you tell me who did this to
19 Dawn?

20 A. Before he allowed me to go to the restroom, he kept
21 pressuring me and telling me to tell him who had done this
22 -- who had done this to Dawn. And he told me that I was
23 going to tell him. And I did not tell him. And when he
24 took me to the restroom -- I asked him if I could use the
25 restroom, and he walked me out to use the restroom. And

1 when I came back, that's when he took me across the hall to
2 his desk.

3 Q. Do you recall in your previous testimony, ma'am, when
4 you spoke about Detective Hagge allowing you to use the
5 restroom, that what he said when you came back, and I
6 quote, Can you tell us who did this to Dawn? Do you recall
7 saying that?

8 A. Yes.

9 Q. Because that's what he said to you. And he never
10 said, You did this to Dawn.

11 A. (The witness shakes her head in the negative
12 response.)

13 Q. He said, Can you tell us who did this to Dawn? Didn't
14 he?

15 A. Yes.

16 Q. And that's when you asked Ken Hagge, What kind of deal
17 can I get?

18 A. No, sir.

19 Q. That's when you asked him, How much time can I get?

20 A. No, sir.

21 Q. And that's when you wanted to know what would happen
22 to you if you told the truth?

23 A. No, sir.

24 Q. When you said those comments, that's when he reached
25 in his pocket and he pulled out that little card that he

1 had on the stand, and he gave you your Miranda warnings.

2 Isn't that true?

3 A. No, sir.

4 Q. Because up to that time, ma'am, you hadn't said
5 anything incriminating to any detective, whether it was
6 Perry or Hagge or Deckard; had you?

7 A. No, sir.

8 Q. So now, when all of a sudden you're starting to ask
9 questions about, Can I get a deal, and how much time can I
10 catch for this, that's when things began to change. And
11 that's something that you brought up; isn't it?

12 A. No, sir. I did not.

13 Q. And that's why he goes out of the room -- "he" being
14 Detective Hagge -- and goes and gets Detective Deckard, and
15 asks him to bring this advice of rights warning and the
16 form for taking a statement; isn't that true?

17 A. Say it again.

18 Q. When you say that you want to know what kind of deal
19 can I get, how much time can I get ---

20 A. I never asked him that.

21 Q. --- and he reads you your rights, he goes out and gets
22 the other detective to bring in a written form; correct?

23 A. I never asked him that.

24 Q. The other detective walks in with this form, and with
25 the pages necessary to take a statement, correct, which we

1 have in evidence?

2 A. He brought in the statement and the form. Yes.

3 Q. And this is an advice of constitutional rights form;
4 isn't it?

5 A. Yes, sir.

6 Q. All right. And so because you didn't see one of those
7 on the 5th, you now know that something is different; don't
8 you?

9 A. He gave me this after -- after he took the statement,
10 and after he was talking to me, Detective Hagge came in.
11 And after Detective Hagge left out, he gave me this and the
12 statement to sign at the same time. But this cannot be
13 verified because it don't have the time that the same
14 detective took the statement from me, wrote up.

15 Q. But it does contain your signature; doesn't it?

16 A. Yes, sir. It has my signature, because the detective
17 told me to sign it.

18 Q. And not only does it have your signature, but it also
19 says, I fully understand each of these rights explained to
20 me, and it's signed and dated; isn't it?

21 A. At that time, I was ---

22 Q. Isn't it?

23 A. At that time, my state of mind was I was tired, I was
24 sleepy, and I had been up, and the detective questioning
25 me. He told me if I had signed the statement, he would let

1 me go home. And that's why my signature and my initials
2 are on that paper.

3 Q. If you signed the statement that you made committing
4 to murder and robbery, he would let you go home? Have you
5 ever heard of that happening?

6 A. That is what's on that paper, sir, that we know today;
7 but that is not what I told the detective.

8 Q. We're going to talk about that in a minute. But you
9 don't deny that your initials appear by each and every one
10 of these constitutional rights. And you, also, signed
11 where it says, I fully understand each of these rights
12 explained to me? You don't deny that; do you?

13 A. No, sir. I do not deny that.

14 Q. And it, also, says, Having these rights in mind, I
15 wish to waive these rights, and answer questions concerning
16 the charge of murder. So you knew that they were going to
17 talk to you about the murder of Dawn Russ?

18 A. That whole paper was not filled out when he gave it to
19 me.

20 Q. I see. In any event, there's no question but that you
21 gave a five-page statement to the police; correct?

22 A. I spoke to the detective. Yes. And he wrote as I was
23 speaking.

24 Q. And after giving the detectives a five-page statement,
25 you signed each and every one of those pages; didn't you?

1 A. The detective left out the room, and he came back.
2 And a couple of hours later -- because that's when he
3 brought the same paper -- the same type of form with the
4 questions on it that states that it was given to me at
5 eleven o'clock a.m. That's the same paper that he brought.
6 And all of them were brought back at the same time,
7 including the rights form that I know of today. Yes.

8 Q. Okay. So after getting your rights, four hours later
9 at eleven o'clock, there are additional questions asked,
10 and you still fill this out; don't you?

11 A. No, sir.

12 Q. No, sir.

13 A. That was brought in before the rights. All of it was
14 brought in the same time. He didn't tell me anything about
15 my rights.

16 Q. Didn't tell you anything about your rights?

17 A. No, sir.

18 Q. Let's talk about that a little bit, Ms. Gilliard.
19 Isn't it a fact, ma'am, that your own statement which I
20 just handed to you, states that you are asking Detective
21 Deckard to write that at your request?

22 A. Yes, sir.

23 Q. So you didn't say, I'll tell you about it, Detective
24 Deckard, but I want to write it? You said, I'll tell you
25 about it, but I want you to write it.

1 A. No. Detective Deckard told me that he will write it.

2 Q. Ms. Gilliard, doesn't your statement say: This
3 statement is written for me by Detective Deckard at my
4 request as I tell it to him?

5 A. And that's in Detective Deckard's handwriting.

6 Q. Exactly.

7 A. Yes, sir.

8 Q. Because that's what he would be doing if you asked him
9 to write a statement; isn't that correct?

10 A. I didn't -- I was so -- my mind was -- I was off and
11 on sleeping, crying, and he said that he would take the
12 statement down. He said that he would write the statement
13 for me. And he asked me if it was okay, and I said, Yes.

14 Q. Okay. So you gave him permission to do it?

15 A. Yes.

16 Q. All right. But your mind wasn't so confused or you
17 felt your will overborne so much that you didn't have the
18 presence of mind to ask for a supervisor, so you could
19 check into what kind of deal was available?

20 A. I never asked him for a supervisor. When he began
21 yelling at me and showing me pictures, I told him that I
22 did not want to talk to him. And that's when he left out
23 the room, and someone else came in.

24 Q. Right. The supervisor, who you thought might be able
25 to offer you a deal?

1 A. He told me that he was the boss of North Charleston
2 Police Detectives Division.

3 Q. All right. You've got your statement in front of you;
4 don't you?

5 A. Yes, I do.

6 Q. It says, At about 11:30 p.m. or 12:00 a.m. on January
7 4, 2000, I went to The Game Room on Rivers Avenue next to
8 Alex's to give Dawn, the attendant, some antibiotics for
9 her cold. That is an absolutely true statement; isn't it?

10 A. Yes, sir, it is.

11 Q. And Ms. Meyer testified, the Korean lady, and we have
12 the antibiotics; don't we?

13 A. Yes, sir, you do.

14 Q. I played the poker machine for a while. After the
15 Korean lady left, Dawn came out of the office and played
16 for a little while, also.

17 The exact same thing you told them on the 5th;
18 correct?

19 A. Yes, sir.

20 Q. After we played, we sat down in the office and watched
21 t.v.

22 The exact same thing you told them on the 5th;
23 correct?

24 A. Yes.

25 Q. Both of us started dozing off, then I made a phone

1 call. I paged my sister's pager for somebody to come meet
2 me. No one called back. So, I guess, B.J. walked straight
3 up there.

4 That's what you told them; right?

5 A. I guess, he did.

6 Q. That's the same B.J. you told this jury from the
7 stand, that often times came up and met you and would walk
8 you home at night in the dark?

9 A. Yes. Either him or my sister.

10 Q. The same B.J. you, now, told this jury you're so
11 afraid of that you couldn't even tell the cops about him
12 he's such a bad dude?

13 A. Because at that time he didn't -- this did not happen.
14 No incident like this had occurred. No, sir. I wasn't
15 afraid of him to the extent where I thought he would harm
16 me. No, sir.

17 Q. Oh. You weren't afraid until this happened. So all
18 that stuff you told the jury about him choking out your
19 sister and being a violent guy and not being right in the
20 head, all that kind of stuff that didn't scare you at all;
21 did it?

22 A. Yeah. It scared me, but not to the extent where he
23 couldn't walk me home.

24 Q. Right. So a guy like this, who's a violent dude who
25 is supposed to be taking medication, got mental illness,

1 has already choked out your sister one time, he's the kind
2 of guy that you can trust to walk you home alone in the
3 dark for a couple of blocks?

4 A. That's when he get angry.

5 Q. When he's walking you home?

6 A. No. When he did all of those stuff.

7 Q. Yeah. Well, what's to stop him from getting angry
8 when he's walking you home and choking you out?

9 A. Well, I don't know.

10 Q. I don't know. But it didn't bother you enough to find
11 somebody else to do it. You'd go home with him; wouldn't
12 you?

13 A. Say it again.

14 Q. You'd go home with him; wouldn't you? In the dark?

15 A. We were walking down a main street.

16 Q. Yeah. And people get killed on the main streets all
17 the time; don't they?

18 A. Yes.

19 Q. Didn't bother you to go home with him in the dark; did
20 it?

21 A. I didn't think of it like that when he was coming to
22 meet me before this had happened.

23 Q. Okay. So he wasn't really a scary a dude as you made
24 out to be to this jury; was he?

25 A. At the time when he do -- when he was doing things

1 that had scared me. Yes, he was. He did frighten me.

2 Q. So then you talked about, no one called you back when
3 you paged them. So B.J. walked straight up there. I heard
4 tapping on the window, and saw B.J., Benjamin Johnson, at
5 the door with a red, black, and yellow mask with furry hair
6 on his head.

7 That's this very same mask that we have in evidence;
8 isn't it?

9 A. Yes, sir.

10 Q. And not only did he have this mask on his head, but
11 he's dressed in all black; isn't he?

12 A. He dressed like that a lot.

13 Q. He's dressed in all black; isn't he?

14 A. A lot of times. Yes.

15 Q. And that night, he was dressed, wearing these clothes;
16 wasn't he?

17 A. Yes.

18 Q. And in addition to that, he's got in his hand, as you
19 describe it, not only a monkey mask but a monkey wrench?

20 A. Yes.

21 Q. And he's tapping on the door?

22 A. I saw the monkey wrench when I had opened the door,
23 and he was talking to me.

24 Q. So here's a guy -- what time is this about 2:30 in the
25 morning?

1 A. I don't know exactly what time it was.

2 Q. But here's a guy in the early morning hours dressed in
3 black, wearing a monkey mask, with a monkey wrench in his
4 hand, and you let him in?

5 A. I did not see the monkey wrench until I opened the
6 door.

7 Q. Didn't see the monkey wrench. Well, how many regular
8 customers do you let in wearing monkey masks?

9 A. I knew that that was B.J., because he used that same
10 mask to run around the house and chase and scare my
11 children.

12 Q. Well, this isn't the only mask that's ever been made
13 by this company; is it? A lot of people can buy these
14 things for Halloween. How do you know it's B.J.? He's all
15 dressed in black, and he's got a mask over his head. You
16 can't see his face?

17 A. He was at The Game Room before with that same mask on,
18 and he had scared Dawn with it.

19 Q. You let him in; correct?

20 A. Yes, sir, I did.

21 Q. You unlocked that door, and you let this man in. Now,
22 if this guy is such a bad dude with such a bad temper, such
23 a bad mind, and he shows up in the early morning hours in
24 the dark, dressed in black, wearing a mask like this, don't
25 you think you should have woken Dawn up, and said, Do you

1 want a fellow like this in your game room?

2 A. I knew that it was B.J.

3 Q. Well, you knew that it was B.J., but that's the same
4 B.J. you're telling this jury that you're so afraid of.

5 Don't you think Dawn should have made that call?

6 A. Well, if he had came to walk me home, I don't know.

7 Q. Well, if he was coming to walk you home, then Dawn
8 should have come and let you out, so she could lock the
9 door back, and the guy in the monkey suit couldn't come in;
10 right?

11 A. I guess.

12 Q. Yeah. I guess.

13 A. Then, he probably still would have done what he had
14 the intentions of doing.

15 Q. Well, he's not going to be able to get in if the
16 door's not unlocked; is he?

17 A. When she unlocked the door to let me out or how ever
18 it was, she would have very well opened the door for B.J.,
19 also. She had done it before, and he was wearing the same
20 mask.

21 Q. But that's a call for Dawn to make, giving that
22 particular time of night; isn't it?

23 A. Yes.

24 Q. And you didn't go wake Dawn up and say, Can this
25 fellow come in, you let him in; didn't you?

1 A. I opened the door.

2 Q. Right. You let him in because your crazy accomplice
3 was now there. The guy you needed to overpower this 300
4 pound woman was now there to help you?

5 A. Well, I wouldn't think that B.J. could have
6 overpowered her, being that she had weighed that much. No,
7 sir.

8 Q. That's why you had to work together. That's why not
9 only did you need B.J. and his extension cord, but you
10 needed Kandy Gilliard and her plastic bag to overpower this
11 woman; isn't it?

12 A. No, sir.

13 Q. Because one person can't take her down. You've got to
14 have two people to take her down; right? Because she's a
15 big woman?

16 A. No, sir.

17 Q. And that's why two were you there on that night. And
18 you say in your statement, I let him in. We were only
19 going to hit her for the money, because we had talked about
20 it before. Just like he told this jury, you talked about
21 it before, because you knew where the money was kept. You
22 knew it was kept in that filing cabinet; didn't you?

23 A. That's what the statement says ---

24 Q. That's what the statement says?

25 A. --- here. B.J. had spoke to me about it. I knew

1 better, because I worked at a place just like this. I knew
2 the consequences of robbing a place like this. I look at a
3 sign all the time before this incident happened.

4 Q. B.J. had talked to you about this before and you never
5 warned your friend that he had mentioned robbing that
6 place?

7 A. Because I thought that he was playing.

8 Q. You thought that he was playing. This crazy, violent
9 man was just playing?

10 A. He used to come on my job.

11 Q. Sure. He used to come on your job. And he used to
12 come to your house.

13 A. Uh-huh.

14 Q. And he used to go to his brother's house. And he came
15 to The Game Room. So maybe he's really not as crazy and
16 violent as you tried to get this jury to believe; correct?

17 A. When he's ready to. Yes, sir, he is.

18 Q. When he's ready to. And he's not ready to, until the
19 two of you put your plan into action. And when you put
20 your plan into action, that's when he goes into action
21 along with his accomplice, Kandy Gilliard; isn't that
22 correct?

23 A. No, sir. I never had a plan with B.J.

24 Q. You were only going to hit her for the money, because
25 we had talked about it before.

1 And that's exactly what happened; correct?

2 A. No, sir.

3 Q. Well, let me ask you this, ma'am: If Detective
4 Deckard made that statement up that's in your statement on
5 the 9th -- if he made that up, how would he know about a
6 plan, because he didn't talk to B.J. for eight more hours?

7 A. He's a detective. I don't know why -- I don't know
8 what -- why what is written inside this statement that was
9 written on the 9th is in here. All I know is what
10 happened. You weren't there, other people weren't there.
11 I was there. B.J. was there. And I'm telling you my
12 version of what happened. And that's all.

13 Q. And I'm asking you if you're accusing Detective
14 Deckard of making up this statement, how would Detective
15 Deckard know to put in that statement that you and B.J. had
16 talked about a plan before, when he had never talked to
17 B.J. for -- he wouldn't talk to B.J. for another eight
18 hours?

19 A. Well, could it have been possible that while Detective
20 Deckard was talking to me as he was taking down this
21 statement he had spoke and he asked me if B.J. have ever
22 spoke about robbing the place, and I could have very well
23 told him, Yes?

24 Q. And you never mentioned a word about that to this jury
25 in all of your testimony until just now; isn't that

1 convenient, ma'am?

2 A. If it was asked to me.

3 Q. Was it?

4 A. The detective asked me.

5 Q. Oh. Now, the detective asked you? You never
6 mentioned that to this jury before, but now, when I ask you
7 how he would know, all of a sudden you come up with this.
8 Just like you've come up with this entire story; correct?

9 A. Detective Deckard had asked me -- well, as he was
10 talking to me and questioning me, he did ask me if me and
11 B.J. ever robbed The Game Room, before he took this
12 statement.

13 Q. He asked you if you had ever robbed The Game Room
14 before?

15 A. If B.J. and I planned to rob The Game Room.

16 Q. And, of course, your answer was "no" at that point in
17 time; wasn't it?

18 A. Because we did not plan to rob The Game Room.

19 Q. Right. But it's not until you're read your rights and
20 you're looking for the deal, and you make the statement
21 that all of a sudden you're planning, now?

22 A. No, sir.

23 Q. And he's just making all that up?

24 A. This was not signed -- this was written by Detective
25 Deckard. I think that you would have to ask Detective

1 Deckard that. I don't know why he wrote down what he wrote
2 down.

3 Q. Ma'am, I'm asking you because you signed it, you
4 initialled it, and you made changes in it?

5 A. And I did not read it, and he did not read it back to
6 me.

7 Q. How can you not read a statement, ma'am, and make
8 changes and initial the changes?

9 A. The detective was talking to me after he wrote --
10 after he wrote the statement, he was talking to me. And as
11 he was talking to me, I was in between sleep, and he was
12 talking to me. And he would say something, and I would
13 say, Huh-huh. And he would scratch out. And then I
14 remember him telling me to just initial right there.

15 Q. Right. Because he's telling you what he's writing
16 down, and if you say, Huh-huh, he changes it and you
17 initial it; right?

18 A. No. He didn't -- the initial did not go until after
19 the whole statement was written. And he -- after he took
20 it, he was talking to me.

21 Q. Right. What he was talking to you about was the
22 contents of the statement. And as he would tell you the
23 contents of the statement, you would say, Huh-uh. And he
24 would scratch through that, and you would initial it; and
25 the change would be made; correct?

1 A. And it's very well that he could have told me what he
2 wanted to tell me.

3 Q. Ms. Gilliard, isn't it a fact, ma'am, that what he was
4 doing was reviewing the statement for accuracy, and you
5 would tell him what was not accurate, and he would make the
6 change?

7 A. He never reviewed the statement to me. He was talking
8 to me.

9 Q. How could you possibly make a change that had not been
10 brought to your attention and then initial it?

11 A. The detective told me.

12 Q. How would you know where to initial?

13 A. The detective showed me where to.

14 Q. And so your statement to this jury, under oath, is
15 that you had absolutely no idea of the contents of this
16 statement, but that because he told you to, you would
17 initial changes that he made?

18 A. That he scratched out and he told me to initial it.

19 Q. And you didn't even want to know what he was changing?

20 A. At seven o'clock in the morning I have already been up
21 all morning, all through the night, had already had a
22 couple of drinks, and being interrogated as they call it,
23 and this detective telling me to do this and do that, yes,
24 sir, I did do it, just like he told me to sign it, I signed
25 it.

1 Q. And when somebody tells you on the advice of rights
2 form, we're now talking to you about murder, that's pretty
3 much going to open your eyes and clear your head; isn't it?

4 A. That form was not given to me until after this was
5 taken. And the same time I signed these, I signed that
6 form where he does not have a time on the form, but he has
7 a time on the statement.

8 Q. Well, Ms. Gilliard, let me ask you this: If you're
9 talking to the detective and he's writing it down as you're
10 talking to him, and now you say, That ain't true, what were
11 you talking to him about?

12 A. I was talking to him. What he was writing down, I
13 don't know. I don't know the speed of his writing. I
14 don't know how fast he can write.

15 Q. What were you talking to him about?

16 A. About what had happened.

17 Q. Exactly. And that's exactly what's in there: What
18 happened.

19 A. No, sir, it's not.

20 Q. Well, Ms. Gilliard, on the documents, itself, it says,
21 I've been given a copy of this statement. It says that on
22 each and every page. He gave you a copy of that statement?

23 A. As I was being handcuffed, they gave it to me.

24 Q. Right. They gave it to you, and then four hours later
25 they bring you back, they've got more questions for you,

1 and you don't even bother to tell them, Oh, wait a minute,
2 Detectives, all this stuff that I signed at 7:45 that ain't
3 true. I want to start all over again and give you another
4 statement; do you?

5 A. No, sir. This statement was taken, Detective Deckard
6 left me inside the room by myself, went on the outside, I
7 guess, to talk to whoever he was talking to, and he brought
8 back another paper with the questions on it.

9 Q. Ma'am, how would Detective Deckard know anything about
10 a gorilla mask that was not found at the scene of the
11 crime? And how would Detective Deckard know anything about
12 a bicycle that was not found at the scene of the crime?

13 A. I told him. I told him.

14 Q. And that's why it's in there, because you told him;
15 correct?

16 A. I told him about the description, what B.J. had on and
17 everything. I told him what he asked me.

18 Q. Right. He would ask you questions. You would tell
19 him the answers. He would write it down; correct?

20 A. What he wrote down is a result of what's on this paper
21 today. What he wrote down that morning as he was
22 questioning me, I don't know. I did not read over these
23 papers as he was finished. No, I did not. These papers
24 was not given to me to sit down -- when they came back at
25 eleven o'clock, these papers were not sitting in front of

1 me. They were not sitting in front of me. He came back
2 with all of them at eleven o'clock when he came back with
3 this second paper with the questions on them, and that was
4 when he asked me those questions. I never had any of these
5 to just sit and read over. When he left me, I was actually
6 sleeping, and they had to wake me up when he came back
7 inside the room.

8 Q. Ms. Gilliard, you just testified a few minutes ago to
9 this jury, they put you in handcuffs, they gave you a copy
10 of your statement, and you were taken back to a cell. Four
11 hours later you're ---

12 A. No. No, sir.

13 Q. --- brought back in the room.

14 A. I did not say that. I did not say that.

15 Q. You just testified; did you not?

16 A. No, sir. I did not say that.

17 THE COURT: Let's proceed on. Just ask your
18 questions, please. Let the jury ---

19 BY MR. DUTREMBLE:

20 Q. You had almost four hours from the time you gave the
21 five-page statement until they came back with a list of
22 four questions to read your statement for accuracy; didn't
23 you?

24 A. I did not have those statements. I did not have these
25 papers. You don't understand what I'm saying. The

1 detective left me. When he left me, he took the papers
2 with him. When he came back, he had more papers which
3 stated at eleven o'clock. Those papers were -- no papers
4 were left with me at the time. When they handcuffed me was
5 when they was taking me out to jail.

6 Q. And they gave you a copy of your statement?

7 A. They gave me a copy of my statement, I think. I know
8 when -- the next morning when I went to bond hearing, my
9 public defender came up, and he had gotten the paper -- he
10 or she -- I think it was two of them had gotten the papers.

11 Q. All right.

12 A. But when I got to jail, I was tired and warn out and
13 crying and stressing, and the paper was on a yellow -- the
14 copies were on a yellow piece of paper and hard to read. I
15 did glimpse at it, but I couldn't make out everything that
16 it was saying.

17 Q. And so the next morning at the bond hearing, when you
18 see the detectives at the bond hearing, you don't say, Wait
19 a minute, I've got this yellow piece of paper with my
20 statement on it, but it ain't true; do you?

21 A. I did not read over it. I glimpsed over it. And I
22 didn't know that what was on this paper now, was on there
23 that morning. No, sir.

24 Q. You glimpsed over it. Well, what part did you glimpse
25 over?

1 A. I just knew that I had these statements.

2 Q. And so your testimony to this jury, under oath, is
3 when you give a confession to murder and robbery, you only
4 glimpse over it, and you don't have a clue twenty-four
5 hours later what's in it?

6 A. If I remember correctly, when they had arrested me,
7 the detectives they never told me that I was being accused
8 of robbery and murder. They told me that there's a law --
9 Detective Hagge told me that there was a law in the State
10 of South Carolina called Hand of one, hand of all. And
11 being that I did not report any of the information that I
12 gave them to the police officers, I was withholding
13 information, and that's why I was being taken to jail. And
14 Detective Hagge, also, told me as the guys were walking me
15 out of the small room handcuffed -- I was crying, and he
16 told me to stop -- they told them to stop me. And I looked
17 at him with tears in my eyes rolling down, he says,
18 Remember what I said. When he said, Remember what I said,
19 I took it as he is saying he will be there when I go to
20 court, and he will recommend that I get six months
21 probation. That's what Detective Hagge told me.

22 Q. Ms. Gilliard, this is South Carolina, not California.
23 You know that nobody in this state gets six months
24 probation for murder and robbery; don't you?

25 A. I knew that I did not commit a murder. I knew that

1 the only reason why that I cooperated with B.J. was because
2 he was going to hurt Dawn.

3 Q. That's not my question, ma'am.

4 A. No, sir. You do not get six months probation for
5 committing a murder and a robbery.

6 Q. And when Detective Hagge told you Hand of one, hand of
7 all, what he told you was when B.J.'s hand was on this
8 cord, it's the same as Kandy Gilliard's hand being on this
9 cord. And when Kandy Gilliard's hand is on this bag, it's
10 the same as B.J.'s hand being on the bag. That's what he
11 told you; isn't it?

12 A. He did not explain that to me, and I did not know what
13 he was talking about when he said, Hand of one, hand of
14 all. He told me that because I withheld information from
15 the police and did not report it, that's why I was being
16 taken off to jail. That's what the detective told me.

17 Q. And then you say, I let him in, and he asked if we
18 were still going to do it, and I shrugged my shoulders.
19 And he said, She's going to see us.

20 You shrugged your shoulders, and didn't even bother to
21 wake up Dawn to tell her that somebody was coming in to
22 rob; did you?

23 A. No.

24 Q. You didn't care; did you?

25 A. Yes, I did care. If I didn't care, I wouldn't have

1 tried to pull him off of her.

2 Q. If you didn't care, you wouldn't have shrugged your
3 shoulders; correct?

4 A. Shrugging your shoulders, what does that -- does that
5 mean yes or no?

6 Q. Well, obviously, to B.J. it meant yes; didn't it?

7 A. That couldn't have meant, yes, sir.

8 Q. Couldn't have meant, yes?

9 A. No.

10 Q. Did you go wake up Dawn, and say, Hey, this guy wants
11 to know if we're still going to rob you, and I just went --
12 (indicating) did you do that?

13 A. No.

14 Q. So B.J. says, Hey, we still going to do it? And you
15 go, I don't care.

16 A. No, sir. Huh-huh.

17 Q. So he sure didn't take it as a, no; did he?

18 A. I don't know what he took it as. I know that he had
19 intentions to do what he was going to do, apparently.

20 Q. I ran to the back and got a trash bag off a roll of
21 bags by the microwave. I ran to the office with the bag to
22 cover her face, so she wouldn't see us.

23 And it wasn't so, "she wouldn't see us" because she's
24 never going to see B.J. in this; is she? It was so she
25 wouldn't see you, her friend, participating in this

1 terrible crime?

2 A. I kept telling B.J. that I did not want her to see my
3 face, and he told me to go get a bag. And I didn't know
4 what the bag was for.

5 Q. The statement says, I went to the back and tore off a
6 bag to put over her face, so she wouldn't see us.

7 That's what you did; isn't' it?

8 A. I did not put the bag over her face.

9 Q. Didn't you just testify to the jury that when you put
10 the bag over her face, she reached up and snatched it down?

11 A. When I went to do it, she snatched it down. It never
12 went on her face.

13 Q. Never went on her face?

14 A. No.

15 Q. Your statement says you went to the back. You tore
16 this off of this roll to put over her face, so she wouldn't
17 see us; but what you meant to say was so she wouldn't see
18 Kandy Gilliard, her friend; isn't that correct?

19 A. No, sir.

20 Q. No, sir. Well she wasn't going to see anybody else,
21 because you weren't wearing this; were you?

22 A. No, sir.

23 Q. You had your own disguise, this?

24 A. But had I had planned this, and had I had ran home and
25 got B.J. and he put on a mask and gloves, wouldn't I have

1 got something to disguise, too?

2 Q. I ran back to the office with the bag to cover her
3 face, so she wouldn't see us. B.J. when he first walked
4 in, went to the back and wanted to use a monkey wrench to
5 hit her, but I told him, No. Because all we wanted was the
6 money. We didn't want to hurt her. B.J. got the cord out
7 of the trash can that had a bunch of cords in them. And
8 then said, I'll use this. It won't hurt her.

9 Not only did this hurt her, it killed her; didn't it?

10 A. Yes, sir.

11 Q. And you did nothing to warn your friend that a man in
12 a monkey mask, carrying a monkey wrench had come into the
13 building with the intent to rob? You did nothing except
14 shrug your shoulders; isn't that correct?

15 A. Yes, sir. Besides trying to tell him not to hurt her.

16 Q. Telling him not to hurt her. And you're so afraid of
17 this guy. Tell the jury why in State's Exhibit Number 10,
18 if you're so afraid of this guy who's come in crazed with
19 his eyes like you described them, foaming at the mouth, to
20 rob this woman, why you didn't run out the back door and go
21 get help?

22 A. You cannot run through the back door.

23 Q. Of course, you can. Look at this door. There's a
24 doorknob on it.

25 A. That leads to the restroom. That leads through where

1 the furniture that came from another game room that Mr. Bob
2 had, and through that door leads to the break room. And
3 through that door leads to the restroom where they have
4 everything blocked off. You can't get out there no way no
5 how in the back.

6 Q. Sure. And that's probably the same reason you didn't
7 -- when B.J. is over here with this cord wrapped around
8 this lady's neck, with both his hands full and occupied
9 with this woman, that's the same reason you didn't run out
10 the front door and run over to Alex's and get help for her;
11 isn't it?

12 A. I tried to get him off of her.

13 Q. But you didn't run out the door and go get help; did
14 you?

15 A. No, sir.

16 Q. And you didn't in State's Exhibit Number 9, you didn't
17 just reach over by your pill bottle and pick up the panic
18 button that Mr. Bob told us about and push that button; did
19 you?

20 A. No, sir. I didn't even know that the panic button was
21 there.

22 Q. No, sir. You'd seen that panic button a million times
23 around Ms. Dawn's neck?

24 A. I may have seen it plenty of time, but in the state of
25 mind that I was in, doing what he's telling me to do,

1 yelling, seeing him doing this to her, I'm not paying
2 attention to what's on her desk.

3 Q. Well, you paid attention enough to tell the police on
4 the 5th that she was writing a letter to her son. And
5 there's the letter, too?

6 A. Because I knew that he -- she was writing a letter to
7 him, because she had sealed it while I was sitting there
8 talking to her.

9 Q. And there in the photograph sits the letter; doesn't
10 it?

11 A. Yes.

12 Q. The very letter that she was writing. The very letter
13 that you observed. The very letter that you knew was there
14 is sitting there right next to the panic button; isn't it?

15 A. Suppose they had moved it just to take that picture.
16 I don't know. I didn't see it.

17 Q. And suppose you would have done more than just
18 shrugged your shoulders, she would still be alive; wouldn't
19 she?

20 A. I couldn't answer that, sir, because I felt like B.J..
21 had all intentions to do what he was going to do when he
22 came there.

23 Q. First, B.J. went to the back of the office and put the
24 cord around her neck. So she looked like she was turning
25 around to see us. So I took the bag and I put it around

1 her head -- I didn't put it over her head -- so she
2 couldn't see us. I dug in her pocket and got the money out
3 of her right pocket, I think. And got the key out of her
4 left pocket. After I got the money and her key out of her
5 pocket, she fell to the floor. And I think the chair fell,
6 too. B.J. was kneeling down over her, and I was trying to
7 get the money and rushing to get out.

8 You were rushing to get the money, you were rushing to
9 get out, but you didn't rush to get her any help; did you?

10 A. No, sir. I did not go and get her any help.

11 Q. And we know that what you did was take this bag and
12 put it around her head and he was choking her. Because
13 your fingerprints are on this bag. And your fingerprints
14 came off this roll of bags. So when you told the police
15 where you had gotten the bag from, and how you had torn it
16 off this roll, that was the truth; wasn't it?

17 A. I did tear the bag off of the roll. And I did go to
18 put it over her face, but the bag never made it on her
19 face.

20 Q. And that's the reason we have that statement written
21 by Detective Deckard in your confession was because you
22 told him about doing that; isn't that true?

23 A. I told him that I tore the bag off of the roll.

24 Q. So he didn't make that up; did he?

25 A. No, sir.

1 Q. He sure didn't. I unlocked the lock with the key, and
2 took all the money; and ran toward the front door. I put
3 the money in my purse. I got the bicycle and left through
4 the front door.

5 And you never attempted to check on your friend, Dawn
6 Russ' condition; did you?

7 A. No, sir, I didn't. I was scared.

8 Q. And when you ran out the front door, you didn't run
9 out the front door and go across the street to Alex's to
10 call EMS or 911, you ran home; didn't you?

11 A. Yes, sir.

12 Q. And you ran home with your co-defendant and a
13 participant in this crime, B.J. Johnson; didn't you?

14 A. No, sir. I ran home by myself.

15 Q. B.J. Johnson was right there with you as you ran home;
16 wasn't he? You were pushing the bike, and he was right
17 there with you?

18 A. No, sir, he wasn't.

19 Q. Didn't you already tell the jury that you dropped the
20 purse and he picked it up and y'all went home together. As
21 you unlocked the door, he entered?

22 A. No, sir. I did not say that. I said to the jurors
23 that as I was running, throwing up, running, going home,
24 that I dropped the bicycle and the pocketbook, and B.J.
25 came up behind me. I was already inside the house. I was

1 trying to open the door, getting inside the house. No,
2 sir. I never said that B.J. and I ran to the house
3 together.

4 Q. And B.J., of course, he didn't kick the front door in.
5 So he went home.

6 And as I was halfway home, B.J. caught up with me, and
7 we went to the house. When we got in the house, we went to
8 my room and took the money which was in bundles and divided
9 it?

10 A. No, sir. B.J....

11 Q. About four o'clock a.m. I asked my mom if I could use
12 her car to go get cigarettes. Before I went to get
13 cigarettes, I stopped at Alex's and placed my order for a
14 double order of hashbrowns with cheese and sausage patties.
15 And then I went to the Amoco and got cigarettes.

16 So what you want this jury to believe that you were so
17 upset at the scene of the crime that you were gagging, less
18 than two hours later you worked up a powerful hunger after
19 murder and robbery, and you got to go get your hashbrowns;
20 don't you?

21 A. Does it say that I ate it? I never ate it. I ---

22 Q. But you went to get them; didn't you?

23 A. I went to get it. Yes, I did.

24 Q. Your mom provides a roof over your head; doesn't she?

25 A. Yes, she does.

- 1 Q. Your mom provides food for the table; doesn't she?
- 2 A. Yes, she does.
- 3 Q. Your mom's a hard-working lady; isn't she?
- 4 A. Yes, she is.
- 5 Q. She's trying to raise two kids; isn't she? You and
- 6 your sister?
- 7 A. That were in the home with her at the time.
- 8 Q. That's right. You were in the home?
- 9 A. Yes.
- 10 Q. She's also got to help out with your two young kids,
- 11 too; doesn't she?
- 12 A. Yes.
- 13 Q. And you never went home and woke up your mom, and
- 14 said, Ms. Emily, please, run up to The Game Room and check
- 15 on my friend, Dawn Russ; did you?
- 16 A. I was scared.
- 17 Q. Okay. You were scared. Ms. Dawn Russ was dead;
- 18 wasn't she?
- 19 A. I don't know.
- 20 Q. And you were scared that she was dead; wasn't she?
- 21 A. I don't know if she was dead, at the time.
- 22 Q. And you didn't need to rob that woman for \$1200; did
- 23 you? Because your mom provides a roof over your head?
- 24 Your mom provided food? Your mom provided care for you?
- 25 You didn't have to kill and rob that woman; did you?

1 A. Sir, I did not rob and kill Dawn. I did what B.J.
2 told me to do.

3 Q. And you never, even when you got home, picked up the
4 phone, called 911 anonymously, called EMS anonymously, or
5 asked your mom or your sister to check on your good friend
6 to see if you still like have a pulse; did you?

7 A. No, sir. I did not.

8 Q. You left her on the floor with her face down in a
9 plastic bag ---

10 A. That bag was laying on the floor.

11 Q. --- with a cord wrapped around her neck. And you
12 never even bothered to have anybody check on her condition
13 to see if she still might be alive; did you?

14 A. I don't know how she was left. I know how I left her
15 with B.J.

16 Q. You know how you left her; don't you?

17 A. I know how she was when I left. And I left B.J.
18 inside there.

19 Q. And how was she when you left?

20 A. B.J. was strangling her on the floor.

21 Q. And you did nothing to get any help for that woman;
22 did you?

23 A. No, sir, I didn't.

24 Q. But you talked with B.J. later on that day?

25 THE COURT: Mr. DuTremble, it's -- we've been here

1 about an hour and twenty minutes. I'm ready to take a
2 break unless you're just about wrapped up.

3 MR. DUTREMBLE: I'm not.

4 THE COURT: We've got redirect, also. I'm sure. So
5 ladies and gentlemen, let's take a break at this time. I
6 may send the clerk in to discuss lunch with you, but if you
7 would, just take a break at this time.

8 (WHEREUPON, the jury retires to the jury room.)

9 THE COURT: Everyone else, remain seated, please.

10 (WHEREUPON, there was a short recess.)

11 THE COURT: Bring the Foreperson out, please.

12 Madam Forelady, I just want to let you know we can do
13 one of two things at this time. I want you to talk to the
14 jury about this. We can go ahead and have Mr. Wilson order
15 you all lunch and bring it in, or I can let you all go to
16 lunch like forty-five minutes to an hour on your own and
17 come back. So if you would, discuss to the jury what they
18 want. It's going to take an hour to get it here if you
19 order it, but I think the two choices are either Wendy's or
20 Papa John's. Right

21 THE CLERK: That's right.

22 THE COURT: Either one of the two. So you decide if
23 you want us to order it, and then we'll take about a ten
24 minute break or so and continue on; or you all can go for
25 about an hour and then come back. So I just want to give

1 you all that choice. So go talk to the jury, and just let
2 Mr. Wilson know.

3 Now, please, make a decision quickly, because we are
4 going to wait right here until you all make a decision.
5 Okay.

6 (The Foreperson retires to the jury room.)

7 THE COURT: If they choose to have lunch brought in,
8 then you all need to make arrangements to have lunch
9 brought in for you all, too. So that way when we give them
10 a break to have lunch, you all can have lunch here, because
11 I don't want to take any longer than they need to. And
12 they might want to eat in twenty minutes and be ready. So
13 you all might need to make arrangements. And, also, you
14 need to make arrangements for lunch brought in for Ms.
15 Gilliard, also. I assume you all have arrangements for
16 that. Okay. Good.

17 (The Foreperson returns to the courtroom.)

18 FOREPERSON: Your Honor, we have decided just to take
19 this five minute break, order lunch, and then proceed.

20 THE COURT: That's good. Thank you.

21 MRS. GAY: Your Honor, I ---

22 THE COURT: Wait one second.

23 (The Foreperson retires to the jury room.)

24 THE COURT: All right. We'll take a ten minute break,
25 and then we'll be back in session.

1 Ma'am, please, remember my admonishment about not
2 talking about your testimony. You can talk to your lawyer.

3 DEFENDANT: Yes, sir.

4 (WHEREUPON, there was a short recess.)

5 THE COURT: Bailiffs, Officers, would you all let
6 everybody know out in the hallway, we're about to start. I
7 just don't want to get too much traffic in and out. In
8 Conway, I always just lock the doors when they start, but I
9 won't do it here.

10 Okay. Bring the jury in.

11 (WHEREUPON, the jury returns to the courtroom.)

12 BAILIFF: The jury is all present, Your Honor.

13 THE COURT: All right. Let's proceed with further
14 cross-examination, Mr. DuTremble.

15 MR. DUTREMBLE: Thank you, Your Honor.

16 CONTINUED CROSS-EXAMINATION

17 BY MR. DUTREMBLE:

18 Q. Ms. Gilliard, when we took the break we were talking
19 about the confession of January 9, 2000. We had gotten to
20 the point where you indicated, I stayed in my room for the
21 rest of the morning, the morning after or the morning of
22 the murder. Me and B.J. talked, and he said that he thinks
23 that she might be dead. Later that day, the police picked
24 me up from Brian Johnson's house in Goose Creek where me
25 and B.J. went because we were scared and didn't know what

1 was going to happen.

2 You and B.J. took a cab to Goose Creek; didn't you?

3 A. We did take a cab to Goose Creek. Again, what that
4 statement says was not written by me, and I did not know
5 what it said.

6 Q. But it's true; isn't it?

7 A. No, sir. Not about we were scared and we talked --
8 not like it's trying to make it seem. No, sir.

9 Q. How about the part, Me and B.J. took a cab to Goose
10 Creek?

11 A. Yes, sir, we did.

12 Q. How would Deckard know if you took a cab if you didn't
13 tell him?

14 A. I told him.

15 Q. You told him?

16 A. Yes.

17 Q. So what you want to do is go through this statement
18 and pick out bits and pieces and say, This is true, but the
19 detective made the rest of it up. Is that what you're
20 telling this jury?

21 A. I am telling what is true inside this statement, and I
22 am explaining what is wrong inside this statement.

23 Q. So when it doesn't hurt you, it's true; but when it
24 does hurt you, it's false; correct?

25 A. That is not correct, sir.

1 Q. Isn't that what you're doing here today for this jury?

2 A. I'm telling them what happened, my version. You
3 allowed B.J. version to come in, and now, I am having my
4 opportunity to have my side told.

5 Q. Yes, ma'am. And isn't what you're doing is picking
6 and choosing from the statement what you want to tell the
7 jury is true, and the rest of it you're saying is false?

8 A. For the part that was not put inside the statement, I
9 am telling you what should have been put inside it. And
10 the parts inside the statement, I am letting you know what
11 is not correct, and correcting it for you.

12 Q. All right. So the parts that incriminate you are not
13 correct, but all the background information is true; right?

14 A. The parts that does not incriminate me?

15 Q. Yes. The parts that incriminate you. Those are the
16 parts that are incorrect, and all the background
17 information that's true; right?

18 A. Well, I didn't write the statement, sir, as you know.

19 Q. I know that very well.

20 A. So -- excuse me?

21 Q. Yes, ma'am. I know. You've made that perfectly
22 clear.

23 A. Okay. And so what is written inside this statement, I
24 didn't write it. So therefore you would have to ask the
25 person that wrote this statement to explain to you why it's

1 on this paper like this. All I did was sign it.

2 Q. And, Ms. Gilliard, didn't we already do that? Didn't
3 we already have Detective Deckard testify and read the
4 entire statement, telling this jury that he wrote down
5 verbatim what you told him, except for the places you had
6 changed and initialled as corrections?

7 A. That's what he testified to.

8 Q. That's what I thought. All right. So while you're at
9 Brian Johnson's house, way out in Goose Creek, that's when
10 Brian learns that you and B.J. have committed this offense,
11 you have stolen this money, and the money gets hidden by
12 Brian in the backyard so the police won't find it; correct?

13 A. From what B.J. told him.

14 Q. Okay. And that's the same money that was stolen from
15 the robbery; correct?

16 A. From what I know.

17 Q. Okay. And from what you know it, because you got part
18 of it; right?

19 A. I had some of it that B.J. gave to me.

20 Q. Right. So you know that money came out of The Game
21 Room because you're the one that went into the black
22 cabinet and took it?

23 A. Because B.J. was yelling at me and telling me to get
24 the F'ing money.

25 Q. And you went and got the F'ing money; didn't you?

1 A. Yes, sir, I did.

2 Q. And the only way you could get the F'ing money was to
3 go in that poor dead lady's pocket and pull those keys out
4 and go unlock that padlock, and take the padlock off, open
5 it, and go into this cash drawer, which is State's Exhibit
6 Number 25; right?

7 A. Yes.

8 Q. Yes. And, of course, the money that y'all were
9 hiding, later on in the day up at Goose Creek was the same
10 money that came out of this very cash drawer; right?

11 A. Not y'all, sir. Brian.

12 Q. Yes. Brian was hiding it for you and B.J.; correct?
13 Because your money got hidden, too; right?

14 A. I gave them the money back. I didn't even want the
15 money.

16 Q. You didn't want the money?

17 A. No, sir.

18 Q. They gave you the money, and if you didn't want the
19 money since the detectives were coming out, why didn't you
20 just reach in your pocket and say, Here you go, I don't
21 want this money; it's got blood on it?

22 A. Brian had told me to give him the money.

23 Q. Well, Brian didn't have a gun or a knife, and had
24 never threatened you; did he?

25 A. Sir ---

1 Q. You didn't have to give him that money; did you?

2 A. Sir, the state of mind that I was in at the time, only
3 I can say. You weren't there. You don't know. You've
4 never been in a situation like this. Only a person that
5 walk what I had to walk through, can sit in this seat and
6 say.

7 Q. You're telling this jury that your mind was so
8 befuddled and so confused that you didn't have the presence
9 of mind when the detectives came out to pick you up, to
10 reach into your pocket and say, Here, the money that came
11 out of this cash drawer is money that doesn't belong to me;
12 I want you to have it and return it to it's rightful owner?

13 That's what you're telling this jury?

14 A. That before detectives even got there, B.J. had told
15 me not to tell nobody on him and so on and so forth.

16 Q. And when the detectives came up and you knew the
17 money, your money, had been put into that plastic bag with
18 B.J.'s money and hidden in the yard, all you had to do was
19 say, Officer, let me show you where this money has been
20 placed.

21 And you didn't do that; did you?

22 A. I didn't even know where the money was placed.

23 Q. Well, you knew the money was placed in the backyard,
24 because in your statement it clearly says that me and B.J.
25 panicked and put all of the money in a plastic bag. And

1 Brian took it out to the tree in the backyard, and hid it?

2 A. That's after I had found out when the detective had
3 questioned all of us on January 5th.

4 Q. Who told you on January 5th that the money was hidden
5 in the tree?

6 A. You're reading from January 9th; correct?

7 Q. Yes, I am.

8 A. Okay. And in this statement, January 9th, everything
9 that you are asking me occurred January 5th; correct.

10 Q. That's correct.

11 A. At Brian's house.

12 Q. That's right.

13 A. The detectives, when they questioned me the first time
14 on January 5th, they also questioned Cookie, Brian, and
15 B.J.

16 Q. That's correct.

17 A. And they brought them back to the house where I was.
18 And Brian had said what he told the police. And that's how
19 I know that the money was hidden behind the tree stump.

20 Q. And because you know how the money was hidden behind
21 the tree stump, you were able to tell Detective Deckard
22 that's where it went, and he wrote it down in your
23 statement of the 9th; isn't that right?

24 A. Yes.

25 Q. Yes. I sat there and waited on the detective to come.

1 Then they brought me to the police station.

2 And that's when you gave the statement of January 5th
3 that I just offered into evidence; correct?

4 A. Yes.

5 Q. And we've talked about that already, so I won't go
6 back through it. The next day, which would have been the
7 10th; correct?

8 A. Uh-huh.

9 Q. The next day me and B.J. talked about how we were
10 scared and he didn't mean to do it. I asked him what
11 happened to the money. And he said, Brian had it. I
12 didn't talk to B.J. again after that. When B.J. came in
13 The Game Room, he had on black jeans, a black hoody, and
14 the ugly mask. He had gloves on his hand ---

15 A. You said the 10th. I got taken (sic) to jail on the
16 9th.

17 Q. Well, when you say, The next day me and B.J. talked
18 about how we were scared, what day were you referring to,
19 ma'am?

20 A. I don't know. The detective wrote that, sir.

21 Q. Okay. I asked him what happened to the money. And he
22 said, Brian had it. I didn't talk to B.J. again after
23 that. When B.J. came the The Game Room, he had on black
24 jeans, a black hoody, and the ugly mask. He had gloves on
25 his hands. I was wearing a black sweater, blue jeans, and

1 green Reeboks.

2 That is correct; isn't it? That's the description of
3 your clothing?

4 A. What I was wearing -- I was wearing -- a black seater?
5 It was a dark colored sweater. It may have been blue.
6 Blue jeans and green Reeboks. I don't know. I had on
7 green Reeboks, though. So something had to match with it.

8 Q. Pardon me, ma'am?

9 A. Maybe, I had on a dark colored sweat-shirt with some
10 type of lime inside of it to match the tennis shoes.

11 Q. Oh. So you were wearing something that had a kind of
12 lime-green lining is what you're telling us that would
13 match these shoes?

14 A. Apparently. I wouldn't just wear just black and -- or
15 blue and black with lime-green. No.

16 Q. Oh. So you've got to be color coordinated before you
17 go out and commit your crimes; is that what you're telling
18 us?

19 A. Why would I wear lime-green shoes to go commit a
20 robbery if I'm dressed in all black clothes?

21 Q. Well, you'll have to answer that, ma'am, because it's
22 pretty obvious that these are the shoes you were wearing
23 that night, and these are the shoes we recovered.

24 A. That's the shoes I was wearing all day.

25 Q. Yes. Exactly.

1 A. Yes.

2 Q. Exactly. And those are the shoes we went and
3 recovered from your house with a search warrant; isn't that
4 right?

5 A. Yes, sir.

6 Q. And while you were there -- and I skipped something.
7 While you were there at Brian's house in Goose Creek, you
8 indicated that I talked to Mr. Bob while we were there.

9 And that was Mr. Bob Rhodus, the fellow who is the
10 manager of The Game Room; correct?

11 A. Yes.

12 Q. And you had known Mr. Rhodus for quite some time?

13 A. Yes.

14 Q. So you knew who he was. And when he called you, y'all
15 talked about what time you left The Game Room that night;
16 correct?

17 A. Yes.

18 Q. And you told him you left The Game Room around 2:00 or
19 2:30; right?

20 A. Probably. I probably did tell him that.

21 Q. Okay. So there is no question about the fact that you
22 and B.J. Johnson were the last two people to see Dawn Russ
23 alive; correct?

24 A. Yes.

25 Q. And that's what he was checking on, to see who had

1 been the last person to see her alive. That's why he
2 called you; right?

3 A. Because he knew that I usually be there ---

4 Q. Correct.

5 A. --- with Dawn late at night sometimes. Yes.

6 Q. And then at the end of your statement -- well, before
7 that. Mr. Rhodus knew that you would frequent The Game
8 Room. And so when you and B.J. left, you left on foot, but
9 poor Dawn Russ left in an ambulance; right?

10 A. I was running home.

11 Q. And she was riding away to the morgue; wasn't she?

12 A. Afterwards. The next day. Yes.

13 Q. This is my statement, truthfully and honest. I am
14 sorry. Please, forgive me. We -- I never meant for it to
15 happen like this. I just only wanted the money. Signed,
16 Kandy Gilliard.

17 So for the vast sum of \$1200, a woman who was your
18 friend, who had never done anything to hurt you, was
19 murdered and robbed. And you took \$1200 for doing such an
20 act. Isn't that the case?

21 A. No, sir.

22 Q. Isn't that why you're here?

23 A. No, sir.

24 Q. Isn't it a fact that when you wrote: This is my
25 statement, truthfully and honest, that's exactly what it

1 was? You told Detective Deckard exactly what happened. He
2 wrote it down exactly as you told it to him?

3 A. That's because Detective Hagge told me to write this,
4 and I wrote it, sir.

5 Q. And four hours later -- almost four hours later, at
6 eleven o'clock, four additional questions are presented to
7 you. Where did you take the money from? In your own hand,
8 I took the money from the black file cabinet and Dawn's
9 pocket.

10 The initials K.G. appear which are your initials; are
11 they not?

12 A. The detective, after he had spoke to me -- after the
13 statement was written, he spoke to me. And as we was
14 talking, he asked me where did I get the money from, and I
15 told him. And then he said, Well, didn't you go inside her
16 pocket for the keys? And I said, Yes. And he said, So you
17 went in her pocket and in the black file cabinet.

18 That's how that answer came on this question.

19 Q. And that's the truth; isn't it?

20 A. Because B.J. was yelling at me ---

21 Q. That's the truth; isn't it?

22 A. That's how it occurred.

23 Q. And not only did you go in the black file cabinet
24 which is the same thing you told Detective Deckard at 7:45
25 that you're not now telling Detective Hagge at eleven

1 o'clock -- not only did you go in the black filing cabinet
2 to take money, but you took money from Dawn's pocket, your
3 friend's pocket. You stole from your friend; didn't you?

4 A. I didn't steal on my own free will. I did what I was
5 told.

6 Q. Well, B.J. never said, Go in Dawn's pocket and take
7 her cash. He said take the F'ing money from the black
8 filing cabinet; isn't that right?

9 A. He didn't say where. He told me to get the F'ing
10 money. The F'ing money means the money.

11 Q. And you robbed not only The Game Room, but you've
12 robbed the body of your own friend, and took her personal
13 money; didn't you?

14 A. You said that was her personal money. How did you
15 know that?

16 Q. How do we know it's not?

17 A. I know it's not, because she didn't have any money. I
18 know it's not, because she kept money that came from the
19 filing cabinet inside her pocket, also. That's how I know.
20 I mean, I'm just clarifying what you're saying was her
21 personal money.

22 Q. All right. So if it's not her personal money ---

23 A. It still doesn't justify it.

24 Q. Exactly. Because it wasn't your money; was it?

25 A. No, sir, it wasn't. And it wasn't my choice either to

1 rob her.

2 Q. How much money was taken is the second question. And
3 your answer is around \$1200, and you initialed that. And
4 we know that's true, because Ms. Mitchell came in and
5 testified as to the amount of money taken?

6 A. And the detective told me before answering this
7 question he told me that around -- he told me that around
8 \$1200 was taken from The Game Room.

9 Q. And what did you do with the padlock? And you wrote I
10 dropped it?

11 A. I dropped it.

12 Q. And you dropped it. And we have a picture of the
13 padlock on the couch where you dropped it; don't we?

14 A. I don't know where I dropped it. All I know is I
15 dropped it.

16 Q. Well, we know where you dropped it, because we've got
17 the photograph. Have you seen the photograph?

18 A. I saw the photograph.

19 Q. You saw the photograph. So you know where you dropped
20 it. You dropped it on the couch; right?

21 A. I don't know exactly where I dropped it.

22 Q. Well, let me show you the photographs, since you don't
23 know exactly where you dropped it. Maybe, that will
24 refresh your recollection. In State's Exhibit Number 15,
25 we have the padlock and the key on the couch; don't we?

1 A. That's where it is.

2 Q. That's where it is. That's where you dropped it;
3 isn't it? And did the detective, also, tell you to write
4 that?

5 A. He didn't say where it was. The paper doesn't say
6 where it was dropped. All it says is I dropped it.

7 Q. Did he tell you to write, I dropped it?

8 A. He asked me what did I do with the padlock, and I told
9 him I dropped it.

10 Q. Sure. You told him, because that's the truth; right?
11 And that's why it's written down there because it's true;
12 right?

13 A. I dropped it.

14 Q. Right. And what was the plan for splitting up the
15 money afterwards? Half and half, Kandy Gilliard.

16 A. And I wrote that, because when I was talking to
17 Detective Hagge and he asked me what happened when we went
18 inside the room, and I told him that B.J. took half,
19 apparently. Because the money was in bundles. And he said
20 it was half. He took half and he gave me half. But I did
21 not keep that money.

22 Q. But you didn't refuse it when he gave it to you?

23 A. The money was still sitting there the whole time. I
24 never put the money up or anything.

25 Q. You never refused the money when he gave it to you;

1 did you?

2 A. I never accepted it. It was still sitting right there
3 on the bed the whole time.

4 Q. You had the money with you in Goose Creek. It wasn't
5 sitting on the bed; was it?

6 A. And I gave B.J. back that money.

7 Q. The money was not sitting on the bed at home. The
8 money went to Goose Creek with you; didn't it?

9 A. Yes, it did.

10 Q. Yes, it did. You accepted that money. This is the
11 same B.J. Johnson that you spent four days with after the
12 murder. You went to the mall with him, you went to
13 McDonald's with him, you went to his grandparents' house,
14 you rode in taxi cabs with him; didn't you?

15 A. That was not -- all of those was not four days. That
16 was the next day. The very next morning.

17 Q. Yes. You never told the cops about it. B.J. never
18 did anything to you during that four-day period; did he?

19 A. He kept telling me, don't tell anyone on him.

20 Q. He never harmed you physically, he never harmed your
21 children, he never harmed your family; did he?

22 A. Because I cooperated with him.

23 Q. He never did any of the things that you, now, want the
24 jury to believe that you were so afraid of; did he?

25 A. He did not hurt me. He did not harm me, or any of the

1 above because I cooperated with him.

2 Q. You cooperated with him when you robbed and murdered
3 Dawn Russ, that's the reason we're here, today; isn't that
4 true, ma'am?

5 A. When B.J., basically, forced me in, and allowed me to
6 -- and made me help him. Yes. That's why we are here,
7 today.

8 Q. You've had sixteen months to think up this story that
9 you just told the jury; right? You told the jury
10 originally, that you're here, because you must tell the
11 truth. But you admit would you not, that you didn't tell
12 the police the truth on January 5th? You didn't tell the
13 police the truth, according to your statement here today on
14 January 9th, but now, you come in on June 1st of the year
15 2001, and you want this jury to embrace your story as being
16 the truth; don't you?

17 A. You allowed them to accept B.J.'s part of the story in
18 testimony. So I felt as if though mine should be heard,
19 also.

20 Q. Yes. And yours has been heard. But you're here
21 putting your hand on the bible, telling this jury that what
22 you're telling them today is the truth. But you do admit,
23 do you not, that you didn't tell the police the truth on
24 January 5th? You're telling this jury you didn't tell the
25 police the truth on January 9th, but now, today, sixteen

1 months later, you want the jury to believe that what
2 they've heard from your mouth is the truth; don't you?

3 A. You said I put my hand on the bible. I talk to God
4 all the time and ask him to bring it forth that the truth
5 may be known. I ask him to allow my part to be heard.
6 Yes. I did put my hand on the bible and it's coming forth.
7 I ask God every night to allow the truth to be heard, and
8 allow my part to be heard, that I may not be convicted of
9 something that I did not do, wrongfully commit --
10 wrongfully accusing me of murder. And wrongfully accusing
11 me of robbery, when I was, basically, forced to help this
12 man that I was frightened and terrified of. That's why I
13 put my hand on the bible that ---

14 Q. Did you talk to God before you put this bag over that
15 lady's head?

16 A. No, sir, I didn't. I never put a bag over her head.

17 Q. Did you talk to God before you reached your hand in
18 this drawer and took out \$1200 that didn't belong to you?

19 A. I didn't do it on my own free will.

20 Q. Basically, what you're telling this jury is what you
21 think the jury needs to hear to cut you loose; isn't it?

22 A. Sir, I will be -- how man judge me, today, is up to
23 them. But God knows what is inside here. He knows what
24 happened. So that is totally up to the jurors and to the
25 Judge, today, how they see me.

1 Q. That's exactly right, ma'am.

2 A. He knows what happened. I know what happened. And
3 B.J. know what happened. You weren't there. You gave B.J.
4 and Brian a plea to testify against me. And if they
5 testify against me, they would get a certain amount of
6 years, or whatever the case may be. That's why they came
7 in to testify me, when I have been informed from other
8 people in the jail ---

9 Q. Now, the Judge has already talked to you about that,
10 ma'am.

11 A. Oh. Excuse me.

12 MR. DUTREMBLE: I object, Your Honor.

13 THE COURT: Sustained.

14 MR. DUTREMBLE: Thank you.

15 WITNESS: Okay.

16 BY MR. DUTREMBLE:

17 Q. Well, ma'am, isn't it also true now that we've heard
18 this colloquy of yours, that on January the 9th, when B.J.
19 told us what happened, he didn't have any kind of deal; did
20 he?

21 A. Not that I know of.

22 Q. And Brian, on January 9th, he didn't have any kind of
23 deal; did he?

24 A. Not that I know of, but B.J. and Brian had already sat
25 down and talked. I do know that.

1 Q. And B.J. came in here and he testified as he testified
2 to the jury. And the jury heard his testimony; didn't it?

3 A. He testified on based what from my understanding is
4 what you told him to say.

5 Q. No, ma'am. B.J. got on the stand and testified in
6 response to questions. And what he testified to, ma'am, is
7 basically, the same thing we find in your statement; isn't
8 it?

9 A. From what I understand, B.J. wants to bring me down.
10 And his brother, also. He do not want to go down by his
11 self. And that's what he said from my understanding.
12 That's all I know. That's all I can say.

13 Q. And because of your involvement, B.J. has gone down
14 and Brian has gone down; haven't they?

15 A. B.J. went down because of what he did.

16 Q. And Brian went down because of what he did; right?

17 A. Yes.

18 Q. And so what they testified to is exactly what's in
19 your statement; isn't it? And so there's no dispute as to
20 what happened that night; is there?

21 A. Yes. There is a dispute of what happened that night.

22 Q. Only from your version of it; correct?

23 A. From what I said. I mean, do you know someone else
24 that can tell you what happened that night, besides B.J.?

25 Q. No, ma'am. And that's why he testified. Thank you,

1 very much.

2 A. Okay.

3 THE COURT: Redirect?

4 MRS. GAY: One moment, please, Your Honor.

5 MR. DUTREMBLE: May we approach, Your Honor?

6 THE COURT: Okay.

7 (WHEREUPON, there was an off-the-record bench
8 conference in the presence of the jury, but out of the
9 hearing of the jury.)

10 THE COURT: All right. Let's proceed with the
11 redirect.

12 REDIRECT EXAMINATION

13 BY MRS. GAY:

14 Q. Kandy?

15 A. Yes.

16 Q. That night on January 5th, had you planned with B.J.
17 to rob Dawn?

18 A. No, ma'am, I didn't.

19 Q. Did you have any idea whatsoever that B.J. was going
20 to come there that night to rob Dawn?

21 A. No, I didn't.

22 Q. When you saw him, the very first minute that you saw
23 him, did you know that he was there to rob Dawn?

24 A. No, I didn't. Until I opened the door, and that's
25 when he said he was going to get the place.

1 Q. So when you, actually, unlocked the door, you did not
2 know that B.J. was going to come in there to rob Dawn?

3 A. No, I didn't.

4 Q. And, I think, you described it, that you were between
5 B.J. and Dawn?

6 A. Yes. To the point where he was backing me into the
7 room with that monkey wrench -- he called it grip wrench.
8 Well, all I know it was a tool, and he was backing me into
9 the room where the ---

10 Q. That's okay. Just through the room.

11 A. Yeah.

12 Q. Okay. And at that moment, can you describe to the
13 jury what you thought about your own safety?

14 A. I thought that being that I told him not to hurt her,
15 he was going to -- he said he was going to knock her out
16 with the wrench, and I told him not to hurt her. I felt
17 like, okay, if I don't help him, or if I don't cooperate
18 with him, he was going to do the same thing to me that he
19 had intentions to do to her, which was probably knock me
20 out or doing bodily harm to me or some type of way. I
21 don't know. All I know is what my mind was going through
22 at the time.

23 Q. And when you went to go get the trash bag, why did you
24 go get the trash bag? I don't want to ask you what you
25 thought. Just, why did you go get the trash bag?

1 A. Because B.J. told me to.

2 Q. Did you have any idea at the time that you went to get
3 that trash bag, what was -- did you have any idea? Did he
4 say anything to you about what he wanted you to do with the
5 trash bag?

6 A. No, ma'am.

7 Q. So when you came back with the trash bag, what was he
8 doing?

9 A. He was strangling her with the cord, and she was
10 trying to resist from him.

11 Q. And at that point, had you or he discussed anything
12 about this trash bag?

13 A. No, ma'am.

14 Q. So at the point that you saw him doing that, did you
15 try to stop him?

16 A. Yes. I was trying to pull him off, and he was
17 yelling, Get the F'ing money. Get the F'ing money. Doing
18 like this to me.

19 Q. So you couldn't stop him?

20 A. No, ma'am.

21 Q. And at that point you were in the room with him and
22 Dawn?

23 A. Uh-huh.

24 Q. And so you've described to the jury that you did
25 something. You tried to put this over her face. Was that

1 your idea?

2 A. No. B.J. told me to do it.

3 Q. And when you did it, I think, you said, specifically,
4 that it didn't go on her face; she knocked it off?

5 A. It never went on her face. She snatched it off like
6 this, and it fell down to the floor.

7 Q. Did you have any intention of putting this bag over
8 her head so she wouldn't see you?

9 A. No, ma'am.

10 Q. Did he ever say anything to you about putting the bag
11 over her head, so she wouldn't see you?

12 A. No. He said -- when I came back with the bag, he told
13 me to put it over her face. And that's when she heard him
14 say it. And when I went to do it, she snatched it down.

15 Q. And when you went in to the -- to get to her pocket,
16 when you went into her pocket to get the keys, tell the
17 jury why you did that.

18 A. Because B.J., he was strangling -- he was pulling her
19 from behind like this with the cord, and when he was --
20 after I had already tried to get him off of her, she had
21 fell down to the floor; and he kept telling me, Get the
22 F'ing money. Get the F'ing money. And when I realized the
23 key was inside her pocket -- after sitting there all night,
24 I should have known that the keys were in her pocket; but
25 being that I was so frightened and just trying to react on

1 what he's saying, I remembered that the key was inside her
2 pocket. And that's why I went inside her pockets.

3 Q. And so the money that the solicitor described, that
4 money was poker parlor money. I think, you said that it
5 wasn't Dawn's money; it was poker parlor money?

6 A. Yes, ma'am.

7 Q. And so you said that you got that money, and then you
8 went and opened the cabinet?

9 A. Yes.

10 Q. And took the money out of there?

11 A. Yes, ma'am.

12 Q. Did all the money that came out of that filing cabinet
13 end up in your pocketbook?

14 A. No. Some of it fell.

15 Q. And when you left, what happened to the money between
16 there and the house?

17 A. I dropped -- first, I dropped the bicycle. And right
18 after I dropped the pocketbook, too. All I was doing was
19 running trying to get home. Then, throwing up and
20 everything else. Just trying to run in all that cold. Try
21 and get inside the house.

22 Q. So this money that you had, did you want that money?

23 A. No, ma'am. Like I stated before, I didn't want the
24 money.

25 Q. So after it was over and B.J. came to the house, tell

1 us a little bit about how he spoke to you.

2 A. He told me, he said, Don't tell nobody what I did.
3 Don't get me inside no trouble. And as he was talking to
4 me, all I can think was if I do, then what? I knew that my
5 sister was inside the room with him, you know, inside the
6 room. And my mom was inside the room, because her car was
7 parked outside. But as I was calling home, nobody was
8 answering. And that's what made me thought my mom wasn't
9 home. But she was home.

10 Q. Did you ever sleep between then and the next morning?

11 A. No, ma'am. I was pacing the floor, and just thinking.
12 Just thinking.

13 Q. And when you went to Alex's, why did you go there?

14 A. Because, well, I don't know. The state of mind that I
15 was in, I couldn't believe it. I could not believe what
16 happened. And I went to Alex's. Yeah. I went to Alex's.
17 I even bought cigarettes, but I never smoked none of the
18 cigarettes. I never smoked none of the cigarettes. I
19 didn't eat the food.

20 I did not plan this robbery. It was B.J. that choked
21 that lady. I did not. And I refuse to let this to go on
22 any further. You try to make me feel ---

23 Q. Ms. Gilliard, please, relax.

24 A. No.

25 Q. Please, relax.

1 A. B.J. know it just as well as the solicitor know it. I
2 did not plan to rob this lady. I would never take nobody
3 life. I only did it, because he was yelling at me, and had
4 that monkey wrench up at me like he was going to hurt me,
5 too.

6 That's the only reason I did it, Ms. Lisa. I told you
7 time and time again.

8 MRS. GAY: Your Honor, one moment, please.

9 BY MRS. GAY:

10 Q. Kandy, you said that you had worked in a place like
11 this before. Had you ever been instructed or told anything
12 -- or what was your understanding of what would happened if
13 robbers came to a place like this?

14 A. To cooperate.

15 MR. DUTREMBLE: That's beyond the scope of cross, Your
16 Honor. It's not appropriate. This is redirect ---

17 THE COURT: I know what this is. I'm just trying to
18 hear the relevance of the question.

19 MRS. GAY: Your Honor, I believe he asked her
20 questions that ---

21 THE COURT: I'll allow it. Answer the question,
22 ma'am.

23 WITNESS: When I was working at Oasis Video Parlor on
24 Remount Road, just like the same one Dawn was working in,
25 they said if somebody come in to rob, cooperate; give them

1 what they want; do what they say.

2 THE COURT: All right. Your next question.

3 BY MRS. GAY:

4 Q. And after this you didn't call 911?

5 A. Huh-huh.

6 Q. Why not?

7 A. Because I was scared. I called 911 before, and you
8 know what they did? They respond to the call and left --
9 and left me -- that result left me with a black eye and ---

10 Q. I understand that. And in the process of not calling
11 911, you, also, didn't tell the police the next day that
12 this happened; did you?

13 A. Huh-huh.

14 Q. And why didn't you do that?

15 A. Because what B.J. had told me not to tell and get him
16 in any trouble. And I didn't want him to hurt me or my
17 children or my family.

18 Q. And after that, did you really believe that B.J. would
19 hurt you if you told?

20 A. Yes. After seeing what had happened that night.

21 Q. And out of these statements that we've talked about,
22 this statement of the 9th, there's some things in this that
23 is true; right?

24 A. Some.

25 Q. And there's some things in it that aren't true?

1 A. Yes, ma'am.

2 Q. And I think we know a million times that you didn't
3 write it and you didn't read it?

4 A. Uh-huh.

5 Q. And the things that are in it that you answered the
6 questions to, you told the jury why you answered these
7 questions the way that you did?

8 A. Yes, ma'am.

9 Q. The ones that are, actually, written in your
10 handwriting?

11 A. Yes, ma'am.

12 Q. And you've told the jury that the stuff that was
13 written in your handwriting was something that you thought
14 you were supposed to say, because Hagge was telling you to
15 put it there?

16 A. Yes, ma'am.

17 Q. And what is the reason that you signed these
18 statements that day?

19 A. Because Detective Hagge told me -- Deckard told me if
20 I signed it, that I can go home. But Detective Hagge told
21 me that being that I knew about what had happened and
22 didn't report it to the police, to anyone, that that was
23 withholding information in the State of South Carolina.
24 And he said something about the Hand of one, hand of all.
25 And when I come to court he said he will be there, and he

1 would recommend that I get six months probation. And
2 that's when I asked him who was he to tell me that. And he
3 told me he was the boss over the detectives in North
4 Charleston Police Department.

5 Q. I think we've described enough all the things that
6 happened. By eleven o'clock in the afternoon on the 9th,
7 when was the last time that you, actually, had slept in a
8 bed?

9 A. The night before, really, because I was up since that
10 morning when they came to pick me up.

11 Q. So that morning that they came to pick you up, which
12 was like 11:30 or twelve o'clock at night, the day before
13 that which would have been the morning of the 8th is when
14 you actually woke up from your bed?

15 A. Uh-huh.

16 Q. And so at the point where it was all the way the next
17 morning to eleven o'clock in the afternoon, had you had any
18 real sleep since then?

19 A. No, ma'am. I was dozing off and on in the room where
20 they were questioning me at. And they would wake me up,
21 but I didn't have any sleep. No, ma'am.

22 Q. When Dawn was at the poker parlor that night, was she
23 asleep?

24 A. No, ma'am. She was just dozing off.

25 Q. Kandy, the solicitor knows, you know, the jury knows,

1 that there are certain things that you did do that night.

2 And you know that you did things that night; right?

3 A. Yes, ma'am.

4 Q. And you know that you did things that weren't good,
5 and you, actually, took the money. You know that; right?

6 A. Yes, ma'am.

7 Q. Did you do that freely and voluntarily that night?

8 A. No, ma'am. Like I said, I did it because B.J. was
9 yelling at me, and telling me to get the F'ing money, and
10 being under all that pressure, seeing him attempt -- that
11 he probably would have hit me before -- he probably would
12 have done it if I not have cooperated with him.

13 Q. I think the solicitor's going to make a big point
14 about the fact that you didn't try to help her and you
15 didn't call 911. Did you try to help her inside the poker
16 parlor that night?

17 A. Yes. When I was trying to get B.J. off of her. And
18 he did me like this. And then, the second time when I
19 tried to get him off of her when he was on -- or she was
20 laying down, and he was in front of her head strangling
21 her. And then I tried to get him off of her, and that's
22 how he said when the mask got ripped.

23 Q. After he did that, why didn't you just run out the
24 front door?

25 A. I don't know. The state mind that I was -- I was

1 scared. I just -- I don't know.

2 Q. And you had absolutely no idea that this was going to
3 happen beforehand?

4 A. No, ma'am.

5 Q. You didn't plan the robbery with B.J.?

6 A. No, ma'am.

7 Q. I have no further questions.

8 THE COURT: Any recross?

9 MR. DUTREMBLE: Briefly, Your Honor.

10 RECROSS-EXAMINATION

11 BY MR. DUTREMBLE:

12 Q. Ms. Gilliard, would it be fair to say that nothing
13 that this jury has heard from your mouth today is supported
14 by your statement of January 9th?

15 A. Can you break it down? Say it again.

16 Q. Nothing that you had to say here today is supported by
17 your statement of January 9th; is it? About what happened.

18 A. This statement that was written, was not written by
19 me, once again, sir ---

20 Q. Ma'am, I asked you a direct question. Nothing the
21 jury has heard from your mouth ---

22 A. I don't know how to answer that question, sir.

23 Q. You can't answer that question? It would be fair to
24 say, wouldn't it, in response to your denial to your
25 attorney of your plan to rob and murder this lady, your

1 confession reads: I let him in, thinking we were only
2 going to hit her for the money, because we talked about it
3 before.

4 That indicates a plan; doesn't it.

5 A. That's what the statement says, sir.

6 Q. Yes, ma'am. Thank you.

7 THE COURT: Okay. You may step down.

8 (The witness leaves the witness stand.)

9 THE COURT: Okay. Other witnesses for the defense?

10 MRS. GAY: No, Your Honor.

11 THE COURT: Any rebuttal witnesses for the State?

12 MR. DUTREMBLE: No, Your Honor.

13 THE COURT: All right. Ladies and gentlemen, if you
14 would, I'm going to take some legal matters up. And, of
15 course, your lunch is not here yet, so if you all want to
16 walk outside with the bailiff or whatever, do that; but,
17 please, do not hang around the hallways. Do not anything
18 other than with the bailiff. If you want to go outside in
19 a group, that's fine. But I don't want you all to be
20 anywhere separate on the hallways, or anything like that.
21 So, Mr. Bailiff, wherever they're to go, you're to go with
22 them. Okay. As far as outside that jury room. All right.
23 So, please, do not discuss the case. It's not yours,
24 yet.

25 (WHEREUPON, the jury retires to the jury room.)

1 THE COURT: All right. Motions? Hearing no motions
2 from the State. Any motions from the defense?

3 MRS. GAY: Your Honor, at this time, I would renew my
4 motion for a directed verdict. There are several pieces of
5 evidence that have been admitted in this trial that are --
6 after I had objected to their admission, and you had denied
7 my motion, Your Honor, one of them was, certainly, the
8 statements. All of the statements. The statement of the
9 9th, the admission of rights, the Exhibit 34, all of those
10 items, we had the extensive Jackson v. Denno hearing. I
11 believe, that they are critical in this case, and should
12 not have been admitted. With regard to the polygraph, I
13 believe, that we did establish a record such that it should
14 have been allowed to come in as expert testimony.

15 And all of the other objections along the way, Your
16 Honor, I would just renew my motion for a directed verdict.

17 THE COURT: Okay. And, please, let the record
18 reflect, you did object to the admission of the statements.
19 You moved to suppress the statements. I had a hearing. I
20 made a ruling. As far as your specific comments about the
21 statements, this is the first time I've heard,
22 specifically, that after I made my ruling, an objection.
23 But the record is clear on that one way or the other.

24 But at this stage, as far as a motion for directed
25 verdict, I deny the motion. If you're asking me to take

1 out evidence that's already in, in regard to the statements
2 or the waiver of rights form, I will deny that motion. If
3 you're asking me to reconsider and to now put in the
4 polygraph exam evidence, I would deny that motion. And the
5 motion of directed verdict, also, is denied.

6 Okay. Any other motions?

7 MRS. GAY: No, Your Honor.

8 THE COURT: Okay. At this time, do you all wish to
9 get charges together and tell me what charges you wish for
10 me to charge as far as requests of charges? I told you all
11 yesterday that I planned to charge, obviously, the two
12 crimes involved, I have my general charge, which you all
13 are welcome to go back and look at, and see what my general
14 charge is, how I do reasonable doubt and everything else;
15 see if you have any objection to that.

16 I would charge my charge on expert witness. I would
17 charge, obviously, a charge regarding voluntariness and
18 Miranda. And that the jury makes it's decision, and it
19 uses the standard of beyond a reasonable doubt in regard to
20 that. I'm trying to think what other charges that I would
21 charge straight off -- does anyone wish me to charge
22 anything lesser included of any of the charges that the
23 defendant faces at this time? Any requests for any lesser
24 included from the State?

25 MR. DUTREMBLE: No, sir. I don't believe the evidence

1 would support anything but the charge of murder.

2 THE COURT: Anything lesser included from the defense?

3 MRS. GAY: No, Your Honor.

4 THE COURT: All right. So everyone agrees it's either
5 guilty or not guilty of the charge. All right. Any other
6 requests from the State regarding charges?

7 MR. DUTREMBLE: No, sir. The descriptions Your Honor
8 gave of the general charges that will be given, I believe,
9 covers adequately everything we need. The two charges that
10 I submitted this morning, I believe, will be incorporated
11 in some factor in your charge.

12 THE COURT: I think, you submitted two sheets with one
13 charge.

14 MR. DUTREMBLE: I think, I did. But, basically,
15 having reviewed and heard charges from other judges, I'm
16 pretty sure what I'm looking for is going to be taken ---

17 THE COURT: Well, I'll show it to both of you before I
18 charge.

19 MR. DUTREMBLE: Yes, sir.

20 THE COURT: Any requests for charge from the
21 defendant?

22 MRS. GAY: Your Honor, we discussed this in chambers
23 yesterday. I would ask that you request the charge of
24 duress. I brought State v. Robinson. And, I believe, that
25 is the case that is cited for the duress charge.

1 THE COURT: Have you shown what you request that I
2 charge in that regard to the solicitor?

3 MRS. GAY: There's, also, State -- I'm going to show
4 that to the solicitor during the break, Your Honor.

5 THE COURT: What I'm wanting from you, though, Mrs.
6 Gay, is what you wish for me to charge, what your request
7 is. As far as if you hand me up several sheets and tell me
8 to put something together, I'm a little concerned. If you
9 want me to charge something on that, right now I'm seeking
10 your request as to what you want me to charge. If you're
11 saying you want me to charge something on duress, whatever
12 I wish to charge on it, then that's kind of a strange
13 request.

14 (The attorneys confer.)

15 MRS. GAY: Your Honor, could we take -- during the
16 break we'll talk about it.

17 THE COURT: Yes. Anything else? Yes. I'll let you
18 talk. Anything else you have other than duress you wish me
19 to charge, other than what I've said?

20 MRS. GAY: Your Honor, I would consider you charging
21 mere presence.

22 THE COURT: Duress and mere presence?

23 MRS. GAY: Yes, sir.

24 THE COURT: They are not counteracting each other,
25 mere presence and duress?

1 MRS. GAY: I would just ask that you charge both.

2 THE COURT: By the way, does anyone request the hand
3 of one, the hand of all charge?

4 MR. DUTREMBLE: Yes, sir, I do.

5 THE COURT: Let me look at the mere presence.
6 What else?

7 MRS. GAY: I believe that's all at this time, Your
8 Honor.

9 THE COURT: Okay. I'll be in chambers. When you all
10 have discussed the other matters, please, step back.

11 Now, what time do you anticipate the pizza?

12 THE CLERK: Two o'clock.

13 THE COURT: Are you saying twenty minutes? All right.
14 Everyone stay in place. Bring the Forelady out -- see if
15 she's in the room?

16

17 THE COURT: Here's what I'm going to have the clerk
18 tell the jury when they all get back in the room. That
19 once their lunch gets here, enjoy the lunch, but we're
20 going to convene twenty-five minutes after the lunch gets
21 here. Twenty-five minutes with the lunch here and all that
22 should give them plenty of time to relax and enjoy. If
23 they wish more time, then they need to request it through
24 the clerk.

25 Now, he says the lunch should be here at two o'clock.

1 I just don't want to break up the arguments. And I see no
2 need for us to start arguing and then the lunch get cold.
3 So it's going to be here about the time we get the charges
4 done, so I would think let's all look to begin our charges
5 at 2:30. Begin the charge at 2:30.

6 Mrs. Gay, do you request that the State open?

7 MRS. GAY: I believe, they normally open on the law,
8 and then I ---

9 THE COURT: Do you request it?

10 MRS. GAY: I don't request it.

11 MR. DUTREMBLE: I would waive it.

12 THE COURT: He waives it. So therefore, he would not
13 -- it would just be you then doing your argument, and then
14 he has his argument.

15 MRS. GAY: Your Honor, just in thoughts of it, I
16 believe, that if I get the opportunity to request it, I
17 would ask him to request first, and then have the
18 opportunity to come back afterwards.

19 THE COURT: I'm not sure you understood what I said.
20 Here's the two possibilities: One is the State would open
21 on the law, then you argue, then the State argues in full.
22 Okay?

23 MRS. GAY: Yes.

24 THE COURT: And then when they argue in full, they can
25 still comment on what they've commented before about the

1 law.

2 MRS. GAY: Yes.

3 THE COURT: So, we can do State, defense, State, or
4 you can do defense, State. So do you have enough time to
5 think about it and make your decision, or what?

6 MRS. GAY: To be honest with you, Your Honor, nobody's
7 ever specifically asked me before which way I would prefer
8 to do it. So I would, I think ---

9 THE COURT: Well, ma'am, I'm sorry. I usually do it.
10 I thought other judges did it, also. Other judges require
11 you to do it? They require you to open? Mr. DuTremble,
12 are you usually required to do that?

13 MR. DUTREMBLE: No, sir. I have yet to open on the
14 law. I've always waived it. And she's presented evidence.
15 She does not get the last argument.

16 THE COURT: I know she doesn't get the last argument.
17 Once, again, as I described it as the procedure. You know,
18 you don't have to -- you can say you don't request they
19 open on the law, then they don't. Then, we'll just go you
20 then them. If you do, then, what can happen is the open
21 and briefly talk about the law. Briefly, any way they want
22 to as far as within the bounds of the law. They'll briefly
23 discuss that, then you argue, then they'll come back and do
24 their formal argument. If you request them to open on the
25 law, in essence, they'll be up before the jury twice.

1 MRS. GAY: Yes, sir. I guess, my confusion is that if
2 I ask for them to do that and he doesn't want to, that's
3 the part where I just have not had that come up before.
4 So...

5 THE COURT: He didn't say he doesn't want to. He
6 said, he waived it.

7 MRS. GAY: I understand, Your Honor. Just -- I'll
8 think about it for just a few minutes.

9 THE COURT: Okay.

10 MRS. GAY: I think that at this point, I believe, that
11 I would ask that he open on the law, first. And I found my
12 case, and I'm going to give it to him at the break. I'm
13 kind of confused about that.

14 THE COURT: All right. Go ahead. And I'll be in the
15 chambers here. So at 2:30 we should be ready to go forth.

16 And by the way, everybody in the courtroom, I'm going
17 to let you know this, and you need to let everybody know
18 otherwise: The minute the first attorney stands up to
19 speak to the jury, that very minute, the bailiffs are
20 instructed no one goes out, no one comes in. So if for
21 some reason you get back at 2:35 and whoever the first
22 attorney is, is before that jury standing up, nobody is
23 coming in, nobody is going out. So, please, everybody be
24 aware of that.

25 And, Mrs. Gay, you might want to let your client's

1 family know that.

2 And, Mr. DuTremble, you need to let the people
3 involved in your case know that, too.

4 So once the attorneys begin, nobody goes out, and no
5 one comes in.

6 (WHEREUPON, court was in recess for lunch.)

7 THE COURT: Pleas, be seated. Now, I have gone over
8 the charges with both sides. My charges will be my general
9 charge. I will also, charge, obviously the crime of murder
10 and the crime of robbery. I will charge felony murder,
11 inference. I will charge coercion or duress. Hand of one,
12 hand of all. The jury's consideration as far as whether a
13 statement of the defendant was made, and whether it was
14 made voluntary. And whether the defendant was given the
15 Miranda rights. And charge expert witness. And that's all
16 the charges.

17 And I've show both of you the charges as they were
18 printed out. So you've had a chance to go over them
19 totally.

20 Any exceptions to the charges as I have them written
21 here from the State, as I went over them?

22 MR. DUTREMBLE: No, Your Honor.

23 THE COURT: Defense?

24 MRS. GAY: No, Your Honor.

25 THE COURT: All right. Mrs. Gay, are you, now, ready

1 to proceed?

2 MRS. GAY: Yes, sir.

3 THE COURT: Do you need a minute or are you ready? If
4 you need a minute, let me know.

5 MRS. GAY: Hold one minute.

6 THE COURT: Okay. I don't limit anyone because,
7 obviously, the charge of this nature. I don't limit the
8 time of the arguments as long within reason. As far as my
9 anticipation of a break for the jury, do you anticipate
10 your argument lasting forty-five minutes or less?

11 MRS. GAY: Probably less, Your Honor.

12 THE COURT: Less. Okay. Well, if it's less than
13 that, if it's, like, thirty minutes, I'll probably have Mr.
14 DuTremble can go with his argument. I'm assuming your
15 argument is going to be thirty to forty-five minutes.

16 MR. DUTREMBLE: About thirty minutes.

17 THE COURT: All right. Within that regard, I'll go
18 ahead. But if your argument goes as much as forty-five
19 minutes, I will probably let them take a break before we go
20 to the State's argument.

21 Okay. Bring the jury in, please.

22 (WHEREUPON, the jury returns to the courtroom.)

23 THE COURT: Officers, if you would, as soon as Mrs.
24 Gay stands up, at that point in time, no one is to go out
25 and no one is to come in. At that point, make sure that no

1 one is to come in the courtroom at all. Everyone else has
2 got to remain seated.

3 BAILIFF: The jury is all present, Your Honor.

4 THE COURT: Okay. Thank you.

5 Ladies and gentlemen of the jury, we are now ready to
6 proceed with the final stage of the trial. And that will
7 be the closing statements of the attorneys regarding their
8 view of the case. I, then, will charge you on the law.
9 Now, you've listened attentively throughout this week in
10 this trial. Please, continue to do so. The procedure will
11 be as follows: First, the defense attorney, Mrs. Gay, will
12 give you closing statement of the defense, and then Mr.
13 DuTremble will give you closing statement for the State.
14 And then I will charge you on the law.

15 I will gage the time and determine whether or not, it
16 would be appropriate if you have a break before we finish
17 the entire process. If both of the statements of the
18 attorneys are finished within an hour, I will probably go
19 ahead and give you my charge on the law. My charge on the
20 law will last probably around twenty minutes, twenty-five
21 minutes, something like that. If for some reason, though,
22 we go way beyond an hour with the statements of the
23 attorneys altogether, then I'll probably give you just a
24 minute to refresh yourself before we give you a charge on
25 the law.

1 Now, having said that, this case very shortly is going
2 to be in your hands. If after one of the attorneys has
3 finished their arguments, or after both of them finished
4 their arguments, if I'm about to charge you, but you say,
5 Judge, I need a break, then we'll take a break. You just
6 let me know, because I want to make sure that we don't lose
7 your attention, and that you pay attention to the whole
8 process here. So, after Mrs. Gay finishes, if you feel you
9 need a break before I recognize Mr. DuTremble, you let me
10 know. After Mr. DuTremble finishes, if you feel you need a
11 break before I do my charge on the law, let me know. Don't
12 be bashful. If you don't, then I'm going to probably go
13 ahead and proceed on in. Okay.

14 With that, as I said, please, listen attentively as
15 you go through this.

16 At this time, Mrs. Gay, I recognize you for the
17 defense, ma'am.

18 MRS. GAY: Thank you, Your Honor. May it please the
19 Court.

20 Ladies and gentlemen, I'd really like to thank you.
21 And I know Ms. Gilliard thanks you, too. This has been a
22 very very long process. This has taken four solid days in
23 court. And I appreciate the fact that all of you have
24 taken time out of your life to come here today and be on
25 this jury.

1 I believe, that you need to understand that this is
2 the most significant day of Kandy's life. And this is such
3 an important process. The process of trial by jury in our
4 country is the most important process that there is,
5 because we do not live in a country where somebody can say,
6 we think you did his, and then you can be punished. We
7 don't live in that kind of place. We live in a place where
8 people, like you, regular, ordinary people, peers, can come
9 and review facts, and make determinations. Because, see,
10 if we did not have a dispute in this case -- if Kandy
11 didn't believe she was not guilty and innocent, and if the
12 State didn't believe that she was guilty and needed to be
13 convicted, we wouldn't have this process. We wouldn't have
14 asked you to come.

15 So after all of these days and all of the evidence
16 that's been brought before you, we're here now, because now
17 is the time when you take all the stuff that you have seen,
18 all the evidence, and make a decision. And I want to
19 remind you, that as your duty as jurors, the Judge is going
20 to instruct you that, as I said in the very beginning of
21 this, Kandy Gilliard is innocent until proven guilty.
22 She's innocent until you decide that the State has met it's
23 burden of proof beyond a reasonable doubt.

24 And if you remember in the very beginning when I told
25 you what reasonable doubt was, reasonable doubt is the

1 doubt which would cause a reasonable person to hesitate to
2 act. Reasonable people, like you, regular people with
3 common sense, like you, to hesitate to act on a set of
4 facts. Not only do they have to hesitate to act, but the
5 State has to prove beyond that. They have to take you
6 beyond any reasonable doubts, which would cause you to
7 hesitate to act.

8 So right now, what's happening is is that you're here
9 to take this evidence. And I'm just here to tell you a few
10 things. What I say is not evidence. What the solicitor
11 says is not evidence. You sat here for all these days and
12 listened to this information, and you get to decide how you
13 want to process that information. So just know that what
14 I'm here to do and what the solicitor is here to do is,
15 merely, tell you some things, give you an overview of what
16 we think the evidence says.

17 And in this case what I want you to understand -- and
18 the solicitor will tell you this -- is that because Kandy
19 has been charged with murder, which is the intentional
20 killing of another with malice aforethought, and robbery
21 which is the larceny or taking of goods from a person with
22 some type of force; because she's been charged with that,
23 the State has the burden of proving those facts, all of the
24 elements of that, beyond a reasonable doubt.

25 The only way -- there has been no evidence whatsoever

1 presented that Kandy, actually, killed Dawn. There is
2 absolutely no evidence whatsoever. It is totally
3 undisputed that B.J. killed Dawn. He came in here, he
4 acted it out on the floor. He strangled Mr. DuTremble. He
5 told you that he killed this woman. He's a killer, and he
6 went in there and strangled her. There is no evidence
7 whatsoever that she strangled this woman, or that anything
8 she did actually lead to the death of this woman.

9 I believe, the medical examiner testified that it was
10 through strangulation. The solicitor, I know, is going to
11 try and say that something about the bag on this woman's
12 head, had something to do with her lack of oxygen. But as
13 common regular people, you know that she died from the
14 choking of the cord. She didn't die because a plastic bag
15 was on her face. She died because B.J. choked her.

16 So in order to prove murder, the Judge is going to go
17 through a whole list of elements of what is malice. And
18 malice can be expressed. It can be implied. It can come
19 from lots of things. In this case, malice has to come from
20 her knowing participation in a robbery. And the Judge is
21 going to instruct you that one of the factors of malice is
22 that she -- if she is a knowing participant in this
23 robbery, you can say that there was malice. And that's
24 going to be part of what the Judge is going to tell you.

25 And when Mr. DuTremble stands up, he's going to say

1 that there's all these reasons for malice, and one of them
2 is that she planned and participated in this robbery. But
3 that's what Kandy has told you all along on the stand that
4 she didn't do. She didn't plan the robbery. She didn't
5 knowingly or intentionally participate in this robber. So
6 we know she didn't kill the woman. We know she didn't
7 strangle her. We know she didn't do anything that lead to
8 this woman's death. Regardless of the plastic bag on her
9 head, she died from the strangulation.

10 And so what we have to do is we have to look at the
11 robbery. We have to look at what kind of evidence the
12 State has presented to say that she is a robber. Because
13 that's what they have to do in order to prove that she's
14 guilty of murder. The type of evidence that they want to
15 use to say that she is a robber is that she planned the
16 robbery, or knowingly and intentionally participated in the
17 robbery.

18 The first thing we're going to do is talk about
19 planning. What type of evidence did you hear about the
20 planning of a robbery? Well, what do we know? We know
21 from everything that was presented that she didn't wear a
22 mask; that she didn't have any type of disguise; that she
23 didn't have anything on her fingers, or she would not have
24 had plastic bag fingerprints. She would not have had
25 fingerprints on the trash bags. We know that she did not

1 pre-plan a robbery, because we know she was wearing
2 lime-green tennis shoes, which was anybody -- if Dawn had
3 survived the robbery, and seen lime-green tennis shoes,
4 she, certainly, would have known that Kandy who is wearing
5 lime-green tennis shoes earlier, had been involved.

6 We know that she didn't plan a robbery because she,
7 specifically, said that the lady, Ms. Meyers, who is the
8 oriental woman, saw her there. She was the last person to
9 be with Dawn. Do y'all realize that she testified that he
10 called -- that Mr. Bob, the owner of this place, called her
11 the night that -- the very morning after this happened,
12 because she was one of the regulars who sat there every
13 night with this woman? She was so known to the people who
14 owned the place, the people who ran the place, and the
15 regular customers, so she was one of the very very first
16 people they called when they found out that this had
17 happened. A robber isn't going to set up a robbery, when
18 she is going to be the very first person they call. They
19 called her by seven, eight, nine o'clock in the morning.
20 And she was talking to Mr. Bob on the phone about what was
21 going on.

22 She did absolutely nothing. And the State has brought
23 absolutely no evidence to you to establish that she, in
24 fact, pre-planned this robbery. Nothing. She didn't do
25 anything consistent with the robber. B.J. did. We know

1 B.J.'s a robber. We know that he came in and had his mask,
2 and his dark clothes, and his gloves, his weapon. We know
3 that he came there with the intent to rob this woman,
4 because he was a robber. But we have absolutely no
5 evidence that the State brought that she, in fact, planned
6 a robbery.

7 Do we have any independent witnesses that said that
8 she went and got B.J. to plan this -- because she was going
9 to get him at the house? No. He was sleeping in the bed
10 with her sister, Cookie. At no time did Cookie come
11 forward and say, I know that B.J. got up out of the bed,
12 because Kandy came there and woke him up. There was no
13 point in time whatsoever when she came in and said to you,
14 Yes, he left the room. I know that Kandy was in there.

15 Never did that happen, because, see, it is totally
16 illogical that Kandy left that place. She was already
17 there -- left that place to go get B.J. It was totally and
18 completely inconsistent with reality. I mean, it's
19 delusional on his part to say that she left there and went
20 there. It's one thing to say, I went there and Kandy met
21 me there. That, you know, that could potentially make some
22 sense. But, certainly, to say that she came there and woke
23 him up, left the poker parlor and went back to get him --
24 there's no way. Because, see, ultimately, if she left that
25 poker parlor, she was going to be locked out. She would

1 have had to taken the keys with her to get back in or prop
2 the door open.

3 In the event that Dawn had heard a noise, if a regular
4 customer had come, or done anything that caused some kind
5 of reason for her to go to the front door, she's not going
6 to see the keys, the door is going to have been propped
7 open; she'll shut the door. See, Kandy said she was never
8 asleep. She was dozing. If you remember, there was one
9 point where she said she had been there on many occasions.
10 She had slept there a lot of times. And there were points
11 before when Dawn had, actually, been asleep where -- she
12 said, She was asleep, and I couldn't wake her up. And
13 there were points before where things like that had
14 occurred, but she said this night she wasn't asleep. She
15 was just dozing. And lots of other people could have come
16 there during the night. And the prosecution didn't bring
17 you any evidence whatsoever other than B.J. that she
18 planned this thing.

19 Now, what about her knowing and willing participation?
20 She described to you all of the reasons why she
21 participated in this. All of the reasons why she
22 acquiesced, or did what B.J. said. She never told you ever
23 -- she said that there was no plan. Even in under her
24 version, she said that he showed up with the mask on. He
25 showed up, you know, in the middle of the night. She's

1 waiting there to sleep, deciding that nobody's going to
2 come get her.

3 And he comes in the middle of the night, and he says
4 -- Mr. DuTremble's going to say, She opened the door for
5 him.

6 Yes. She knew him. She recognized him. She had
7 absolutely no idea that he was coming there to commit a
8 robbery. She had absolutely no beforehand information that
9 that's what he had that mask on for. She, actually,
10 testified that at other times he'd been there with that
11 mask, and that he had been playing with that mask since
12 Halloween. Never at any point did she say that she knew he
13 was coming there with that mask.

14 And when he walked in that room -- what do we know
15 about B.J.? What did he tell us about himself that night?
16 We know he was high. We know he does drugs, and had gotten
17 high that night. We know that he was mad. He described
18 himself as being violent when he's mad. We know that she
19 was standing between him and Ms. Dawn. That when she came
20 to the front door, and he came in -- she opened the door.
21 She admitted that she opened the door. She didn't know he
22 was a robber. She didn't see a wrench. He comes in the
23 door. Okay. Now, she's let him in. What's going to
24 happened next? She can't kick him back out. He's in the
25 place.

1 And so when he came in and showed her the wrench and
2 said to her what his plan was -- we know because she
3 described it, that he was high. He said he was high. She
4 described his eyes, bulgy, red, and white stuff coming out
5 of his mouth. And she is literally positioned in this
6 place, backing up, she said, in between him and his
7 intended robbery victim. We already know she didn't plan
8 it, but at this point she's got to make choices.

9 What is she going to do? She's got this crazy person,
10 who admits that he's supposed to be on psychotic
11 medications that he's not taking, who admits that since
12 he's been in jail, he's been taking a lot of it, but at
13 that time, he wasn't taking any; who she knows has beaten
14 up her sister with a bat; has tried to strangle her sister
15 before; somebody who she described as okay -- sometimes
16 he's okay. But let me tell you, that night he was out of
17 control. He was completely psychotic, and he comes in,
18 it's in the middle of the night, he's wearing this mask,
19 he's got all this stuff on to rob this woman, he's already
20 had a plan in his head to do it. And he comes in and she
21 is standing between him and his victim. And she's got to
22 make a choice.

23 And no, she didn't make the right choice. She didn't
24 make the right choice. And if we had had her make the
25 right choice, we wouldn't be here. If Kandy had run out

1 the front door at that minute and called 911, we wouldn't
2 be here, and we know that. She knows that. But instead of
3 doing that, as she's backing up -- afraid for her friend
4 and afraid for herself; afraid that he's going to hit her
5 with that wrench; afraid that he's going to go after her
6 friend; telling him, No, don't do that; No, don't do that
7 -- he comes at her.

8 And he comes at her, and he is trying to get to his
9 victim, and she didn't know what to do. And she told you
10 that she didn't know what to do. And she made the wrong
11 choice. And instead of leaving and instead of running, she
12 chose to do what he said. She didn't choose to participate
13 in a robbery, knowingly. She chose to do what he said.
14 And what he said was to get a plastic bag. He didn't say
15 at that point, Get the money. He said, Get a plastic bag.

16 And the solicitor is going to try to say that in her
17 getting this plastic bag, she had a plan ahead of time
18 about a plastic bag. That is totally illogical. There was
19 no plan ahead of time about a plastic bag. At that minute,
20 there was a plastic bag. And he said, Get it. And she
21 didn't know why he wanted it, but she was doing what he
22 said. And she got this plastic bag. And when she turned
23 around and saw what he was doing, he was choking that
24 woman. And at that point, he said to her, Put the bag over
25 her head. And she did it, because she was already there.

1 She hadn't run. She hadn't left. She was in the room.
2 And she was freaking out. She said to you that her state
3 of mind was that she was freaking out. She did not know
4 what to do.

5 And so what did she do? She goes over there, and she
6 said, I tried to pull him off of her. I tried, but I
7 couldn't get him off. And somewhere in the back of her
8 mind, maybe, she thought if she helped him, he would leave
9 her alone. And is that right? Or, maybe, she thought, if
10 I help him, he won't hurt me. Is that right? Does that
11 make her a robber? No. It doesn't make her a robber.
12 She's sitting there, and he says do this. And she goes
13 like this shaking, and the lady pulls the bag away.

14 This bag had nothing to do with that woman's death.
15 It had nothing to do with that woman's death. It did not
16 asphyxiate her. It did not choke her. He choked her with
17 the extension cord. And at the point when she was on the
18 floor, and he was choking her, Kandy was absolutely freaked
19 out. She didn't know what to do. And he is screaming
20 commands at her. He is screaming at her, telling her to
21 get the money. And she said, at that point, she realized,
22 Oh, my God, the key is in her pocket. And he said, Well,
23 get it. Get it. And so she did it. She did it. She told
24 you that she did it. But she did not knowingly, willfully,
25 planning, commit a robbery. She had no pre-planning. She

1 had no desire whatsoever to have that lady's money.

2 There were so many other times when Kandy Gilliard
3 could have stole money from Dawn. There were so many times
4 that she and the other people describe that she was up
5 there with her. There were so many times where she'd seen
6 the money. She knew there was money there. She told you,
7 she'd even worked in a place like this.

8 The solicitor is going to try to say that that gave
9 her knowledge and an opportunity. No, it didn't. She was
10 there all the time. She was one of the very first people
11 that they called to say what happened. She did not have
12 any desire to steal money from Dawn. She was a friend.
13 She did not betray her friend. She got sucked into
14 something that was a horrible situation that B.J. created.

15 And so what do we know? We know that the solicitor
16 gave you nothing to say that she's the only person that
17 would have had this opportunity. There were lots of people
18 that came there. And she had an opportunity on many other
19 occasions to do it. Do you know what else we know? We
20 know that she did not need B.J. to take money from this
21 place. Why? If she wants to steal the money from the
22 poker parlor, from her friend Dawn, why is she going to get
23 a completely psychotic nut? Why is she going to do that?

24 Why is she going to go -- now, the solicitor is going
25 to try to say she needed muscle, because this lady was a

1 big lady. And she was going to need him to help subdue
2 her. That is absolutely ludicrous. All she had to do was
3 wait until she went to sleep, take the key out of her
4 pocket, get the money out of her pocket, or figure out a
5 different way to get in that cabinet. There was no need
6 for B.J. whatsoever in any plan that she might have had on
7 her own to rob this place. She had no plan. She had no
8 desire whatsoever to commit this act. She only did what
9 she did because of B.J.

10 What else do we know in this case? What other
11 evidence other than B.J., do we actually have in this case?
12 Other than B.J. -- we know what he looked like. We know
13 how he comes off. He is scary. What other evidence do we
14 have? The solicitor is going to call her statement a
15 confession. And he's going to call that confession
16 evidence. And certainly, it is real. It does exist.
17 There is a bunch of paper with her names on it, and some
18 bad stuff on it. And he can call it a confession. I can
19 call it a statement. We can call it paper. We can do
20 anything we want, but it is something that exists.

21 And for three days, we have sat here and talked about
22 that statement; that opportunity she had to talk to the
23 police and what she said to them. We presented an expert
24 from California, and y'all listened to that. And I
25 apologize. I've never in my life done anything like that

1 before. And I'm sorry that it may have come off so long
2 and drawn on. I probably won't do it again that way, but
3 at the point that I was doing it, I had never done anything
4 like that. So I apologize if it was long. And it was
5 long.

6 But you know what? One thing that we know -- and,
7 certainly, you know that at this point, I'm going to
8 explain to you that I believe that she was coerced; that
9 she was under duress; that she was promised things. I
10 mean, certainly, y'all know that. I mean, you heard it for
11 three days. And so all of those things about her
12 statements are facts. And there are things that you're
13 going to consider when you look at them. And one of the
14 things that the Judge is going to do, the Judge is going to
15 instruct you that, yes, he's allowed this statement to come
16 into evidence. But you, as members of the jury, get to
17 decide the weight that you want to give that statement.

18 And one of the things that he's going to tell you is
19 that you have to decide whether the defendant made the
20 statement. You're going to have to decide if the
21 constitutional rights of the defendant -- we've talked
22 about them. Miranda. Everybody knows it. Whether the
23 constitutional rights of the defendant were actually given
24 to her, because she says the weren't. She says they
25 weren't until 7:40 in the morning, when she was taken into

1 custody at 11:30 at night. And she says that the solicitor
2 will say that somewhere along the way, she was given some
3 rights. We know Deckard stood up there and said that he
4 didn't give her any. We know that.

5 So sometime between 11:00 when four police cars came
6 and she was taken to the Detective Division -- sometime
7 between then and sometime around three o'clock in the
8 morning, Kandy didn't have any rights read to her then.
9 She didn't have any rights read to her until sometime, in
10 their opinion, around six o'clock in the morning. And she
11 says, never. She says she never had anybody tell her those
12 very important rights; that she had a right to remain
13 silent; that she had a right not to talk to them; that she
14 had a right to terminate the interview and go home; that
15 she had a right to an attorney; that she had a right to
16 consult an attorney. These constitutional rights that
17 every single one of us has, she was never told.

18 Now, at some point the solicitor is going to say,
19 Well, she was given them. Even if she was given them at
20 six o'clock in the morning. But, ladies and gentlemen, you
21 know from what the expert said and what Kandy said, that
22 was way into all the duress and coercion that was used.

23 Let me ask you one question. This is what you're
24 really going need to ask yourself. Kandy Gilliard is a
25 twenty-something-year-old girl with not a lot of education,

1 and, you know, not all that bright. Do you honestly
2 believe that she could have made up facts, techniques, ways
3 that they did things, things that this man spends his whole
4 life talking about, his whole life researching about and
5 being involved in? Do you honestly believe that this
6 twenty-something-year-old girl could come up with this
7 stuff on her own? No. There was a process that they put
8 her through. And she described it being different than the
9 other time she talked to them.

10 Kandy said that she didn't tell the police on the 5th
11 what happened, because she was afraid of B.J. Certainly,
12 we know that on the 9th, she's described it and everybody
13 else has described it as a very aggressive, hostile
14 environment. They believed that she had information. They
15 had found her fingerprint on a bag underneath this woman,
16 this dead woman. And they believed that she had
17 information. We can sit here all day long and pretend that
18 they were just asking her background information, and they
19 were just telling her, you know, it's no big deal. I want
20 to find out what you know. But that is not how it works in
21 the real world.

22 How it works in the real world, is when they find
23 evidence, fingerprints, things like that, or things that
24 are in close proximity to a body, the believe in their
25 minds that you might be involved. And, certainly, she

1 testified that Hagge said that she couldn't have done it.
2 She was too small. But you know what? In order for her
3 fingerprint to be on that bag, she had to have been so
4 close in proximity to it, that she had information. And
5 that's incriminating information. And everything he said
6 -- everything Deckard said was that he was trying to elicit
7 incriminating information from her.

8 What type of incriminating information? Okay. Maybe,
9 it was that she just gave false information. Maybe, it was
10 that she didn't tell the police afterwards. Maybe, it was
11 that she was an accessory or something like that, but that
12 is incriminating information. And he was trying to get
13 that incriminating stuff from her without giving her the
14 benefit of knowing that she had a right to remain silent,
15 without giving her the benefit of knowing she had a right
16 to an attorney. And her rights were violated, because they
17 didn't tell her that she had those rights. And when she
18 stood up there and said to Deckard, I want to go home, do I
19 need a lawyer? All he did was, No, we're not going home,
20 yet. We're still talking about this. You're not going to
21 leave until you tell me this. When she said she wanted a
22 lawyer, he said, You don't need one. A lawyer wouldn't
23 help you.

24 Do you know what? I respect Deckard. I appreciate
25 him. He, at least, was honest on the stand when he got up

1 there and said, Yes, it got very heated. Yes, she got very
2 upset. Yes, I could see that I was getting to her, and I
3 started squeezing even harder. And at the point where she
4 was, basically, falling apart some three hours after this
5 happened, is when he went and got Sargent Hagge.

6 And one thing that Mr. DuTremble is going to say to
7 you after the expert and everything else, because you've
8 heard it, was that guilty people cave in. Guilty people
9 say what you -- you know, give the facts, the true facts;
10 all of that stuff. It took three hours for them to
11 convince this woman that -- or, maybe, even three and a
12 half to four hours for them to convince this woman that she
13 needed them to tell them anything. That is a long time.

14 And one thing -- I want to take you back. That video
15 was three hours and forty minutes long. Now, what did we
16 do during that video? We started the video before lunch.
17 We took several breaks in between, and all of us were just
18 waiting for it to get over. And we know that. And it was
19 three hours and forty minutes long.

20 Imagine if for the entire time that that video was on,
21 from the time it started until the time it ended, some
22 police officer was in your face. Imagine if you were in a
23 closed room that you did not believe in any version of
24 reality that you had the right to leave, where there was a
25 bunch of police officers outside, where you had been taken

1 there in the custody -- you know, in a police car at 12:30,
2 1:00, whatever 11:30, 12:00 at night and it is now 6:00 or
3 7:00 in the morning, and you haven't slept since the night
4 before. Imagine for those three hours and forty minutes,
5 some police officer screamed at you, yelled at you, told
6 you you knew things; told you he wanted you to say things.

7 Imagine if that happened to you for three hours and a
8 half. Imagine what state you would be in. And I think
9 that Kandy did a good job of describing to us what state
10 she was in. She was totally -- her will was overborne.
11 Okay. That's a term of art, and we know that. But you
12 take that term of art as explained to you by this expert,
13 and you take it and you apply everything she said to you.
14 And you will find a person who was no longer in any type of
15 voluntary state. She was over it. She was tired. She
16 believed that these officers were squeezing on her.

17 And what happened? Hagge came in there. Now, what
18 did he do? He went after her kids. He took her to the
19 bathroom. He took her to his desk and showed her pictures
20 of his children. Here was this woman who has been
21 hysterically crying for probably an hour or so with
22 Detective Deckard in there, and he takes her in there and
23 he starts telling her about her children, and how B.J.
24 could or whoever did this could hurt your children. They
25 knew she had information about this. There is absolutely

1 no way they could say, Well, we weren't quite sure what
2 type of involvement she had. They knew she had
3 information, and they were going to squeeze it out of her.

4 And at the point where she said, When I started
5 thinking that my kids were out there, and that B.J. knew I
6 was there, and he could have hurt my children. It was at
7 that point that she said, okay, she'd talk to them. At
8 that point she said whatever -- and what did she say? She
9 said that she talked, they wrote, she talked, they wrote.
10 She was tired. It was 7:40 in the morning, the next day
11 when this statement was finally signed. The advisement of
12 rights form doesn't even have a signature -- I mean, a
13 time. We know that it was sometime around there. They're
14 trying to say that it was before that. She says it was at
15 the same time. Whatever it was, it was some seven, eight
16 hours after they had initially come to her house. Hours
17 and hours after they had been talking to her.

18 Another thing that you'll find when you go back in the
19 jury room is there's this other thing. This other -- some
20 questions. That was at eleven o'clock the next day. This
21 poor kid hadn't slept since the night before. I mean,
22 we're talking twenty-seven, twenty-eight hours later. She
23 had not had any sleep. She was so tired and so over it.
24 And what did she tell you as honestly as she could? I
25 wanted to get out of there. I was just going to sign

1 anything they gave me. And the solicitor's going to say,
2 Ah, yes. But what did she sign? She signed a statement
3 that said that she was a robber and she planned it, and all
4 of this stuff. And, yes, that is what it says. But I
5 think she did a really good job of describing to you why it
6 says what it says.

7 What she said on the stand about her involvement in
8 this, wasn't a planned robbery that she participated in
9 willfully. It wasn't. It isn't even consistent with
10 what's in the statement. It isn't even consistent with
11 what B.J. said. She said that this happened -- that when
12 she was there, he came, and he overpowered her is what
13 happened. He overpowered her. And she's there, and she's
14 a friend of this lady's. And, you know, she didn't know
15 what to do.

16 And somewhere a long the way she made some bad
17 choices. And those choices lead to some horrible results.
18 And we know that. And that's why she's here. But the
19 prosecution has not proved beyond a reasonable doubt, that
20 she knowingly and willfully participated in the robbery.
21 They haven't proved that she planned the robbery. They
22 haven't proved that she, you know, that she went to go get
23 B.J. to come back and do some robbery.

24 Yes. They have shown throughout this trial that B.J.
25 is a robber. They've shown that he came there with full

1 intent to rob this woman. But they never showed that she
2 had anything to do with it, that she knew he was coming
3 ahead of time. They never did, and they have to do that.
4 And when he gets there, and he's a robber and she knows
5 nothing about it, nothing about it, and in the process of
6 the whole heat of the moment, she makes some decisions
7 about the bodily harm to herself, the bodily harm to Dawn.
8 She makes decisions to acquiesce. And that's what it is.
9 And if you don't know what it means, it means to give in.
10 She makes decisions to give in and to do things that she
11 shouldn't have done, because she was afraid and she was
12 concerned about her friend and herself and couldn't believe
13 what was happening. And somewhere along the way, the
14 solicitor's going to say that that means she helped him.

15 But ladies and gentlemen, the Judge is going to tell
16 you that there is a defense of duress. And it has
17 something to do with, you know, when you believe that you
18 were a subject to harm and serious harm. And, yes, you're
19 supposed to leave if you have a chance, and things like
20 that. But she didn't believe she had a chance to leave.
21 She believed when she came in with the trash bag, and
22 walked in and saw him on that lady, she was jumping on him.
23 And at that point is when she was making decisions, Oh,
24 well, I'll get it for him and get out of here. She didn't
25 mean to rob this person. She didn't intentionally rob this

1 person. And the State hasn't shown you beyond a reasonable
2 doubt that she did.

3 Reasonable doubt. Reasonable doubt, the doubt which
4 would cause reasonable people to hesitate to act. You're
5 here because there's a dispute in this case. And when Mr.
6 DuTremble stands up and tells you, I'm going to show you
7 all the reasons that Kandy's a robber, I want you to
8 remember that there's all the reasons why Kandy isn't a
9 robber. All the reasons that he's going to say.
10 Opportunity. Things of that nature. Those are all reasons
11 why she wouldn't have been a robber that night, too. And
12 those are all reasons why she didn't need B.J. to be a
13 robber. And once you involve that completely out of
14 control, psychotic person, then you have to go to Kandy's
15 version, which is that she didn't plan it with him; that he
16 came in; and that in the process, she got sucked up in it,
17 and did not willfully and intentionally hurt Ms. Russ that
18 night.

19 And I think that after you hear all of this evidence,
20 and you take this back with you, you reasonable people are
21 going to hesitate to act. You reasonable people are going
22 to hesitate to convict. And I want you to know something.
23 This is a very very serious moment. She's charged with
24 murder. This isn't possession of a stolen motor vehicle or
25 something like that. These are the most serious charges

1 that they have. And the burden that the State has to meet,
2 don't take that lightly. Don't take that lightly.
3 Everything in our system in justice has to do with
4 skepticism. Review. Everything in our system of justice
5 -- if we just said, We charged you, and you're guilty, we
6 wouldn't be in this country. And so as you sit back there,
7 I want you all to realize that they have to prove every
8 element beyond a reasonable doubt. And I don't believe
9 they have in this case. And I don't believe you'll find
10 they have, either.

11 THE COURT: Thank you, Mrs. Gay.

12 Mr. DuTremble, closing arguments, sir.

13 MR. DUTREMBLE: Thank you, Your Honor. May it please
14 the Court. Madam Forelady and ladies and gentlemen of the
15 jury, we are at the stage of the trial that the Judge told
16 you when the lawyers get to tell you what they think the
17 evidence in the case has shown. And shortly, it will be
18 your opportunity to tell us how you view the evidence, and
19 what you think the evidence has shown. And y'all act as
20 the finders of the facts. Y'all are the jury.

21 Winston Churchill once said that jury duty is the
22 greatest form of service that a citizen can perform for his
23 country in peacetime. And it's not an easy thing to do.
24 Jury service is tough. You have to make tough decisions.
25 You have to make tough choices. It's not easy, but it's

1 not supposed to be easy. Because if it was easy, just
2 anybody could do it. And not just anybody is sitting on
3 this jury. Y'all were selected to hear this case. Y'all
4 were selected to determine the truth of the matter. Y'all
5 were selected to be the conscience of the community. And
6 you do that by determining where the truth of the matter
7 lies. Y'all have been attentive and you have done your
8 duties for the past four days. I have every reason to
9 believe that you will continue to do your duties as you
10 deliberate and reach a verdict in this case.

11 Now, before I can mention anything to you about the
12 facts and the law, I want you to understand that you are
13 the judges of the facts. If I say anything about the facts
14 that appears to be different from the way you heard it, you
15 take it as you heard it, because you judge the facts. If I
16 say anything about the law that appears to be different
17 than what Judge Lockemy charges you at the end of the
18 trial, you take it as the Judge charged it to you; because
19 I'm human and I make mistakes. But if I make a mistake, I
20 assure you, it's a mistake of the head, not of the heart,
21 because I am not here to mislead you in any way.

22 What I want to talk to you about briefly is the law.
23 What this lady is charged with is the crime of murder.
24 Murder is, simply, by definition, the willful, felonious
25 killing of a human being by a human being with malice

1 aforethought. That malice being either express or implied.
2 The reason we are here, ladies and gentlemen, is because
3 Dawn Russ has been murdered.

4 We are here and she is here, because in this State in
5 South Carolina, the law says that the hand of one is the
6 hand of all. And what that means is that if a crime is
7 committed such as robbery, by two or more persons who are
8 acting together in the commission of that robbery, the act
9 of one is the act of all. If two or more people are
10 together, acting together, assisting each other in the
11 commission of an offense, the law says that under these
12 circumstances, the act of one is the act of all, or the
13 hand of one is the hand of all. And what that means,
14 simply, ladies and gentlemen, is that when B.J. put his
15 hand on this cord, Kandy Gilliard, also, put her hand on
16 this cord. And when Kandy Gilliard put her hand on the
17 bag, B.J. Johnson put his hand on the bag. Because they
18 were in it together.

19 Now, there are other charges of the law that we need
20 to talk about briefly. I'm going to do this briefly,
21 because the Judge is going to charge you more fully.
22 Malice is a term of art that the Judge is going to talk to
23 you about. It indicates a form, purpose, and design to do
24 a wrongful act, such as robbery, under circumstances that
25 exclude any legal right to do it. They had no right to

1 take that lady's money. It's a term of art that imparts
2 wickedness, excludes just cause or excuse. It springs from
3 wickedness and depravity from a depraved spirit, a spirit
4 bent on mischief at the time. And from not then having a
5 regard for the social obligation or the obligation which
6 rests upon mankind. And the Judge will charge you more
7 fully on malice, but that is what the law defines it as.

8 And malice must be aforethought. That means it must
9 be in your mind for some period of time. It must have been
10 conceived in the mind of the defendant prior to the fact,
11 producing the fatal result. But the law does not require
12 that malice must exist for any appreciable length of time
13 before the commission of the act. Which means you don't
14 have to plan a month, a week, or a day in advance. As long
15 as you plan in your mind to go in and do the act, and then
16 you do it, that is malice aforethought. Because it doesn't
17 have to be in your mind for any specific length of time.

18 And what the plan was was doing robbery. The
19 felonious taking away of the goods of another, against the
20 owners will, and without his consent; by force,
21 intimidation, or violence. What is larceny? Stealing by
22 force. And that's what this robbery is. That's all I'm
23 going to talk to you about the law, because the Judge has
24 got a full charge, and he is going to give you the complete
25 charge on the law. And that's, basically, what we're

1 talking about here. Murder, robbery, malice, hand of one,
2 hand of all.

3 This case is about a murder that took place on January
4 5th of the year 2000, under the cover of darkness of the
5 early morning hours. In the dead of night they came
6 wearing dark clothing, wearing a mask to rob a lady who had
7 done nothing to them, who was asleep in the chair. She was
8 completely defenseless, could not defend herself. And they
9 came under the cover of darkness, because they wanted the
10 darkness to cover their foul deeds. They wanted it to be a
11 secret, but it did not remain a secret, ladies and
12 gentlemen, because as Shakespear has said, The truth will
13 come to light and murder will be found out.

14 And it was found out. And truth came to light. And
15 it only took four days, because the police department did a
16 very good job finding out who had killed this poor and
17 defenseless woman. What does the evidence show? On the
18 night in question of the early morning hours of the 5th,
19 The Game Room at [REDACTED] was robbed. You see
20 the area where the games are played. You see the area
21 where Dawn Russ was killed. That is the cashier's room.
22 That is where Dawn stayed. That is where only friends and
23 special customers were allowed to come, because she had a
24 monitor there where she could see who was at the door. She
25 had the ability to let in those people whom she trusted,

1 those people who would not harm her. And she had to be
2 careful, because in that drawer right there, they kept the
3 money to run the business. The money that belonged to the
4 business. The money that did not belong to Kandy Gilliard
5 or to B.J. Johnson.

6 And they came. And we know they were there. We know
7 Kandy was there, and we know she was one of the last people
8 to see her alive, because we found the pill bottle that
9 bears her name, that she brought to her friend, because her
10 friend needed antibiotics. And she was allowed to come
11 into the building by her friend, supposedly bearing gifts
12 for her. And what could be more ironic. You heard Bob
13 Rhodus, the manager, indicate that he had provided panic
14 buttons for his employees, and had gone out and bought the
15 chains for them to put around their neck so they would have
16 them with in case somebody came into rob. And what is more
17 ironic than the very panic button that was supposed to
18 prevent the robbery, sits next to the pill bottle of the
19 woman who was supposed to be a friend? A woman for whom a
20 panic button would never be needed. A panic button that
21 she never had the opportunity to press, because they
22 attacked her in the dark from behind while she slept. She
23 never even knew they were there. They came in in the dark,
24 wearing a mask, wearing dark clothes, pretending to be
25 friends. And they went into this room. And B.J. went to

1 this button, and he removed the cord. And the cord was so
2 long that he doubled it up. And Kandy Gilliard went down
3 the hall to the break room to this roll of bags. And she
4 went there for one purpose and one purpose only. And it
5 comes out loud and clear what that purpose was from her own
6 lips. I ran to the back and got a trash bag off a roll of
7 bags by the microwave. I ran back to the office with the
8 bag to cover her face, so she wouldn't see us. B.J. went
9 back to the office, put the cord around her neck. She
10 looked like she was turning around to see us, so I took the
11 bag and I put it around her head -- I didn't put it over
12 her head -- so she couldn't see us. I put it around her
13 head. And I dug in her pockets, and I took her money, and
14 I took her keys.

15 The bag, ladies and gentlemen, is an integral part of
16 this offense. Because B.J. came wearing a disguise so he
17 couldn't be recognized. But Kandy didn't want her friend
18 to know that she was robbing her. She didn't want her
19 friend to see who she was. So she took a bag just like
20 this, which is right here in this bag. And she put it over
21 her face. How do we know that she put it over her face?
22 Because, again, it rings out loud and clear from her own
23 lips in her own statement. I took the bag, put it around
24 her face. The actions of the friend who didn't even know
25 the killer was coming.

1 We went into the cash drawer. The cash drawer that
2 Kandy Gilliard knew contained the money that belonged to
3 The Game Room. And the only way she could get into that
4 cash drawer was to go into Dawn Russ' pockets as Dawn Russ
5 was being strangled. In her own statement tells you that
6 as she was being strangled, the bag was placed over her
7 face. Kandy Gilliard was reaching in her pockets, in Dawn
8 Russ' pockets, taking not only the money out of Dawn Russ'
9 pocket, but also the keys. And the keys are right there
10 where she dropped them on the couch, after she took \$1200
11 out of the cash drawer. And then she ran out the front
12 door into the night. The keys to the front door are right
13 there in the lock. The keys to the door that Kandy
14 Gilliard turned to let B.J. Johnson, her accomplice, into
15 the business to accomplish their deeds.

16 The defendant, Kandy Gilliard, exhibited a total
17 disregard for the most basic right that an innocent victim
18 has. And that is the right to life. Dawn Russ is gone.
19 Her life has been stolen away from her. And for what? For
20 a lousy \$1200. Twelve hundred dollars. The woman is no
21 longer with us. She never even had the chance to say good
22 bye. She had no idea the robbers and the killers were
23 there. She had no idea they were coming.

24 Although, they had talked about it and made plans
25 about it prior, she never warned her friend that she was

1 talking with B.J. about pulling a robbery. And as a
2 result, Dawn Russ has been deprived of her life for money.
3 The medical examiner told you, ladies and gentlemen, that
4 this poor woman probably died within thirty seconds.
5 Thirty seconds is not a long period of time. There is a
6 clock on wall, but y'all can't see it. But let me show you
7 what a short period of time thirty seconds is. Because by
8 the time they walked into that room with the mask, the bag,
9 and this, she had thirty seconds left to live.

10 From right now when they walk in it's put around her
11 neck. The cord is around her neck. The bag is over her
12 face. She has twenty seconds left to live. As B.J.
13 tightens the noose, as Kandy Gilliard goes into her
14 pockets, she now has ten seconds to live. As Kandy
15 Gilliard goes and takes the money, and B.J. is on top of
16 her, she now has two seconds to live. She is now dead.
17 Like that, thirty seconds is all she had to live. Once her
18 friend and her accomplice came into that business and
19 grabbed these instruments of death, thirty seconds.

20 What is her defense? It's the defense we hear all the
21 time. We call it SODDI, S-O-D-D-I. Do you know what that
22 stands for? Some Other Dude Done It. B.J. made me do it.
23 And the cops coerced me into giving an untrue confession.
24 Ask yourself a couple of questions. Number one, if she was
25 afraid of B.J., why would she open the door at 2:00 a.m.

1 for some guy dressed all in black, wearing a mask, with
2 gloves on his hands with a pair of vice grips or grip
3 pliers as he described them to be? Most regular customers
4 don't show up at two o'clock in the morning dressed like
5 that.

6 She let him in. She picked B.J. She wants to tell
7 you that she's afraid of him; that he's a madman; that he's
8 a crazy man; but she picked him, because that's the type
9 of guy she needed. As you can see, poor Dawn Russ weighs
10 about three hundred pounds, I think the testimony was. So
11 she needed some help. You know, you just can't go into
12 somebody's pockets and rummage around and take keys out
13 without waking them up. So you kind of got to have a plan.
14 And the plan was, as B.J. testified, that as they ran up to
15 the place they were talking about choking her out. See,
16 that was the plan. She couldn't do it by herself, because
17 she wasn't big enough. She had to have somebody, and so
18 she chose a man who is mentally retarded, who clearly has
19 violent tendencies, and is the kind of guy that would agree
20 to do something like this.

21 You will notice she didn't ask the father of her
22 children to come along and help her do this. And she
23 didn't ask her boyfriend to come along and do this. And
24 she didn't ask her mother. She didn't ask her sister. And
25 she didn't ask B.J.'s brother, who is not mentally

1 retarded. She asked the mentally retarded guy, who has
2 problems, to come along, because he's the kind of guy that
3 she could convince to do an act like this.

4 When B.J. started talking about robbing this place,
5 all she had to do was say, No. We hear it all the time on
6 t.v., Just say, No. We tell our children all the time,
7 Just say, No. But she didn't do that. And what did she do
8 when B.J. said, Are we going to do this deal tonight? I
9 don't care. Let's do it if you want to. In her own words,
10 I shrugged my shoulders. If she's so afraid of this guy,
11 not only why does she let him in, but why does she spend
12 the next four days with him? Why does she ride in taxi
13 cabs with him? Why does she go to the bus station with
14 him? Why does she go to McDonald's to eat with him? Why
15 does she go to grandma's house in Goose Creek with him if
16 she's so afraid of this guy? Because, ladies and
17 gentlemen, this fear factor is made up for you, today.

18 She's had sixteen months to work on a story that
19 nobody's ever heard before to try to convince you that all
20 the bad things contained in this statement were made up by
21 the police. And we're going to talk about why that is
22 absolutely possible. She chose B.J. I didn't choose B.J.
23 She chose him. And when he killed that woman, he pled
24 guilty to it. And when he robbed that woman, he pled
25 guilty to it. He will be punished. And poor ole Brian,

1 poor ole Brian Johnson, who had nothing to do with this,
2 who had nothing to do with the robbery, is convinced by
3 this woman to give the police the false alibi for her. She
4 was on the phone with me during the time period that this
5 lady was killed. And she convinces him, along with B.J.,
6 to put the money in a plastic bag, and go out and hide it
7 in the yard so the cops won't find it.

8 And poor ole dumb Brian, for whatever reason --
9 probably, trying to cover for his retarded brother --
10 agrees to do it. And because of that, he's been arrested,
11 he's in jail, and he's going to stay in jail for some
12 period of time, because he's going to be sentenced. And
13 she is the reason that poor ole Brian is in trouble. If
14 she was coerced by the police, ladies and gentlemen, ask
15 yourselves this question: Why does her confession match up
16 almost item per item with B.J.'s testimony from the stand?
17 And you have to understand, you have to realize Professor
18 Leo told you that she was the first one to be interviewed.
19 B.J. wasn't interviewed ---

20 MRS. GAY: Your Honor, could we ---

21 MR. DUTREMBLE: --- for about eight hours.

22 MRS. GAY: Nothing.

23 THE COURT: Good.

24 MR. DUTREMBLE: Let's look at her statement. Her
25 statement says that she knew the victim as Dawn at The Game

1 Room. B.J. got on the stand and told you that the lady
2 that they robbed worked at The Game Room. Well, how in the
3 world would Deckard know to write that in the statement if
4 it wasn't true? Because he had not talked to B.J., yet.
5 He knew it because she told him that. And he wrote it in
6 her statement. She told Deckard she took the medicine to
7 the victim. B.J. told you, I saw the medicine bottle on
8 the desk, while the lady was being strangled. We know
9 that's true, because it's right here with Kandy's name on
10 it. She says, B.J. came to The Game Room. B.J. says, I
11 went to The Game Room with Kandy after she woke me up. It
12 doesn't matter how he got there, whether she woke him up or
13 whether he came up there.

14 But I submit to you, ladies and gentlemen, if you look
15 back at the statement of the 5th, not the 9th. Here's what
16 she says on the 5th. Now, she's talking to the police,
17 she's not anything more than a witness. They're just
18 trying to find out what happened. And she comes up and
19 tells the police -- she doesn't say, I was coerced. And
20 she doesn't say, They were mean to me. And she doesn't say
21 that I needed Miranda warnings on the 5th. And on the 5th,
22 this is what she says: I rode B.J.'s bike to The Game
23 Room, because he and my sister, Demetrice Gilliard, were
24 sleeping.

25 And that's what B.J. said. I went to The Game Room

1 with Kandy, because she woke me up, and I was sleeping with
2 Cookie, that's Demetrice. I was sleeping with Cookie when
3 she woke me up. And on the 5th, this defendant out of her
4 own mouth says, I rode to The Game Room on the bike,
5 because B.J. was sleeping with my sister. And so it's a
6 factual matter for y'all to determine. Did she come and
7 wake him up and bring him back up there, or did he come up
8 on his own? It doesn't make a bit of difference. But I
9 submit to you her statement of the 5th indicates that what
10 B.J. says has a ring of credibility to it, because out of
11 her own mouth she says, He was asleep with my sister in the
12 house.

13 She tells the police, B.J. had a mask. B.J. tells you
14 I had a gorilla mask. How would Corporal Deckard know that
15 there was a gorilla mask? It wasn't found at the scene of
16 the crime. The stipulation is that this mask was later
17 found by Ms. Emily Gilliard, her mother, in Cookie's
18 closet. And she turned it over. And that's how we have it
19 here. It was never found at the scene of the crime. How
20 would Deckard know to put a fact like this into the
21 statement if this lady, right here, didn't tell him about
22 it? He couldn't have known. The same thing with the bike.
23 I rode the bike to The Game Room. There was no bike found.
24 How would Deckard know to put that in her statement if, as
25 she says, he made all these facts up, and they're not true?

1 Only the killer would know.

2 Only the killer would know about the mask. Only the
3 killer would know about a bicycle. Because none of those
4 things were found at the scene of the crime. She says in
5 her statement, We talked about the robbery before. B.J.
6 tells you from the stand, We talked about the robbery
7 before. Remember he told you -- okay. That they first
8 started discussing it sometime after Hurricane Floyd. That
9 they discussed it two or three times after that. And I
10 asked him, when you were running from West Boland, her
11 house, up to The Game Room, what were y'all talking about?
12 And he said, We were talking about how to choke the lady
13 out. That was the plan.

14 The plan was to choke the lady out. And that's
15 exactly what they did. He didn't use his grip pliers,
16 because that wasn't the plan. He brought grip pliers, but
17 he decided not to use them. They were going to choke the
18 lady out. She says that's the plan. He says that's the
19 plan. And that was the plan, because that's exactly what
20 happened.

21 She says in her statement, I got a plastic bag from
22 the roll of bags. And he said, Kandy got the black trash
23 bag. We know that's true. We know Deckard didn't make
24 that up, because they took the fingerprint off this bag.
25 And they matched it with the fingerprint on this bag. They

1 took her inked fingerprints, and low and behold, they're
2 the same. And you have the fingerprints, right here.
3 These are Kandy Gilliard's prints found on the roll of bags
4 which she had torn off, found on the bag that she put over
5 the lady's face.

6 So there is no question but that B.J. is telling the
7 truth. There is no question that what she told Deckard was
8 the truth, because the physical evidence proves it, beyond
9 any reasonable doubt. She says in her statement that B.J.
10 got a cord from the trash can. B.J. says, I got a cord
11 from the bucket. The photograph of the bucket is in
12 evidence. And Bob Rhodus told you that that was where the
13 cords were kept, in the storage room. And we have the
14 cord. So we know that B.J. is not lying to you about that.
15 And we know that Kandy Gilliard is not lying to you about
16 that. It's corroborated by the evidence.

17 She says in her statement, He put the cord over her
18 neck, and I put the bag over her face. B.J. tells you the
19 exact same thing. I doubled up the cord, because it was
20 too long. I put it around her neck, and Kandy put the
21 plastic bag over her face. How would Deckard know how the
22 crime was committed, unless the killer told him how. That
23 killer told him how, because she was the first one to tell
24 him. Oh, he made that up. The second killer told him
25 eight hours later, when that killer was interviewed. And

1 the physical evidence from the medical examiner
2 corroborates both statements. That's exactly how the lady
3 died.

4 She says -- Kandy says the victim fell to the floor.
5 B.J. told you the victim to the floor. And I had him show
6 you when I got down on the floor, how she fell to the
7 floor, and how he continued to strangle her. Kandy says in
8 her statement, I went through her pockets; I took the keys;
9 I opened the money drawer. B.J. told you from the stand,
10 Kandy opened the drawer and took the money. And we know
11 that's true, because we have the money drawer, and we have
12 the testimony from poor ole Brian, who they gave the money
13 to to hide. Poor ole Brian had nothing to do with this
14 terrible crime, but some how got talked into hiding the
15 money that they took from that cash drawer right there and
16 from Dawn Russ' body. So we've corroborated that
17 particular statement as well.

18 Kandy said, I took the bike and I left The Game Room.
19 And B.J. told you that she took the bike, and had to walk
20 it back, because it had a flat tire. How would Deckard
21 know that there was a bike involved in this case? There
22 was no bike found at the crime scene. He would only know
23 if the killer told him. He would only know if the killers
24 told him. She told him. He told him. That's a fact that
25 he couldn't make up, unless he was told. And that's what

1 Professor Leo was talking about. You got to look for the
2 corroboration. You got to look to see whether or not these
3 people know what they're talking about. And we're going to
4 talk about Mr. Leo in a minute.

5 She said, We went back to the house to my bedroom, and
6 we split up the money. And B.J. said the same thing. I
7 split the money with Kandy. Now, she says, I only got two
8 hundred bucks. He said, I only got five hundred bucks out
9 of the twelve hundred. It doesn't make any difference how
10 they divided it. It makes no difference at all. If they
11 divided it fifty-fifty, that's fine. If it was two hundred
12 one way, a thousand the other way, that's fine. It makes
13 no difference at all. That money was divided up. That
14 money had blood on it. That money did not belong to that
15 lady, and it did not belong to B.J., either. They stole
16 that money. They robbed that money. It was larceny by
17 force.

18 These confessions fit, ladies and gentlemen, because
19 they contain facts that only the people who were involved
20 in the crimes would know. They fit because both people who
21 were there, tell you exactly the same thing. Now, there
22 may be one or two items that they don't exactly agree upon,
23 but the major points of these confessions fit together,
24 hand in glove. And if you believe that the police made up
25 all the facts found in this confession, you have to ask

1 yourselves: How could the police be so smart to put in
2 facts in this confession that they didn't know about at
3 seven o'clock in the morning, which could not and were not
4 corroborated until five o'clock in the afternoon when they
5 finally got B.J. in there and he confessed? Impossible.
6 They couldn't have done it. They could not have done it.

7 I want to talk to you a little bit about Richard Leo.
8 Now, Richard Leo is her expert. We've heard almost four
9 hours from Richard Leo. Now, he is not the kind of expert
10 that deals in what we call the hard sciences. Hard
11 sciences are things like anatomy, physics, things like
12 that. Hard sciences come from people like the medical
13 examiner, who is a medical doctor. He was an expert. It
14 took him about twenty minutes to tell you what happened
15 that day and what the cause of death was. Hard science is
16 things like fingerprint examination where no two people can
17 have the same fingerprints. It took him about fifteen
18 minutes to tell you Kandy Gilliard was the only person that
19 could have made those prints on the bag.

20 Her expert is an expert in the soft sciences. He's
21 not a doer, he's a reader. He reads what other people do,
22 and then he makes an opinion. He's into soft sciences. So
23 I found a quotation that applies to Richard Leo. He's the
24 kind of expert who knows more and more about less and less.
25 And it took him almost four hours to tell you almost

1 virtually nothing. Because what we found out at the end of
2 almost four hours was that everything he had to say was
3 one-sided. It only came from what this woman told him. He
4 never went and looked at the totality of the case which he
5 has testified before is required of him before he can give
6 an opinion. And when he gave the opinion, the best he
7 could tell you was, Well, if what she says is true, then it
8 might have done this, or it could have done this. For a
9 guy who's charging two hundred and fifty bucks an hour,
10 ladies and gentlemen, I think, we need a little more
11 substantial opinion than what we got from Richard Leo.
12 Almost four hours.

13 Mark Twain really had a pretty good saying about
14 people like Richard Leo. Some people don't have much to
15 say, but you have to listen a long time to find it out.
16 Well, he's probably not a bad fellow, although, he lives in
17 California. And he's probably a real smart fellow. But
18 let's look at what he did have to say. We don't know how
19 many people falsely confess. We don't know if it's one in
20 a hundred, one in a thousand, or one in a million. And
21 he's an expert. He can't tell you.

22 You can never take a defendant's word that her
23 confession is false. You have to look at the totality of
24 the case. And he had to admit, he did not do that. He
25 never talked to the police; never attempted to talk to the

1 police. He never attempted to call me. He never asked for
2 any information from the police side. He only looked at
3 what this young lady told him. And well after the fact, he
4 had to sit around and determine what was going to help her
5 out, because that statement sure doesn't help her out.
6 Even taking the defendant's word -- if we say that
7 everything she says is true, the best he can say is that if
8 there was coercion, it could have overborne her will, or it
9 might cause an inaccurate statement. He cannot say it did,
10 and he would not say it did.

11 He didn't want to talk about reliability of the
12 statement. But when he was forced to, he admitted that the
13 mask, the plastic bag, the cause of death from
14 asphyxiation, the prescription pill bottle, the amount of
15 money taken in the robbery, were all factors that suggested
16 only the killer would know. And these are factors
17 indicating reliability of her statement. And what he said
18 on the tape -- and the good thing about it, this tape,
19 ladies and gentlemen, which is sitting over here, is that
20 fortunately, as the Judge told you, the court reporter
21 didn't have to take down everything Mr. Leo said, because
22 we had a transcript that came along with this tape. And so
23 we can check the accuracy of what he had to say.

24 And what he had to say, when I was talking to him
25 about liability, is in quotations right there. I asked him

1 about the bag. This very bag, right here. And he said,
2 That is consistent with being present at the crime scene
3 and handling the bag. And if that bag was involved in the
4 murder, that would be consistent with being involved in the
5 murder. This bag was involved. This roll of bags was
6 involved. And from the lips of her own expert, was
7 consistent with being at the crime scene, was consistent
8 with handling it, and it was involved in the murder, it's
9 consistent with being involved in murder, from Richard
10 Leo's own lips.

11 He said, Guilty people are more likely to confess than
12 innocent people. He admitted he found no evidence that the
13 crime did not occur. He found no evidence that any
14 scientific evidence exonerated Kandy Gilliard, which means
15 that proves she didn't do it. And he, also, said he found
16 no evidence that there were any factors of reliability that
17 he would look for as an expert to indicate that she was
18 physically unable to commit the crime, or that somebody
19 else would come forward and claim sole responsibility.

20 Those were the four ways he told you, ladies and
21 gentlemen, that you could prove that the confession was
22 absolutely false. And he found none of those factors in
23 Kandy Gilliard's statement. None. And so what he told you
24 in his four hours of testimony, that there were factors
25 that only the killer would know. And her statement was

1 reliable. He could not tell you that her statement was
2 false. And that's from her expert, ladies and gentlemen.
3 Her expert. I didn't hire him. I didn't bring him here.
4 She brought him here. And that's what he tells us.

5 You have to determine, ladies and gentlemen, whether
6 her statement was given freely and voluntarily. But we
7 know that before they brought her in, they brought her in
8 on the 5th. And they treated her nice. They gave her a
9 ride. She testified that she liked Perry. He didn't do
10 anything bad to her. They just talked to her about general
11 background information, and they let her go. On th 9th,
12 they don't find her until -- mom says, nine o'clock. She
13 says eleven o'clock, but the police officer who transported
14 her knows that at eleven o'clock he was out in Goose Creek
15 at Brian's house looking for her and couldn't find her. At
16 2:30 in the morning, he found her. And he gave her a ride.
17 They asked her, Will you come down and talk with us? You
18 might have information that could be helpful. She agreed
19 to do it. They let her lock up her car, and they gave her
20 a ride down there. Not in handcuffs, not in belly chains.
21 They didn't even bother to search her for weapons. They
22 gave her a ride to the police department.

23 And Officer Heis told you, I left there about 2:30.
24 It took me about ten minutes to get to the station. She's
25 there about quarter of three in the morning. They don't

1 put her in a cell. They put her at a table in a chair, and
2 they asked her, Do you want a soda, something to drink?
3 No, I don't. And they wait for Sargent Deckard. And by
4 her own testimony that you heard today, Sargent Deckard was
5 not mean to her. He asked her general background
6 questions. He never accused her of committing any crime.
7 And when she said, Can I go home? He said, Sure, anytime.
8 But we really would like to know what happened to your
9 friend Dawn. And so she agreed to stay and answer more
10 questions. She never tried to get up an leave, never asked
11 to leave, never went to the door and opened it. She
12 answered his questions.

13 But the fact of the matter is, ladies and gentlemen,
14 even if you believe that Detective Deckard was somehow mean
15 to her, or yelled at her, the fact of the matter is she
16 never confessed to him. She never one incriminating
17 statement to him. So when she asked for a supervisor, and
18 he gets up and leaves, he leaves her alone in there. And
19 she's free to go if she wants to. There's nobody guarding
20 her. And he gets his supervisor, Detective Hagge, who
21 comes in. He has no idea what they have been talking
22 about. He hasn't asked her any questions. And she wants
23 to know whether or not he can give her a deal. He tells
24 her that he cannot give her a deal. And he wants to know
25 -- she wants to know what possible penalties she's looking

1 at. He can't tell her that, either. And she wants to
2 know. If I tell you the truth, can I go home? And he
3 said, If the truth implicates you in the crime, you cannot
4 go home. And she said, Well, I want to tell you what
5 happened.

6 At that point in time, being a cautious police
7 officer, he said, Whoa. Wait a minute. Let me give you
8 your rights, because I don't know what you're about to tell
9 me. And he gives her the Miranda warnings. And he says,
10 Do you understand these warnings? And she says, Yes. I
11 want to tell you what happened. And she tells him what
12 happened. And after she tells him what happened, he said,
13 I'm going to go get Sargent Deckard, because he knows more
14 about this case than I do. And they go and they get
15 Sargent Deckard.

16 Sargent Deckard comes in with a written Miranda
17 warning, which she initials, she signs, and admits they
18 were read to her. But the thing is, ladies and gentlemen,
19 she doesn't she doesn't confess to anybody. Nobody
20 overbears her will. Nobody threatens her. Nobody locks
21 her up. And she doesn't say anything to anybody that
22 incriminates her until after she's read her Miranda
23 warnings. And then she gives a statement.

24 All the evidence in this case, ladies and gentlemen,
25 points right to her. The fingerprints are on the bag,

1 B.J.'s confession, her own confession which interlocks with
2 B.J.'s, the prescription bottle at the scene, Brian's
3 statement, his testimony, and the stolen money. Brian came
4 in here -- he sure didn't want to be here. He felt like a
5 big dummy. He sat up here, and he didn't want to tell you
6 what Kandy Gilliard said to him out there in Goose Creek.
7 You saw him on the stand. He just didn't want to say it.
8 I had to make him look at his statement, again, before he
9 would say it, which he told it. Basically, after I leaned
10 on him a little bit, he said, Well, she told me they had
11 done some dirt at Gas Lite Square.

12 Now, he lives in Goose Creek. Gas Lite Square is
13 where the crime occurred. How would he know the dirt was
14 done in Gas Lite Square, unless she told him? And I said,
15 What did she tell you after the Gas Lite Square? Well,
16 they killed a woman. Is that what you said, Brian, when I
17 asked you? No. What did you say when the police asked you
18 what she told you? He said, We killed a bitch. And this
19 was supposed to be her friend. Dawn Russ was her friend.
20 She watched t.v. with her. She played poker games with
21 her. But now all of a sudden the day after the murder,
22 she's suddenly a bitch. And he didn't want to tell you all
23 that. I had to drag it out of him, but that's what he told
24 the police on January the 9th. And that's what the truth
25 of the matter was. And he told you about it from the

1 stand.

2 This statement, ladies and gentlemen, could not have
3 been manufactured by the police, because it contains
4 information that only the killer would know. This
5 statement tells you that they planned it. This statement
6 tells you that they did it together. And after doing it
7 together, they split the proceeds of the crime, and they
8 ran away. You know, she was in the accompany of the police
9 on the 5th. We never heard the story that she told you,
10 today. She had every ample opportunity to tell the police
11 what had happened on the 5th, because Detective Perry, her
12 friend, was trying to help her. He, also, went out to her
13 house to see if she would look at a photo line-up, and she
14 talked to him on the phone, and she still didn't tell him
15 what had happened. And she didn't tell the police this
16 story she told today on the 9th.

17 She's had sixteen months to think up a story to tell
18 you. What happened on the 5th is contained in her
19 confession. And we know it's true. And we know it's what
20 happened, because the physical evidence supports it, the
21 scientific evidence supports it, and the confession of the
22 co-defendant killer supports it. And he was not
23 interviewed for eight hours after she gave this statement.

24 We know it's true, ladies and gentlemen, because she
25 writes on her statement, This is my statement, truthfully

1 and honest. I am sorry. Please, forgive me. Well, if she
2 didn't do anything, like she told you here today, if she's
3 not guilty of any crime, why does she beg for forgiveness?
4 Why does she ask you to forgive her? Why is she sorry if
5 she didn't do anything wrong? We never meant for it to
6 happen like this, I just only wanted the money. I just
7 only wanted the money.

8 And that's why this thing happened. She wanted the
9 money. She needed help in getting the money. She made a
10 horrible choice by asking B.J. to help her with this crime.
11 And as a result, a completely innocent woman -- who should
12 be sitting here today to tell you, Hey, I was robbed --
13 can't be here, because she's dead. She's dead because they
14 killed her. She's not here to sell you anything. She
15 can't tell you anything. She doesn't know why she died
16 such a horrible death, but we know why. Because the
17 evidence tells us why.

18 It's easy to walk away from the hard decision, ladies
19 and gentlemen, but that's not what duty calls for. That's
20 not what responsibility calls for. That's not why y'all
21 are here. You're here as the conscience of the community.
22 You bring your common sense in here with you. You don't
23 leave it out in the parking lot. You, as the jury, have
24 the opportunity to do justice for Dawn Russ, who did
25 nothing to deserve the terrible fate that she was dealt.

1 She did nothing to die that horrible death in those last
2 thirty seconds she was able to draw a breath.

3 It's your duty to find the verdict that speaks the
4 truth in this case. There is only one such verdict.
5 Thomas Jefferson once said that no man is above the law,
6 and no man is below it. Nor do we ask any man's
7 permission, we require him to obey it. And that goes for
8 females as well.

9 Downtown at the corner of Broad and Meeting, is known
10 at the four corners of the law. We have the Federal law,
11 represented by the Federal Courthouse. We have State law
12 represented by the State Courthouse -- which will hopefully
13 one day move back down there, because they're repairing it
14 -- we have Municipal law, which is represented by City
15 Hall, and we have God's law which is represented by the
16 church on the corner, St. Philips.

17 All those laws are different, but they all have one
18 mandate. They all stand for one proposition, and that is,
19 simply, this: Thou shalt not kill. Thou shalt not kill
20 Dawn Russ. Thou shalt not kill any human being for any
21 reason. Greed is not a sufficient reason to take the life
22 of that woman. Greed is not a sufficient reason to take
23 the property in the possession of that woman.

24 And I'd ask you to return a verdict, ladies and
25 gentlemen, that speaks the truth. Return a verdict that

1 holds the murderer and the robber of Dawn Russ accountable
2 for her actions. Return a verdict that tells Kandy
3 Gilliard that she was wrong, she is guilty of murder, and
4 she is guilty of robbery. Return a verdict, ladies and
5 gentlemen, because the law requires you to do so, because
6 the law says, clearly, the hand of one is the hand of all.

7 Thank you, very much for your attention.

8 THE COURT: If you would, raise the screen.

9 (The bailiff complies.)

10 THE COURT: All right. Ladies and gentlemen, do this,
11 if you would, step to your jury room. Once you've
12 refreshed yourself, let the bailiff know and we'll come
13 out, and we'll give you the charge on the law. Like I say,
14 my charge on the law will only last about maybe twenty
15 minutes or so. Let's step to the jury room. Refresh
16 yourself, and let me know when you're ready to come back
17 in.

18 Everyone else, remain seated.

19 (WHEREUPON, the jury retires to the jury room.)

20 THE COURT: Now, what I want you all to do is this: I
21 want you all to look at all the exhibits. Make sure all
22 the exhibits that you all feel are in evidence, are in
23 evidence. Let's get them in order so that once the jury
24 gets this case, we won't have to worry about looking around
25 for exhibits. So you all make sure you look at the

1 exhibits for a minute. And I'll be right back in five
2 minutes.

3 MR. DUTREMBLE: Yes, sir.

4 (WHEREUPON, there was a short recess.)

5 THE COURT: Be seated. Is everyone ready? All right.
6 Please, understand, everyone, that once I bring that jury
7 out, no one is to leave and no one is to enter.

8 Okay. Everyone is where they're going to be. All
9 right. Did you all get the exhibits? Is everything fine
10 with the exhibits?

11 MR. DUTREMBLE: We checked them, Your Honor.

12 THE COURT: Now, here's what I planned to do. When I
13 finish my charge on the law, I am going to look at you two.
14 And if you all need to approach the bench, say you need to
15 approach the bench. If you don't need to approach the
16 bench, then I'm just going to assume that you all do not
17 have any objections or exceptions to the charge as I gave.
18 If you do, come up and tell me, and I'll ask the jury to
19 step inside the room, and then I'll give them another
20 charge. But if you don't have any exceptions, I'm going to
21 leave the two alternates out here, and I'm going to send
22 the other jurors in and tell them when I send the exhibits
23 in, they may begin their deliberations. This will make me
24 not have to worry about sending the alternates in and
25 bringing them out.

1 So when I finish, if you all have any exceptions, I'll
2 invite you to approach the bench, and we'll address it that
3 way. Okay?

4 MR. DUTREMBLE: Yes, sir.

5 THE COURT: Okay, Mrs. Gay?

6 MRS. GAY: Yes, sir.

7 THE COURT: All right. Bring the jury out, please.

8 (WHEREUPON, the jury returns to the courtroom.)

9 BAILIFF: The jury is all present, Your Honor.

10 THE COURT: All right. Thank you, very much.

11 Now, ladies and gentlemen of the jury, it now becomes
12 my duty to charge you on the law of the case. Please,
13 listen attentively, because you must follow the law as I
14 give it to you. It has already been mentioned to you, I
15 think, by one of the parties in the matter, one of the
16 attorneys, that I am the instructor of the law. If I say
17 something about the law that one of them has said
18 different, you take what I say about the law. Because what
19 I say is controlling in the case, regarding the law.

20 Now, ladies and gentlemen, I wish that I could sit
21 here and look and talk with you with appropriate eye
22 contact, and not have to look down and read anything.
23 However, I'm going to have read some things. When I do,
24 though, I'll make it as clear as possible. I'll speak as
25 clear as possible. And you have a duty to listen and pay

1 attention. Like I said, this will not take a long time,
2 but it is very important that you listen and pay attention
3 to this.

4 Now, ladies and gentlemen, I told you when the case
5 began that the State of South Carolina charges the
6 defendant, Kandy Latrice Gilliard, with two crimes. Crime
7 of robbery, sometimes called strong-arm robbery, common-law
8 robbery, but robbery. And with the crime of murder. And I
9 told you that the defendant is charged with these two
10 crimes, and the fact that we have two sheets of paper
11 called indictments that will go in the jury room with you
12 and charges the defendant with these crimes, that the fact
13 a person is charged with a crime or the fact that a person
14 has indictments about crimes, that is not evidence that the
15 person has committed the crime. So, ladies and gentlemen,
16 the fact that a person is charged or these indictments
17 exists is not evidence that the person has committed a
18 crime at all.

19 To this indictment, to these charges, the defendant
20 has pled not guilty. Now, that places upon the State the
21 burden of proving guilt beyond a reasonable doubt. Because
22 this is a vital and important rule of law, that no person
23 should be presumed guilty, but they should be presumed
24 innocent. And that presumption of innocence remains with a
25 person, no matter what the nature of the charge is.

1 Remains with a person from the period of time they're
2 charged through all proceedings. And that presumption as a
3 vail of innocence is never removed, unless a jury is
4 convinced of guilt beyond a reasonable doubt. And it is
5 your duty, ladies and gentlemen, if you're not convinced of
6 guilt beyond a reasonable doubt, to find the defendant not
7 guilty.

8 Now, when I say that the State has the burden of
9 proving the defendant guilty beyond a reasonable doubt, it
10 means further to say this, that some of you may have served
11 as jurors in civil cases, where you were told it is only
12 necessary to prove that a fact is more likely true than
13 not. Well, in criminal cases, the State has a more
14 powerful -- the State has a stronger burden than that. It
15 must prove something beyond a reasonable doubt.

16 Now, proof beyond a reasonable doubt, is proof that
17 leaves you firmly convinced of the defendant's guilt. Our
18 Court's have stated that a reasonable doubt is a doubt that
19 would cause a reasonable person to hesitate to act. Having
20 said that, let me, also, say this. There are few things in
21 this world that we know with absolute certainty. And in
22 criminal cases the law does not require proof that
23 overcomes every possible doubt. Reasonable doubt may arise
24 from evidence which is in the case, or from the lack or
25 absence of evidence in the case. You, the jury, you

1 determine whether or not reasonable doubt exists as to the
2 guilt of the defendant.

3 Now, ladies and gentlemen of the jury, under the
4 constitution of this state, you are the triers of fact.
5 You decide the facts, not I. I am not even permitted to
6 make any comments about the facts. And if for some reason,
7 because of something I may have said, something I may have
8 done, you have some thoughts that I have an opinion about
9 the facts, you're wrong. I do not. I leave that totally
10 up to you. You decide the facts from the evidence, lack of
11 evidence. But you decide what facts have been proven
12 beyond a reasonable doubt. When I say evidence in the case
13 of this nature, I mean from the testimony, whether it be
14 live testimony, deposition testimony, or from exhibits in
15 the case.

16 And, also, ladies and gentlemen, the law does not
17 desire nor require that you leave your common sense at
18 home. You're permitted to use your individual common
19 sense, and make it your collective common sense together
20 when you come into a court of law.

21 Furthermore, ladies and gentlemen, in deciding the
22 facts, you must necessarily pass upon the credibility or
23 the believability of the evidence presented to you. And in
24 doing so, you can consider such things as the demeanor of
25 the witness, whether a witness was forthright or hesitant,

1 whether a witness has a reason to be biased or prejudiced
2 in regard to the testimony that was given, whether a
3 witness' testimony was contradicted on the one hand, or
4 supported and corroborated on the other. Was the testimony
5 of a witness consistent? What was the witness' opportunity
6 for observation and knowledge of the matters about which he
7 or she testified? You, certainly, ladies and gentlemen, do
8 not determine this matter of credibility by counting the
9 number of witnesses on either side.

10 By the way, ladies and gentlemen, you can believe a
11 small portion of a witness' testimony and disregard the
12 larger, or vice versa. You can believe one witness against
13 many or many against one. All these things you could
14 consider, but, also, you should bear in mind while
15 considering these things that you should give the defendant
16 the benefit of every reasonable doubt.

17 Now, just as you are the finders of fact, I am the
18 instructor of the law. And as I told you already, you must
19 accept the law as I give it to you. For that reason, don't
20 be concerned with what you thought the law was before you
21 came in here. And don't be concerned with what you think
22 the law should be. Because you are under your oath to
23 follow the law as I give it to you.

24 I told you, ladies and gentlemen, that usually the
25 rules of evidence ordinarily does not permit a witness to

1 testify about opinions. An exception to this rule exists
2 for witnesses we call, quote, expert witnesses, unquote. A
3 witness who by education and experience has become expert
4 in some art, science, profession, or calling, may state an
5 opinion as to relevant and material matter in which the
6 witness claims to be an expert, and may also state the
7 reasons for that opinion.

8 You should consider any expert opinion received in
9 evidence in this case, like any other evidence. Give it
10 the weight you think it deserves. If you decide that the
11 opinion of the expert witness is not based on sufficient
12 education or experience; or if you conclude that the
13 reasons given in support of the opinions are not sound, or
14 that the opinion is outweighed by other evidence, you may
15 disregard the opinion entirely. An expert witness'
16 testimony is to be given no greater weight than that of any
17 other witness, simply, because a witness is an expert.
18 Further, you're not required to accept an expert's opinion,
19 even though it is not contradicted.

20 Ladies and gentlemen, a statement alleged to have been
21 made by the defendant has been admitted into evidence in
22 this case. While the Court, the Judge, usually makes a
23 determination about whether a statement is admissible or
24 not, I instruct you that you make the ultimate decision on
25 whether or not the defendant made the statement. If you

1 decide that the defendant did make the statement, you must
2 determine then whether the statement was made by the
3 defendant voluntarily and of her own free will. This
4 means, that the statement was not caused by pressure,
5 force, fear, threats, coercion, or intimidation, or by hope
6 or a promise of leniency, or a reward of any kind.

7 In determining whether the statement was voluntary,
8 you should consider both the characteristics of the
9 defendant and the details of the questioning. Some of the
10 factors that you must consider are, the age of the
11 defendant, the defendant's education or lack of education,
12 the defendant's mental ability or capacity, the defendant's
13 IQ or intelligence, the defendant's background and
14 environment, the place and the length of detention or
15 questioning, the nature of the questioning, and the advice
16 or lack thereof to the defendant of her constitutional
17 rights, including but not limiting to the right to remain
18 silent, that any statement could be used against her in a
19 court of law, the right to have a lawyer present, that if
20 she could not afford a lawyer, a lawyer would be appointed
21 to represent her without charge, and that she could stop
22 making a statement at any time. And you must carefully
23 consider all of the surrounding circumstances before you
24 give any weight to the alleged statement.

25 The State has the burden of proving beyond a

1 reasonable doubt that the alleged statement was made by the
2 defendant, and that it was a voluntary statement. If you
3 determine that the State has proven both of these, you may
4 give this statement any further consideration that you deem
5 proper. You must decide what weight, if any, should be
6 given to the alleged statement. If you determine that the
7 alleged statement was not the free and voluntary statement
8 of the defendant, you should not consider the statement at
9 all.

10 Now, the State charges the defendant, as I said, with
11 two crimes. First of all, let me talk with you about the
12 crime of robbery. In order to prove the crime of robbery,
13 the State must prove beyond a reasonable doubt the
14 following elements: That the defendant took the personal
15 property from the person or presence of another person
16 without that person's consent and carried it away.
17 Property is in the presence of a person if it is within the
18 person's reach, inspection, observation, or control, so
19 that the person could, if not overcome with violence, or
20 prevented by fear, retain possession of the property.

21 The State must show that the defendant carried the
22 property away with the intent to permanently deprive the
23 owner of the property, and to convert the property to the
24 defendant's own use. The slightest removal of the property
25 or the complete possession of the property, even for an

1 instant, by the defendant, is sufficient to show a taking
2 an carrying away of the property. The taking and carrying
3 away of the property must have been done with violence, or
4 by putting the owner of the property in fear of violence.
5 The defendant has raised the defense of coercion or duress
6 as to the charge of robbery. Because the defense of duress
7 does not apply to a charge of murder.

8 Coercion or duress is when a person makes another
9 person commit a crime against someone else's person or
10 property by the threat of immediate physical violence. The
11 coercion or duress must be present, imminent, and of the
12 type to create a well-grounded fear of death or serious
13 bodily harm if the act is not done. The fear of injury
14 must be reasonable. Coercion or duress is not a defense if
15 there is any reasonable way, other than committing the
16 crime, for the defendant to escape the threat of harm. If
17 you find that the defendant was coerced into committing the
18 crime of robbery, then you must find her not guilty of that
19 crime.

20 Murder is the unlawful killing of any person with
21 malice aforethought either express or inferred. Hence, in
22 order to convict someone of murder, the State must not only
23 prove the killing of an individual by the defendant, but
24 that it was done with malice aforethought. And, once
25 again, that must be proof beyond a reasonable doubt. And

1 as I said, the defendant is charged with a crime of murder.
2 And the State must prove beyond a reasonable doubt that the
3 defendant killed another person with malice aforethought.

4 Malice, is hatred, ill will, or hostility toward
5 another person. It is the intentional doing of a wrongful
6 act without just cause or excuse, and with intent to
7 inflict an injury or under circumstances that the law will
8 infer an evil intent. Malice aforethought does not require
9 that malice exists for any particular time before the act
10 is committed, but malice must exist in the mind of the
11 defendant just before and at the time that the act is
12 committed. Therefore, there must be a combination of the
13 previous evil intent and the act. Malice aforethought may
14 be express or inferred. These terms "express" and
15 "inferred" do not mean different kinds of malice, but
16 merely the manner in which malice may have be shown to have
17 existed. That is either by direct evidence or inference
18 from the facts and circumstances which are proven.

19 Express malice is shown when a person speaks words
20 which express hatred or ill will for another, or when the
21 person prepared beforehand to do the act, which was later
22 accomplished. For example, lying in wait for a person, or
23 any other acts of preparation going to show that the deed
24 was within the defendant's mind would be express malice.
25 Malice may be inferred from conduct showing a total

1 disregard for human life. Inferred malice may, also, arise
2 when the deed is done with a deadly weapon. A deadly
3 weapon is any article, instrument, or substance, which is
4 likely to cause death or great bodily harm. Whether an
5 instrument has been used as a deadly weapon depends on the
6 facts and circumstances of each case.

7 Further, if one intentionally kills another during the
8 commission of a felony, the inference of malice may arise.
9 If facts are proven beyond a reasonable doubt sufficient to
10 raise an inference of malice to your satisfaction, this
11 inference would, simply, be an evidentiary fact to be taken
12 in consideration by you, along with all other evidence in
13 the case. And you may give it the weight that you decide
14 it should did receive. And I further charge you, that the
15 crime of robbery is a felony.

16 Ladies and gentlemen of the jury, I further charge you
17 that the law in this state is that if a crime is committed
18 by two or more persons who are acting together in the
19 commission of the crime or the offense, the act of one is
20 the act of all. A person who joins with another to
21 accomplish an illegal purpose, is criminally responsible
22 for everything done by the other person which occurs as a
23 natural consequence of the acts done in carrying out the
24 common scheme and purpose.

25 However, ladies and gentlemen, mere presence is not

1 enough. The State must prove the defendant acted knowingly
2 and intentionally with one or more persons to commit the
3 offense. If two or more persons are together or acting
4 together and are knowingly and intentionally assisting each
5 other in the commission of an offense, the law says that
6 under the circumstances, the act of one is the act of all.
7 This is sometimes referred to as the hand of one is the
8 hand of all. The State must prove beyond a reasonable
9 doubt by competent evidence the theory of the hand of one
10 is the hand of all.

11 Now, ladies and gentlemen, several days ago, you were
12 selected as fair and impartial jurors. You were put under
13 oath to act as fair and impartial jurors in trying this
14 case. And no one can expect -- but we do demand and ask
15 that you do that, that you act as fair and impartial
16 jurors, listening to all the evidence presented, listening
17 to the law as instructed to you, and in reaching your
18 verdict. You have no one to punish, no one to reward. You
19 just, simply, have to make a decision in the case from the
20 evidence and the law as I've given it to you.

21 Now, ladies and gentlemen, your verdict must be
22 unanimous. All of you must agree on your verdict. I have
23 in my hands the two indictments, which, once again, I tell
24 you, these indictments are not evidence that the defendant
25 has committed these crimes. This is a record -- the paper

1 record of this proceeding. On the back, Madam Forelady,
2 you see the word "verdict" on each one of these. You see
3 the word "verdict". You have one or two choices in each
4 one of these crimes: Either guilty or not guilty. Either
5 not guilty or guilty. There is no preference in the way I
6 say the words. I have to say one before the other. One or
7 the other on those choices, on each one of these forms.
8 And they don't have to be the same. So your choice is
9 either guilty or not guilty on each one of these charges,
10 robbery or murder.

11 Now, ladies and gentlemen, I know it's Friday. And I
12 know you all have been here all week. You know, it's not
13 often you get to sit as jurors, and maybe some of you never
14 again will get to sit as a juror in a case that is serious
15 both to the State and to the defense of this magnitude.
16 So, please, ladies and gentlemen, don't be concerned with
17 the day of the week or the hour of the day. That makes no
18 difference. Go back and discuss these matters. Discuss
19 this case. And then, when you reach your verdict, let us
20 know.

21 Now, ladies and gentlemen, if you have any questions,
22 please, knock on the door and send them out in writing, and
23 I'll see if I can answer the question. And anything as far
24 as me to recharge you on any matters of the law, or you
25 need to listen to any testimony that was given or something

1 of that nature, just let us know. If not, then when you
2 have reached a decision, once again, just knock on the door
3 and we'll bring you back out.

4 Now, I've just about completed -- but let me just look
5 over one thing here.

6 And do the attorneys need to approach the bench?

7 MR. DUTREMBLE: No, Your Honor.

8 MRS. GAY: Yes.

9 (WHEREUPON, there was an off-the-record bench
10 conference in the presence of the jury, but out of the
11 hearing of the jury.)

12 THE COURT: Now, my two alternates, Ms. Waring and Ms.
13 Magill, do you have everything out that you need to have
14 out of the room? You need to get something out of the
15 room?

16 ALTERNATE JUROR: Yes.

17 THE COURT: If you would, step back in and get what
18 you need to get out of the room. For the twelve primary
19 jurors -- Ms. Waring and Ms. Magill, if you would, please,
20 stay with us at this time. If you wish to say good-bye to
21 them, you may. But I'm going to have you all step to the
22 jury room. Do not begin your deliberations until I send
23 the exhibits into the jury room along with the indictments.
24 Do not begin your deliberations until then. Okay.

25 So, if you would, please, step to the jury room. And

1 by the way, now that it's given to you all, ma'am, you're
2 in charge in the sense of if you all want breaks or
3 whatever. If you want a break, let the bailiff know. But
4 remember this: If you take a break, everybody must take a
5 break. That doesn't mean everybody has to go outside, but
6 it does mean that you can't discuss the case if some are
7 taking a break or whatever. So if someone will take a
8 break or go outside to do whatever, everybody needs to stop
9 talking about the case, until everybody gets back there.
10 Okay. But you all decide on whether you need a break or
11 not.

12 All right. Please, step to the jury room.

13 (WHEREUPON, the jury retires to the jury room.)

14 THE COURT: If you would, you all step in this room a
15 minute, please.

16 Is there anything in there, Mr. Bailiff?

17 BAILIFF: No, sir.

18 (WHEREUPON, the two alternates are placed in a
19 separate room.)

20 THE COURT: Okay. Exceptions from the State?

21 MR. DUTREMBLE: None, Your Honor. Thank you.

22 MRS. GAY: No, Your Honor. Just to protect any need
23 that I might have at this case, I would renew any motions
24 that I would need to make.

25 THE COURT: All right. Well, they're on the record.

1 All right. If you all would, I need bailiffs up here
2 to help me out. Mr. Bailiff who's back there opening the
3 door for the lady, if you would, I need you to help us get
4 the exhibits. And let's go ahead and take them in the jury
5 room. And if you would, also, Mr. Willson, here are the
6 indictments. And get those things and take them in, and
7 tell them to begin their deliberations.

8 THE CLERK: Yes, sir.

9 (WHEREUPON, the jury begins their deliberations at
10 5:05 p.m.)

11 THE COURT: Okay. Bring my two alternates out, if you
12 would.

13 Okay. Ms. Waring and Ms. Magill, now you all have
14 been involved in this matter all week long, so, obviously,
15 you have interest in it after this week. I've noticed that
16 you all have not been nodding around. You've been paying
17 attention as all the other jurors have. So if you wish to
18 stay, you may stick around and wait and see what the
19 decision is, or if you wish to go home, either way. You
20 don't have to come back, and they'll mail your juror checks
21 to you.

22 THE CLERK: I have them already for the jurors.

23 THE COURT: Mr. Wilson has them for you and you can
24 either stick around or go home. If you do stay, I'd rather
25 you not discuss the case until after this jury has decided.

1 Once this jury decides, then I'll talk with them and give
2 them instructions about what they can and cannot say. But
3 if you don't stick around for that, the best thing is not
4 to talk about it at all.

5 Okay. Let me shake your hands. And let me tell you
6 how much I appreciate spending this week with you.

7 (WHEREUPON, the two alternates are released.)

8 THE COURT: Before the court reporter and I do any
9 other business, we need to all take a break for a few
10 minutes.

11 (WHEREUPON, there was a short recess.)

12 THE COURT: The jury has sent out a question.
13 You need to get the defendant. This won't take but a
14 minute. The jury has a question.

15 All right. If you would, ladies and gentlemen,
16 courtroom and counsel, and the defendant is present. The
17 jury sent out a question saying they would like to receive
18 a copy of the charges on the law. And the position of the
19 defense and the State is what, regarding giving them a copy
20 of the changes I read to them? Anybody want to say
21 anything?

22 MRS. GAY: Yes, sir, Your Honor. I would ask that you
23 give it to them verbally as opposed to a hard copy.

24 THE COURT: Okay. You want me to reread the entire
25 charge to them?

1 MRS. GAY: I think we discussed that you would ask
2 them ---

3 THE COURT: I'm asking what you want at this time.
4 What would you like? Would you like for me to ---

5 MRS. GAY: Yes.

6 THE COURT: --- let them know that I don't normally --
7 that I don't usually send my written charge in there?
8 That's usually a practice in South Carolina. However, if
9 they wish for me to read a certain portion of my charge, or
10 all of my charge, again, I'll be glad to do so. Would that
11 be acceptable?

12 MRS. GAY: I believe that would be acceptable.

13 THE COURT: For the State?

14 MR. DUTREMBLE: Yes, sir.

15 THE COURT: All right. Good.

16 Bring the jury in.

17 (WHEREUPON, the jury returns to the courtroom.)

18 THE COURT: All right. Ladies and gentlemen of the
19 jury, I have your question. It says, the jury would like
20 to receive a copy of the, quote, charges on the law that
21 Judge Hughston -- by the way, I'm Judge Lockemy --
22 delivered just prior to our deliberations, at a minimum,
23 the portions read.

24 I assume by the last portion you mean that some of the
25 matters I may have spoken to you as if I were not reading

1 them, other parts I did read. It is not the practice in
2 South Carolina to send in the written charges on the law.
3 What I can do is this: If you want me to read back to you
4 a portion of the charges, any area, any section, or if you
5 want me to restate the entire charge to you that I gave,
6 I'll be glad to do that.

7 So if you would, decide if you wish for me to reread
8 something I've already said, as far as some particular area
9 that I gave you, or if you want me to do the entire charge.
10 Either one. So just let me know, and write it down
11 whichever one you want. Okay. Whatever you wish, what
12 area you want, or if you want the entire charge. If you
13 all would go to the jury room and discuss that, just send
14 me out a note.

15 (WHEREUPON, the jury retires to the jury room.)

16 THE COURT: Any objections from what I instructed the
17 jury, from the State?

18 MR. DUTREMBLE: No, sir.

19 THE COURT: Defense?

20 MRS. GAY: No, Your Honor.

21 THE COURT: Okay. And by the way, let the record
22 reflect, that I offered to both of you that I would be
23 willing to send in my written charges to the jury. I'll be
24 perfectly willing to do so if you all would like me to do
25 so. But apparently you all would rather I not do it, so I

1 won't do it. But I would be perfectly willing to do it.

2 (WHEREUPON, there is a note from the jury.)

3 THE COURT: All right. Thy jury sends out the
4 following request: The jury would like or request that the
5 Judge review the charges on malice aforethought and the
6 hand of one is the hand of all. Signed by the Foreperson.
7 And then says, But we would like a fifteen minute break.

8 So what I'm going to do is I'm going to let them do
9 the fifteen minute break, and then come back and charge
10 them on those two things, and let them continue their
11 deliberations.

12 Now, I do need to help Mr. Wilson, as far as making
13 sure if they take a break, that we have bailiffs with them.
14 So make sure that occurs. That whoever wants to take a
15 break, the bailiffs go with them. Do this: Tell them they
16 get twelve minutes. Have them back at 6:00. So walk them
17 outside and bring them back at 6:00 in the room, and then
18 I'll charge them.

19 The jury asked for the charge on malice aforethought
20 and the hand of one is the hand of all. I think the
21 appropriate thing to do on the malice aforethought, is to
22 charge the murder charge, again, because I'd hate to have
23 excerpts of it. I'd rather just charge the murder charge,
24 which is what I charged before. In regard to that with the
25 felony murder inference. Then the hand of one is the hand

1 of all is the charge I charged them on.

2 So that's what I propose to charge. That's what I
3 think their question is requesting.

4 Any objection from the Sate?

5 MR. DUTREMBLE: No, Your Honor.

6 THE COURT: From the defense?

7 MRS. GAY: No, Your Honor.

8 THE COURT: All right. If you would, bring the jury
9 out for me, please.

10 (WHEREUPON, the jury returns to the courtroom at 6:00
11 p.m.)

12 BAILIFF: The jury is all present, Your Honor.

13 THE COURT: Okay. Ladies and gentlemen, I received
14 your request that I recharge you on malice aforethought and
15 the hand of one is the hand of all. On the malice
16 aforethought matter, I'm going to just recharge you on the
17 crime of murder, because that's one of the elements
18 involved there. And it would probably better to just do
19 the whole charge instead of taking out portions which may
20 not address your request.

21 So, as you were recall on the crime of murder, I told
22 you murder is the unlawful killing of any person with
23 malice aforethought either express or inferred. Hence, in
24 order to convict of murder, the State must not only prove
25 the killing of a person by the defendant, but that it was

1 done with malice aforethought. And such proof must be
2 beyond a reasonable doubt. So therefore, since the
3 defendant's charge with murder, the State must prove beyond
4 a reasonable doubt that the defendant killed another person
5 with malice aforethought.

6 Malice is hatred, ill will or hostility toward another
7 person. It is the intentional doing of a wrongful act
8 without just cause or excuse, and with intent to inflict an
9 injury or under circumstances that the law will infer an
10 evil intent. Malice aforethought does not require that
11 malice existed for any particular time before the act is
12 committed. But malice must exist in the mind of the
13 defendant just before and at the time of the act.
14 Therefore, there must be a combination of the previous evil
15 intent and the act. Malice aforethought may be express or
16 inferred. These terms "express" and "inferred" do not mean
17 different kinds of malice, but merely the manner in which
18 malice may be shown to exist. That is either by direct
19 evidence, or by inference from the facts and circumstances
20 which are proven.

21 Express malice is shown when a person speaks words
22 that express hatred or ill will for another, or when the
23 person prepared beforehand to do the act which was later
24 accomplished. For example, lying in wait for a person, or
25 any other acts of preparation going to show that the deed

1 was within the defendant's mind would be express malice.
2 Malice may be inferred by conduct showing a total disregard
3 for human life. Inferred malice may, also, arise when the
4 deed is done with a deadly weapon. A deadly weapon is any
5 article, instrument or substance which is likely to cause
6 death or great bodily harm. Whether an instrument has been
7 used as a deadly weapon, depends on the facts and the
8 circumstances of each case.

9 Further, ladies and gentlemen, I told you that if one
10 intentionally kills another during the commission of a
11 felony, the inference of malice may arise. If facts are
12 proven beyond a reasonable doubt sufficient to raise an
13 inference of malice to your satisfaction, this inference
14 would, simply, be an evidentiary fact to be taken into
15 consideration by you, along with all other evidence in the
16 case. And you may give it the weight that you decide it
17 should receive. And I further charge you that the crime of
18 robbery is a felony.

19 In regard to the hand of one is the hand of all, the
20 law is that if a crime is committed by two or more persons
21 who are acting together in the commission of the crime or
22 offense, the act of one is the act of all. A person who
23 joins with another to accomplish an illegal purpose is
24 criminally responsible for everything done by the other
25 person, which occurs as a natural consequence of the acts

1 done in carrying out the common scheme and purpose.

2 However, mere presence is not enough. The State must
3 prove the defendant acted and intentionally with one or
4 more persons to commit the offense. If two or more persons
5 are together or acting together, and are knowingly and
6 intentionally assisting each other in the commission of an
7 offense, the law says under the circumstances, the act of
8 one is the act of all. This is sometimes referred to as
9 the hand of one is the hand of all. The State must prove
10 beyond a reasonable doubt by competent evidence the theory
11 of the hand of one is the hand of all.

12 Okay. Ladies and gentlemen, that is the charge. Does
13 anyone wish for me -- does the jury wish for me to reread
14 it again? If so, let me know, now.

15 (No response.)

16 THE COURT: Okay. Well, if you have any other
17 questions or any other requests, or you want me to reread
18 it again, or anything else, please write them down. Thank
19 you, very much. You may proceed to continue to deliberate.

20 (WHEREUPON, the jury retires to the jury room to
21 resume deliberations at 6:07 p.m.)

22 THE COURT: Any exceptions to the charge that I gave
23 the jury?

24 MR. DUTREMBLE: None from the State, Your Honor.

25 THE COURT: Defense?

1 MRS. GAY: No, Your Honor.

2 THE COURT: All right. We'll continue to wait for
3 their decision.

4 (WHEREUPON, the jury reaches a verdict.)

5 THE COURT: All right. The bailiff has informed me
6 that the jury a verdict.

7 Is the State ready?

8 MR. DUTREMBLE: Yes, sir, Your Honor.

9 THE COURT: Defense?

10 MRS. GAY: Yes, sir.

11 THE COURT: All right. Ladies and gentlemen in the
12 audience, this has been a long trial. It's lasted all
13 week. And I don't know what the verdict of the jury is.
14 However, I want to make sure that -- my officers that are
15 in here, make sure that we contain everybody with order and
16 proper decorum as a courtroom should have. So whatever the
17 decision of this jury is, I don't want to have any
18 outbursts in any way, one way or the other.

19 And, Officers, you all make sure I can maintain that.

20 And, also, Mrs. Gay, I would request if you would,
21 that when the clerk reads the verdict, if you and your
22 client would stand, please.

23 MRS. GAY: Yes, sir. I've advised her of that.

24 THE COURT: All right. Bring the jury in.

25 (WHEREUPON, the jury returns to the courtroom with a

1 verdict at 6:20 p.m.)

2 BAILIFF: The jury is all present, Your Honor.

3 THE COURT: Madam Forelady, I understand the jury has
4 reached a verdict. Have you?

5 FORELADY: Yes, we have.

6 THE COURT: All right. If you would give it to the
7 clerk. If you would, Mr. Wilson.

8 (WHEREUPON, the verdict is passed up to the Court.)

9 THE COURT: Okay. You may publish the verdict.

10 THE CLERK: Please have the defendant stand.

11 Case number 2000-GS-10-2468, the State of South
12 Carolina vs. Kandy Latrice Gilliard, indicted for strong
13 arm robber, verdict of the jury, guilty.

14 Madam Forelady, ladies and gentlemen of the jury, if
15 this is your verdict, please, raise your right hand.

16 (All hands were raised.)

17 THE CLERK: Case number 2000-GS-10-2467, the State of
18 South Carolina vs. Kandy Latrice Gilliard, indicted for
19 murder, verdict of the jury, guilty. Signed Tomlyn
20 Pulliam, June 1, 2001.

21 Ladies and gentlemen of the jury, if this is your
22 verdict, please, raise your right hand.

23 (All hands were raised.)

24 THE CLERK: Thank you. You may put them down.

25 THE COURT: The defendant may be seated. Counsel, any

1 polling requested by the State?

2 MR. DUTREMBLE: None, Your Honor.

3 THE COURT: Polling requested by the defense?

4 MRS. GAY: Yes, sir.

5 THE COURT: All right. Ladies and gentlemen of the
6 jury, polling is the following procedure: The clerk will
7 call your names out. When he calls your name out, please,
8 stand. He will then ask you two questions on each one of
9 the verdicts. If you would, Mr. Clerk, ask on each one of
10 the verdicts -- he'll say, first, on the decision on the
11 strong arm robbery, he'll ask: Is this your verdict? You
12 answer "yes" or "no." Is it still your verdict? Answer
13 "yes" or "no." Then, he'll ask on the charge of murder:
14 Is this your verdict? Is it still your verdict? Answer
15 "yes" or "no" to each one of them.

16 Mr. Clerk, do you have that procedure down, as far as
17 the procedure I want?

18 THE CLERK: Yes, Your Honor.

19 THE COURT: All right. And once you've answered, you
20 may then be seated, again, after you provide your answer.

21 You may proceed, Mr. Clerk.

22 THE CLERK: Okay, Your Honor. On the indictment of
23 strong arm robbery, Tomlyn Pulliam, is this your verdict?

24 JUROR: Yes, it is.

25 THE CLERK: Is this still your verdict?

1 JUROR: Yes, it is.
2 THE CLERK: Thank you. You may be seated.
3 Clay Martin, is this your verdict?
4 JUROR: Yes, it is.
5 THE CLERK: Is this still your verdict?
6 JUROR: Yes, it is.
7 THE CLERK: You may be seated.
8 Richard Mazyck, is this your verdict?
9 JUROR: Yes, sir.
10 THE CLERK: Is this still your verdict?
11 JUROR: Yes, sir.
12 THE CLERK: You may be seated.
13 Brenda Capers, is this your verdict?
14 JUROR: Yes, it is.
15 THE CLERK: Is this still your verdict?
16 JUROR: Yes, it is.
17 THE CLERK: You may be seated.
18 Raymond Rawls, is this your verdict?
19 JUROR: Yes.
20 THE CLERK: Is this still your verdict?
21 JUROR: Yes.
22 THE CLERK: You may be seated.
23 David Scozzaro, is this your verdict?
24 JUROR: Yes, sir.
25 THE CLERK: Is this still your verdict?

1 JUROR: Yes, sir.

2 THE CLERK: You may be seated.

3 Simon White ---

4 JUROR: Simone.

5 THE CLERK: I'm sorry. Simone. I apologize. Is this
6 your verdict?

7 JUROR: Yes.

8 THE CLERK: Is this still your verdict?

9 JUROR: Yes.

10 THE CLERK: You may be seated.

11 Sherrilyn Carter, is this your verdict?

12 JUROR: Yes, sir.

13 THE CLERK: Is this still your verdict?

14 JUROR: Yes, sir.

15 THE CLERK: You may be seated.

16 Sandra Hillen, is this your verdict?

17 JUROR: Yes, sir.

18 THE CLERK: Is this still your verdict?

19 JUROR: Yes, sir.

20 THE CLERK: You may be seated.

21 Carolyn Bailey, is this your verdict?

22 JUROR: Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR: Yes.

25 THE CLERK: Thomas Waylett, is this your verdict?

1 JUROR: Yes, sir.

2 THE CLERK: Is this still your verdict?

3 JUROR: Yes, sir.

4 THE CLERK: You may be seated.

5 John Bishop, is this your verdict?

6 JUROR: Yes.

7 THE CLERK: Is this still your verdict?

8 JUROR: Yes.

9 THE CLERK: You may be seated.

10 THE COURT: Was any juror not polled? Any juror not
11 polled? If you were not polled, raise your hand.

12 (No response.)

13 THE COURT: All right. You may proceed to the other
14 charge.

15 THE CLERK: All jurors have been polled, Your Honor.
16 The verdict stands.

17 THE COURT: All right. Poll on the next charge,
18 please.

19 THE CLERK: The indictment for murder, Tomlyn Pulliam,
20 is this your verdict?

21 JUROR: Yes, it is.

22 THE CLERK: Is this still your verdict?

23 JUROR: Yes, it is.

24 THE CLERK: Please, be seated.

25 Clay Martin, is this your verdict?

1 JUROR: Yes, it is.
2 THE CLERK: Is it still your verdict?
3 JUROR: Yes, it is.
4 THE CLERK: Please, be seated.
5 Richard Mazyck, is this your verdict?
6 JUROR: Yes, sir.
7 THE CLERK: Is this still your verdict?
8 JUROR: Yes, sir.
9 THE CLERK: You can be seated.
10 Brenda Capers, is this your verdict?
11 JUROR: Yes.
12 THE CLERK: Is this still your verdict?
13 JUROR: Yes.
14 THE CLERK: You may be seated.
15 Raymond Rawls, is this your verdict?
16 JUROR: Yes.
17 THE CLERK: Is this still your verdict?
18 JUROR: Yes.
19 THE CLERK: You may be seated.
20 David Scozzaro, is this your verdict?
21 JUROR: Yes.
22 THE CLERK: Is this still your verdict?
23 JUROR: Yes.
24 THE CLERK: You may be seated.
25 Simone White, is this your verdict?

1 JUROR: Yes.

2 THE CLERK: Is this still your verdict?

3 JUROR: Yes.

4 THE CLERK: You may be seated.

5 Sherrilyn Carter, is this your verdict?

6 JUROR: Yes, sir.

7 THE CLERK: Is this still your verdict?

8 JUROR: Yes, sir.

9 THE CLERK: Sandra Hillen, is this your verdict?

10 JUROR: Yes, sir.

11 THE CLERK: Is this still your verdict?

12 JUROR: Yes, sir.

13 THE CLERK: You may be seated.

14 Carolyn Bailey, is this your verdict?

15 JUROR: Yes.

16 THE CLERK: Is this still your verdict?

17 JUROR: Yes.

18 THE CLERK: You may be seated.

19 Thomas Waylett, is this your verdict?

20 JUROR: Yes, sir.

21 THE CLERK: Is this still your verdict?

22 JUROR: Yes, sir.

23 THE CLERK: You may be seated.

24 John Bishop, is this your verdict?

25 JUROR: Yes, sir.

1 THE CLERK: Is this still your verdict?

2 JUROR: Yes, sir.

3 THE CLERK: You may be seated.

4 Your Honor, the jury has been polled, and the verdict
5 still stands.

6 THE COURT: Okay. Was there any juror not polled?

7 (No response.)

8 THE COURT: I have everyone polled. All right.

9 All right. Ladies and gentlemen of the jury, that
10 will complete your service in the case. At this stage I
11 will now proceed to sentencing. If you wish, you may go
12 out and sit in the audience, or you may return to home.
13 But I'll proceed with the sentencing phase of the trial
14 now.

15 So at this time, go this way. If you wish to go home,
16 you may do so, or you may stay out in the audience. Anyone
17 need to get anything out of the jury room. I'll wait a few
18 minutes for you all to get something out of the jury room
19 and come on back out.

20 (WHEREUPON, the jury is dismissed.)

21 MRS. GAY: Your Honor, may my client's family members
22 come up?

23 THE COURT: Yes.

24 Do you have a sentencing sheet Mr. Clerk?

25 MR. DUTREMBLE: I do, Your Honor.

1 MRS. GAY: Oh, Your Honor, at this point -- I almost
2 forgot -- I need to renew my motions and make a motion for
3 a new trial based on all my previous motions and the motion
4 for a directed verdict.

5 THE COURT: All right. Those motions are noted, and
6 respectfully they would be denied. I think the jury had
7 the evidence before them to make their decision, and they
8 did.

9 MRS. GAY: Thank you, Your Honor.

10 THE COURT: Now, it's not required Mrs. Gay that these
11 sentencing sheets be signed since this is not a plea. So
12 if you would rather not sign it or Ms. Gilliard not sign
13 it, then there is no requirement. Would you rather not
14 sign it? These are just sentencing forms is all they are.
15 You don't have to sign it if you don't wish to.

16 MRS. GAY: No, sir.

17 THE COURT: All right. This time then, Mr. DuTremble,
18 I'll be glad to hear any information regarding sentencing.
19 As you know the statutes provide for strong arm robbery,
20 zero to fifteen years; for murder either thirty years or
21 life. So I'm ready to proceed.

22 MR. DUTREMBLE: Thank you, Your Honor. If Your Honor
23 please, I've been practicing law for about twenty-two
24 years, now. About half that time, I've been a prosecutor.
25 This is one of the most senseless crimes I've ever run

1 across. This lady did not need to die. They did not have
2 to kill this woman for \$1200. She would have given them
3 the money. But to attack a friend from behind while she
4 slept, after she had let you in the building, because she
5 trusted you and she knew you, is absolutely outrageous. I
6 cannot think of a more cold-blooded and heinous crime than
7 the crime that was committed here, and that we heard about
8 in this courtroom all week long.

9 Despite that fact, and despite the fact that the cause
10 of death was most probably caused by the co-defendant, Mr.
11 Johnson, this lady caused the death of Dawn Russ. She was
12 the one who turned the lock to open the door to let Mr.
13 Johnson in. She was the one that gave him access to the
14 cord. She was the one, who by her own hand, took the black
15 plastic trash bag to put over the lady's face. It is
16 absolutely inconceivable to me, Judge, how you can kill a
17 friend for such a small amount of money.

18 And despite the fact, that even up until the time when
19 Your Honor ruled that the confession was coming in, the
20 State was still of a mind to not contest a thirty-year
21 sentence of this lady, and she refused. She would not
22 consider it. And, I believe, Judge, that based upon the
23 outrageous and outlandish lies that were told from this
24 stand, by this defendant, without remorse for the killing
25 of this woman, I think, that a fifteen year sentence for

1 strong arm robbery is appropriate. I think a life sentence
2 for this senseless murder is appropriate as well.

3 THE COURT: Okay. Mr. DuTremble, as I told you in the
4 plea and the sentencing on Mr. Johnson, the law permits any
5 victims and families of victims to comment. Does anybody
6 wish to comment in that regard?

7 MR. DUTREMBLE: This is such a sad case, Your Honor.
8 Dawn Russ had no insurance. When she died, the funeral
9 home had to donate the funeral plot for her. The family
10 members had to seek community aid for the \$1400 balance for
11 the funeral expenses. Her only son is in prison. Her only
12 daughter, who is sixteen, was taken into protective custody
13 at the time. She had no where to go. There was no family.
14 Since that time, her daughter has turned eighteen and has
15 been released. We cannot find her. We have been trying
16 for over two weeks just to locate a family member to come
17 and sit in this courtroom. We have not been able to do so.
18 So there's nobody to speak on her behalf, but me.

19 THE COURT: As a matter of interest, who are the
20 people, out there?

21 MR. DUTREMBLE: Friends, people who knew her from her
22 work, just community people.

23 THE COURT: All right. Okay.

24 Mrs. Gay, I'll be glad to hear from you, ma'am.

25 MRS. GAY: Thank you, Your Honor. May it please the

1 Court. Kandy is twenty-three years old. She has a
2 tenth-grade education, Your Honor. Her mother, Emily
3 Gilliard is here. A number of members of her family have
4 sat in the courtroom with her. One of them is her father.
5 She has a sister that was here earlier. And, Your Honor,
6 she has two small children, a six year old and a four year
7 old.

8 The jury convicted her of the acts. There were a
9 number of different versions of the facts that,
10 unfortunately, still lead to guilty. And I believe that
11 that's apparent in the record. Your Honor, there is no way
12 that there was any intent on her part for B.J. Johnson to
13 strangle that woman. I understand that the jury has found
14 that she committed a robbery. And I understand based even
15 on what they asked of the charge, that malice and the hand
16 of one has inferred guilt for murder. But she, herself, I
17 don't think on any level, wanted that to happen to her.

18 Your Honor, she's here today, and there are two
19 possible sentences. That is said in the statute. There is
20 a sentence of life, which Mr. DuTremble has mentioned, and
21 there's also thirty years. There is the possibility for
22 you to give her that sentence. She's a young woman with
23 two small children, Your Honor. And we would just ask you
24 to, please, consider doing that.

25 THE COURT: Anything else you wish to present to me?

1 MRS. GAY: I believe, Your Honor, also, her mother
2 would just ask that you, please, consider that as an
3 option.

4 MS. EMILY GILLIARD: For her children's sake.

5 THE COURT: Ms. Gilliard, anything you wish to tell
6 me?

7 DEFENDANT: Your Honor, no one was there the night
8 that this incident occurred. And I just want to say to the
9 Court, thank you for hearing me out. At least, I got
10 someone to hear my part. It may have appeared to be one
11 way, but I know what happened. And I ask the family of
12 Dawn Russ to forgive me for opening the door for B.J. And
13 I just want to say thank you for listening to me for the
14 last four days, and listening to my attorney and, also, the
15 prosecutor.

16 THE COURT: Where were your children at the time of
17 this incident, because I know you've been incarcerated
18 since then, but at the time of this incident, were the
19 children living with you?

20 DEFENDANT: They stay with their father, and then --
21 it's between their father and I.

22 MRS. GAY: I think what she's saying, Your Honor, is
23 -- her children are now with their father.

24 THE COURT: No. I'm talking about in January of 2000.

25 MRS. GAY: Well, at that time, Your Honor, I think --

1 she has two children. One of them is with the gentleman
2 who has the children, and one of them isn't. But since he
3 was two weeks old, that man has been her child's father.
4 They have and did have a very good relationship with him.
5 And so, I believe, she's told me is that they had -- they
6 didn't always stay with her, but they didn't always stay
7 with him. That's what she means.

8 THE COURT: Well, my thoughts are here, that this lady
9 has spent so much time in the middle of the night at
10 various different places, it's amazing that she could have
11 a child at all staying with her. I mean, she said on the
12 stand that she spent many times there at the poker parlor.
13 And this lady who was killed, worked there in these late,
14 late hours. So she was there a lot with her. Plus, on the
15 night of her arrest -- not arrest. The night that she was
16 first picked up, and taken for questioning and then later
17 arrested, that she was then at someone else's house. Then,
18 she was, also, at another person's house for a while. I'm
19 just wondering, because the mother said, For the sake of
20 her children. But I really haven't seen where she's been
21 with the children at that time very much.

22 MRS. GAY: Your Honor, I believe, that there was
23 absolutely -- I mean, it wasn't as if she didn't have
24 custody of her children. She had custody of her children.
25 They stayed with the father a good bit, you know, a good

1 bit. They, also, stayed with her with her mother. They
2 have since this time, Your Honor, been living with the man
3 the whole time. And as I said, she has two kids, and the
4 good part is that he, the father of her younger child, has,
5 basically, taken in the older child as his own.

6 THE COURT: And just so I'll know, Ms. Gilliard, you
7 were asked on the stand about what type of work you do.
8 You worked one time in a video place like this before.
9 What other work have you done?

10 DEFENDANT: Pizza Hut, Piggly Wiggly, Bi-lo. I worked
11 in the office at the Master Chef on Rivers Avenue.

12 THE COURT: As I stated before, this crime is so
13 heinous it's almost hard to imagine that it would have
14 occurred as it did. This jury, I think, did have some
15 concern about how much participation you had in hands on
16 participation. Apparently, from their questions, but they
17 had no doubt that your actions lead to the death of this
18 lady. And your attorney mentioned a couple of times
19 something about, maybe that you had either intelligent
20 problems or mental problems. But from what I can tell,
21 from listening to you testify as well as from your
22 observations in the courtroom, there seems to be no
23 problems in that regard at all. I think that you knew what
24 you were doing. I think that you were suffering under no
25 mental or intelligence hindrances. And the jury has

1 determined that your actions lead to the murder and to this
2 robbery of this individual.

3 And looking at this, and looking at the entire case,
4 looking at all that happened here, I think the sentence
5 that I have here is the sentence that is appropriate.

6 On the strong arm robbery, the sentence is ten years.
7 It's to run concurrent with the sentence for murder, which
8 will be a sentence for your natural life. The sentence of
9 the Court. It will be concurrent.

10 MRS. GAY: Thank you, Your Honor.

11 MR. DUTREMBLE: Thank you, Your Honor.

12 THE COURT: Any other matters for the Court?

13 MR. DUTREMBLE: None from the State, Your Honor.

14 THE COURT: Anything else?

15 (No response.)

16 (Court's Exhibits 15 through 19 are marked for ID.)

17 THE COURT: All right. We are adjourned, sine die
18 from general sessions.

19

20 --- END OF TRANSCRIPT OF RECORD ---

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1
2 I, the undersigned Bonnie M. Britt, Official Court
3 Reporter for the Ninth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the trial of
7 the captioned case, relative to appeal, in the Circuit
8 Court for Charleston County, South Carolina, on the 29th,
9 30th, 31st days of May and the first day of June 2001.

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

12 August 30, 2002

13
14 Bonnie M. Britt

15 Official Court Reporter
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02:06:22

1

STATE OF SOUTH CAROLINA

2

COURT OF GENERAL SESSIONS

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3

OF THE NINTH JUDICIAL CIRCUIT

4

5

6 STATE OF SOUTH CAROLINA,)

7 Plaintiff,)

8 vs.) Indictment No.

9 KANDI GILLIARD,) 2000-GS-10-2467

10 Defendant.) 2000-GS-10-2468

11)

12

13

ORIGINAL

14

15

VIDEOTAPED

16

17 DEPOSITION OF:

18 RICHARD A. LEO, PH.D., J.D.

19 WEDNESDAY, MAY 23, 2001

20 2:08 P.M.

21

22

23 Reported by:

24 Kathleen E. McCarthy

25 CSR No. 4483

1 Deposition of RICHARD A. LEO, PH.D., J.D., the
2 witness, taken on behalf of the Defendant, on
3 Wednesday, May 23, 2001, 2:08 p.m., at 101 Pacifica,
4 Suite 100, Irvine, California, before Kathleen E.
5 McCarthy, CSR No. 4483.

6

7 APPEARANCES OF COUNSEL:

8 FOR PLAINTIFF (present telephonically):

9 DALE DU TREMBLE, ESQ.

10 NINTH CIRCUIT SOLICITOR'S OFFICE

11 2144 Melbourne Avenue

12 Charleston, South Carolina 29405

13

14 FOR DEFENDANT (present telephonically):

15 MELISA W. GAY, ATTORNEY AT LAW

16 47 Calhoun Street

17 Suite B

18 Charleston, South Carolina 29401-3506

19

20 ALSO PRESENT: BRIAN MESSNER, VIDEOGRAPHER

21

22

23

24

25

1 INDEX

2 WITNESS EXAMINATION PAGE

3 RICHARD A. LEO, PH.D., J.D.

4 Ms. Gay 5, 156

5 Mr. DuTremble 118

6

7 EXHIBITS

8 NO. PAGE DESCRIPTION

9 (None)

10

11 INSTRUCTIONS NOT TO ANSWER

12 PAGE LINE

13 (None)

14

15 INFORMATION REQUESTED

16 PAGE LINE

17 (None)

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1 IRVINE, CALIFORNIA; WEDNESDAY, MAY 23, 2001

2 2:08 P.M.

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3
02:06:58 4 THE VIDEOGRAPHER: Here begins Volume 1,
02:07:14 5 videotape tape number one, in the deposition of
02:07:20 6 Richard Leo in the matter of State of South Carolina
02:07:24 7 versus Gilliard in the Court of General Sessions of
02:07:24 8 the Ninth Judicial Circuit. The case number is
02:07:30 9 TA0005693.

02:07:36 10 Today's date is 5-23-2001. The time on the
02:07:40 11 video monitor is 2:08.

02:07:42 12 The certified legal videographer today is
02:07:46 13 Brian Messner, contracted by Wishnow.Tearney.Killion,
02:07:48 14 at 16830 Ventura Boulevard, Encino, California.

02:07:52 15 This videoed deposition is taking place at
02:07:56 16 Wire One, Inc., located at 101 Pacifica, Suite 100,
02:08:02 17 Irvine, California, and was noticed by A. William
02:08:06 18 Roberts, Jr., & Associates.

02:08:08 19 Counsel, please voice-identify yourselves
02:08:10 20 and state whom you represent.

02:08:14 21 MR. DU TREMBLE: Excuse me. Before we
02:08:16 22 begin, I would like the record to reflect the
02:08:20 23 caption number should be the number on the
02:08:22 24 indictment, which is 2000-GS-10-2467 and
02:08:34 25 2000-GS-10-2468.

02:08:36 1 THE VIDEOGRAPHER: Okay. So noted.
02:08:38 2 And if you can just voice-identify
02:08:40 3 yourselves and state whom you represent.
02:08:42 4 MR. DU TREMBLE: I'm sorry. I'm Dale
02:08:44 5 DuTremble. I represent the Ninth Circuit
02:08:46 6 Solicitor's Office.
02:08:48 7 MS. GAY: I'm Melisa Gay. I represent the
02:08:50 8 defendant, Kandi Gilliard.
02:08:52 9 THE VIDEOGRAPHER: Okay. And the court
02:08:52 10 reporter today is Kathleen McCarthy of
02:08:54 11 Wishnow.Tearney.Killion.
02:08:58 12 Would the reporter please swear in the
02:08:58 13 witness.
14
15 RICHARD A. LEO, PH.D., J.D.,
16 having been first duly sworn, was
17 examined and testified as follows:
18
19 THE VIDEOGRAPHER: We are now on the
20 record.
21
02:09:10 22 EXAMINATION
23 BY MS. GAY:
02:09:12 24 Q. Good morning, Mr. -- good afternoon,
02:09:14 25 Mr. Leo.

02:09:18 1 First of all, before we get started on the
02:09:18 2 questioning, I just would like to sort of clarify
02:09:22 3 for the people watching this video why you are where
02:09:24 4 you are and what we're doing today.

02:09:28 5 You are a professor at the University of
02:09:34 6 California, Irvine?

02:09:36 7 A. Correct. I'm a professor -- I'm a
02:09:38 8 professor --

02:09:38 9 Q. Yes, sir.

02:09:38 10 A. Go ahead.

02:09:40 11 Q. I was going to say obviously you're not in
02:09:42 12 your office.

02:09:42 13 A. Correct.

02:09:44 14 Q. You are not at the university, and what I
02:09:46 15 wanted to just get out is that you're at a place in
02:09:50 16 California in Irvine that was the location where
02:09:54 17 this type of deposition could occur?

02:09:56 18 A. Correct.

02:09:58 19 Q. And you were asked to go there by me,
02:10:04 20 Melisa Gay, who is representing Ms. Gilliard?

02:10:06 21 A. Correct.

02:10:06 22 Q. And pursuant to this deposition, the
02:10:12 23 location that you are at, the office that you're in,
02:10:14 24 the conference room was set up by the court
02:10:16 25 reporting service?

02:10:18 1 A. That's my understanding, correct. 991

02:10:20 2 Q. And when you were contacted and asked to go

02:10:24 3 there, you didn't have a choice of where you went.

02:10:28 4 This is where they told you.

02:10:28 5 A. Correct.

02:10:30 6 Q. Okay. I just want to get back to the

02:10:32 7 questions now. In other words, you have an office

02:10:38 8 at the University of California, Irvine, but in this

02:10:40 9 conference room today, this is where we had to go to

02:10:42 10 complete this process.

02:10:44 11 A. Correct. This is not my office, correct.

02:10:46 12 Q. Right.

02:10:48 13 And your name, sir?

02:10:52 14 A. Richard Leo. L-e-o is the last name.

02:10:54 15 Q. And your professional address?

02:10:58 16 A. Department of Criminology, 2367 Social

02:11:08 17 Ecology II, University of California, Irvine,

02:11:12 18 California, 92697.

02:11:16 19 Q. And your current position?

02:11:20 20 A. I'm currently employed at the University of

02:11:24 21 California at Irvine in the Department of

02:11:26 22 Criminology and in the Department of Psychology and

02:11:28 23 Social Behavior.

02:11:30 24 Q. And, sir, we're going to discuss a little

02:11:34 25 bit about your background.

02:11:34 1 A. Okay.

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02:11:36 2 Q. I believe that I have a curriculum vitae,
02:11:40 3 which is a copy of the different education and
02:11:44 4 academic things that you've done in the past?

02:11:46 5 A. Correct. A curriculum vitae is just a
02:11:50 6 resume that contains all my professional activities
02:11:52 7 and endeavors and accomplishments, correct.

02:11:54 8 Q. That's what I want to ask you about, is a
02:11:58 9 little bit about some of your training and
02:12:00 10 experience.

02:12:00 11 Your educational background, could you
02:12:06 12 describe, please, what your educational background
02:12:06 13 is and when you received the degrees that you
02:12:06 14 received?

02:12:08 15 A. Yes.

02:12:10 16 I have a bachelor's degree in sociology
02:12:12 17 from the University of California at Berkeley, which
02:12:16 18 I received in 1985. I have a --

02:12:22 19 Q. Is there anything specific -- excuse me.
02:12:22 20 Was there anything specific about that degree?

02:12:24 21 A. I believe I graduated with honors, but
02:12:26 22 other than that, I'm not sure --

02:12:28 23 Q. I believe -- that's fine.

02:12:30 24 A. Okay.

02:12:30 25 Q. And where did you go -- what school did you

993

02:12:32 1 go to after that?

02:12:32 2 A. The University of Chicago, where I received
02:12:40 3 a master's degree in sociology in 1989, and then in
02:12:46 4 1994 I received both a Ph.D. and a J.D., which is a
02:12:46 5 law degree, from the University of California at
02:12:50 6 Berkeley. My Ph.D. was -- it was in a program
02:12:58 7 called jurisprudence and social policy, which is a
02:12:58 8 specialized law and social science program at UC
02:13:04 9 Berkeley which has social scientists from every
02:13:04 10 social science discipline who study law and legal
02:13:08 11 institutions. So, for example, there were
02:13:12 12 sociologists, psychologists, economists, political
02:13:16 13 scientists, all who specialized in the study of law
02:13:20 14 and legal institutions. In my case I studied -- I
02:13:22 15 specialized in criminology and social psychology and
02:13:26 16 sociology and how they relate to the criminal
02:13:30 17 justice system.

02:13:32 18 Q. And with regard to your law degree, you
02:13:36 19 said that you received that degree at the same time
02:13:38 20 you received your Ph.D.?

02:13:40 21 A. Correct.

02:13:40 22 Q. You don't actually practice law, do you?

02:13:42 23 A. No. I've never taken a bar examination,
02:13:44 24 and I am not practicing law, correct, nor have I
02:13:50 25 ever tried to practice law, correct.

02:13:54 1 Q. In other words, you have the degree from
02:13:54 2 having completed the educational process, but you've
02:14:00 3 never moved forward into the licensing process.

02:14:02 4 A. Correct. I never wanted to be an attorney,
02:14:06 5 and I have never made that move to try to become
02:14:06 6 one, correct.

02:14:08 7 Q. And I believe -- what was your reasoning
02:14:10 8 behind getting a J.D.?

02:14:12 9 A. Well --

02:14:12 10 Q. A juris doctorate or a law degree?

02:14:16 11 A. Well, the scholarship -- research and
02:14:18 12 scholarship that I do crosses over what social
02:14:24 13 scientists interested in law study and what legal
02:14:28 14 scholars and law professors study, so a number of
02:14:30 15 the outlets, the presentations, the associations,
02:14:32 16 the journals of my research is geared toward law
02:14:36 17 professors, and I thought that by getting a law
02:14:38 18 degree along the way, it would improve my knowledge
02:14:40 19 of the legal system as well as the quality and
02:14:48 20 breadth of my legal scholarship. So that was the
02:14:48 21 reason why I got the law degree, not to practice
02:14:50 22 law.

02:14:52 23 Q. And in the process of obtaining these
02:14:56 24 degrees, I believe you said that your area or your
02:15:00 25 specialization is in criminology and social

02:15:06 1 psychology as it applies to the criminal justice
02:15:06 2 system?

02:15:08 3 A. Correct.

02:15:08 4 Q. Could you describe in a little bit more
02:15:10 5 detail with that specialization includes?

02:15:14 6 A. Sure.

02:15:14 7 The field of criminology is an academic
02:15:16 8 discipline that goes back to the 18th century, and
02:15:22 9 in universities in America it's either part of the
02:15:26 10 sociology department or a freestanding department in
02:15:32 11 its own right.

02:15:32 12 The discipline of criminology essentially
02:15:34 13 has two halves. One half is concerned with studying
02:15:38 14 the causes of delinquency or deviants or criminal
02:15:42 15 behavior. The other half is interested in the study
02:15:44 16 of the criminal justice system and how the criminal
02:15:48 17 justice system investigates, processes, regulates,
02:15:50 18 and punishes alleged and real offenders.

02:15:54 19 My interest in the field of criminology
02:15:58 20 really is in the second half, and I have specialized
02:16:00 21 in police investigative activities, in particular,
02:16:04 22 interrogation, confession, and wrongful
02:16:06 23 convictions.

02:16:08 24 In addition to criminology, I'm also -- I
02:16:12 25 have also specialized in the field of social

02:16:14 1 psychology. Social psychology goes back, like
02:16:22 2 criminology, several hundred years. It was
02:16:22 3 institutionalized in American universities in the
02:16:28 4 19th century. Every university in the United States
02:16:30 5 has social psychologists in the sociology department
02:16:32 6 and in the psychology department, and social
02:16:36 7 psychology is thought of as a subspecialty within
02:16:38 8 the academic discipline of psychology.

02:16:44 9 Psychology is the study of human behavior,
02:16:44 10 human thought processes. Social psychology is the
02:16:48 11 study of behavior and thought processes and
02:16:54 12 influence in social contexts. So social psychology
02:16:58 13 is just a subfield of the general discipline of
02:17:00 14 psychology.

02:17:02 15 My own interest is in -- is in social
02:17:06 16 psychology in the criminal justice system and in
02:17:08 17 high-pressure environments like police
02:17:12 18 interrogation, like certain forms of therapy, like
02:17:16 19 the military or prisoner of war camps or gangs or
02:17:18 20 other high-pressure environments.

02:17:20 21 And so those are the two general areas of
02:17:22 22 specialty, criminology, social psychology, and then
02:17:28 23 the specific area of specialization for me in the
02:17:30 24 last decade has been police interrogation practices,
02:17:36 25 confessions, false confessions, and wrongful

02:17:38 1 convictions.

02:17:40 2 Q. And I believe that when you say your

02:17:42 3 specialization is in police interrogation and those

02:17:46 4 types of areas, could you tell us a little bit about

02:17:50 5 what specific training and/or specific skilled

02:17:58 6 research that you have done in the area of police

02:18:02 7 interrogation and -- I think you described it as

02:18:06 8 criminology and social psychology.

02:18:08 9 A. Correct.

02:18:08 10 Q. The social psychology having to do with

02:18:14 11 the -- I believe you referred to it as high-stress

02:18:14 12 environments and how that affects people, and I

02:18:18 13 think you said that your criminology experience is

02:18:20 14 in the second prong, having to do with the process

02:18:24 15 itself; right?

02:18:26 16 A. Correct.

02:18:28 17 Q. And so can you describe for us a little bit

02:18:30 18 about your specific specialized training in the area

02:18:34 19 of police interrogation?

02:18:36 20 A. Okay.

02:18:38 21 As part of my research I've attended and

02:18:42 22 participated in a number of police interrogation

02:18:46 23 training classes and seminars. The first one was in

02:18:48 24 the Oakland Police Department in 1990. It was a

02:18:50 25 one-day training seminar for patrol officers who

02:18:56 1 were just promoted to detective in the Criminal 993
02:18:58 2 Investigation Division at Oakland.
02:19:00 3 The second and third interrogation training
02:19:06 4 courses that I took were the introductory and
02:19:06 5 advanced interrogation training put on by Reid,
02:19:10 6 R-e-i-d, and Associates, a national training firm
02:19:14 7 based in Chicago that goes around the country and
02:19:18 8 trains private and public police in how to interview
02:19:22 9 and interrogate suspects..
02:19:24 10 I then took a one-week interrogation
02:19:26 11 training course at the San Mateo Community College
02:19:30 12 in Northern California, the Department of
02:19:32 13 Administration of Justice, and that was a full
02:19:34 14 week's training for patrol officers who were
02:19:38 15 promoted to detective in that part of the Bay Area.
02:19:40 16 And then finally -- I believe this was in
02:19:44 17 early 1993 -- I was invited by the Federal
02:19:50 18 Government to take a one-week advanced interrogation
02:19:50 19 training seminar in Glynco, G-l-y-n-c-o, Georgia, at
02:19:56 20 the Federal Law Enforcement Training Center, known
02:20:02 21 as FLETC, F-L-E-T-C, and FLETC is where all federal
02:20:06 22 police, with the exception of the FBI, are trained.
02:20:10 23 So the purpose of taking these courses was
02:20:18 24 as a researcher, but I took the courses, even though
02:20:18 25 I was the only civilian in the courses, typically

02:20:20 1 the same way the other police did. I took notes; I
02:20:26 2 took exams; I did role plays; I received
02:20:30 3 certification just like everyone else.

02:20:30 4 In addition to taking those courses, I also
02:20:34 5 observed up to 1994 when I had received the
02:20:42 6 dissertation -- the Ph.D., I observed approximately
02:20:44 7 200 interrogations, either live or by videotape, and
02:20:48 8 collected data on those interrogations. I also
02:20:50 9 interviewed police officers, police interrogators,
02:20:56 10 police trainers, other people in the criminal
02:20:56 11 justice system, and reviewed a number of historical
02:21:00 12 documents at archives having to do with police
02:21:04 13 interrogation.

02:21:06 14 After I received my dissertation, my Ph.D.,
02:21:10 15 in 1994, so in the last seven years, I've continued
02:21:12 16 to do research on police interrogation, primarily
02:21:16 17 analyzing case files, which include videotapes,
02:21:20 18 audio tapes, transcripts, police reports, medical
02:21:26 19 reports, and other information or evidence bearing
02:21:30 20 on the interrogation and the confession, and since
02:21:32 21 1994 I have observed or analyzed interrogations in
02:21:38 22 approximately 300 cases. So total, my work as a
02:21:46 23 graduate student up to 1994, my research since 1994,
02:21:48 24 I've observed or analyzed somewhere between 500 and
02:21:52 25 600 cases of interrogation and/or confession.

02:21:58 1 Q. And with regard to these cases that you've
02:22:00 2 analyzed, I believe that you said that your purpose
02:22:04 3 in analyzing them has been for research.

02:22:06 4 A. Correct.

02:22:12 5 Q. And pursuant to your -- to your research,
02:22:14 6 you have had the occasion to produce either written
02:22:20 7 materials in the form of books, articles,
02:22:24 8 publications, things of that nature, regarding your
02:22:26 9 research?

02:22:26 10 A. Correct. I've published a number of
02:22:30 11 articles in academic journals that discuss my
02:22:36 12 research on police interrogation and confessions.
02:22:36 13 I've published a number of book chapters, and I have
02:22:42 14 published an edited book, and I have another book
02:22:44 15 that is forthcoming.

02:22:46 16 Q. Okay. I believe, from looking at your
02:22:48 17 resume, there's two books that you have mentioned,
02:22:54 18 Inside the Interrogation Room, The Real World of
02:22:56 19 Police Questioning. Is that one of your books?

02:23:02 20 A. Correct, and that is in completion. It's a
02:23:02 21 forthcoming book.

02:23:04 22 Q. Okay. And The Miranda Debate -- Law,
02:23:04 23 Justice, and Policing?

02:23:06 24 A. Correct.

02:23:06 25 Q. That is published?

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02:23:08 1 A. Correct.

02:23:10 2 Q. And I believe that there are 20 articles

02:23:10 3 that you have mentioned, and we won't go over all of

02:23:14 4 them, but all about the field of questioning and

02:23:18 5 police interrogation?

02:23:22 6 A. Yes. Most of them are about police

02:23:22 7 questioning, police investigation, police

02:23:26 8 interrogation, and confessions. A few are about

02:23:28 9 police -- policing, police organization, more

02:23:32 10 broadly, and other related topics, but the vast

02:23:38 11 majority of my publications have been in the area of

02:23:38 12 police interrogation and confessions.

02:23:42 13 Q. And I believe that in your resume you've

02:23:44 14 also -- I think there's five book chapters that are

02:23:48 15 mentioned in different books of other people, but

02:23:50 16 you've written a chapter.

02:23:50 17 A. Correct.

02:23:52 18 Q. And several short publications as well as

02:23:56 19 reprinted articles that you've mentioned?

02:23:58 20 A. Correct.

02:24:00 21 Q. And I've looked at it briefly. I believe

02:24:04 22 there's ten awards and several other meetings that

02:24:08 23 you've attended pursuant to your resume?

02:24:12 24 A. I know there are some awards. I haven't

02:24:14 25 counted the number. I have attended a great many

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02:24:16 1 professional meetings and presented my research at
02:24:18 2 these meetings. Sometimes -- well, the meetings are
02:24:24 3 typically for the organizations to which I belong,
02:24:26 4 the professional organizations, in the field of
02:24:28 5 psychology or criminology or sociology. I have also
02:24:36 6 made presentations at a number of universities as
7 well.

02:24:38 8 Q. And I believe that we discussed that --

02:24:42 9 Before I go there, what professional
02:24:46 10 organizations are you a member of?

02:24:50 11 A. The American Society of Criminology, The
02:24:52 12 Law and Society Association, The American
02:24:56 13 Psychological Association, The American Sociological
02:24:58 14 Association, The Academy of Criminal Justice
02:25:02 15 Sciences, and the Pacific Sociological Association.
02:25:06 16 I don't have a copy of my resume in front of me, so
02:25:08 17 I may be leaving -- leaving some out.

02:25:12 18 Q. But it's fair to say that most all of the
02:25:14 19 associations related to your field.

02:25:18 20 A. Correct, the major associations, major
02:25:20 21 professional research organizations.

02:25:22 22 Q. And I believe also that you are -- you
02:25:26 23 indicated that you are a professor at UC Irvine.

02:25:32 24 A. Correct.

02:25:32 25 Q. I believe you are an associate professor?