

VOLUME I of III

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**Appeal from Horry County
Kristi Lea Harrington, Circuit Court Judge**

RECEIVED

AUG 27 2015

S.C. Supreme Court

JEFFREY WAYNE RIEBE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000015

APPENDIX

**DAVID ALEXANDER
Appellate Defender**

**South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589**

ATTORNEY FOR PETITIONER

**ALAN WILSON
Attorney General**

**JOSHUA L. THOMAS
Assistant Attorney General**

**P. O. Box 11549
Columbia, SC 29211**

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT (dated May, 20, 24 -27, 31, 2011)	1
APPLICATION FOR POST-CONVICTION RELIEF	1000
RETURN	1008
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated August 26, 2014).....	1015
PLANTIFF'S EXHIBIT#1 (Letter dated September 5, 2013)	1072
PLANTIFF'S EXHIBIT#2 (Letter dated July 12, 2013)	1074
PLANTIFF'S EXHIBIT#3 (Letter dated May 17, 2011)	1076
PLANTIFF'S EXHIBIT#4 (Administrative Order)	1078
DEFENDANT'S LETTER DATED DECEMBER 1, 2014.....	1079
DEFENDANT'S LETTER DATED DECEMBER 9, 2014.....	1080
DEFENDANT'S LETTER DATED JANUARY 12, 2015	1081
ORDER OF DISMISSAL	1082
INDICTMENT	1091

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

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
COUNTY OF HORRY	)	(09-GS-26-01053)
STATE	)	
VERSUS	)	TRANSCRIPT OF RECORD
JEFFREY WAYNE RIEBE	)	May 20, 2011
	)	May 24, 25, 26, 27, 31, 2011
	)	Conway, South Carolina

B E F O R E:

HONORABLE STEVEN H. JOHN, Judge; AND A JURY.

A P P E A R A N C E S:

GEORGE HENRY DeBUSK, JR., ESQ.
ASSISTANT SOLICITOR FOR HORRY COUNTY
ATTORNEY FOR STATE

BRANA J. WILLIAMS, ESQ.
ATTORNEY FOR DEFENDANT

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

1	<u>I N D E X .</u>			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u> <u>RC</u>
3	May 20, 2011			
4	MOTIONS			17
5	HEATHER SWARTHOUT			
6	MR. DEBUSK	18	25	
7	MS. WILLIAMS		22	
8	OWEN LYNAM			
9	MR. DEBUSK	27		
10	MS. WILLIAMS		35	
11	COURT'S RULING			37
12	OWEN LYNAM			
13	MR. DEBUSK	45		
14	(PUBLISHED PORTION OF DVD OF VIDEO STATEMENT)			46
15	(PUBLISHED PORTION OF DVD - STATEMENT OF DEFENDANT)			58
16	MS. WILLIAMS		59	
17	DEFENSE'S SUMMATION (WILLIAMS)			62
18	STATE'S SUMMATION (DEBUSK)			64
19	COURT'S RULING			66
20	REVIEW OF DEFENDANT'S STATEMENT			69
21	COURT'S RULING			82
22	COURT TO DEFENDANT			86
23				
24				
25				

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	
May 20, 2011		<u>(FOR MOTIONS ONLY)</u>
S-1	Statement of Defendant (2 photograph.)	22
S-2	Miranda Rights	32
S-3	Response from State to request	42
S-4	Transcribed statement (1st statement)	71
S-5	Transcribed statement (2nd statement)	71
S-6	Video of statement	72
S-7	(NOT ADMITTED)	
S-8	Photo of Defendant	22
D-1	Request to redact	40

I N D E X

1				
2	May 24, 2011			
3	JURY SELECTION (NOT TRANSCRIBED - JURY SELECTION FORM ATTACHED)			
4	(BATSON MOTION WAS MADE - DENIED)			
5	JURY OUT/ON RECORD (BATSON MOTION)			101
6	COURT'S RULING			106
7	MOTION TO SEQUESTER			107
8	JURY IN/SWORN			109
9	COURT TO JURY			109
10	STATE'S OPENING STATEMENT (DEBUSK)			110
11	DEFENDANT'S OPENING STATEMENT (WILLIAMS)			117
12	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u> <u>RC</u>
13	MICHELLE JACQUELINE RAINEY			
14	MR. DeBUSK	119		130
15	MS. WILLIAMS		126	
16	DIANA MARIE MOWERY			
17	MR. DeBUSK	131/145		
18	JURY OUT/ON RECORD/JURY IN			141/145
19	MS. WILLIAMS		147	
20	ROBERT STANLEY HODGES			
21	MR. DEBUSK	151		157
22	MS. WILLIAMS		155	157
23				
24				
25				

1		<u>I N D E X</u>			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	VICKY SHARRER				
4	MR. DEBUSK	159		168	
5	MS. WILLIAMS		163		
6	LUNCH.				169
7	JURY OUT (as to Juror #274)				170
8	JURY IN				173
9	SAM GEORGAKOPOULOS				
10	MR. DEBUSK	175			
11	MS. WILLIAMS		183		
12	HEATHER SWARTHOUT				
13	MR. DEBUSK	188			
14	JURY OUT/ON RECORD/BREAK/JURY IN				205/209
15	MS. WILLIAMS		211		
16	VANT ABERCROMBIE				
17	MR. DEBUSK	218			
18	MS. WILLIAMS		228		
19	DENNIS JAMES PITSINGER				
20	MR. DEBUSK	250			
21	JURY OUT/BREAK/ON RECORD/JURY IN				262
22	JURY OUT/ON RECORD/JURY IN				289
23	END DAY.				310
24					
25					

1	<u>I N D E X</u>			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u> <u>RC</u>
3	May 25, 2011			
4	JURY OUT/ON RECORD/JURY IN			310
5	MS. WILLIAMS		312	
6	JURY OUT/ON RECORD/JURY IN			356
7	DEBRA THOMPSON			
8	MR. DEBUSK	377		
9	MS. WILLIAMS (NONE)			
10	RENEE BEST			
11	MR. DEBUSK	379		
12	MS. WILLIAMS		389	
13	JURY OUT			394
14	AMY STEPHENS			
15	MR. DEBUSK	395		
16	MS. WILLILAMS (NONE)			
17	LORI GILES			
18	MR. DEBUSK	405		
19	MS. WILLIAMS		409	
20	SHERREE BROWN			
21	MR. DEBUSK	413		
22	MS. WILLIAMS (NONE)			
23				
24				
25				

1		<u>I N D E X</u>			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	MELINDA RAINES				
4	MR. DEBUSK	419			
5	MS. WILLIAMS		423		
6	KATIE URKA				
7	MR. DEBUSK	425		452	
8	MS. WILLIAMS		434		457
9	JURY OUT/LUNCH/JURY IN				458
10	ROBERT L. EDGE, JR.				
11	MR. DEBUSK	459			
12	MS. WILLIAMS		460		
13	PAM SMITH				
14	MR. DEBUSK	463			
15	MS. WILLIAMS (NONE)				
16	TINA GOFF				
17	MR. DEBUSK	464			
18	MS. WILLIAMS		469		
19	RACHEL WYLIE GRANT				
20	MR. DEBUSK	470		511	
21	JURY OUT/ON RECORD/JURY IN				477
22	MS. WILLIAMS		487		
23	JURY OUT/ON RECORD/BREAK/JURY IN				514
24					
25					

1	<u>I N D E X</u>				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	CARL DAVID FARMER				
4	MR. DEBUSK	516			
5	MS. WILLIAMS		518		
6	JURY OUT/BREAK/JURY IN				521
7	EDWARD LEROY PROCTOR, JR.				
8	MR. DEBUSK	522		547	
9	MS. WILLIAMS		535		
10	END DAY				
11					
12	May 26, 2011				
13	JURY OUT/ON RECORD/COURT'S RULING				550
14	OWEN LYNAM				
15	MR. DEBUSK	555		614	
16	PUBLISHED S-45, DVD, INTERVIEW				560
17	JURY OUT/BREAK/ON RECORD/JURY IN				564
18	PUBLISHED S-46 (DVD)				570
19	LUNCH				571
20	JURY IN				571
21	MS. WILLIAMS		572		618
22	JURY OUT/ON RECORD/JURY IN				583
23					
24					
25					

1	<u>I N D E X</u>				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	JEFFREY WHITE				
4	MR. DEBUSK	622			
5	MS. WILLIAMS		624		
6	JURY OUT/ON RECORD				628
7	PUBLISHED PORTION OF S-46				630
8	STATE'S CASE (MOTIONS)				630
9	COURT'S RULING				632
10	CHARLES MICHAEL BOWERS				
11	MS. WILLIAMS	650			
12	MR. DEBUSK		656		
13	JURY IN/COURT TO JURY/JURY OUT/ON RECORD				666
14	COURT'S RULING				670
15	END DAY				675
16					
17	May 27, 2011				
18	JURY OUT/ON RECORD/JURY IN				675
19	CHARLES MICHAEL BOWERS				
20	MS. WILLIAMS	689		726	
21	MR. DeBUSK		721		
22	JURY OUT/BREAK/JURY IN				728/729
23					
24					
25					

	<u>I N D E X</u>			
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u> <u>RC</u>
1				
2	ROBERT JOHN BELLOTO, JR.			
3				
4	MS. WILLIAMS	729		
5	JURY OUT/ON RECORD/JURY IN			743/745
6	MS. WILLIAMS	745		
7	JURY OUT/ON RECORD/COURT'S RULING			755/758
8	MS. WILLIAMS	758		
9	JURY OUT/ON RECORD/JURY IN			760/764
10	MR. DEBUSK		766	
11	JURY OUT/ON RECORD/BREAK/JURY IN			768/770
12	DONALD GIRNDT			
13	MS. WILLIAMS	770		
14	MR. DEBUSK		798	
15	JURY OUT/ON RECORD/LUNCH/JURY IN			801/803
16	BRIAN W. MEEHAN			
17	MS. WILLIAMS	803		
18	JURY OUT/ON RECORD/JURY IN			803/832
19	MR. DEBUSK		844	
20	JURY OUT/BREAK/JURY OUT			859
21	COURT TO DEFENDANT (Concerning his Rights)			859
22	JURY IN			865
23	END DAY			
24				
25				

1	<u>I N D E X</u>			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u> <u>RC</u>
3	MAY 31, 2011			
4	JURY OUT/ON RECORD/MOTIONS			868
5	REVIEW CHARGE AND VERDICT FORM			
6	JURY IN/COURT TO JURY			885
7	DEFENDANT'S SUMMATION (WILLIAMS)			886
8	STATE'S SUMMATION (DEBUSK)			899
9	JURY OUT/BREAK/JURY IN			926
10	CHARGE BY THE COURT			927
11	JURY OUT @ 11:30 A.M.			936
12	JURY OUT/ADDITIONS, EXCEPTIONS, OBJECTIONS			936
13	JURY TO DELIBERATE AT 11:30 A.M.			
14	JURY IN @ 12:50 A.M.			939
15	VERDICT - GUILTY (MURDER)			
16	JURY POLLED (ALL AFFIRM)			
17	JURY DISMISSED			
18	MOTIONS			936
19	COURT'S RULING			
20	SENTENCING			936
21	END DAY			
22				
23				
24				
25				

<u>EXHIBITS</u>				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-1	Photo		121
4	S-2	Photo		121
5	S-3	Photo	137	148
6	S-4	(Brown box) (containing S-4 (A) (B) (C)	140	516
7	S-4 (A)	Brown leather belt	140/516	
8	S-4 (B)	Brown bag	224	516
9	S-4 (C)	Swabs	303	
10	S-5	Large aerial poster		191
11	S-6	Photo (later became D-29)		
12	S-7	Handwritten statement (2pg) Defendant	198	562
13	S-8	Photo	195/630/666	
14	S-9	Photo		260
15	S-10	Photo		233
16	S-11	Photo		200
17	S-12	Photo		200
18	S-13	Photo		200
19	S-14	Photo		260
20	S-15	Photo		260
21	S-16	Photo		260
22	S-17	Photo		260
23	S-18	Photo		260
24	S-19	Photo		260
25	S-20	Photo		260

1	<u>EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-21	Photo		260
4	S-22	Photo		260
5	S-23	Photo		260
6	S-24	Photo		260
7	S-25	Photo	227/260	
8	S-26	Photo		260
9	S-27	Photo		260
10	S-28	Photo		260
11	S-29	Photo		260
12	S-30	Photo		260
13	S-31	Photo		260
14	S-32	Photo	125/518	
15	S-33	Photo		561
16	S-34	Photo		561
17	S-35	Floor plan (hand drawn)		563
18	S-36	Photo		260
19	S-37	Photo		260
20	S-38	Diagram of the scene		255
21	S-39	Sexual Assault Kit	203/630/666	
22	S-40	Brown bag containing red panties	204/630/666	
23				
24				
25				

1	<u>EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-41	Four teeth		308
4	S-42	Meds (Aleve)		266
5	S-43	Bag containing 2 shoes and 2 socks		564
6	S-44	Miranda form	558	559
7	S-45	DVD of interview with Defendant	559	560
8	S-46	DVD of interview with Defendant		570
9	S-47	Photo	142	145
10	S-48	Photo	174	527
11	S-49	Photo	174	527
12	S-50	Photo	174	527
13	S-51	Photo	174	527
14	S-52	Photo	174	208
15	S-53	Photo	174	
16	S-54	Photo	174	
17	S-55	Photo		261
18	S-56	Photo		261
19	S-57	Photo	261/311	
20	S-58	Photo		261
21	S-59	DNA chart	452	455
22	S-60	DNA chart	452	455
23	S-61	REPORT OF RACHAEL GRANT	476	484
24		(3 pages with Table)		
25				

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-62	Bulletin	848	
S-63	(2 pg.) Bulletin		853
D-1	Statement of D.M. Rainey	164	
D-2	Photo of shoes	354	359
D-3	Statement of Mr. Georgakopoulos	185	
D-4	Photo	211	543
D-5	Photo	211	343
D-6	Photo	211	
D-7	Photo	211	331
D-8	Photo	211	337
D-9	Photo	354	362
D-10	Photo	354	362
D-11	Photo		340
D-12	Photo	354	376
D-13	Photo	354	376
D-14	Photo	242	
D-15	Photo		354
D-16	Photo		361
D-17	Photo	518	519
D-18	Photo	577	578
D-19	Photo	579	580
D-20	Photo	578	579

<u>E X H I B I T S</u>				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	D-21	Photo (NOT ADMITTED)		
4	D-22 (A) (B) (C)	DNA charts	501	503
5	D-23	DNA chart	444	445
6	D-24	DNA chart	444 445/730	
7	D-25	DNA chart	446	446
8	D-26	Photo	579	580
9	D-27	Photo	579	580
10	D-28	(3 pg.) Report - Richland Co.	481	
11	D-29	Photo (formerly S-6(ID)	540	543
12	D-30	Photo	542	
13	D-31	Photo	542	
14	D-32	CV of Brian W. Meehan	770	
15	D-33	CV of Donald C. Girndt	770	
16	D-34	CV of Robert J. Belloto, Jr.	770	
17	D-35	CV of Charles Michael Bowers	770	
18	D-36	(4 pages) of SLED manual	828	
19				
20	C-1	Note from Jury	209	
21	C-2	Defendant's Voir Dire	310	
22				
23				
24				
25				

Horry County Courthouse RANDOM STRIKE SHEET

JUDGE NAME :

TRIAL TYPE : Criminal

ANEL ID : JOHN-REIBE

COURTROOM JAR

DESCRIPTION : JOHN-REIBE

Sorted by: Random Nbr

Trial

NAME	JURY NUMBER	RACE	SEX	DOB	DOB	DOB	REMARKS
1 Rabon, Lessie J	261	W	F	()	()	()	✓ ①
2 Evans, Delores E	85	B	F	()	X ①	()	
3 Floyd, Natalie C	89	B	F	X ①	()	()	
4 Skinner, Christopher A	292	B	M	X ②	()	()	
5 Belcher, Darlene M	23	W	F	()	()	()	✓ ②
6 Forrest, Johnny P	92	W	M	()	()	()	✓ ③
7 Foster, James L JR	94	W	M	()	()	()	✓ ④
8 Mccune, Christine D	217	W	F	()	()	()	✓ ⑤
9 Roberts, Eric S	274	W	M	()	()	()	✓ ⑥
10 Johnson, Mattie H	155	W	F	()	()	()	✓ ⑦
11 Hayes, Dwain W	123	W	M	()	()	()	✓ ⑧
12 King, Karen A	170	W	F	X ③	()	()	
13 Locker, Kathleen A	191	W	F	()	X ②	()	
14 Moser, Mickey L	232	W	M	()	()	()	✓ ⑨
15 Shelton, Melanie D	287	W	F	()	()	()	✓ ⑩
16 Armstrong, George R	14	A	M	X ④	()	()	
17 Gambelli, Frances	96	W	F	()	()	()	✓ ⑪
18 Stalvey, Kirk W	302	W	M	()	()	()	✓ ⑫ Sorema
19 Kooshian, Barbara T	175	W	F	()	()	()	✓ ① alt.
20 Davis, Patrick S	68	B	M	()	()	()	✓ ② alt.
21 Floyd, Tammy B	90	W	F	()	()	()	
22 Bowden, Liza R	34	W	F	()	()	()	
23 Mason, Jaime M	207	W	F	()	()	()	

Horry County Courthouse RANDOM STRIKE SHEET

JUDGE NAME :

TRIAL TYPE : Criminal

JURY ID : JOHN-REIBE

COURTROOM JAR

DESCRIPTION : JOHN-REIBE

Sorted by: Random Nbr

Trial

NAME	JURY NBR	RACE	SEX	STATE/PLAINTIFF	DEFENDANT	REMARKS
24 Edmonds, Janet M	82	W	F	()	()	()
25 Knowles, Susan E	173	W	F	()	()	()
26 Joiner, Myia E	159	B	F	()	()	()
27 Maupin, Steve W	209	W	M	()	()	()
28 Martin, Rodney W	203	N	M	()	()	()
29 Sarvis, Sabrina G	281	B	F	()	()	()
30 Smalls, Bonita	294	W	F	()	()	()
31 Laperle, Mark E	184	W	M	()	()	()
32 Earl, Dennis E	81	W	M	()	()	()
33 Hoebee, Sharon A	136	W	F	()	()	()
34 Magee, Matthew R	196	W	M	()	()	()
35 Rabon, Tobie C	262	W	M	()	()	()
36 Smith, Mary E	297	B	F	()	()	()
37 Hawley, Harold N	122	W	M	()	()	()
38 Meyer, Teri J	223	W	F	()	()	()
39 Watts, Gloria J	335	W	F	()	()	()
40 Kronenwetter, Vicki L	178	W	F	()	()	()
41 Larson, Valerie B	186	W	F	()	()	()
42 Maggio, Luke	197	W	M	()	()	()
43 Kelley, Steven	168	W	M	()	()	()
44 Biddy, Barbara E	28	W	F	()	()	()
45 Meridith, Stephanie C	222	W	F	()	()	()
46 Holt, Pilkey Beverly D	139	W	F	()	()	()

Horry County Courthouse RANDOM STRIKE SHEET

JUDGE NAME :

TRIAL TYPE : Criminal

NEL ID : JOHN-REIBE
COURTROOM JAR

DESCRIPTION : JOHN-REIBE

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	PLAINTIFF	DEFENDANT	REMARKS
47 Flanagan, Kathleen A	87	W	F	()	()	()
48 Mccoll, David N	214	W	M	()	()	()
49 Blanton, Donna M	30	W	F	()	()	()
50 Griffiths, Virginia M	109	W	F	()	()	()
51 Callahan, Mary E	43	W	F	()	()	()
52 Riggins, George T JR	271	W	M	()	()	()
53 Moore, Charles H JR	229	W	M	()	()	()
54 Tindell, Melissa G	316	W	F	()	()	()
55 Johnson, Wendy C	158	W	F	()	()	()
56 Martorano, Joanne	205	W	F	()	()	()
57 Dowd, Laurie A	78	W	F	()	()	()
58 Bethle, Joseph K	27	W	M	()	()	()
59 Hulshart, George A JR	146	W	M	()	()	()
60 Stewart, Kenneth D	305	B	M	()	()	()
61 Rousseau, Russell J	279	W	M	()	()	()
62 Estep, Mell J JR	84	W	M	()	()	()
63 Muller, Dianne	233	W	F	()	()	()
64 Smith, Rhonda L	299	B	F	()	()	()
65 Abrams, Ryan L	1	W	M	()	()	()
66 Tingen, Chad E	317	W	M	()	()	()
67 Knowlin, Latonya M	174	B	F	()	()	()
68 Paul, Emma T	249	W	F	()	()	()
69 Hooks, Alicia N	141	W	F	()	()	()

20

**Horry County Courthouse
RANDOM STRIKE SHEET****JUDGE NAME :****Sorted by:** Random Nbr**TRIAL TYPE :** Criminal

Trial

NEL ID : JOHN-REIBE
COURTROOM JAR**DESCRIPTION :** JOHN-REIBE

NAME	JUROR NBR	RACE	SEX	DATE	PLAINTIFF	DEFENDANT	REMARKS

70 McCloskey, Patrick D	213	W	M	()	()	()	

Total Number of Jurors: 70**** END OF REPORT ****

MOTIONS

17

1 (THE FOLLOWING TAKES PLACE ON MAY 20, 2011.)

2 THE COURT: All right, Solicitor, be glad to hear from
3 you, sir.

4 MR. DEBUSK: Your Honor, we want to proceed with
5 Jackson v. Denno.

6 THE COURT: Yes sir. You need -- why don't we call the
7 name of the case so we've got it on the record, please.

8 MR. DEBUSK: This is State v. Jeffrey Riebe. I'm
9 sorry, Your Honor, everything else -- I didn't have the
10 indictment number handy. Madame Clerk has stepped out.

11 MS. WILLIAMS: I have it. It's (08-GS-26-01053) (SIC).

12 MR. DEBUSK: That is correct, Your Honor.

13 THE COURT: All right. Very good. And ---

14 MR. DEBUSK: The State calls -- sorry, Your Honor.

15 THE COURT: And I'm sorry. The -- just so I'm clear.
16 The things that we need to cover, we've got a Jackson v.
17 Denno, and then we've got a matter about certain statements,
18 whether they should be redacted or not; is that correct?

19 MR. DEBUSK: Yes, Your Honor, and we also have, just to
20 maybe save a little time next week, I have the photos I intend
21 to admit, and we might discuss those, see if we can ---

22 THE COURT: Okay. And then -- and that will remind me
23 that, while y'all are here, I would appreciate it if you would
24 get with Ms. Dixie about the exhibits, and see if y'all can't
25 premark some exhibits, and get those ready to go. All right.

HEATHER SWARTHOUT - DIRECT BY DEBUSK

18

1 MS. WILLIAMS: Yes, Your Honor.

2 Your Honor, if I may, I had two additional motions that
3 I prepared late yesterday if we want to address them today, or
4 we can address them later. I don't think they will take much
5 time.

6 THE COURT: We'll talk all -- we will talk about them
7 all today.

8 All right, Solicitor, why don't you call your first
9 witness, please.

10 MR. DEBUSK: Your Honor, just for -- to tell you the
11 structure, Your Honor, we have three statements, one written
12 and two tapes. We'll just begin with the written statement,
13 and I'll call Officer Heather Swarthout of the North Myrtle
14 Beach Police Department.

15 THE COURT: All right. Very good.

16 HEATHER SWARTHOUT, being first duly
17 sworn, testifies as follows:

18 DIRECT-EXAMINATION BY MR. DEBUSK:

19 Q. Officer Swarthout, who is your employer?

20 A. City of North Myrtle Beach.

21 Q. Were you employed by them on August 28th, 2008?

22 A. Yes sir, I was.

23 Q. At that time what were your duties?

24 A. Patrol Officer, answering calls.

25 Q. Did you respond to ri on August 28th?

HEATHER SWARTHOUT - DIRECT BY DEBUSK

19

1 A. Yes sir, I did.

2 Q. While you were there, did you see the Defendant,
3 Jeffrey Wayne Riebe?

4 A. I did.

5 Q. Did you speak to him?

6 A. Very briefly.

7 Q. What did you -- what was your conversation with Mr.
8 Riebe?

9 A. He actually approached me, kind of wanting to know what
10 we were doing there, and what was going on. Don't remember
11 our exact conversation, but he was saying that he was friends
12 with the victim, and at that time I was handing out voluntary
13 statements to pretty much anybody that was in the area that
14 knew the victim or had had any contact with the victim. I
15 handed him a written voluntary statement and requested him to
16 write down the last time he had had any contact with the
17 victim, and I showed him a table where he could go write, and
18 gave him a pen, and basically walked away from him.

19 Q. Did you force him, or coerce him in any to make that
20 statement?

21 A. I did not.

22 Q. Was he under arrest at that time?

23 A. No sir.

24 Q. Was he a suspect in anything at that time?

25 A. At that time. No, I ---

1 Q. Okay. Where did he sit?

2 A. In between -- basically there's like a little courtyard
3 area, and there was a table just away from the actual crime
4 scene, and he sat down at that table and began writing.

5 MR. DEBUSK: Your Honor, we have what we intend to
6 admit as State's Exhibit 8 at trial.

7 Wonder if we could mark it out of order as State's
8 Exhibit 8, just for ---

9 THE COURT: That's fine. Yes, that's not problem.

10 MR. DEBUSK: ---For reference purposes.

11 THE COURT: For this motion.

12 Q. I'm going to show you what's been marked as State's
13 Exhibit 8 and ask if you recognize that.

14 A. Yes sir, I do.

15 Q. What is that?

16 A. It's going to be the courtyard area, and the table
17 where Mr. Riebe sat down to write his statement.

18 Q. Was anyone standing there near him while he was writing
19 that statement?

20 A. Nobody was around him.

21 Q. Okay. Let me show you ---

22 MR. DEBUSK: At this time, Your Honor, I'd mark State's
23 Exhibit 1. We may -- we mark it as copy for trial.

24 THE COURT: All right.

25 MR. DEBUSK: And for the record, Your Honor, this

HEATHER SWARTHOUT - DIRECT BY DEBUSK

21

1 consists of two pages.

2 THE COURT: Very good.

3 MR. DEBUSK: Perhaps we could staple them, or paperclip
4 them together at some point.

5 THE COURT: Do you have a stapler over there, Madame
6 Clerk?

7 DEPUTY CLERK OF COURT: Yes sir.

8 Q. I'm going to ask -- hand you State's Exhibit 1 and ask
9 if you recognize that.

10 A. Yes sir, I do.

11 Q. What is that?

12 A. It's going to be the Voluntary Statement paperwork that
13 I gave to Mr. Riebe, and requested that he fill out with any
14 information.

15 Q. How did you come into possession of that statement?

16 A. I keep them in my car, blank ones, so I got it out of
17 my car and gave it to him.

18 Q. Obviously when you handed it to him it wasn't filled
19 out. When it was filled out he handed it back to you; is that
20 correct?

21 A. He actually gave it to another officer.

22 Q. Okay.

23 A. I just gave him -- at the time I filled out the time
24 and the place, and the case number, and handed it to him. A
25 little later another officer actually witnessed it and took it

1 from him.

2 Q. Okay.

3 MR. DEBUSK: Your Honor, at this time I'll go ahead and
4 publish the contents of the statement, offer it as exhibit.

5 THE COURT: All right. Very good. Is there any
6 objection to State's 8 and 1 coming into evidence for the
7 purpose of the motion?

8 MS. WILLIAMS: Your Honor, may I -- may I -- I don't
9 know if this is the time for me to -- for the purposes of the
10 motion, no, I don't have an objection for it coming in for
11 purpose of the motion, Your Honor.

12 THE COURT: All right. Very good.

13 (PHOTO OF DEFENDANT MARKED STATE'S EXHIBIT NUMBER 8, FOR
14 PURPOSES OF THIS MOTION.)

15 (TWO-PAGE STATEMENT OF THE DEFENDANT MARKED STATE'S
16 EXHIBIT NUMBER 1, FOR PURPOSES OF THIS MOTION.)

17 THE COURT: You may continue, Solicitor.

18 MR. DEBUSK: Your Honor, I think all the State has left
19 is the argument on this particular motion.

20 THE COURT: Oh, I'm sorry. With this witness. Do you
21 have any further questions of this witness?

22 MR. DEBUSK: No, Your Honor.

23 THE COURT: All right. Cross-examination.

24 MS. WILLIAMS: Thank you.

25 CROSS-EXAMINATION BY MS. WILLIAMS:

HEATHER SWARTHOUT - CROSS BY WILLIAMS

23

1 Q. Good morning, Officer Swarthout. Is it -- I want to
2 pronounce it correctly.

3 A. Swarthout.

4 Q. Swarthout. You testified you were one of the
5 responding officers.

6 A. Yes Ma'am.

7 Q. And how many other officer responded?

8 A. Initially, I was the only one dispatched, but my
9 partner did show up shortly thereafter, and then shortly after
10 that several detectives came.

11 Q. Do you recall when Mr. Riebe arrived at the scene?

12 A. It was prior to us getting the Search Warrant for the
13 house, so I don't know the exact time, no, but it was while we
14 were kind of standing around out front waiting for the
15 detectives to come back.

16 Q. All right. Do you recall if any other officers had
17 conversations with Mr. Riebe prior to your handing him his
18 voluntary statement?

19 A. Not that I recall, no Ma'am.

20 Q. Do you -- so you don't know if any other officers had
21 conversations with him?

22 A. No Ma'am.

23 Q. Okay. But according to you, you did not have any type
24 of conversation with him that amounted to any type of suspect
25 or interrogation type conversation?

1 A. Correct.

2 Q. And I believe you testified that when Mr. Riebe
3 finished Mr. Riebe actually gave the statement to another
4 officer.

5 A. Correct.

6 Q. Did you witness that?

7 A. No sir. No Ma'am. I'm sorry. The other officer
8 actually witnessed it.

9 Q. All right -- I mean, did you witness him handing the
10 statement to the other officer?

11 A. No Ma'am.

12 Q. All right. Now, let me ask you this, did you -- when
13 Mr. Riebe went and sat down, was anybody else around him?

14 A. At the beginning there may have been. Some other
15 family members were also writing statements. I handed out a
16 lot of voluntary statements to everyone around, but they
17 weren't there for any amount of time around him.

18 Q. Did you -- did you instruct anybody to leave, to give
19 him peace and quiet to be able to write his statement?

20 A. No, I did not.

21 MS. WILLIAMS: One -- one -- beg the Court's indulgence
22 one moment, Your Honor.

23 Q. Did you see any other officers disperse anybody around
24 Mr. Riebe as he was giving -- writing the statement?

25 A. I did not.

HEATHER SWARTHOUT - REDIRECT BY DEBUSK

25

1 Q. Okay. You did not see any, so you don't know if an
2 officer did or did not run anybody off?

3 A. Yes Ma'am. I did not see anybody.

4 MS. WILLIAMS: Okay. That's all the questions that I
5 have, Your Honor.

6 THE COURT: Any redirect?

7 MR. DEBUSK: Very briefly.

8 REDIRECT-EXAMINATION BY MR. DEBUSK:

9 Q. Who was that other officer that received the hand and
10 witnessed it?

11 A. Based on the bottom it was actually -- I believe it was
12 Detective Sheetz. I would have to look at it to see the name
13 at the bottom.

14 Q. All right. The Judge is ---

15 A. I'm sorry. It was Officer Schuster.

16 Q. Who is Officer Schuster?

17 A. That day he was my partner in that area.

18 Q. Okay. And he gave that statement back to you?

19 A. Correct.

20 Q. Okay. And when you gave him that form you saw him go
21 sit down at that table and begin to write on that form?

22 A. Yes.

23 Q. Is that the same form you gave him?

24 A. Yes, it is.

25 Q. Does it have your handwriting on it?

1 A. It does, at the top, yes sir.

2 Q. And you recognize that?

3 A. I do.

4 Q. Okay. And at that time were you even aware that a
5 crime had been committed?

6 A. I had no knowledge that a crime had been committed.

7 MS. WILLIAMS: Your Honor, I believe at this point we
8 are addressing on redirect, issues that weren't brought up in
9 direct.

10 MR. DEBUSK: Your Honor, Ms. Williams asked Ms.
11 Swarthout if he was a suspect.

12 THE COURT: That's fine. That's fine. Let's just move
13 along.

14 MR. DEBUSK: That's all, Your Honor. Thank you.

15 THE COURT: Ma'am, let me ask you a question. Describe
16 your first contact with Mr. Riebe again, please.

17 A. We were -- I was standing outside, out front of the
18 residence. There was lots of family members around. We had
19 kind of taped off the crime scene. He approached and -- I
20 don't remember the exact conversation, but he was asking kind
21 of what was going on, what we were doing. I, you know,
22 advised him that the victim was deceased, and we were just
23 trying to, you know, kind of figure out what had happened, and
24 asking anybody that knew any -- had any contact with her, or
25 knew anything about her, to give us some infor -- their

OWEN LYNAM - DIRECT BY DEBUSK

27

1 information.

2 THE COURT: And at that point in time you handed him a
3 form?

4 A. Yes sir. I was handing out forms to pretty much
5 anybody that was out there.

6 THE COURT: All right. You did not seek out Mr. Riebe
7 in any way?

8 A. No, I did not.

9 THE COURT: Very good. Thank you very much. You may
10 step down.

11 A. Thank you.

12 MR. DEBUSK: Your Honor, on this particular statement
13 there's one more witness.

14 THE COURT: All right. Very good.

15 MR. DEBUSK: The State calls Detective Owen Lynam.

16 THE COURT: All right. Please come around to be sworn,
17 sir.

18 OWEN LYNAM, being first duly sworn,
19 testifies as follows:

20 MR. DEBUSK: Your Honor, just as a question as to how
21 you would like me to proceed. At one point Detective Lynam
22 went over this statement that has been currently marked with
23 the Defendant during another statement, recorded statement.
24 Would you like me to qualify the recorded statement first, or
25 just ask him specific questions about the written statement?

1 THE COURT: All right. So the written statements came
2 first?

3 MR. DEBUSK: Yes, Your Honor.

4 THE COURT: And then he reiterated the written
5 statements in the recorded statement?

6 MR. DEBUSK: Yes, Your Honor.

7 THE COURT: All right. Well, let's cover the written
8 statements first.

9 MR. DEBUSK: Okay. Thank you, Your Honor.

10 DEPUTY CLERK OF COURT: Please state your full name and
11 spell your last name.

12 A. My name is Owen Lynam, L.y.n.a.m..

13 DIRECT-EXAMINATION BY MR. DEBUSK:

14 Q. Detective Lynam, who is your employer?

15 A. City of North Myrtle Beach.

16 Q. What are your duties?

17 A. I'm employed in the Department of Public Safety,
18 currently assigned to Investigation Division.

19 Q. How about in August -- on August 28th of 2008, were
20 your duties the same or different?

21 A. Yes. In August, 2008, I was assigned to Investigative
22 Division also.

23 Q. Okay. During the course of that did you encounter the
24 Defendant, Jeffrey Riebe?

25 A. Yes sir, I did.

OWEN LYNAM - DIRECT BY DEBUSK

29

1 Q. I want to ask you specifically, before we go to the
2 beginning of your encounter with him, about State's Exhibit 1,
3 and ask if you recognize that.

4 A. Yes. This is a handwritten statement that was
5 completed by Mr. Riebe.

6 Q. During the course of your discussions with Mr. Riebe
7 did he acknowledge having written that statement at any point?

8 A. Yes sir, he did.

9 MR. DEBUSK: Your Honor, that would be our showing on
10 this particular statement. Detective Lynam will be the
11 witness on the next statement, so if you want me to leave him
12 on the stand, I'm not sure.

13 THE COURT: I need for you to just, if you would,
14 explain to me the circumstances that he asked that question.

15 Q. Okay. Let's start from the beginning. Where -- how
16 did you encounter Jeffrey Riebe?

17 A. When I arrived at the police station on the morning of
18 August 28, 2008, I was informed by one of my supervisors,
19 Sergeant Sheetz, that we had a possible crime scene on
20 , and if I would drive to
21 that location to see if the guys already there needed
22 assistance.

23 I proceeded to that location on , at which
24 time there were several uniformed officers there already,
25 along with another detective. The Watch Commander on duty

OWEN LYNAM - DIRECT BY DEBUSK

30

1 that day, Lieutenant Joe Turner, he approached me in the
2 little courtyard area and explained that there was one person
3 in particular that they knew was the last person that had been
4 in contact with the deceased that was found inside her
5 apartment, and he asked me if I would interview this
6 individual, get some more indepth information and background.

7 Q. And what did you do?

8 A. At that particular time Lieutenant Turner, he had
9 pointed specifically to Mr. Riebe, who was sitting on the
10 opposite end of the courtyard at a table, and it appeared to
11 me like he was actively writing something. I waited for
12 several minutes, and when Mr. Riebe had completed his
13 statement I approached Mr. Riebe after he had handed his
14 statement to Officer Schuster and I asked him if he would
15 voluntarily come to the police station with me so we could
16 talk more in depth. The reason ---

17 Q. Was he under arrest at that time?

18 A. No sir, he was not.

19 Q. Did he have handcuffs on?

20 A. No, he did not.

21 Q. Did you coerce him in any way to make him go to the
22 police station with you?

23 A. No sir, I did not.

24 Q. But you did ask him?

25 A. Yes. And the reason I asked him to come to the

OWEN LYNAM - DIRECT BY DEBUSK

31

1 station, it was extremely hot there that morning.. There was a
2 lot of people around, a lot of immediate family members of the
3 victim, and a lot of -- lot of bugs, and I just felt it more
4 comfortable for both of us to get into a cooler environment.

5 Q. How did the two of you get to the station?

6 A. We actually drove in my police car.

7 Q. Okay. And where did you go once you got there?

8 A. When we got to the police station we went to the second
9 floor, to the Detective Division. In the Detective Division
10 we do have what we call our interview room. It's a private
11 room. We can go in and close the door, and it does have the
12 audio/video recording capabilities.

13 Q. Okay. Did you record the interview with Mr. Riebe?

14 A. Yes sir, I did.

15 Q. Now was Mr. Riebe under arrest at that time?

16 A. No, he was not.

17 Q. If he had wanted to leave could he have left?

18 A. Yes, absolutely.

19 Q. But despite that, did you read him his Miranda Warning
20 anyway?

21 A. Yes, I did.

22 Q. Did you have him fill out, in fact, a Miranda form?

23 A. Yes sir, I did.

24 MR. DEBUSK: For purpose of this hearing I would like
25 to mark this as State's 2.

OWEN LYNAM - DIRECT BY DEBUSK

32

(MIRANDA RIGHTS FORM MARKED STATE'S EXHIBIT NUMBER 2,
FOR IDENTIFICATION ONLY.)

Q. Detective Lynam, showing you State's Exhibit 2. Ask if
you recognize that.

A. Yes. This is -- this is a true and accurate copy of
the Miranda Form that I had Mr. Riebe complete.

Q. Did you read Mr. Riebe each one of his rights?

A. Yes, I did.

Q. Did you have him acknowledge each right separately?

A. Yes, I did.

Q. Did he, in fact, understand his rights?

A. Yes, he did.

Q. Did you also question him to determine if, in fact, he
was under the influence of any alcohol or drugs?

A. Yes, I did.

Q. Did he acknowledge that he was under the influence, or
did he deny that he was under the influence?

A. He denied. He denied -- he stated that he was not
under the influence, and that he had a clear understanding and
comprehension of what I was discussing with him.

Q. Based on your experience as an officer -- how long have
you been a law enforcement officer?

A. Just turned eighteen years.

Q. And based on your eighteen years experience did he seem
to be coherent?

OWEN LYNAM - DIRECT BY DEBUSK

33

1 A. Yes, he did.

2 Q. Did he ask for anything that you denied him, any food
3 or anything?

4 A. No, he did not.

5 Q. Did you offer him to use the restrooms or anything that
6 he needed?

7 A. Yes, I did.

8 Q. How was he seated?

9 A. Both of us sat at a table. Mr. Riebe was kind of
10 seated in the corner, at the end of the table, and then I was
11 seated at the long section of the table, facing Mr. Riebe.

12 Q. Did you threaten him or coerce him in any to get him to
13 make a statement?

14 A. No, I did not.

15 Q. Once you had read him his Miranda Rights and were
16 certain that he seemed to be sentient did you, in fact, have
17 him sign that Miranda Form?

18 A. Yes, I did.

19 Q. Did he sign to waive his rights?

20 A. Yes, he did.

21 MR. DEBUSK: Your Honor, we offer into evidence State's
22 2, for the purpose of this hearing.

23 THE COURT: All right. Any objection to State's 2 for
24 this particular hearing?

25 MS. WILLIAMS: No sir, not for this hearing.

1 THE COURT: Thank you very much.

2 (MIRANDA RIGHTS FORM ADMITTED INTO EVIDENCE AS STATE'S
3 EXHIBIT NUMBER 2 FOR PURPOSES OF THIS HEARING.)

4 Q. After he had waived his rights and you proceeded to ask
5 him about the situation with Phyllis Mowery?

6 A. Yes sir, I did.

7 Q. And for the Court's purposes, who is Phyllis Mowery?

8 A. Phyllis Mowery is the victim in this case. She's the
9 lady that was found to be deceased in her apartment.

10 Q. And that is the place where you -- the apartment is the
11 place where you encountered Jeffrey Riebe?

12 A. Yes. It's -- the apartment is located at
13

14 Q. Okay. During the course of that interrogation, after
15 he waived his Miranda Rights, did you show him State's Exhibit
16 1, the written statement?

17 A. Yes, I did.

18 Q. And he did acknowledge that he had, in fact ---

19 A. Yes, he did.

20 Q. Okay. Did he go over and read that statement to you?

21 A. Yes. We had read it over together. I was having a
22 hard time understanding some of the writing so we went over it
23 together.

24 Q. Okay. And does all that appear on tape?

25 A. Yes, it does.

OWEN LYNAM - CROSS BY WILLIAMS

35

1 MR. DEBUSK: Your Honor, that's our showing for this
2 particular statement.

3 THE COURT: All right. Any cross-examination?

4 CROSS-EXAMINATION BY MS. WILLIAMS:

5 Q. Good morning, Detective Lynam.

6 A. Good morning.

7 Q. All right, so when you arrived at the scene at that
8 point Mr. Riebe was already a suspect, correct?

9 A. No, he was not.

10 Q. I thought you testified that you said Lieutenant --
11 your Lieutenant, Joe Turner, approached you and said that
12 there was one person of particular interest because he was the
13 last person that had contact with her; is that correct?

14 A. He was a person of interest. What we knew at that time
15 is that he had been with the victim Tuesday night, but that
16 was the extent.

17 Q. Okay. So you are testifying that he was not a suspect
18 then.

19 A. No, he was not a suspect.

20 Q. But you offered to take him to the police station to
21 video tape and record his statement; is that correct?

22 A. That's correct.

23 Q. All right. Now let me ask you, did you talk to Mr.
24 Riebe on the -- how far is it from the incident location to
25 the police station, approximately?

- 1 A. It's approximately a mile and a half.
- 2 Q. So how long would it have taken you to drive there?
- 3 A. With normal flow of traffic, probably three to five
- 4 minutes.
- 5 Q. So for probably three to five minutes y'all were
- 6 enroute?
- 7 A. Yes Ma'am.
- 8 Q. Okay. Did you talk to Mr. Riebe during that time?
- 9 A. Briefly.
- 10 Q. Do you recall what you discussed?
- 11 A. No, I do not.
- 12 Q. Okay. And so when you got to the statement -- when you
- 13 got to the police station you took him upstairs and you read
- 14 the Miranda forms with him, correct?
- 15 A. Yes, that's correct.
- 16 Q. Okay. And in part of your interview you went over this
- 17 statement that the State is admitting -- wanting to admit as
- 18 his first statement. We'll call it his first statement.
- 19 A. Yes, we did.
- 20 Q. Okay. And part of why you went over it is because it
- 21 was unintelligible writing?
- 22 A. Well, I just wanted to make sure that I had a clear and
- 23 accurate understanding of exactly what he was trying to convey
- 24 in his written statement.
- 25 Q. All right. Let me ask you this. If he wasn't a

COURT'S RULING
ON RECORD

37

1 suspect, why would you read him his Miranda Rights?

2 A. Just to err on the side of caution. There was a
3 distinct possibility that it may be foul play involved, so
4 just -- with that possibility I felt it was the most prudent
5 action to take.

6 Q. Okay. So if I'm correct, because we think there was
7 foul play involved -- and I would just assume that it was
8 because at that point if I believe what Officer Swarthout
9 said, y'all had already gone to get a search warrant, correct,
10 someone had, the police had?

11 A. Yes, that's correct.

12 Q. And you had gone to get a search warrant because there
13 was a lot of blood inside the -- inside the residence; is that
14 correct?

15 A. I believe so, yes.

16 Q. So we knew that there was foul play, most probably?

17 A. Suspected there may have been foul play.

18 Q. Okay. And ---

19 MS. WILLIAMS: That's all the questions I have about
20 this statement, Your Honor.

21 THE COURT: Very good.

22 Any redirect?

23 MR. DEBUSK: No, Your Honor.

24 THE COURT: All right. Very good. You may step down.

25 All right. Before we get any further, as to that

COURT'S RULING
ON RECORD

38

1 particular handwritten statement of the Defendant that's been
2 marked, for purposes of this motion, as State's 1, Court finds
3 that that is the voluntary statement of the Defendant -- it
4 was -- came as a result of actions volunteered by the
5 Defendant to give the information, he was under no coercion,
6 nor force, he was not under arrest, Miranda was not required
7 at that point in time, he voluntarily gave the statement, and
8 I will allow that statement to be admitted into evidence in
9 this case.

10 Let's proceed on to the next one.

11 MR. DEBUSK: State's Exhibit 1, I'm giving the
12 Reporter. We carried it off.

13 THE COURT: Go ahead, Solicitor.

14 MR. DEBUSK: Thank you, Your Honor. May I ask you,
15 just as a matter of procedure. On these taped statements, to
16 spoken statements, I have recordings that I can play for the
17 Court. I have two versions, one that we've redacted some
18 things we agreed on already, and one that is complete, that's
19 unredacted. One, would you like to hear the tape in the
20 course of the Denno hearing, and two, which version would be
21 more appropriate.

22 MS. WILLIAMS: Your Honor, if I may address that before
23 you make a decision. Here -- here's the Defendant's position
24 on that. What I did was initially submit to the State the
25 statements that I want redacted, and Your Honor, the

COURT'S RULING
ON RECORD

39

1 statements I want redacted involve a -- basically there's a
2 whole group, if you want to call it that. What the State has
3 agreed to is to reduce -- redact a portion, and not the other
4 portion, and Your Honor, our position would be, we either want
5 all of them redacted, but for -- Your Honor, I will say this,
6 there are two things that are clearly inadmissible. There is
7 a statement in there where he admits to using Oxycodone, I
8 believe, and there is a little series of questions where
9 Detective Lynam asked him about an ex-girlfriend in
10 Charleston, and some issues with an ex-girlfriend. Those are
11 clearly inadmissible and redactable, Your Honor, but with
12 regard to the remainder of the items that we suggested, that
13 we asked to be redacted, where -- our position is, we would
14 like the whole grouping redacted, or either none of them
15 redacted, based on our theory.

16 THE COURT: All right. So you sent -- you sent
17 something to the Solicitor dated May 18, 2011, correct?

18 MS. WILLIAMS: On Wednesday.

19 THE COURT: You sent a written ---

20 MS. WILLIAMS: Yes sir.

21 THE COURT: ---Letter, communication to the Solicitor
22 dated May 18, 2011.

23 MS. WILLIAMS: Yes sir.

24 THE COURT: Do you have a copy of it?

25 MS. WILLIAMS: Yes sir.

COURT'S RULING
ON RECORD

40

1 MR. DEBUSK: I have it, Your Honor.

2 THE COURT: All right.

3 MR. DEBUSK: I have my response as well. Would you
4 like that too?

5 THE COURT: All right. Is yours marked on in any way?

6 MR. DEBUSK: Pardon?

7 THE COURT: Is it marked on in any way?

8 MR. DEBUSK: No, neither one is.

9 THE COURT: All right. Very good. All right, Ms.
10 Williams, why don't you take your communication, tell me
11 exactly -- and have that marked by the Court Reporter so we
12 will be clear as to what you are talking about, and then you
13 can tell me exactly what it is that you agree with the State
14 that should be redacted, and if I don't agree with your other
15 position, that you want everything in, except for those two
16 things.

17 MS. WILLIAMS: Yes sir.

18 THE COURT: All right.

19 MS. WILLIAMS: Do you want this marked?

20 THE COURT: I want it marked for the record.

21 COURT REPORTER: Defendant's 1.

22 (DEFENDANT'S REQUEST TO REDACT MARKED DEFENDANT'S
23 EXHIBIT NUMBER 1.)

24 THE COURT: All right. Please take that document and
25 tell me what it is that you believe you have agreed with the

COURT'S RULING
ON RECORD

41

1 Solicitor is clearly inadmissible and will not be included.

2 What is that?

3 MR. DEBUSK: Your Honor, if I may, I have a transcript
4 for the Court that might help you in following along.

5 THE COURT: I think I've got a copy of the transcript.
6 I just want her to use her letter.

7 MS. WILLIAMS: Well, Your Honor, it refers to the
8 transcript. Your Honor, on page two, lines ten and twelve.

9 THE COURT: That's the first interview of August 28,
10 2008.

11 MS. WILLIAMS: Yes sir. First interview, August. Then
12 in twelve ---

13 THE COURT: All right. Page two, lines ten through
14 twelve, you have submitted to the Solicitor, and continue to
15 submit, and with the Solicitor's consent, that should be
16 redacted, correct?

17 MS. WILLIAMS: Yes sir. That's our position.

18 THE COURT: All right. What's the next one?

19 MS. WILLIAMS: Then we go to the second interview.

20 THE COURT: That's on August 29th, 2008, correct?

21 MS. WILLIAMS: Yes sir. Just a second, Your Honor.
22 I'm sorry. I had it marked and I grabbed my wrong.---

23 THE COURT: Hand it to the Court Reporter, the State's
24 response to your letter, and we will mark that as a state's
25 exhibit.

COURT'S RULING
ON RECORD

42

1 (RESPONSE FROM STATE AS TO DEFENDANT'S REQUEST TO REDACT
2 MARKED STATE'S EXHIBIT NUMBER 3.)

3 MS. WILLIAMS: Your Honor, page twenty-five, in the
4 second interview transcript ---

5 THE COURT: Okay.

6 MS. WILLIAMS: ---Lines one through twenty-two.

7 THE COURT: All right. And the State is in agreement
8 with that, correct?

9 MR. DEBUSK: I'm sorry, Your Honor. Which statement
10 are we on now?

11 THE COURT: Page twenty-five ---

12 MR. DEBUSK: Of the second statement?

13 THE COURT: ---Of the second statement, lines one
14 through twenty-two, the State is in agreement with that,
15 correct, according to the communication I got, copy of the one
16 that you sent back to Ms. Williams.

17 MR. DEBUSK: The entire page, yes, Your Honor.

18 THE COURT: That's what it indicates.

19 MR. DEBUSK: One through twenty-two.

20 THE COURT: Yes, page twenty-five.

21 MR. DEBUSK: Yes, Your Honor.

22 MS. WILLIAMS: And then, Your Honor, we have considered
23 to -- page twenty-six ---

24 THE COURT: Lines one through five?

25 MS. WILLIAMS: Yes sir.

COURT'S RULING
ON RECORD

43

1 THE COURT: All right. And the State is in agreement
2 with that also, correct?

3 MR. DEBUSK: Your Honor, the State has agreed up to
4 line twelve, because it seems that the colloquy about the
5 injuries to the girlfriend go all the way down to line twelve.

6 THE COURT: All right. So page twenty-six, one through
7 twelve?

8 MR. DEBUSK: Yes, Your Honor.

9 MS. WILLIAMS: Yes sir. It's lines one through twelve.

10 THE COURT: All right. One through twelve, all right,
11 so ---

12 MR. DEBUSK: And Your Honor, also on page twenty-four,
13 the last three lines, twenty, twenty-one, twenty-two, pertain
14 to that same ---

15 THE COURT: Same thing. So page twenty-four, lines
16 twenty through twenty-two, those are also out?

17 MR. DEBUSK: Yes.

18 THE COURT: All right. So -- all right, so no matter
19 what the ruling is the Court makes about the interviews,
20 clearly the State and the Defense are in agreement that the
21 first interview, page two, lines ten through twelve are out,
22 and of the second interview, from page twenty-four, line
23 twenty, through page twenty-six, line twelve, is out, correct?

24 MR. DEBUSK: Correct, Your Honor.

25 THE COURT: All right. All right, very good. All

COURT'S RULING
ON RECORD

44

1 right. Now, your argument then, Ms. Williams -- and we'll get
2 to it more fully when we talk to -- talk about these
3 particular matters. The -- or your position is that, if --
4 for the purpose of the argument -- not making any decision
5 here -- that I agree with the State that the things that you
6 wanted redacted, and they did not want to redact, and they
7 want left in, if I agree with the State, then you want
8 everything else in, except for what we just talked about?

9 MS. WILLIAMS: Yes sir, for purposes of our defense in
10 the case, Your Honor, we think that the -- the statements need
11 to be taken as a whole ---

12 THE COURT: So the entirety of the statements, except
13 for these couple lines in the first one, and basically a page
14 and a half or so of the second interview, everything else
15 ought to come in if I agree with the State.

16 MS. WILLIAMS: Yes sir.

17 THE COURT: Very good. All right. Let's proceed on.
18 We need to then cover the issues of, obviously Miranda,
19 voluntariness, those types of things on the first and the
20 second interview, and then we can make a decision on that, and
21 then go into whether or not -- we will see what my decision is
22 about those ones that are to be redacted or not. Okay.

23 MR. DEBUSK: Your Honor, State calls Detective Owen
24 Lynam.

25 THE COURT: All right, sir. Please come around, take

OWEN LYNAM - DIRECT BY DEBUSK

45

1 the stand again, and please remember that you remain under
2 oath.

3 A. . Yes sir.

4 THE COURT: All right. Go ahead, Solicitor.

5 OWEN LYNAM, having been previously
6 sworn, testifies as follows:

7 DIRECT-EXAMINATION BY MR. DEBUSK:

8 Q. Detective Lynam, you have already testified about the
9 reading Miranda to Mr. Riebe when you took him to the police
10 station on August 20th, 2008; is that correct?

11 A. Yes sir.

12 Q. Just to clarify, at that time did you know you had a
13 crime on your hands?

14 A. No, I did not know for sure.

15 Q. Did you suspect there might be a crime on your hands?

16 COURT REPORTER: Mr. Debusk, I'm having a hard time
17 catching your last couple of words every time.

18 MR. DEBUSK: I understand. I'll do my best.

19 THE COURT: All right. You said that ---

20 MR. DEBUSK: I'm sorry, Your Honor. I lost my train of
21 thought.

22 THE COURT: ---That he didn't that there was a crime,
23 but he suspected there was a crime.

24 Q. Based on that, was Jeff -- since there was not a crime
25 known at that time, could you have a suspect?

OWEN LYNAM - DIRECT BY DEBUSK

46

1 A. No, we did not.

2 Q. But he was a person of interest?

3 A. Yes, he was a person of interest.

4 Q. You wanted to know what he had to say?

5 A. Yes.

6 Q. And that's why you had him there, and that's why you
7 taped his statement?

8 A. Yes, correct.

9 Q. Now, the colloquy about the Miranda Rights that you
10 told the Court about earlier, was that captured on tape?

11 A. Yes, it was.

12 MR. DEBUSK: Your Honor, at this time I would request
13 that we publish the portion where he read his Miranda Rights
14 from the tape.

15 THE COURT: Please do so.

16 MR. DEBUSK: Thank you, Your Honor.

17 MR. DEBUSK: Your Honor, I'll play the original
18 unredacted version.

19 THE COURT: All right, sir. Very good.

20 (AT THIS TIME A PORTION OF DVD OF VIDEO-TAPED STATEMENT
21 OF MR. RIEBE WAS PUBLISHED.)

22 Q. Officer Lynam, is that the point at which your
23 interrogation began?

24 A. Yes, it is.

25 Q. I am going to refer back to State's Exhibit 2, and ask

OWEN LYNAM - DIRECT BY DEBUSK

47

1 if you could explain to the Court what that is, relative to
2 the tape we just watched.

3 A. This is a copy of the actual Miranda form that we
4 normally use at the station. On the top of the form it
5 clearly states, "Your Rights", and the Rights are printed out,
6 then in the next second, the second section, it's titled
7 "Waiver of Rights", and then the final section, it a
8 certification that the -- whoever signs it gets to receive a
9 copy of this.

10 Q. Is that a copy of the one that was executed on that
11 tape?

12 A. Yes, it is.

13 Q. And does it bear your signature?

14 A. Yes, it does.

15 Q. And does it bear Mr. Riebe's signature?

16 A. Yes, it does.

17 Q. And does it indicate that he waived his rights in order
18 to ---

19 A. Yes, it does.

20 MR. DEBUSK: Thank you.

21 Q. Now, you and Mr. Riebe were together for some time
22 before you went to that room, right?

23 A. Yes. The trip from the incident location to the police
24 station.

25 Q. During that time did you intimidate him, or threaten

OWEN LYNAM - DIRECT BY DEBUSK

48

1 him in any way to make him -- to give -- to give a statement?

2 A. No, I did not.

3 Q. Did you tell him he had to give a statement?

4 A. No, I did not.

5 Q. Before you got there and reviewed his rights with him
6 on that form, had you read him his Miranda rights?

7 A. Had I read him his Miranda rights before ---

8 Q. No. Before. Was that the first time you read his
9 Miranda rights on the tape there?

10 A. Yes, it was.

11 Q. Okay. Did you interrogate him about the incident
12 before you arrived at the station?

13 A. No, I did not.

14 MR. DEBUSK: Please answer any questions the Defendant
15 may have.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION BY MS. WILLIAMS:

18 Q. Detective Lynam, you stated that, prior to this
19 interview your opinion, or the position that Mr. Riebe held
20 was a person of interest, correct?

21 A. Correct.

22 Q. And not a suspect?

23 A. Correct.

24 Q. But before you even read him his Miranda rights you
25 told him you were going to take pictures, checking for

OWEN LYNAM - DIRECT BY DEBUSK

49

1 defensive wounds, correct?

2 A. Yes. I told him that was one of the things that I
3 would like to do while he was at the station.

4 Q. And before you read him his Miranda rights you told him
5 you were going to take his shoes; is that correct?

6 A. Yes. I believe I told him that was probably my
7 intention, that was one thing that we would probably have to
8 do.

9 Q. Is it your position, and you are telling the Court,
10 that he wasn't a suspect, but you already knew you were going
11 to take -- check for defensive wounds, and you already knew
12 you were going to check -- take his shoes, but he wasn't a
13 suspect?

14 A. I did tell him that I did want to take photographs,
15 yes, and as regard to shoes, I can't recall that I said I
16 wanted to photograph them, or if I was going to take them at
17 that point.

18 Q. The first thing that you told him that you were going
19 to take fingerprints of the crime scene, correct?

20 A. Yes.

21 Q. And he said his fingerprints would be there?

22 A. Correct.

23 Q. Okay. And then you told him they were going to do an
24 autopsy because there was a lot of blood at the scene,
25 correct?

1 A. Correct.

2 Q. All right. And we get to page five and you said you
3 were going to do a lot of things, I'm going to take
4 photographs, going to photograph your hands and have you take
5 off your shirt, photograph his shirt, what I'm looking for is
6 what we call either scars, marks, or maybe defensive wounds,
7 correct?

8 A. Correct.

9 Q. Okay. And then you move on down to the middle of page
10 five, well, what I'm going to do, I'm going to take your shoes
11 and I'm going to photograph your shoes, and I'll probably go
12 ahead and keep them, I'm going to give you a pair of
13 flipflops, correct?

14 A. Correct.

15 Q. But he wasn't a suspect?

16 A. Correct.

17 MS. WILLIAMS: Your Honor, that's all the questions
18 that I have of him at that time, with -- regarding this first
19 statement.

20 THE COURT: All right. Now, ---

21 You can step down, Detective.

22 Ms. Williams, I have read through -- I've read through
23 both statements. I've been provided a copy of the transcript
24 of both statements, and I've read through -- since we are just
25 talking about the first one -- I've read through the first

OWEN LYNAM - DIRECT BY DEBUSK

51

1 one. I don't see anywhere in there -- and I want you to tell
2 me if, based upon your review and your examination of it, you
3 find anywhere else, other than what we have just covered, any
4 other questions of the Detective about Miranda, or
5 voluntariness of the statements, or any statements by your
6 Defendant. I didn't find anything in there about him saying,
7 I want to stop now, and I want an attorney, or -- there's none
8 of that other than this initial part that we've already read,
9 and the Court has viewed. That's what I'll be -- want to be
10 clear about it. I didn't see anything else in there other
11 than this, but if there is, please point it out to me.

12 MS. WILLIAMS: Your Honor, I think I would agree with
13 you. I do not -- there is nowhere else in there that -- at
14 that point that I -- that my client asked to stop the
15 interview, nor does he ask for an attorney to be present, and
16 anything of that nature. There was the initial hesitation.

17 THE COURT: And they didn't talk about his rights again
18 thereafter.

19 MS. WILLIAMS: No sir. That is my reading of this as
20 well.

21 THE COURT: All right. Very good.

22 Is that your understanding also, Solicitor?

23 MR. DEBUSK: It is, Your Honor, but just as a caveat,
24 I'll inform the Court, these transcripts are not purported to
25 be completed accurate. There are errors in them. We have

OWEN LYNAM - DIRECT BY DEBUSK

52

1 prepared them for inhouse use only. They are not certified.

2 THE COURT: Okay.

3 MR. DEBUSK: But I have viewed the tape many times
4 myself and I found no such invocation to his rights.

5 THE COURT: And Ms. Williams, you viewed the tape also,
6 correct?

7 MS. WILLIAMS: Yes sir. And I will say that, Your
8 Honor -- and it may be rather than -- and I understand that
9 maybe this is not the appropriate time to address it, but he
10 brought it up. With regard to the transcript, there are some
11 things in there where, in the transcript it will say
12 inaudible, but you can hear what they are saying.

13 THE COURT: Well, the jury is not getting these
14 transcripts.

15 MS. WILLIAMS: Okay.

16 THE COURT: I mean, that's -- we are clear about that.
17 I mean, this is ---

18 MS. WILLIAMS: Okay.

19 THE COURT: ---For the purposes of the use of the
20 Solicitor, the Defense attorney, the Court, but the official
21 evidence, official record, is the actual recording. The jury
22 is not seeing these, reading these, so they are not going
23 anywhere near the jury.

24 MS. WILLIAMS: Thank you, Your Honor.

25 THE COURT: All right. I just wanted to be clear that,

OWEN LYNAM - DIRECT BY DEBUSK

53

1 if there was something else about Miranda or voluntariness or,
2 you know, I want to stop, I want to talk to an attorney, if
3 there's anything about that I want to hear it, but I just
4 didn't see it in the transcript, and if y'all are aware of it,
5 please let me know, but as I understand it there isn't any.

6 MS. WILLIAMS: There is nothing as far as I'm aware of.

7 THE COURT: Very good. All right. Do you want to
8 proceed on to the second statement -- or we probably ought
9 to -- probably ought to deal with this -- probably ought to
10 deal with the -- with this first statement, the Court's
11 decision on that, so Ms. Williams, let me hear any arguments
12 that you might have about the voluntariness or the ---

13 MS. WILLIAMS: Your Honor, if I may ---

14 THE COURT: Yes.

15 MS. WILLIAMS: ---Actually it probably would flow
16 better with my position, with our defense, if we argue the two
17 of them at the same time, Your Honor.

18 THE COURT: All right. Very good. We'll ---

19 MS. WILLIAMS: Your Honor, with that being said, may
20 I -- I hate to impose, but my client would like to take a
21 brief recess. I think they were kind of fast in transport
22 over here. He needs about three minutes.

23 THE COURT: All right. We'll take a five minute break
24 and be back and resume.

25 MS. WILLIAMS: Thank you, Your Honor.

OWEN LYNAM - DIRECT BY DEBUSK

54

1 THE COURT: Thank you very much.

2 (THE FOLLOWING TAKES PLACE AFTER A BREAK.)

3 MR. DEBUSK: Your Honor, we would recall Detective
4 Lynam.

5 THE COURT: All right, sir. Please come around to be
6 sworn, sir, or -- I'm sorry, please come back to the stand.
7 You've already been sworn. Thank you.

8 MS. WILLIAMS: Your Honor, while he's approaching, do I
9 -- just to make sure, because I don't want to mess up -- for
10 clarification purposes. When Your Honor ruled on the first
11 statement -- and I'm not asking you to change your ruling -- I
12 just want to make sure that I didn't stand up and say, at that
13 time, that I would submit that it wasn't voluntary because
14 Detective Sheetz wasn't here, and I just want to be clear on
15 the record that I would have ---

16 THE COURT: Sheetz being the one that he handed the
17 statement to.

18 MS. WILLIAMS: Yes sir.

19 THE COURT: All right. Very good.

20 MS. WILLIAMS: That he wasn't here, and that there were
21 other officers who -- who dispersed people from around him
22 while he was giving the statement.

23 THE COURT: Well, you ---

24 You can sit down, sir.

25 You stated that, but nobody has testified to that.

OWEN LYNAM - DIRECT BY DEBUSK

55

1 MS. WILLIAMS: Yes sir.

2 THE COURT: Okay. I understand you asked those
3 questions that people were dispersed, but nobody has said that
4 to me. I heard the questions, but be that as it may, I
5 understand your objection. Now, any arguments -- please feel
6 free to raise anything that you would like.

7 MS. WILLIAMS: No sir. I just didn't ---

8 THE COURT: That's fine. No, but I'm just saying, any
9 arguments, please feel free to raise anything that you would
10 like.

11 MS. WILLIAMS: Other than what I've stated, if I --
12 just have the record to reflect that I would have objected to
13 it, and Your Honor has ruled, so ---

14 THE COURT: All right. Very good.

15 MS. WILLIAMS: ---I understand.

16 THE COURT: Continue on, Solicitor.

17 OWEN LYNAM, having been previously
18 sworn, testifies as follows:

19 DIRECT-EXAMINATION BY MR. DEBUSK:

20 Q. Detective Lynam, about what time did your first
21 interview with Jeffrey Riebe end?

22 A. I know that we had been in there approximately two
23 hours, a little bit over two hours.

24 Q. Once that interview ended, what happened? Where did
25 Mr. Riebe go?

OWEN LYNAM - DIRECT BY DEBUSK

56

1 A. I believe I gave him a ride to his place of employment,
2 Sam's Restaurant.

3 Q. Okay. After that, when did you next encounter Mr.
4 Riebe?

5 A. The following morning. I made contact with Mr. Riebe
6 back at his place of employment, at the restaurant.

7 Q. What did you do at that time?

8 A. At that time Mr. Riebe was asked to return to the
9 station, and I was accompanied by Lieutenant -- Lieutenant
10 Repec.

11 Q. Now, at that time did you start questioning him before
12 you got him back to the station?

13 A. No, I did not ask him any questions.

14 Q. Did he make any spontaneous utterances concerning his
15 willingness to speak with you?

16 A. Yes, he did. He made several statements, that he had a
17 lot that he had to tell us.

18 Q. Okay. How did he get back to the station?

19 A. We transported him in my patrol vehicle.

20 Q. Where did you go?

21 A. We returned to the police department. I believe we
22 returned the rear exit to the building, and walked upstairs to
23 the Detective Division, second floor.

24 Q. Did you reinform him of his Miranda rights before you
25 began speaking to him?

OWEN LYNAM - DIRECT BY DEBUSK

57

- 1 A. Yes, I did.
- 2 Q. Did you fill out a new form?
- 3 A. No. We didn't fill a new form. We actually re-read,
4 and reiterated the rights on the form that we had used the
5 previous day.
- 6 Q. And did that reiteration also appear on the tape?
- 7 A. Yes, it did.
- 8 Q. Did he express a willingness to speak with you?
- 9 A. Yes, he did.
- 10 Q. Did you coerce him or threaten him in any way to make
11 him give that statement?
- 12 A. No, I did not.
- 13 Q. Did you deprive him of sleep or anything else, or use
14 of the restroom, or food or anything that he asked for?
- 15 A. No, I did not.
- 16 Q. Let me ask you, when you transported him over, was
17 anyone else present? You said Lieutenant Don Repec.
- 18 A. Yes. Lieutenant Repec rode with us. He was in my
19 vehicle also. Just three of us rode in the vehicle.
- 20 Q. Okay. At the beginning of that tape, does Lieutenant
21 Repec appear on the tape?
- 22 A. Yes, he does.
- 23 Q. Okay. And for the remainder of the tape was just you
24 and ---
- 25 A. Mr. Riebe.

1 Q. Mr. Riebe.

2 A. Correct.

3 Q. Okay. Once again, when you reiterated his Miranda
4 warning you used State's Exhibit 2; is that correct?

5 A. That's correct.

6 Q. Okay.

7 MR. DEBUSK: Your Honor, once again, we have the
8 beginning of that interview on tape. We would like to publish
9 that.

10 THE COURT: All right. Please do so.

11 MR. DEBUSK: Your Honor, there is a portion at the
12 beginning that includes Lieutenant Repec. It doesn't pertain
13 to Miranda. Should I play that as well?

14 THE COURT: Just -- yes. Play it from the beginning.
15 That will be fine.

16 MR. DEBUSK: I will, Your Honor.

17 (AT THIS TIME A PORTION OF DVD CONTAINING STATEMENT OF
18 DEFENDANT WAS PUBLISHED.)

19 Q. Detective Lynam, once again, you had gone over his
20 Miranda rights again with the form. You showed him the form,
21 same form he had signed the day before.

22 A. Yes, I had.

23 Q. And you reiterated that he was freely and voluntarily
24 waiving his rights again.

25 A. Yes, I did.

OWEN LYNAM - CROSS BY WILLIAMS

59

1 Q. And before you started an interrogation, you clearly
2 informed him that he was a suspect; is that correct?

3 A. Yes, I did.

4 Q. Okay.

5 MR. DEBUSK: Please answer any questions Defense might
6 have.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION BY MS. WILLIAMS:

9 Q. Detective Lynam, when you picked him up on day number
10 two, approximately how far was the drive from his restaurant
11 that he was working at to the police station?

12 A. Approximately four-tenths of a mile, less than half a
13 mile.

14 Q. How long you think it took you to ride back and forth?

15 A. I would guess he was in my car for three minutes tops.

16 Q. Okay. And who in all actually went to the restaurant
17 to pick him up?

18 A. I drove there, and my Lieutenant, Lieutenant Repec, was
19 with me. Just the two of us went.

20 Q. So it's your testimony there was only -- did only one
21 car show up at the restaurant?

22 A. To the best of my recollection, yes.

23 Q. So if I -- if I -- one second, please. So the two of
24 you came in one car or two cars?

25 A. I believe we rode together in my car.

1 Q. Did you guys call for a road patrol car to show up and
2 then cancel that order?

3 A. It's very possible. I can't remember for a hundred
4 percent sure, but it is possible, yes.

5 Q. It's possible, but you don't remember.

6 A. Yes.

7 Q. Okay. Was Lieutenant Repec in the car with you when
8 y'all -- when you rode with Mr. Riebe from the station back to
9 the -- I mean, from the restaurant back to the station?

10 A. Yes, he was.

11 Q. At this point when you went in there to talk to him was
12 he still a -- as your testimony was, a person of interest, or
13 was he, at that point, a full-fledged suspect?

14 A. I would classify him as a suspect at that time.

15 Q. Okay. So he's now a suspect beginning this second
16 interview, right?

17 A. Correct.

18 Q. And at the first interview you actually had him initial
19 on the Miranda form, correct? You had him sign it?

20 A. Yes, I had him sign it.

21 Q. Okay. Because you went over each and every single one
22 with him on the first day, correct?

23 A. Correct.

24 Q. And this form that you went over, you actually list out
25 the Miranda and he signs it, correct?

OWEN LYNAM - CROSS BY WILLIAMS

61

1 A. On the first day, yes.

2 Q. All right. And then there's the second part where it
3 goes in again and he -- you basically have him reiterate that
4 he's willing to make a statement, and he signs it.

5 A. Correct.

6 Q. And that day he was just a person of interest.

7 A. I didn't hear your question. I'm sorry.

8 Q. I said, on that first day he was just a person of
9 interest.

10 A. Correct.

11 Q. But didn't think it was necessary to ask him to
12 actually sign a second form on the second day, now that he was
13 a full-fledged suspect.

14 A. The form was the same form, was laid on the table
15 between both of us, again, and it was read exactly, and re-
16 understood, just as it was the previous day.

17 MS. WILLIAMS: That's all the questions that I have of
18 this witness at this time, Your Honor.

19 THE COURT: Thank you. Any redirect?

20 MR. DEBUSK: None, Your Honor.

21 THE COURT: All right. You may step down, sir. Thank
22 you.

23 All right, Solicitor, any further testimony from the
24 State?

25 MR. DEBUSK: No, Your Honor.

DEFENSE'S SUMMATION (WILLIAMS)

62

1 THE COURT: All right. Any testimony from the Defense?

2 MS. WILLIAMS: No sir. We have no testimony at this
3 hearing.

4 THE COURT: All right. Very good. I'll be glad then
5 to hear any arguments that you might have.

6 MS. WILLIAMS: Thank you, Your Honor.

7 Your Honor, our position at -- I don't mean to have a
8 convoluted argument, Your Honor, so let me try to explain it.

9 THE COURT: That's all right.

10 MS. WILLIAMS: I understand that the State presented
11 him with a Miranda form, and went through his rights under
12 Miranda. I would agree that I think some of the standard on
13 Miranda is, did you -- now there was no keeping him up for
14 thirty-six hours, there was no depriving him of going to the
15 bathroom, I mean, I don't think he got in his face and
16 threatened him, or did any type of those -- those types of
17 interrogation techniques, Your Honor, so if that is the
18 standard that we are under under Jackson v. Denno -- excuse me
19 -- subject to the fact that -- that they came in force, that,
20 you know, the instances that I don't think that Mr. Riebe --
21 he talked about a lawyer but then he waived it. He was in
22 there, Your Honor, he -- at this point if you get into it
23 there are things that they talk about into it that basically -
24 - he discusses the amount of alcohol they drank, and the vast
25 quantities that they had consumed, Your Honor, but truthfully

DEFENSE'S SUMMATION (WILLIAMS)

63

1 under Miranda, with that standard, I'm not sure that I think
2 Detective Lynam met the standard in reading Miranda in reading
3 those forms, Your Honor, but our position would be -- and the
4 totality of the circumstances, the totality of the statements,
5 that those statements are not reliable, and that they are, in
6 fact, coercive in nature, which is kind of difficult to argue
7 at this point because we actually haven't read -- haven't seen
8 it, you've read it, Your Honor, and if you -- as part of -- in
9 reading it I'm sure Your Honor has seen, my client, if he says
10 once, I don't know what happened, I don't remember, I don't
11 know what happened, he must have said it ---

12 THE COURT: He probably said that -- you are right, a
13 hundred times.

14 MS. WILLIAMS: A dozen times.

15 THE COURT: Right.

16 MS. WILLIAMS: ---Your Honor, and our position would be
17 that the Detective, while once he read Miranda, and he went
18 that through him, as I stated in the first statement, he
19 already told this client, my client, that he intended to take
20 pictures of him, that he wanted to check on defensive wounds,
21 he wanted to find his shoes, take his shoes in then and check
22 them, so there is no doubt that my client was more than a
23 person of interest, he was a suspect at that point. But Your
24 Honor, he says he doesn't know. Then Detective Lynam proceeds
25 to basically lay out exactly what happened at the scene, and

STATE'S SUMMATION (DEBUSK)

64

1 lay out exactly his versions of what happened, and basically
2 suggests every semi-statement that my client gives as to what
3 the answer would be. There are things that my client says
4 initially, and -- but he's consistent throughout. He says
5 that when he was there he woke up one time and Ms. Mowery was
6 on her back. He says that they drank very heavily. He says
7 that he went to sleep and then he left.

8 The other things, as they are put in his mouth, is our
9 contention, is that they were totally suggestive, and -- but
10 for showing him pictures of the murder weapon, or of the belt
11 that was found under Ms. Mowery, but for showing him pictures
12 of her, but for showing him all of these things, my client was
13 consistent in his story that he did not recall, and did not
14 remember. Your Honor, even in the fact when, at one point my
15 client actually says in the statement, I -- I must have gone
16 into a rage. They have a discussion, they leave it, they come
17 back. Detective Lynam says, but you just said you were in a
18 state -- in a rage. My client says basically, no, I must have
19 been based on what I have seen. And Your Honor, our position
20 is that with the totality that the statements themselves are
21 unreliable.

22 THE COURT: All right. Argument, Solicitor.

23 MR. DEBUSK: Well, Your Honor, I think the Officer has
24 satisfied the requirements of Miranda, Arizona v. Miranda, and
25 has informed the Defendant of his rights at both occasions,

STATE'S SUMMATION (DEBUSK)

65

1 read each one to him individually, he was well aware of his
2 rights, he was not coerced in any way to make the statement.

3 He went on to ask him a series of questions. In the
4 second interview they were more in the nature of
5 interrogation, the first more in the nature of an interview,
6 and during the course of the interview sometimes the Defendant
7 said he didn't remember, and then moments later said, oh well,
8 I just remembered something else, you know how I told you
9 yesterday she was on her back, well, actually when I woke up
10 she was on her face, you know, I've said consistently there
11 was no blood, all of a sudden, yes, I remember there was some
12 blood. So the Officer was not planting ideas in his mind, he
13 was asking him -- continued to ask him questions, but the
14 answers that he enlisted came from the Defendant. They
15 weren't suggested. At no point did the Officer suggest that
16 she was actually face down when he left. The first time being
17 face down was mentioned was actually mentioned by Mr. Riebe.
18 On the first interview he claimed he saw her through the door
19 and she was face down, so there was no coercion here, there
20 was questioning. In the second statement some of his
21 questioning got aggressive, but that's permissible, Your
22 Honor. That -- he was aware of his rights, and that he could
23 stop answering at any time. And he was not consistent with
24 his statements. He began to be quite inconsistent in the
25 second statement. Even in the first statement he was

COURT'S RULING

66

1 inconsistent through the course of it. So that justifies
2 continuing questioning when he was changing his story
3 throughout.

4 There was no coercion here, Your Honor. It was a
5 voluntary statement. It was compliance with Miranda, and Your
6 Honor, we would argue therefore it's admissible, with the
7 exception -- the State will agree to redact the portion about
8 the Oxycodone, and does agree to the portion where he talks
9 about beating his previous girlfriend.

10 THE COURT: All right, sir.

11 In this particular matter -- I'll reiterate again the
12 very first written statement that the Defendant gave at the
13 scene I find was his own voluntary statement. He approached
14 the police officers asking questions about why they were
15 there, what occurred. Pursuant to a request he went to a
16 table, gave, voluntarily, without force, coercion, any kind of
17 influence of any kind, he wrote what he wanted to write.
18 Nobody directed him to write anything, nobody told him what to
19 write, nobody corrected anything that he wrote. It's fully
20 and completely his statement, without influence of any kind by
21 anyone.

22 When he was transported to the police department
23 thereafter, whether or not he was classified as a person of
24 interest or a suspect, the Court would find that he was in
25 custody, he was in the control of the police officers, I find

COURT'S RULING

67

1 that Miranda was required. I do find that the police officer
2 complied with Miranda fully, he went over every single right
3 that Defendant needs to be made aware of. He had the
4 Defendant initial a document so indicating. It was clear that
5 the Defendant understood what he was doing, there was no
6 coercion, he wasn't under the influence of anything, he wasn't
7 deprived of anything, he wasn't forced to do anything. Again,
8 he voluntarily -- knowing his rights, voluntarily waived those
9 rights and gave a voluntary statement to the police. He was
10 then allowed to leave. They did not keep control of him.
11 They relinquished custody of -- or control of him. The next
12 day they go to his place of employment and ask the Defendant
13 to come back with them to the police station. As indicated by
14 the Detective he was certainly a suspect at that point in
15 time. Again, when they asked him to come back I find that he
16 was in custody again, in their custody and control, Miranda
17 was required. I find that the Detective fully complied with
18 the Miranda requirements. While he did use the same form
19 again, and the better practice might have been to get out a
20 brand new form and have the Defendant initial it all over
21 again, I do not find that the Defendant's rights were violated
22 in any way. The Defendant -- Detective went over with the
23 Defendant fully again all of his rights. It's clear that he
24 understood them, he knew what he was doing, he was not coerced
25 in any way, he was not forced to do anything in any way, he

COURT'S RULING

68

1 was not under the influence. Miranda having been, I find,
2 required and fully complied with, I find that these two
3 statements of the Defendant were as a result of his own
4 voluntary statements, with full and complete knowledge of his
5 Constitutional Rights, and that he voluntarily waived them.

6 Now, in making this determination I am using, as the
7 Courts have indicated, the preponderance of evidence standard.
8 The State has that burden. I find that they have proven that.

9 Now, obviously because I find that the statements should
10 be allowed into evidence in this case is not the final word on
11 these particular statements. The State, in the trial, has the
12 burden of proof to prove the Defendant guilty beyond a
13 reasonable doubt. For the jury -- and they will be so
14 instructed -- to accept these statements they will have to
15 find that the State has proven to them, beyond a reasonable
16 doubt, the voluntariness, and that the dictates of Miranda
17 have been complied with. These arguments about whether or
18 not the Detective suggested answers, or taking in it's
19 totality the confession is unreliable in some way, those might
20 be fine arguments to a jury, but they do not impact the
21 Court's finding here under the preponderance of evidence
22 standard. Again, reiterating, the jury has the ultimate call.
23 They will be told that. The State will have to prove it's
24 case and all of it's components, including this, to the
25 standard of beyond a reasonable doubt. So I'm going to allow

ON RECORD
REVIEW OF DEFENDANT'S STATEMENT

69

1 the statements into evidence.

2 Now, as to the issue of the redaction, and what you
3 would like redacted out, excluding, of course, the parts that
4 we've already talked about previously, and everybody is in
5 agreement on that, using your document, Ms. Williams, that you
6 forwarded to the Solicitor on May 17th, I believe, 17th or
7 18th, one of the dates, anyway, you forwarded to him and he
8 responded, why don't we go over the matters that remain in
9 controversy. As I understand it then, looking at the very
10 first interview -- and you correct me if I'm wrong -- if
11 there's other things you want me to consider please bring them
12 to my attention, but as I understand it, looking at the first
13 interview, the matters that you want me to review are on page
14 four, lines fourteen through seventeen. Now, do you want to -
15 - can we use this transcript, or do you want to go back to the
16 tape and let -- and go over that particular point?

17 MS. WILLIAMS: No sir. I think using the transcript
18 makes this much easier for purposes of this hearing, and
19 making the record as clear as it can be.

20 THE COURT: All right. Very good.

21 MS. WILLIAMS: But then, Your Honor, have we -- do we
22 need to, when the Court finishes, make sure we enter these in
23 as ---

24 THE COURT: I think you would probably need to have a
25 copy of each one of them as part of the record, understanding

ON RECORD
REVIEW OF DEFENDANT'S STATEMENT

70

1 that they are not certified transcripts, they were for the
2 purpose of the motion hearing, they were for the purpose of
3 making these discussions and rulings, to make it easier.

4 Do you have a copy?

5 MR. DEBUSK: Your Honor, for purpose of the hearing I
6 prepared a copy. I have marked in green highlighting the
7 portions where the State and the Defense agreed on
8 redactions ---

9 THE COURT: Okay.

10 MR. DEBUSK: ---And marked with pink highlighting the
11 portions where there's disagreement. In each page where there
12 was a portion of disagreement I've placed a yellow post-it
13 note, and would make these Court's exhibits.

14 THE COURT: Okay. And do we have somewhere on the
15 front of them which one is interview one and which one is
16 interview two?

17 MR. DEBUSK: No, Your Honor. I will place that right
18 now.

19 THE COURT: How about -- why don't we do that, and if
20 you can just put number one and number two is fine, and if you
21 can show those to Ms. Williams, please, if she would -- if you
22 would look at those, Ms. Williams, make sure that you don't
23 have any questions about that.

24 MS. WILLIAMS: No sir. These are the copies, Your
25 Honor.

ON RECORD
REVIEW OF DEFENDANT'S STATEMENT

71

1 THE COURT: All right. Very good. So with that then,
2 there being no questions, we will have those marked -- just
3 mark them as the State's next exhibits, whatever they are, for
4 the purposes of this hearing.

5 COURT REPORTER: It's number four and five.

6 THE COURT: All right. Great.

7 (TRANSCRIPT OF FIRST STATEMENT BY THE DEFENDANT MARKED
8 STATE'S EXHIBIT NUMBER 4, TRANSCRIPT OF SECOND STATEMENT BY
9 THE DEFENDANT MARKED STATE'S EXHIBIT NUMBER 5.)

10 COURT REPORTER: And Judge, do we need to mark that
11 video?

12 MR. DEBUSK: I have it on disk, Your Honor.

13 THE COURT: You don't have it on disk?

14 MR. DEBUSK: Not yet. I can put it on disk, but I
15 don't ---

16 THE COURT: We will need to do that. We will need to
17 put it on a disk, and then that will be State's 6 when you put
18 it on a disk then, so for purposes of the hearing.

19 MR. DEBUSK: I'll put the entire unredacted version
20 of -- on the same disk.

21 THE COURT: Yes. Yes. I'm -- yes, completely.

22 MS. WILLIAMS: I was going -- both versions on one
23 disk, Number 6.

24 THE COURT: Right. Yes, if we can do that, that would
25 be great.

ON RECORD
REVIEW OF DEFENDANT'S STATEMENT

72

1 MS. WILLIAMS: Super.

2 MR. DEBUSK: I believe, Your Honor, the transcript ---

3 THE COURT: Hold on one second. I'm sorry.

4 (VIDEO OF STATEMENTS ONE AND TWO BY THE DEFENDANT MARKED

5 STATE'S EXHIBIT NUMBER 6.)

6 THE COURT: Okay.

7 MR. DEBUSK: I believe the transcript of the first

8 interview is now Exhibit 4.

9 THE COURT: All right.

10 MR. DEBUSK: The transcript of the second interview is

11 now Exhibit 5.

12 THE COURT: All right.

13 MR. DEBUSK: And I'll provide to the Court Reporter

14 later on a disk containing the AVI files for both the

15 interviews, one and two.

16 THE COURT: All right. Very good. All right.

17 Now -- so, going to your letter, Ms. Williams, the first

18 thing that we needed to look at then is, on the first

19 interview, page four, lines fourteen through seventeen.

20 MS. WILLIAMS: Yes sir.

21 THE COURT: All right. And those would be ---

22 MS. WILLIAMS: Your Honor, they are about mid-way. It

23 begins with Officer Lynam, Detective Lynam, and it says, okay,

24 there's going to be a lot of blood samples, apparently there

25 was a lot of blood in there.

ON RECORD
REVIEW OF DEFENDANT'S STATEMENT

73

1 THE COURT: Okay.

2 MS. WILLIAMS: And he says, yes, you know, uh, a lot of
3 blood.

4 THE COURT: All right. And ---

5 MS. WILLIAMS: That was it for the first ---

6 THE COURT: Okay. But can you tell me why.

7 MS. WILLIAMS: Well, Your Honor, because if you take
8 the first one and the second one ---

9 THE COURT: I mean, do you want to go through all of
10 them and then make your argument; is that what you are telling
11 me?

12 MS. WILLIAMS: Yes sir.

13 THE COURT: Okay. All right. Well, then -- okay.

14 MS. WILLIAMS: Probably makes a little more sense.

15 THE COURT: All right. Very good. All right. Very
16 good. All right, so then we go to interview two, all right,
17 and then the next one is page five, lines one through three;
18 is that right?

19 MR. DEBUSK: Your Honor, it's only a portion of line
20 one that the State -- the State agrees that, from speaking to
21 everyone else, we would agree to redact that part. We do not
22 agree with the redacting is -- the portion that says, there
23 was no one else in that -- that was in that apartment. I
24 know.

25 THE COURT: All right.

ON RECORD
REVIEW OF DEFENDANT'S STATEMENT

74

1 MS. WILLIAMS: Your Honor, we actually skipped page
2 four.

3 THE COURT: I'm sorry. All right. Very good. On page
4 four, what did we need to take out?

5 MS. WILLIAMS: It was eighteen through ---

6 THE COURT: I thought the State agreed to that.

7 MR. DEBUSK: We did, Your Honor.

8 MS. WILLIAMS: And that's one of the ones when I was --

9
10 THE COURT: Okay. And I understand, but I'm -- the
11 State agreed -- and it's in the -- that's why I made the
12 State's response ---

13 MS. WILLIAMS: Yes sir.

14 THE COURT: ---A part of it. The State agreed with you
15 on a number of pages, but that's why I was trying to be clear
16 with you. Even though the State agreed with you on a number
17 of pages the only ones that -- if I don't agree with you in
18 total, the only ones you want out are those ones on page two,
19 and then page twenty-four, line twenty through page twenty-
20 six, line twelve, that's all you want out if I don't agree
21 with you in total; is that -- is that correct?

22 MS. WILLIAMS: Yes sir.

23 THE COURT: Even though the State agreed with you on a
24 number of other pages and lines.

25 MS. WILLIAMS: Yes sir.

ON RECORD
REVIEW OF DEFENDANT'S STATEMENT

75

1 THE COURT: All right. Very good. Okay. So, I see
2 that page four was there, but I mean, the State agreed with
3 you, so what I'm trying to do is identify the ones that the
4 State doesn't agree with to see if I'm going to -- if I'm
5 going to agree with you or with the State. So we've got page
6 five, lines one through three. All right. And then the next
7 one is page eight, lines one through six; is that right?

8 MR. DEBUSK: Your Honor, there are two spots on page
9 five.

10 THE COURT: Two. Again -- okay. Again, I'm trying --
11 and maybe I shouldn't be. What I've done is, I've gone to the
12 Solicitor's Response to Ms. Williams' letter, and in the
13 Solicitor's Response to Ms. Williams' letter it says, the
14 State will not agree to the following redactions, and will be
15 prepared to argue these points before the Judge on Friday.
16 That's what I'm concentrating on, the ones that y'all don't
17 agree on. That's what I -- those are the ones I want to
18 identify, so that I can either say, yes, I agree with the
19 State, or no, I agree with the Defense, one of the two, so if
20 there's ---

21 MR. DEBUSK: I think I may have inadvertently left one
22 off on page five, Your Honor. There are actually two spots on
23 page five. I previously said the -- lines one through three,
24 the portion that says, there was no one else in that
25 apartment. I know. And then part of line seven, and then

ON RECORD
REVIEW OF DEFENDANT'S STATEMENT

76

1 lines eight and nine, so there was no one else in and out of
2 that apartment after you left the next morning whenever you
3 left, okay, and on the tape the Defendant asserts agreement.
4 So that was actually two spots, and if I inadvertently left
5 one off I apologize.

6 THE COURT: Why don't we just say the entirety of page
7 five, how about that, okay, that the State disagrees with the
8 entirety of page five. Why don't -- so just -- there's no
9 problem. All right.

10 MR. DEBUSK: Very well, Your Honor.

11 THE COURT: All right. All right, so then the next one
12 we go to is page eight, lines one through six; is that
13 correct, Ms. Williams?

14 MS. WILLIAMS: Yes sir.

15 THE COURT: All right. The next one after that is page
16 nine, lines one through five; is that correct?

17 MS. WILLIAMS: Yes sir.

18 THE COURT: All right. Page eleven, lines eight
19 through ten; is that right?

20 MS. WILLIAMS: Yes sir.

21 THE COURT: All right. Then we go to page fourteen,
22 lines five through eight; is that right, or four through
23 eight?

24 MS. WILLIAMS: He has he doesn't agree to five, but I
25 had put down the bit about the trachea being busted, so ---

ON RECORD
REVIEW OF DEFENDANT'S STATEMENT

77

1 THE COURT: Right. So we'll just say four through
2 eight.

3 MS. WILLIAMS: Yes sir.

4 THE COURT: All right. Four through eight..

5 MR. DEBUSK: It would just start with the word, "I", at
6 the very end.

7 THE COURT: Right. Well, it needs to be -- it needs to
8 be clear, but anyway, four though eight. All right.

9 Then we go on to page seventeen. lines fifteen through
10 twenty; is that right?

11 MS. WILLIAMS: Yes sir.

12 THE COURT: All right. Very good. Go on to page
13 eighteen, lines five through sixteen; is that right?

14 MS. WILLIAMS: Yes sir.

15 THE COURT: All right. Page twenty, lines twelve
16 through nineteen; is that right?

17 MS. WILLIAMS: Yes sir.

18 THE COURT: All right. Page twenty-one, lines sixteen
19 through eighteen.

20 MS. WILLIAMS: Yes sir.

21 THE COURT: All right. Page twenty-two, lines thirteen
22 through eighteen.

23 MS. WILLIAMS: Yes sir.

24 THE COURT: All right. Page twenty-three, lines three
25 through seven.

ON RECORD
REVIEW OF DEFENDANT'S STATEMENT

78

1 MS. WILLIAMS: Yes sir.

2 THE COURT: All right. Page twenty-six, you've got two
3 of them, lines six through fourteen, and lines seventeen
4 through twenty-two; is that right?

5 MR. DEBUSK: Your Honor, upon further examination, the
6 State only objects to lines thirteen through twenty-two.

7 THE COURT: Thirteen through twenty-two?

8 MR. DEBUSK: Yes, Your Honor. I had mis-read the prior
9 portion. I had no problem with that.

10 THE COURT: All right. So -- I'm sorry, so it's page
11 twenty-six, lines thirteen through twenty-two.

12 MR. DEBUSK: Yes, Your Honor.

13 THE COURT: All right. Is that -- is that correct, Ms.
14 Williams?

15 MS. WILLIAMS: Yes sir.

16 THE COURT: All right. Very good. Then we go to page
17 twenty-seven. That's basically the entire page, correct?

18 MS. WILLIAMS: Yes sir.

19 THE COURT: All right. Page twenty-nine, that's lines
20 nine and eleven, right?

21 MS. WILLIAMS: Yes sir.

22 THE COURT: All right. Page thirty-one, lines three
23 through twenty, so that's, in essence, the entirety of the
24 page, or most of the page, correct?

25 MS. WILLIAMS: Page thirty-one, Your Honor?

ON RECORD
REVIEW OF DEFENDANT'S STATEMENT

79

1 THE COURT: I'm sorry. Yes, page thirty-one, three
2 through -- three through twenty.

3 MS. WILLIAMS: Yes sir.

4 THE COURT: All right. Very good. And then page
5 thirty-two, lines three through six, and fourteen through
6 eighteen.

7 MS. WILLIAMS: Yes sir.

8 THE COURT: All right. Those are the ones that are in
9 dispute.

10 MS. WILLIAMS: Yes sir.

11 THE COURT: All right. The rest of the ones that you
12 wanted redacted the State would agree, but those are the ones
13 that are in dispute. How about give me your argument as to
14 why all that should be redacted then.

15 MR. DEBUSK: Your Honor, I'm sorry. Apparently we've
16 left another one off, which is page thirty-three, lines eleven
17 through fourteen.

18 THE COURT: I'm sorry. What?

19 MR. DEBUSK: Page thirty-three, lines eleven through
20 fourteen.

21 THE COURT: All right. Thirty-three, eleven through
22 fourteen.

23 MR. DEBUSK: I apologize, Your Honor. I must have been
24 hasty.

25 THE COURT: All right. Very good. Thirty-three,

ON RECORD
REVIEW OF DEFENDANT'S STATEMENT

80

1 eleven through fourteen.

2 All right, Ms. Williams, let me hear your arguments,
3 please Ma'am.

4 MS. WILLIAMS: Your Honor, our position is that this
5 statement is tantamount to -- it is unreliable, and that this
6 has been completely suggested to Mr. Riebe. His -- he -- as
7 we stated, if he said I don't know one time he must have said
8 it a hundred times. He consistently says that, Your Honor.
9 He also say -- even when he volunteers some suggested
10 information then he says, but I don't know. I'm not saying
11 that, Your Honor -- clearly at the end of the first statement
12 he actually -- when the Detective is continuing to ask me,
13 tell me -- tell me what you -- tell me what you know, tell me
14 what you know, he says, I can tell you but it will be a lie, I
15 don't want to make anything up, I don't want to be there, I
16 mean, I don't want to do that. Your Honor, which is why our
17 position is, there are certain things that the State has
18 agreed to that if removed, for our argument to flow and make
19 sense to the jury, it's our position that the jury would have
20 to hear all of the suggestive things that were said, Your
21 Honor, and I understand that some of that is inflammatory, and
22 Your Honor, I understand that some of that, I think the Court
23 would agree, would be redacted, and knowing that, I've
24 discussed it with Jeff, I've discussed it with the
25 investigator on my case, and we have made a decision that our

ON RECORD
REVIEW OF DEFENDANT'S STATEMENT

81

1 position would be that we think it would be better for our
2 argument if the jury heard all of the suggestiveness as
3 opposed to a portion of it which led up to the things that he
4 may have said. Your Honor, he never says -- in the statement,
5 as Your Honor has read, he never says, I killed her, I
6 strangled her. In fact, the closest that anything comes is, I
7 may have gone into -- I must have gone into a range. Well,
8 where did you put the belt? I don't know if I was standing
9 up, I don't know if I was sitting down, I simply don't know, I
10 don't remember, I don't know, but that must have been what
11 happened. And so, Your Honor, our position is -- is that the
12 totality of the statement, when you look at the manner -- and
13 his answers consistently -- it goes to the fact of, he was
14 simply led along, led along, led along and what he sees, and
15 where he's gotten to are the things he kind of regurgitates.
16 So, while I understand at this juncture, Your Honor -- I am
17 aware that I have made a difficult motion for the Judge to
18 rule on at this point, Your Honor, but I think I just need to
19 make sure that we are clear that, while I understood -- and I
20 am in compliance with Your Honor's Order that -- as far as
21 Jackson v. Denno, that these statements are voluntary under
22 that standard, that my client was read Miranda, Your Honor,
23 but we don't submit that they are reliable in the way that
24 they were induced. And, Your Honor, it may be that the Court
25 will decide that that is an argument for the jury for me to

COURT'S RULING

82

1 make, and in that sense, Your Honor, I want the total story
2 in, and not a portion of it.

3 THE COURT: All right, Solicitor, any argument?

4 MR. DEBUSK: Your Honor, as Ms. Williams said, that's a
5 jury argument. There is nothing in this interview that shows
6 that this was anything but a voluntary statement, the
7 Defendant knew he could stop at any time, he was asked, and
8 implored in a matter several times, but he knew he could stop
9 at any time. Maybe the things that she claims were suggested
10 were first brought up by the Defendant. The whole concept of
11 a rage didn't come from the Detective, it came from the
12 Defendant. The fact of her being face down instead of face
13 up, again, was first mentioned by the Defendant. There was no
14 suggestion of the key points of that argument. She is welcome
15 to make that argument to the jury, Your Honor, the State would
16 welcome that, but there is no basis in law to defy that this
17 is anything but a voluntary statement admissible against the
18 Defendant as a statement against interest.

19 THE COURT: All right. Very good. Now, again, to be
20 clear, the parts that will be redacted, no matter what the
21 Court's ruling is, is page two, lines ten through twelve, page
22 twenty-four -- starting with page twenty-four -- and this is
23 on the -- I'm sorry, the first interview, page two, lines ten
24 through twelve are out.

25 In the second interview, starting with page twenty-four,

COURT'S RULING

83

1 lines twenty, through page twenty-six, line twelve, all that
2 will be out. No matter what the ruling is of the Court, those
3 -- those matters are out, will not be played to the jury.

4 As to the remaining matters, as reflected by the
5 Defense's request for the redactions, and then the areas of
6 dispute between the State and the Defense, I would certainly
7 have redacted the areas -- and I find it to be proper, some --
8 certainly some of the areas that the State has agreed to, but
9 the Defense has presented to me an argument that I must agree
10 with that position in total and not in part, because if I do
11 not agree with their position in total the State's (SIC)
12 request to the Court is the entirety of the statement to be
13 played, so -- for the consistency of their argument. As to
14 the areas of dispute between the State and the Defense in
15 those matters that the Defense wanted to redact and the State
16 did not want to, I do not find that those areas are proper
17 areas for redaction. Again, going back, I did find that this
18 was a proper statement to come in. The argument that -- I
19 guess it's a psychological argument more than anything else,
20 that the answers were supplied, the answers were suggested by
21 the actor of the State, the Detective, the prosecution, and
22 then the Defendant, without a will of his own, decides to
23 submit to the Detective and give those answers, that is an
24 argument to be made to the jury. I does not, in the Court's
25 mind, rise to the level such that the Court would find that

REVIEW OF DEFENDANT'S STATEMENT
ON RECORD

84

1 the Defendant was coerced, or his will was so overborne that
2 he had no choice but to make the statements he did. I do not
3 find that to be the case, therefore, I will not then redact
4 the statements that were in dispute.

5 Again, I will reiterate, I would have redacted the other
6 ones, but the Defense does not want me to. The Defense wants,
7 then, the entirety of the statement, except for that little
8 bit that's not going to come in, for it to come in. Based
9 upon that, then the entirety of the interviews, except for
10 first interview, page two, line ten through twelve, and the
11 second interview, page twenty-four, line twenty, through page
12 twenty-six, line twelve, will be played to the jury as part of
13 the evidence in the case. And again, ultimately it's going to
14 be for the jury to decide. They, again, have to decide. The
15 Defendant, knowing the Miranda rights, understood them,
16 voluntarily waived them, and then voluntarily made a
17 statement, and the State is going to have to prove that to the
18 jury beyond a reasonable doubt. That's going to be the jury's
19 decision in this particular matter, but I'll find it -- find
20 it's proper that they should hear it, as indicated.

21 MS. WILLIAMS: Thank you, Your Honor.

22 THE COURT: All right. Anything on that particular
23 issue, Ms. Williams?

24 MS. WILLIAMS: No sir. Nothing else at this point in
25 time.

REVIEW OF DEFENDANT'S STATEMENT
ON RECORD

85

1 THE COURT: All right, Solicitor, what else?

2 MR. DEBUSK: Yes, Your Honor, just on some of those
3 particular issues, the items marked in green on the exhibits
4 I've put into court ---

5 THE COURT: Yes sir.

6 MR. DEBUSK: ---Where we had formerly agreed to
7 redact ---

8 THE COURT: Right.

9 MR. DEBUSK: ---Some of those are hearsay, repeated by
10 the Officer during the course of the -- I'm not raising the
11 objection to it, but at this point I intend to play these
12 tapes.

13 THE COURT: And Ms. Williams -- and I -- and I told
14 you, I'm willing to redact those statements. Now you
15 understand, it's clear that the Officer is making a hearsay
16 statement, or there might be some other -- or there is some
17 rational basis or reason to redact it, and I'll be glad to,
18 and would redact them but for you telling me, Judge, I don't
19 want you to do that, I want the entirety of the thing to come
20 in. So, I mean, we are clear that's where we are, right?

21 MS. WILLIAMS: Yes sir.

22 THE COURT: All right. And that's a knowing decision
23 by the Defense, understanding their position to be able to
24 present what you find to be your best argument to the jury, or
25 your best explanation to the jury, correct?

1 MS. WILLIAMS: Yes sir.

2 THE COURT: And that's your -- your defensive plan in
3 this particular matter.

4 MS. WILLIAMS: My trial strategy, yes sir.

5 THE COURT: All right. Very good. All right, now, Mr.
6 Riebe ---

7 BY MR. RIEBE:

8 MR. RIEBE: Yes sir.

9 THE COURT: You -- you have understood what we have
10 been talking about here.

11 A. Yes sir.

12 THE COURT: All right. And what Ms. Williams says is,
13 y'all have discussed, and y'all have come up with your plan,
14 your trial strategy in this particular matter; is that
15 correct?

16 A. Yes sir.

17 THE COURT: And you are in agreement, and you
18 understand what we are doing here, correct?

19 A. Yes sir.

20 THE COURT: And you are in agreement with her position
21 that, if I'm not going to redact the whole thing, that we are
22 going to let -- we are going to have the jury hear it, even
23 though I would redact other parts of it; you understand that.

24 A. Yes sir.

25 THE COURT: All right. Very good.

ON RECORD

87

1 A. Thank you.

2 THE COURT: Thank you very much.

3 All right, Solicitor, you indicated or mentioned
4 something about some photographs.

5 MR. DEBUSK: I do have the photographs that the State
6 will probably seek to admit, Your Honor.

7 THE COURT: All right.

8 MR. DEBUSK: If Ms. Williams and I might review those
9 and ---

10 THE COURT: I think that would -- I would ask that
11 y'all do that, not only the photographs, but the evidence, so
12 that if there are some matters in dispute, that we will have
13 narrowed down what they -- what they might be, so that we will
14 move it along as quickly as we can. All right.

15 MR. DEBUSK: Your Honor, I do not have the physical
16 evidence in the courtroom today. I ---

17 THE COURT: That's all right. No. But I'm
18 understand -- but what I'm asking y'all to do is to please do
19 that.

20 Now, y'all understand the plan for Monday is, Judge
21 Hyman will qualify -- generally qualify the jury, not
22 succinctly for this case, but will generally -- do the general
23 qualification Monday morning. He will, you know, go through
24 all that.

25 As far as separating out -- or a sub-set, or a sub-pool

ON RECORD

88

1 of jurors, would it be sufficient to separate out fifty jurors
2 to come back Tuesday morning at 9 A.M.?

3 Do you think that is sufficient, Solicitor?

4 MR. DEBUSK: Yes, Your Honor.

5 THE COURT: Ms. Williams, do you think that is
6 sufficient? Obviously I will have the whole panel come back
7 Tuesday morning if you want me to, you know, I don't know that
8 there is going to be, honestly, any other business next week
9 other than this case, truthfully.

10 MS. WILLIAMS: If we count -- I'm sure Your Honor has
11 counted it, but can you help me do the math, because we get --
12 we are going to have twelve jurors, two alternates ---

13 THE COURT: Right. That's fourteen. You could strike
14 ten, and State could strike five.

15 MS. WILLIAMS: And then on the alternates I get ---

16 THE COURT: You get two, and the State gets one. And
17 trying to allow for somebody that, by coincidence, you know,
18 might live in North Myrtle Beach, and might have heard
19 something about this, or you know, nextdoor -- you know, I'm
20 just picking Detective Lynam because he's here -- is the
21 nextdoor neighbor of Detective Lynam and no matter what he
22 says that's basically, you know, coming from the Good Lord's
23 mouth so, you know, he couldn't be -- couldn't be, you know,
24 unbiased.

25 MS. WILLIAMS: Your Honor, by my count that's thirteen

ON RECORD

89

1 extras, right, just in case.

2 THE COURT: Yes Ma'am. I'm ---

3 MS. WILLIAMS: I would think that would be a plenty,
4 Your Honor.

5 THE COURT: I'm thinking it's more than sufficient, you
6 know, so -- anyway, so we'll have fifty -- we'll have
7 basically by -- and again, it's totally by random draw,
8 computer draw, that draws the -- every jury that we have.
9 Computer will just pull out a sub-set of fifty people, once
10 Judge Hyman has qualified a jury pool, and then we will have
11 that sub-pool of fifty, and they will come back Tuesday
12 morning at 9 A.M., all right.

13 MS. WILLIAMS: Yes, Your Honor. While we are
14 addressing this ---

15 THE COURT: Yes Ma'am.

16 MS. WILLIAMS: ---Since we've decided to start on
17 Tuesday, when we had our meeting last week we were -- my two
18 people that are flying in from Ohio and from California are
19 flying in on Wednesday night.

20 THE COURT: Okay.

21 MS. WILLIAMS: Right. That's what we talked, so they
22 will be here on Thursday.

23 THE COURT: Yes Ma'am.

24 MS. WILLIAMS: Can -- do you anticipate, Solicitor,
25 with -- we agreed to how we are going to do the ---

ON RECORD

90

1 Because you know, Your Honor, I stipulated to him not
2 having to call every, you know, Tom, Pete and Harry, to ---

3 **THE COURT:** Right. Right. Right. But I mean -- on
4 the chain. I mean, there were certain people that y'all
5 eliminated in the chain, by agreement, correct.

6 **MS. WILLIAMS:** Yes sir. If we have any idea what --
7 what he thinks it's going to be, because Your Honor, it never
8 fails, my -- my experts, so the Court will know, that is
9 driving up from Hilton Head, another case he's working on in
10 Aiken got called this week too, so he sent me an e-mail -- and
11 we've known this and discussed it -- and Lord have mercy --
12 and he -- he sent me an e-mail this morning that said, do I
13 have any clue when we may want him, so if we can narrow it
14 down.

15 **THE COURT:** I don't know that we can. It -- I guess
16 the best question, or the only question that can be asked of
17 the State at this point in time is, assuming that we start as
18 soon as we can Tuesday morning, do you think that you will be
19 done with the State's witnesses come the close of business
20 Wednesday, or do you think you will probably go into Thursday?

21 **MR. DEBUSK:** I think we will probably go into Thursday.

22 **THE COURT:** All right. So, do -- going into Thursday,
23 do you think you are going to need the entirety of Thursday to
24 present the State's case, or will there be time for the
25 Defense to present any witnesses?

ON RECORD

91

1 MR. DEBUSK: Your Honor, this is just an educated
2 guess.

3 THE COURT: And I understand we are talking as best we
4 can here.

5 MR. DEBUSK: I believe I will be done by lunch on
6 Thursday.

7 THE COURT: All right. What I will say to you, Ms.
8 Williams, is -- assuming the State doesn't take till five PM,
9 okay, to present it's case, on Thursday, we will do the best
10 we can to let you put up those witnesses. Assume we have to
11 stay late to get them so that they can go to other places, or
12 the expense to the State of South Carolina will not, you know,
13 be more than it needs to be.

14 MS. WILLIAMS: Your Honor, if you may, what I was
15 thinking is, my two that are flying in, they are flying in on
16 Wednesday. I would certainly be glad to call -- my witnesses
17 aren't such that ---

18 THE COURT: Do you want them to fly in Thursday; is
19 that what you are saying?

20 MS. WILLIAMS: No sir. My witnesses aren't such that
21 one needs to testify before the second, that needs to testi --
22 you know, they are not crucial, the order isn't crucial, is
23 what I'm trying to say.

24 THE COURT: Okay.

25 MS. WILLIAMS: So what I can do is, the folks that --

ON RECORD

92

1 my two guys that fly in, I can put them up Thursday, and my
2 guy from Hilton Head, I would just tell him Friday ---

3 THE COURT: Tell to come Friday. Okay.

4 MS. WILLIAMS: ---And that will -- they need -- if they
5 need him on Thursday ---

6 THE COURT: That's fine. That's fine.

7 Now, I will tell you -- hopefully this doesn't come to
8 pass, but if it does, such that we don't finish the case
9 Tuesday through Friday, if that does come to pass -- again, I
10 hope that doesn't occur, but if it does, my intention is that
11 we would resume the next Tuesday. We are not going to work
12 over Memorial weekend because I know there are going to be
13 some of those jurors that had plans for Memorial weekend, for
14 that Saturday, Sunday and Monday, so we are not going to take
15 that away from them. We would come back the following
16 Tuesday. Judge Hyman will make the jury aware of that when he
17 qualifies the jury on Monday, so that if somebody has a
18 problem with that they will have identified that to Judge
19 Hyman before we get to that sub-pool of fifty people. All
20 right.

21 Anything else from the State at this point in time?

22 MR. DEBUSK: I guess we do have the two motions that
23 were served on me today, Your Honor.

24 THE COURT: Oh, yes, we do.

25 MR. DEBUSK: When we take a break I can review the

ON RECORD

93

1 photographs, and ---

2 THE COURT: Okay. Yes Ma'am, Ms. Williams, you had the
3 two motions, basically to restrict the use of the word murder,
4 and victim.

5 MS. WILLIAMS: Yes sir. We would suggest, Your Honor,
6 that the using the term murder throughout this trial by any of
7 -- by the Solicitor -- obviously it would be read the
8 indictment, I understand that, and in the charge, and Your
9 Honor would instruct them that my client is charged with
10 murder, but as far as any testimony saying that she was
11 murdered, that she -- you know, that type of testimony, we
12 would ask that it be restricted because it is such an
13 inflammatory statement, and obviously our statute sets out the
14 elements of proof that must be met to reach that burden, and
15 the -- ultimately I would submit that that is a jury decision
16 as to whether or not she was murdered, and murdered by my
17 client.

18 THE COURT: All right. Well, certainly I'm sure the --
19 I'm just trying to think of people that would use it -- use
20 the term. There was an autopsy.

21 MS. WILLIAMS: Yes sir.

22 THE COURT: I expect that that might be part of the
23 testimony of that particular expert; would it not, Solicitor?

24 MR. DEBUSK: Your Honor, he may use the term homicide,
25 or murder, I'm not sure which.

1 THE COURT: But ---

2 MS. WILLIAMS: I would suspect he would use the term.
3 The legal term is homicide, Your Honor, as opposed to ---

4 THE COURT: I'm just saying that if, for some reason,
5 it comes up during -- and that will be Dr. Proctor, correct?

6 MS. WILLIAMS: Yes sir, Your Honor.

7 MR. DEBUSK: Yes, Your Honor.

8 THE COURT: All right. If he does use that term I
9 think we might have to take it in context, whatever it is, and
10 if you have an objection I'll be glad to hear you, and you
11 might mention to him, Solicitor -- if he's going to use the
12 word probably homicide is probably the word that he is
13 probably going to use, but you know, I'm going to -- but other
14 than that, I'm not sure that -- how else would it come up? I
15 mean, the Solicitor is going to be talking about it, and y'all
16 are going to be talking about it in your opening arguments and
17 your closing arguments. Certainly that's got to be allowed,
18 and is allowed. Who is it that would be ---

19 MS. WILLIAMS: I just wanted to make sure that the
20 Solicitor would make sure that the detectives -- not that they
21 would in that, but just as a precautionary measure, that he
22 caution them not to use that term as part of the testimony.

23 THE COURT: Well, Solicitor -- yes sir.

24 MR. DEBUSK: It's used copiously throughout that
25 interview. It's rather hard to ---

ON RECORD

95

1 THE COURT: Well, we can't change the interview.

2 MR. DEBUSK: Yes.

3 THE COURT: We can't change the interview, you know,
4 the -- the -- because, number one, the Defense doesn't want
5 the interview changed, okay, with my ruling that I wouldn't
6 redact the entirety of their argument.

7 So, Ms. Williams, you understand that.

8 MS. WILLIAMS: Yes sir, I do.

9 THE COURT: All right. What you are talking about is
10 in response to a question by the Solicitor what you are trying
11 to avoid is, well ---

12 THE COURT: Your Honor, there should be -- my -- if I
13 look at the State's witness list there are several lay
14 witnesses on there. I really don't anticipate the police
15 officers would do that at all. They are highly trained
16 officers and I would not anticipate that. It would probably
17 be more so susceptible to come up with some of the lay
18 witnesses who testified, Your Honor, and I would simply ask
19 that he instruct them that they not discuss that.

20 THE COURT: Well, it's very hard to -- I guess, to
21 anticipate how that would be, but in general, Solicitor, I'm
22 going to ask you to talk to the witnesses and, you know,
23 unless there -- you perceive there to be a reason that it
24 should be used, then, you know, in an answer from a witness,
25 then just talk to them in general about it. Okay.

ON RECORD

96

1 MR. DEBUSK: Yes, Your Honor.

2 THE COURT: All right.

3 MS. WILLIAMS: Thank you, Your Honor. And my second
4 motion has to do with the victim, referring to Ms. Mowery as a
5 victim, as opposed to the decedent.

6 THE COURT: Well, is she not -- I mean, the State is
7 alleging a crime was committed, correct?

8 MS. WILLIAMS: Yes sir.

9 THE COURT: All right. If the State is alleging a
10 crime was committed there has to be, by necessity, a victim,
11 correct?

12 MS. WILLIAMS: Yes sir. My argument, Your Honor, to
13 that is, it is the ultimate decision for the jury to determine
14 if this Defendant is guilty of the crime that they are
15 alleging, and if they -- and it -- by suggesting that she is
16 the victim it basically preplants that notion in their mind
17 that she was the victim of this crime, and this Defendant is
18 the one on trial, therefore, he must be the one who did it. I
19 would simply ask that she be referred to as the decedent.

20 THE COURT: All right. I appreciate that. I'm going
21 to decline to ask the State to do anything, and there's -- I
22 think there is a big distinction here. There is a legal
23 definition of murder. The jury is going to have to make a
24 determination of that, so there -- there ought to be some
25 caution in how we use that particular term. Victim, I don't

ON RECORD

97

1 see that to be the case. I don't see the prejudice to the --
2 to the Defendant, and I will not so instruct the State to do
3 so. All right.

4 MS. WILLIAMS: Thank you, Your Honor. Would it be that
5 that -- rather than me having to continue to make that
6 objection throughout ---

7 THE COURT: Yes Ma'am.

8 MS. WILLIAMS: ---Can it be noted that it's ongoing and
9 ---

10 THE COURT: Yes Ma'am. You have noted your objection,
11 and I have made my ruling.

12 MS. WILLIAMS: Thank you.

13 THE COURT: All right. Very good.

14 Anything else from the State that you are aware of at
15 this point in time, Solicitor?

16 MR. DEBUSK: Just the photos, Your Honor, which we can
17 review when you step down.

18 THE COURT: That y'all will do, but -- all right. And
19 Ms. Williams, anything else?

20 MS. WILLIAMS: Nothing else from the Defense at this
21 time, Your Honor.

22 THE COURT: All right. Very good. Thank you very
23 much. I will see y'all Tuesday morning.

24 MR. DEBUSK: Thank you, Your Honor.

25 THE COURT: Solicitor, and Ms. Williams, could y'all

JURY QUALIFICATION/VOIR DIRE/JURY SELECTION
COURT TO JURY

98

1 come up here for just one second.

2 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

3 (THE FOLLOWING TAKES PLACE ON MAY 24, 2011, AFTER
4 QUALIFICATION OF THE JURY VENIRE, AFTER VOIR DIRE FOR THIS
5 PARTICULAR CASE, AND WITHIN THE PRESENCE OF THE JURY VENIRE.)

6 THE COURT: Thank you very much.

7 Further questions from the State?

8 MR. DEBUSK: None, Your Honor.

9 THE COURT: Further questions from the Defense?

10 MS. WILLIAMS: Your Honor, may we approach?

11 THE COURT: Be glad for you to.

12 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

13 THE COURT: All right. As to the matter from the
14 Defense, I believe my questions have covered the necessary
15 parts of question one. I will not ask number two. I have
16 covered the necessary parts of number three. To expound on I
17 do not believe would be proper. I believe I've covered the
18 issues as set forth as necessary in number four, but not as
19 specifically needed, or -- I'm sorry -- as requested by the
20 Defense. I will not ask number five or number six, and I
21 believe I've covered number seven.

22 Thank you very much.

23 (THE FOLLOWING TAKES PLACE AFTER A JURY WAS SELECTED FOR
24 THE TRIAL OF THIS CASE, AND WITHIN THE PRESENCE OF THE JURY

COURT TO JURY

99

1 SELECTED FOR THE TRIAL OF THIS PARTICULAR CASE.)

2 (A JURY SELECTION FORM WAS PREPARED IN THIS CASE AND IS
3 ATTACHED HERETO.)

4 THE COURT: All right, ladies and gentlemen, I'm going
5 to ask you to go back to the jury room in just a minute to do
6 something, and let me explain that. I'm going to ask you to
7 pick your foreperson for this particular jury, so let me tell
8 you very briefly what the duties and responsibilities of the
9 foreperson are. If we are here in the courtroom and the jury
10 needs attention to some matter, the witness needs to speak up,
11 the lawyers need to speak up, there's some issue that the jury
12 has, the foreperson raises their hand, gets the Court's
13 attention, and we will handle the matter, whatever it is. If
14 you are back in the jury room then what you do is, from the
15 paper and pen provided you will write out a note, sign it, get
16 that note to the bailiff. It will come to me, and again, we
17 will handle the matter, whatever it might be.

18 After we have heard all the evidence in this case, and
19 you've heard the closing arguments from the attorneys, and I
20 have given you the law that you are going to apply to the
21 facts and evidence in this particular case, then I will submit
22 the case to you for your decision, your deliberation. When I
23 do that the foreperson's duties and responsibilities change in
24 this regard. The foreperson is going to act like the chairman
25 at a meeting. Important duty that the foreperson has is to

1 make sure everybody has an opportunity to speak, everybody's
2 voice has an opportunity to be heard that wants to be heard on
3 a particular issue. Hopefully good order doesn't need to be
4 kept, but that would obviously be a duty of the foreperson.

5 Again, if there is some question or issue that comes up
6 the foreperson, again, would write that out, sign it, give the
7 note to the bailiff. It will come to me and again, we will
8 handle the matter, whatever it might be.

9 The final duty and responsibility of the foreperson is,
10 once the jury has well and truly deliberated in this case, and
11 reached it's unanimous decision in this particular matter, the
12 foreperson will take the verdict form that the Court will
13 provide to you, either check the appropriate block, or write
14 the appropriate word, and thereafter sign your name as the
15 foreperson, indicating that is the unanimous verdict of each
16 and every member of the jury in this particular case.

17 So, with that brief explanation of the duties of the
18 foreperson, I'm going to ask that you go back to your jury
19 room, select your foreperson, knock on the door and let the
20 bailiff know who that person is.

21 Now, the two alternates, y'all can vote on the
22 foreperson, but obviously, being the alternates you cannot be
23 the foreperson.

24 All right. Y'all go back to the jury room, select your
25 foreperson, please.

JURY OUT/BATSON MOTION

101

1 Thank you very much.

2 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
3 JURY SELECTED FOR THE TRIAL OF THIS PARTICULAR CASE.)

4 (THE REMAINDER OF THE JURY VENIRE IS PRESENT IN THE
5 COURTROOM.)

6 THE COURT: All right. Ladies and gentlemen ---

7 MS. WILLIAMS: Your Honor, may we approach?

8 THE COURT: Sure.

9 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

10 THE COURT: All right. Are there any objections to the
11 jury as empaneled, from the State?

12 MR. DEBUSK: None from the State, Your Honor.

13 THE COURT: From the Defense?

14 MS. WILLIAMS: Yes sir, there is.

15 THE COURT: All right. Very good.

16 All right, Ladies and gentlemen, what I'm going to need
17 for you to do is -- I cannot excuse you at this point in time.

18 I assume basically all those rooms are open, gentlemen,
19 out there, so ---

20 What -- there is -- across the hall, on this side and on
21 the -- down the other side, there are some jury waiting rooms,
22 basically, or witness waiting rooms. What I'm going to need
23 for y'all to do is, to go and -- either go in the hall and be
24 quiet, or go into those rooms and wait until I resolve this
25 motion. At that point in time then I can decide what needs to

JURY OUT/BATSON MOTION

102

1 be done, either to excuse you or to re-do the jury selection
2 in this particular matter.

3 So, with that, if y'all will please exit the courtroom,
4 and I'll be with you shortly.

5 Thank you very much.

6 (AT THIS TIME THE REMAINDER OF THE JURY VENIRE EXIT THE
7 COURTROOM.)

8 THE COURT: All right. You wish to make a Batson
9 motion at this point in time, Ms. Williams?

10 MS. WILLIAMS: Yes sir, I do. The Defense would oppose
11 -- the State struck jurors number eighty-nine, and jurors
12 number two ninety-two. One was a black female, one was a
13 black male.

14 Now, they did strike two additional jurors, who are a
15 white female and a white -- a white female and a white male,
16 Your Honor, but we would submit that the striking of those --
17 the two ---

18 THE COURT: That's jurors number eighty-nine and two
19 ninety-two?

20 MS. WILLIAMS: Yes sir.

21 THE COURT: And the State also struck one seventy and
22 fourteen. You are not challenging their striking of one
23 seventy and fourteen?

24 MS. WILLIAMS: Your Honor, what we would submit is
25 that, with regard to our two jurors that came in, those were

JURY OUT/BATSON MOTION

103

1 the only two black potential jurors that were called before
2 the Court.

3 THE COURT: No Ma'am. You struck the very first one,
4 juror number eighty-five, Delores Evans, who is a black
5 female. You struck her. Then the State struck juror number
6 eighty-nine, a black female, and the State also struck juror
7 number two ninety-two, a black male. The next African-
8 American that was called in random order was juror number
9 sixty-eight, who was chosen as one of the alternates in this
10 particular matter.

11 MS. WILLIAMS: Yes sir.

12 THE COURT: All right. But anyway, but that as it may,
13 I mean, it is what it is.

14 MS. WILLIAMS: You are correct -- and I'm correct. And
15 Your Honor, I would submit that ---

16 THE COURT: Well, you are challenging that -- under
17 Batson, their striking of juror number eighty-nine and two
18 ninety-two; is that right?

19 MS. WILLIAMS: Correct.

20 THE COURT: All right. Very good. All right. At this
21 point in time, what we have then is -- we will turn to the
22 State to see if there is some race or gender-neutral reason
23 for the striking, and then after that we will turn to -- back
24 to you, Ms. Williams, to see if you can show that that
25 explanation was a mere pretext to strike a person, either

JURY OUT/BATSON MOTION

104

1 based on their race or gender.

2 All right, Solicitor, be glad to hear from you.

3 MR. DEBUSK: Thank you, Your Honor. As you know, we
4 run criminal histories for all jurors before they are
5 qualified. Several were disqualified by their criminal
6 history. There are several that were not disqualified by
7 their criminal history, but did have what histories are left.
8 I take notes of those because they may have animus against the
9 Solicitor's office, being the prosecuting agency.

10 In this case juror number eighty-nine had a prior arrest
11 from 2010 for shoplifting, which may actually be a pending
12 case -- I'm not certain -- and juror two ninety-two had a
13 prior arrest for criminal sexual conduct in the first degree
14 from 1989 that would have been handled by this office.

15 Those are the only two jurors that we had non-
16 disqualifying NCICs for that were called during the jury
17 selection, Your Honor.

18 THE COURT: All right. There was no other juror, you
19 are saying in the entire panel, that had a arrest record, or
20 that was called.

21 MR. DEBUSK: Correct, Your Honor. I have four others
22 that I can give you the numbers of if you want, for the
23 record.

24 THE COURT: Please.

25 MR. DEBUSK: Okay. Eighty-two, ninety-one, one ninety-

JURY OUT/BATSON MOTION

105

1 six and two ninety-seven.

2 THE COURT: But none of those were called.

3 MR. DEBUSK: To the best of my knowledge they were not,
4 Your Honor.

5 THE COURT: I'm sorry. Tell me the numbers again.

6 MR. DEBUSK: Eighty-two, ninety-one -- I'm sorry --
7 ninety-one wasn't -- I don't think ninety-one was in it. I
8 think ---

9 THE COURT: Ninety-one I actually excused. That was
10 one of the people that had some extraordinary reason to be
11 gone next Tuesday, so that was -- I think it was ninety-one
12 and fifty-six I let go.

13 MR. DEBUSK: So it would be eighty-two, one ninety-six,
14 and two ninety-seven. Your Honor, I check all the NCICs
15 against the names and birth dates on the -- on the jury list,
16 and these all matched, including the two that I struck.

17 THE COURT: All right. Very good. I would so find on
18 the record that I find the explanation of the State to be a
19 race and gender-neutral explanation for the striking of jurors
20 eighty-nine and two ninety-two, therefore, I would turn to
21 you, Ms. Williams, to see if you have any information for the
22 Court to show that that explanation is a mere pretext to
23 strike a person either by their race or gender.

24 MS. WILLIAMS: Beg the Court's indulgence for just one
25 moment.

COURT'S RULING

106

1 THE COURT: Yes Ma'am.

2 MS. WILLIAMS: I -- no sir, not at this time.

3 THE COURT: All right. And I just want to be clear,
4 you weren't challenging the State's striking juror number one
5 seventy or fourteen; is that right?

6 MS. WILLIAMS: Correct.

7 THE COURT: All right. Very good. All right. Thank
8 you very much.

9 All right, I find therefore, that the jury as empaneled
10 has been done properly pursuant to Batson versus Kentucky and
11 J.E.B. versus Alabama, and will seat the -- the jury as the
12 jury in this particular case.

13 All right. Can we have that panel come back in, please.

14 (AT THIS TIME THE REMAINDER OF THE JURY VENIRE ENTERS
15 THE COURTROOM.)

16 THE COURT: Do we have them all?

17 DEPUTY SHERIFF: Yes sir.

18 THE COURT: All right. Very good. Thank you.

19 (AT THIS TIME THE REMAINDER OF THE JURY VENIRE IS
20 RELEASED, JURORS TO CALL BACK JUROR INFORMATION LINE AND
21 FOLLOW INSTRUCTIONS THEREON.)

22 THE COURT: All right. Is there any matters from the
23 State before we call the jury in to get started?

24 MR. DEBUSK: No, Your Honor.

25 THE COURT: From the Defense?

JURY OUT/ON RECORD

107

1 MS. WILLIAMS: Yes sir. We would like to make a motion
2 to sequester the witnesses that will be testifying, Your
3 Honor.

4 THE COURT: All right. Who is your chief investigating
5 officer in this particular case, Solicitor?

6 MR. DEBUSK: Owen Lynam, Your Honor, sitting to my
7 right.

8 THE COURT: Owen Lynam. All right, sir. Other than
9 that, do you wish to have anyone else stay in the courtroom
10 regarding the sequestration request from the Defense?

11 MR. DEBUSK: Yes, Your Honor. There's two family
12 members, who will actually be the first two witnesses. That
13 is a niece and the daughter of the victim.

14 THE COURT: And who are they, please?

15 MR. DEBUSK: Diana Mowery and Michelle Rainey.

16 THE COURT: Diana Mowery and Michelle Rainey.

17 MR. DEBUSK: Because of their interest in the case,
18 Your Honor, I would ask that they be allowed ---

19 THE COURT: And I'm sorry. Tell me their relation
20 again to ---

21 MR. DEBUSK: Ms. Rainey is niece of the victim. Ms.
22 Mowery is the daughter of the victim.

23 THE COURT: All right. Very good.

24 MR. DEBUSK: Ms. Rainey will testify first, so Ms.
25 Mowery will only hear one witness, and she has got extreme

1 interest, being the daughter of the victim, Your Honor.

2 THE COURT: All right. Very good. Is there any reason
3 that -- pursuant to the Victims' Rights Act that the Court
4 should not allow these two witnesses to remain in the
5 courtroom during the entirety of the trial?

6 MS. WILLIAMS: No sir. I do not see any with regard to
7 these two particular witnesses.

8 THE COURT: All right. Very good. I'm going to allow
9 the State's chief investigating officer, as well as the two
10 relatives, to stay in the courtroom. As to all other
11 witnesses, State and Defense, they will be sequestered.

12 MR. DEBUSK: There was one other. Detective Pitsinger
13 has custody of the evidence, some of the evidence in the case.
14 I can send him out. We would just have to send somebody to
15 get the -- get him if we need to bring any of the evidence in
16 his custody into -- I've got no problem doing that as long as
17 that's okay with the Court.

18 THE COURT: What's your position, Ms. Williams?

19 MS. WILLIAMS: Your Honor, my position is, I think
20 Detective -- I think that in spite of the difficulty that that
21 may cause us, Your Honor, I think he is one of the witnesses
22 that needs to be sequestered until his testimony is taken.

23 THE COURT: All right. Very good. All right. Thank
24 you very much.

25 MR. DEBUSK: Thank you, Your Honor.

JURY IN/SWORN
COURT TO JURY

109

1 THE COURT: All right. Anything else from the Defense?
2 Ms. Williams, any other matters before we bring the jury out?

3 MS. WILLIAMS: No sir. I cannot think of any.

4 THE COURT: All right. Why don't we -- why don't we
5 take just a very short break, for five minutes, and don't get
6 lost anywhere. We will come back in in five minutes and get
7 started, please.

8 Thank you very much.

9 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
10 THE PRESENCE OF THE JURY.)

11 THE COURT: All right. Is the State ready for the
12 jury?

13 MR. DEBUSK: Yes, Your Honor.

14 THE COURT: And the Defense? Are you ready for the
15 jury, Ms. Williams?

16 MS. WILLIAMS: I'm sorry. Yes sir, the Defense is
17 ready.

18 THE COURT: For your information, ladies and gentlemen,
19 the jury has selected juror number three-oh-two, Kirk Stalvey,
20 as the foreperson for this particular jury.

21 All right. Ask the jury to come in, please.

22 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
23 JURY.)

24 THE COURT: All right, ladies and gentlemen, the very
25 first thing that is going to happen in this particular case

JURY IN
STATE'S OPENING REMARKS (DEBUSK)

110

1 is, the Clerk is going to administer your oath, so if you
2 would all please stand at this time. All right.

3 And Mr. Stalvey, the jury selected you as the foreperson.
4 for this particular jury; is that right?

5 MR. STALVEY: Yes sir.

6 THE COURT: All right. Very good.

7 Go ahead, Madame Clerk.

8 (AT THIS TIME THE JURY WAS SWORN.)

9 (THE FOLLOWING TAKES PLACE AFTER THE COURT MADE OPENING
10 REMARKS TO THE JURY.)

11 MR. DEBUSK: Thank you, Your Honor. If it please the
12 Court.

13 THE COURT: Yes sir.

14 MR. DEBUSK: Ladies and gentlemen, as the Judge has
15 told you, this case is the case of the State versus Jeffrey
16 Riebe.

17 When I prepare a murder case I put a different name on
18 my trial. In this case, that name is Phyllis Mowery. Phyllis
19 is a victim in this case. Phyllis lived in a little apartment
20 off of in North Myrtle Beach, just around the
21 corner from Ducks and Fat Harold's, and all the shag clubs on
22 Main Street, just a couple of blocks from the beach.

23 She was also a mother -- she had her daughter -- and a
24 grandmother. She had some grandchildren. And probably the
25 best advantage of this apartment for her wasn't so much as

JURY IN
STATE'S OPENING REMARKS (DEBUSK)

111

1 that it was close to the beach and to the shag clubs, but her
2 daughter and her granddaughter lived just on the other side of
3 the building, in the same she did.

4 She had another family, had a family at work. She had
5 the same -- worked for the same employer for about fifteen
6 years, a place called Sam's Place, on 17 -- Highway 17 at
7 North Myrtle Beach. That was her work family. At her
8 apartment she had her daughter and her grandchildren, and you
9 imagine her joy when, just a couple of days before she died
10 her niece, Michelle Rainey, moved in just across the back
11 yard, another house on the same lot. There she was in her
12 apartment surrounded by family, had a job close to the
13 apartment, had that apartment taken care of, had maid service,
14 lot of reasons to be happy.

15 Unfortunately Phyllis had a problem. Phyllis's problem
16 was drinking. She probably drank too much. Phyllis only
17 drank every other day. That was probably her way of
18 convincing herself she wasn't an alcohol, she didn't have a
19 problem because she only drank every other day. Phyllis also
20 didn't like to drink alone. She wanted a drinking buddy,
21 somebody to share those long nights with, somebody to fuss at,
22 somebody to holler at when she was in the cups. And she chose
23 as that drinking buddy the Defendant, Jeffrey Riebe.

24 Mr. Riebe, he needed a friend too. He was homeless. He
25 lived on the street there in North Myrtle Beach, and Phyllis,

JURY IN
STATE'S OPENING REMARKS (DEBUSK)

112

1 she would give him a place to come in from the cold,
2 occasionally he would spend the night there, get some food,
3 maybe clean up a little bit. In return, Phyllis wanted to
4 fuss at him. That's what it was about. She wanted somebody
5 to fuss at.

6 Turns out, unfortunately, Jeffrey Riebe didn't like
7 being fussed at. It made him angry. And on the night of
8 August 26, 2008, and the early morning hours of August 27,
9 2008, that anger boiled over, and when Phyllis fussed at
10 Jeffrey Riebe just one too many times he started to beat her.

11 Phyllis was very badly injured. Her ribs were broken in
12 two places, she had massive contusions on the front part of
13 her head, her forehead was all cut up, some of her teeth were
14 knocked out. She was very badly beaten, lying on the floor in
15 a helpless position, probably too drunk to do anything about
16 it, in pain, spitting out blood with every breath.

17 At that point Jeff Riebe takes a choice. He could walk
18 out of that apartment, leaving her there. She probably would
19 have called the police and he would have gone to prison for
20 beating her. The alternative was to finish what he had
21 started, and that's the alternative he chose, and the
22 opportunity to do that presented itself right next to
23 Phyllis's body, the belt, on a dresser, right there.

24 He grabbed that belt, he put it around Phyllis's neck,
25 and he squeezed it so hard it crushed her trachea, and he held

JURY IN
STATE'S OPENING REMARKS (DEBUSK)

113

1 it so long that it killed her from asphyxiation. She wasn't
2 going to testify. She wasn't going to be a witness against
3 him. He made the choice, I'm going to get away with this.

4 And he carried on with that choice. He left her there,
5 face down in a pool of blood, and he didn't call anybody. He
6 didn't ask anybody for help because then they would have
7 discovered his crime. Instead, when Phyllis's employer of
8 fifteen years called and said Phyllis hasn't shown up for work
9 Jeff Riebe went and worked her shift for her, went there to
10 that restaurant and worked that shift.

11 But he seemed less worried about work and about getting
12 a new pair of shoes. That's what he was talking about all
13 that day, even asked Phyllis's former employer, Sam, for money
14 to go buy those shoes. He got a drive to Wal-Mart, he bought
15 those shoes and he threw the old ones away. Then he went and
16 did something very uncharacteristic, he washed all his
17 clothes. He's getting rid of the evidence.

18 And then, when the police found out that Jeff Riebe was
19 the last person that had talked to Phyllis Mowery, known to
20 talk to Phyllis Mowery, they went to talk to him, and he
21 didn't tell them the truth. They talked to him two different
22 days and he told two different stories, but mostly he said, I
23 don't remember.

24 That's the story you are going to hear about today. And
25 the Judge has told you it's the State's burden to prove this

JURY IN
STATE'S OPENING REMARKS (DEBUSK)

114

1 case beyond a reasonable doubt.

2 My name is George Debusk. I'm a Senior Assistant
3 Solicitor. I've been working here in Horry County for twelve
4 years. It's my burden. When he says the State has the
5 burden, that's my burden, and I take it seriously. I'm going
6 to present a State's case. I'm going to ask you to listen to
7 every bit of it, and I'm going to have to apologize in advance
8 because some of it is going to be difficult to listen to.
9 Some of these injuries suffered by the victim are grievous,
10 painful, and it's going to be easy to imagine her lying there
11 with that pain ---

12 MS. WILLIAMS: Your Honor ---

13 THE COURT: Yes Ma'am.

14 MS. WILLIAMS: I'm going to object to some of what the
15 Solicitor is saying at this point.

16 THE COURT: All right. Solicitor, let's confine, at
17 this point in time, just to an opening statement, please sir.

18 MR. DEBUSK: Yes, Your Honor.

19 And despite the gruesomeness from the evidence you might
20 hear, you need to listen to everything. You can't let your
21 anger or your sympathy for the victim cloud your judgment.

22 The State is going to put up a case, and then the
23 Defense has a right to put up a case if they chose to. You
24 have to listen to all of it, listen to all of the evidence.

25 Most of the evidence is going to be testimony. It's

JURY IN
STATE'S OPENING REMARKS (DEBUSK)

115

1 going to be people standing on -- sitting on that chair. They
2 are going to be telling you what they saw, what they heard,
3 what they saw other people do, how they were acting, things
4 they did. That's going to be the bulk of the testimony in
5 this case, maybe a few physical exhibits, physical evidence,
6 but most of it is going to be testimony.

7 We have different kinds of testimony, people that knew
8 Phyllis, people that were in law enforcement, people that
9 analyzed the evidence, and you have to look at all those the
10 same. Even though witnesses are qualified as experts you
11 judge them all the same. Are they qualified to testify about
12 what they are testifying about. Do they have a reputation for
13 truthfulness. You have to look at all those things with each
14 and every witness, and you have direct evidence, and you have
15 circumstantial evidence, both kinds. You have to look at it
16 all the same.

17 When all the evidence has been presented we are going to
18 come back to you and ask for a verdict. The Judge has told
19 you, it's my burden to prove that case beyond a reasonable
20 doubt. Because that's my burden, because I take it so
21 seriously, I want to talk to you a little bit about what that
22 burden is. Proof beyond a reasonable doubt. What is that?
23 At the end of the case the Judge will come back and instruct
24 you in the law, and he can give you some guidance, but he
25 can't draw you a picture of reasonable doubt, he can't give

JURY IN
STATE'S OPENING REMARKS (DEBUSK)

116

1 you a formula, or a meter you can use to determine if there's
2 reasonable doubt, because that standard comes from you as
3 jurors. That's the role of the jury, to look at the facts, to
4 find the facts and decide whether there's proof beyond a
5 reasonable doubt. It's not something you have to go looking
6 for. You will know, from inside you, when you've looked at
7 all the evidence in this case, whether there's proof beyond a
8 reasonable doubt. It's a standard that comes from you. And
9 the right to a jury trial is perhaps one of the most important
10 Constitutional Rights people have -- we take it seriously --
11 and that's why you are so important. We have to prove our
12 case to you, as the community. You have to find the facts for
13 the protection for everyone that is accused of a crime.

14 I thank you for your service, and again, I ask you to
15 listen to all the evidence in this case, and not to prejudge
16 anything till the end, then we'll come back and present final
17 arguments, and we would ask you to render a verdict based on
18 the facts it, and what we want is justice. We want you to
19 find a verdict that speaks the truth, which is what verdict
20 means in Latin, veredicto, speak the truth.

21 And again, I thank you for the attention you will giving
22 this case in the next few days. I look forward to returning
23 and giving my closing argument.

24 Thank you.

25 THE COURT: All right, Ms. Williams, be glad to hear

DEFENSE'S OPENING (WILLIAMS)

117

1 from you, Ma'am.

2 MS. WILLIAMS: Thank you, Your Honor. May it please
3 the Court.

4 THE COURT: Yes Ma'am.

5 MS. WILLIAMS: Good morning, Ladies and gentlemen of
6 the jury. My name is Brana Williams, and when I do openings I
7 always feel like, gosh, you guys have to come up here and
8 stand in front of us so it's only fair that I do the same.

9 I am a private practice, sole practitioner. My office
10 is in Murrells Inlet. I do mainly criminal defense, some
11 domestic, some personal injury. I work with my husband, who
12 is a retired police officer, after twenty-five years of
13 service in the police, and we have two children that are
14 adopted.

15 Seated with me at the table is my client, Jeff Riebe.
16 What I want to do, the very first thing -- the Judge has said
17 it, the Solicitor has said it, but I do want to repeat it
18 because it is important. I thank you for being here. There
19 is no doubt that I understand you don't want to be here.
20 There are better things that you need to be doing than being a
21 jury in this trial this week, but without you our justice
22 system couldn't work, and thank goodness we have you. So I
23 thank you for taking the time to do it, and paying attention,
24 and listening. And as the Judge said, you are the finders of
25 the facts, and everything you are going to hear is going to

DEFENSE'S OPENING (WILLIAMS)

118

1 come from that witness stand.

2 You know, this is probably the most serious case that
3 could be brought. My client is charged with murder. You are
4 going to hear facts it was a terrible crime, but we will
5 submit to you that the police arrested the wrong person; my
6 client is not guilty of this crime.

7 What I think is most important -- we are probably going
8 to be here all week, and I will tell you that, and the
9 Solicitor and Judge have told you that, and Lord knows, we
10 don't want to go on to next week, we might, but you are going
11 to hear lots of information come from that stand, but what I
12 really want you to focus on is what you don't hear, because I
13 think it's absolutely important, absolutely critical, and
14 fundamental to the answers to this case.

15 The Judge told you, my client comes in with a cloak of
16 innocence. He doesn't have to prove he didn't do it. The
17 State has the burden of beyond a reasonable doubt, and it is
18 an obscure thing, you know, what is it? It's not every
19 doubt -- the Judge is going to tell you, it's not every doubt,
20 any doubt, all doubt, but it's not probably, and it's not
21 some, it's a big old burden.

22 You know, this is the part of our justice system that I
23 just love the most. This is a very serious case, but what our
24 system requires is that we take twelve people, from all walks
25 of life, all levels of education, and you guys have to come

MICHELLE JACQUELINE RAINEY - DIRECT BY DEBUSK

119

1 together and make a decision. You have to make a collective
2 decision, and how do you do that? Well, what you do is, you
3 are going to listen to what you hear, listen to what you don't
4 hear, and then as the Judge said, you are going to take your
5 common sense and make a decision, and common sense is the best
6 thing any of us have. You know we use it every day. We use
7 it to make little decisions, we use it to make big decisions.

8 During this trial I will submit that you are going to
9 hear that there was evidence that this case is basically
10 fraught with bad police work. There was testing that could
11 have been done, should have done, won't ever be done, because
12 the evidence isn't here. It no longer exists.

13 When we come back together I'll get to talk to you one
14 more time at the end, and at that time my client and I will be
15 asking you to, from everything you heard, everything you
16 didn't hear, together, and make a decision, and make that
17 decision that my client is not guilty of this crime.

18 THE COURT: All right, Solicitor, your first witness,
19 please sir.

20 MR. DEBUSK: Thank you, Your Honor.

21 The State calls Michelle Rainey.

22 THE COURT: All right. Please come around to be sworn,
23 Ma'am.

24 MICHELLE JACQUELINE RAINEY, being
25 first duly sworn, testifies as follows:

MICHELLE JACQUELINE RAINEY - DIRECT BY DEBUSK

120

1 DIRECT-EXAMINATION BY MR. DEBUSK:

2 Q. Ms. Rainey, where do you live?

3 A. In North Myrtle Beach, South Carolina.

4 Q. Now, how about in August of 2008? Where did you live?

5 A. In North Myrtle Beach, on where my
6 aunt was staying.

7 Q. Where is ?

8 A. That's where I was living.

9 Q. Is that , or is it ?

10 A.

11 Q. Okay. How long had you been living there?

12 A. Two days.

13 Q. I'll show you what has been marked as State's Exhibits
14 1 and 2 ---

15 MR. DEBUSK: And I believe, Your Honor, we have
16 consented to these.

17 THE COURT: Is there any objections to State's 1 and 2?

18 MS. WILLIAMS: No sir.

19 THE COURT: All right. They are in evidence without
20 objection.

21 (PHOTOS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT'S 1
22 AND 2.)

23 Q. And I ask if you recognize these.

24 A. Yes.

25 Q. What are those?

MICHELLE JACQUELINE RAINEY - DIRECT BY DEBUSK

121

1 A. The apartment in the front of where I stayed.

2 Q. Okay. The first one, State's Exhibit 1, what part of
3 the building is that shot?

4 A. The front of the building, on

5 Q. And where did you ---

6 A. In the back.

7 Q. Okay.

8 A. In this building right here.

9 Q. Okay. And how about Phyllis Mowery?

10 A. She stayed right here, in this apartment right here.

11 Q. Who was Phyllis Mowery to you?

12 A. My aunt.

13 Q. Okay. And how long -- do you know how long Phyllis had
14 been living in that apartment?

15 A. I think for about two weeks.

16 Q. Now on August 26, of 2008, did you see Phyllis?

17 A. Not on the 26th, no.

18 Q. When did you see her?

19 A. I'm not exactly sure what day. I moved in on the 22nd,
20 and I had lived there for about two or three days, so it was
21 the day that -- before she got murdered.

22 MS. WILLIAMS: Your Honor, I would object to that
23 characterization, and ask that that be struck.

24 THE COURT: All right. I also strike the last work.

25 And continue on, Solicitor.

- 1 MR. DEBUSK: Thank you, Your Honor.
- 2 Q. So, the day before that happened, did you see Phyllis?
- 3 A. Yes. She was with me till about 8:05 that night.
- 4 Q. What were you doing?
- 5 A. We were sitting at the house just talking, and she was
- 6 drinking, just talking.
- 7 Q. How can you be so precise about 8:05?
- 8 A. Because she called Jeff, and right when she called Jeff
- 9 it was on my cell phone. I had it saved on my cell phone for
- 10 the longest, and not too long after she called Jeff from my
- 11 cell phone that's when she went home.
- 12 Q. And when you say Jeff, what are you referring to?
- 13 A. Jeff Riebe.
- 14 Q. Would that be the Defendant?
- 15 A. Yes.
- 16 Q. Okay. Did you hear the -- Phyllis's end of the
- 17 conversation?
- 18 A. Like when she was --
- 19 Q. When she was speaking to him on the cell phone.
- 20 A. No. He just said that she -- when they hung up the
- 21 phone she said that he was going to come over.
- 22 Q. Okay.
- 23 A. I guess because she was drinking I always warn her,
- 24 because I wasn't drinking her.
- 25 Q. Did you see Phyllis again that night?

MICHELLE JACQUELINE RAINY - DIRECT BY DEBUSK

123

- 1 A. No.
- 2 Q. Did you see Jeff Riebe that night?
- 3 A. Yes.
- 4 Q. What were the circumstances?
- 5 A. He came over, I'll say around ten something, to use my
6 can opener to open a can of spaghetti.
- 7 Q. Did you know Jeffrey Riebe before this?
- 8 A. Yes.
- 9 Q. How did you know him?
- 10 A. I worked with him at Harry's -- well, Sam's Place. We
11 used to -- I used to pick him up a lot and bring him to work.
- 12 Q. So he was known to you ---
- 13 A. Uh huh (indicating positive)
- 14 Q. ---And the rest of the family?
- 15 A. Yes.
- 16 Q. After that, after he came over for the can opener did
17 you see Phyllis and Jeff again?
- 18 A. No.
- 19 Q. When was the next time you saw Jeff Riebe?
- 20 A. That -- the morning that my aunt was found.
- 21 Q. And what were the circumstances then?
- 22 A. He was just -- he came up there when my aunt got found,
23 when everybody came -- everybody came up there.
- 24 Q. What was his demeanor? Was he acting normal, or was he
25 acting ---

MICHELLE JACQUELINE RAINY - DIRECT BY DEBUSK

124

1 A. He was acting a little nervous. That's when I went to
2 the police officer and I told her, I don't know what happened,
3 if my aunt fell, or if she was -- what happened, but I seen
4 that he was a little nervous, and I seen that his hand was
5 busted.

6 Q. Do you remember which hand it was?

7 A. His right hand.

8 MR. DEBUSK: I apologize, Your Honor. We've changed
9 the order of ---

10 THE COURT: That's all right. That's fine.

11 (PHOTO MARKED STATE'S EXHIBIT NUMBER 33.)

12 Q. I'm going to show you what's been marked as State's
13 Exhibit 33, as if you recognize that?

14 A. Yes.

15 Q. What does that show?

16 A. His hand busted up.

17 Q. Did you see your aunt?

18 A. I seen her -- the door was cracked a little bit, and I
19 could see her lying on the -- well, I saw like her waist down,
20 lying on the floor in the apartment.

21 Q. Let me ask you, in your experience in dealing with Jeff
22 Riebe, in the years you've known him, would it be unusual for
23 him to wash all his clothes, or to buy new shoes?

24 MS. WILLIAMS: Your Honor ---

25 A. Well ---

MICHELLE JACQUELINE RAINEY - DIRECT BY DEBUSK

125

1 THE COURT: Yes Ma'am.

2 MS. WILLIAMS: ---I would object to that testimony.

3 THE COURT: I'll allow it if it's based on personal

4 knowledge.

5 MS. WILLIAMS: Okay.

6 MR. DEBUSK: Thank you, Your Honor.

7 A. He -- no, because he was homeless. If I was -- myself,

8 I would buy me something to eat before I would wash my

9 clothes.

10 Q. Uh huh. So would it be -- I'm sorry. Just to make it

11 clear, would it be unusual for him to wash all his clothes?

12 A. Yes.

13 Q. Would it be unusual for him to buy ---

14 MS. WILLIAMS: Your Honor ---

15 A. Yes.

16 MS. WILLIAMS: ---May we approach?

17 THE COURT: Yes Ma'am.

18 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

19 Q. Just to reiterate, Ms. Rainey, how did you know Jeff

20 Riebe?

21 A. I worked with him at Sam's Place.

22 Q. So you had spent a lot of time with him?

23 A. Yes sir.

24 Q. Did you also testify that you had given him rides to

25 work at times?

1 A. Yes.

2 Q. So you had been in close proximity to him many times.

3 A. Yes.

4 MS. WILLIAMS: Your Honor, I object to the leading
5 nature of that question.

6 THE COURT: I believe it's reiteration of testimony she
7 already gave. I'm going to allow it. Thank you very much.

8 MR. DEBUSK: Thank you, Your Honor.

9 Please answer any questions the Defense might have.

10 A. Okay.

11 THE COURT: Cross-examination.

12 MS. WILLIAMS: Thank you, Your Honor.

13 CROSS-EXAMINATION BY MS. WILLIAMS:

14 Q. Ms. Rainey, you said you moved in, what, two or three
15 days before the incident happened?

16 A. Yes Ma'am.

17 Q. Okay. And you were there the morning that your aunt
18 was found, correct?

19 A. I was at the bus stop and my cousin called me, and then
20 I ran down. I wasn't there when she was found, but I was a
21 block up the road putting my son on the school bus.

22 Q. Okay. And the morning that she was found did the
23 police talk to you that morning?

24 A. Yes. I had to write a statement.

25 Q. And you did write a statement for them, correct?

MICHELLE JACQUELINE RAINEY - CROSS BY WILLIAMS

127

1 A. Uh huh (indicating positive)

2 THE COURT: You need to -- I'm sorry. You need to
3 answer yes or no.

4 A. Oh. I'm sorry.

5 THE COURT: That's all right. Because the Court
6 Reporter can't tell what that -- Uh huh is.

7 Go ahead.

8 Q. And you did write a statement for them; is that
9 correct?

10 A. Yes.

11 Q. And in that statement did they give you any
12 instructions about how to write that statement?

13 A. No.

14 Q. They just told you -- so let me ask you this. Is it
15 fair to say that you were to write a statement about what you
16 knew about what was going on, correct?

17 A. Yes.

18 Q. Okay. And is that statement -- do you think that that
19 was accurate reflection of what you knew and what you thought
20 at that time?

21 A. Yes.

22 Q. Okay. And ---

23 MS. WILLIAMS: Your Honor, if we could mark this for
24 identification at this time.

25 (STATEMENT OF MICHELLE JACQUELINE RAINEY MARKED

1 DEFENDANT'S EXHIBIT NUMBER 1, FOR IDENTIFICATION ONLY.)

2 THE COURT: What number is that?

3 MS. WILLIAMS: It would be Defendant's Number 1 ---

4 THE COURT: All right. Thank you, Ma'am.

5 Q. May I hand that to you. Do you recognize that?

6 A. Yes. That's the statement I wrote.

7 Q. Okay. And is that a copy of the statement that you

8 wrote?

9 A. Yes.

10 Q. And do you think anything has been added or deleted to

11 it?

12 A. No. It's all my handwriting.

13 Q. Okay. Now let me ask you, in this statement did you

14 tell the police that you were worried that Jeff was nervous?

15 A. I told the police officer I didn't know what was going

16 on, that he was the last one around my aunt.

17 Q. Did you tell them that he was nervous?

18 A. He was acting nervous, yes.

19 Q. And you put that in your statement as well?

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

21 Q. If you will check it and be sure.

22 A. I'm going to read the whole thing first, because I

23 haven't read it in about three years.

24 Q. Certainly.

25 A. I didn't put that he was nervous in the statement, no.

MICHELLE JACQUELINE RAINY - CROSS BY WILLIAMS

129

1 Q. But you are testifying today that you went right up to
2 a police officer and told him Jeff was acting nervous, right?

3 A. Yes.

4 Q. Okay. But ---

5 A. I told the Officer I didn't know what was going on; I
6 don't know if my aunt had fell, because she fell a lot, but we
7 worked this little thing, count to one, two, three, when you
8 feel like you was going to fall, or when you was walking up
9 the stairs, count to one, two, three. I told the Officer I
10 didn't know if she had fell, or what happened, but Jeff was
11 the last one around her, and she -- and he was acting nervous.

12 Q. That's your opinion, that he was the last one around
13 her, correct?

14 A. That I know of, yes.

15 Q. The last one that you know about?

16 A. Uh huh (indicating positive) But I didn't see nobody
17 else coming. I was right there.

18 Q. I'm just going -- for the Judge, that was a yes, right?

19 A. Yes.

20 Q. Okay.

21 MS. WILLIAMS: I beg the Court's indulgence for just
22 one moment.

23 THE COURT: Yes Ma'am.

24 Q. Ms. Rainey, to your knowledge, my client and your aunt
25 were pretty good friends, right?

1 A. Yes.

2 Q. So when -- when we realize that something has happened
3 to your aunt, wouldn't you expect him to be upset?

4 A. Yes.

5 Q. Emotional even, correct?

6 A. Yes, but he wasn't emotionally -- he was just -- he was
7 just -- he was stan -- like, he wasn't -- he was just standing
8 there and his hands was shaky. He was like a little shaky,
9 like he looked nervous.

10 Q. Maybe he was hung over?

11 A. Yes, cause he was drinking when he came to use the can
12 opener. You can tell he was buzzed, and he had been drinking.

13 Q. Okay.

14 MS. WILLIAMS: That's all the questions that I have.
15 thank you, Your Honor.

16 THE COURT: Redirect.

17 MR. DEBUSK: Thank you, Your Honor.

18 REDIRECT-EXAMINATION BY MR. DEBUSK:

19 Q. Ms. Rainey, Ms. Williams asked you if you knew of
20 anybody else that went in that apartment besides your aunt and
21 Jeffrey Riebe. Did you know if there was anybody else in that
22 apartment?

23 A. No, I didn't see nobody.

24 Q. Did you hear anything from inside that apartment ---

25 A. I heard -- there's two apartments right next to each

DIANA MARIE MOWERY - DIRECT BY DEBUSK

131

1 other, if you've seen the picture, but the neighbors kept
2 coming in and out, in and out, in and out, and I heard arguing
3 over there, but I wasn't sure if it was coming from them, I
4 wasn't sure if it was coming from them, so I didn't see nobody
5 else go in that apartment after Jeff went over there.

6 Q. Okay. Thank you.

7 MR. DEBUSK: No further questions, Your Honor.

8 THE COURT: All right. You may step down.

9 Next witness, Solicitor.

10 MR. DEBUSK: The State calls Diana Mowery, Your Honor.

11 THE COURT: All right.

12 Please come around to be sworn, Ma'am.

13 DIANA MARIE MOWERY, being first
14 duly sworn, testifies as follows:

15 DIRECT-EXAMINATION BY MR. DEBUSK:

16 Q. Ms. Mowery, where do you live?

17 A. In Loris, South Carolina.

18 Q. Do you work?

19 A. Yes sir.

20 Q. What do you do?

21 A. Vista Resort.

22 Q. Okay. And were you related to Phyllis Mowery?

23 A. Yes sir. She's my mother.

24 Q. Do you have any children?

25 A. Yes sir.

- 1 Q. How many?
- 2 A. Three.
- 3 Q. And how old were they in August of 2008?
- 4 A. My son would have been eight and -- seven and a half,
- 5 my middle daughter would have been about five and a half, and
- 6 my youngest one, almost five, so about four and a half.
- 7 Q. How was their relationship with your mother?
- 8 A. She loved her grandkids.
- 9 Q. And at that time, August of 2008, specifically August
- 10 26 and 27 of 2008, where were you living?
- 11 A.
- 12 Q. Let me show you State's Exhibit -- Exhibits 1 and 2,
- 13 and ask if you recognize those.
- 14 A. Yes sir. Yes sir.
- 15 Q. What are those?
- 16 A. This one is the back of the apartment where my mother
- 17 stayed at, right there.
- 18 Q. Which one -- I'm sorry. On the lower floor?
- 19 A. Yes sir, right there. And that would be Michelle's
- 20 apartment.
- 21 Q. And how about the other one?
- 22 A. This one would be my apartment, right here on the
- 23 bottom.
- 24 Q. The lower floor?
- 25 A. Yes sir.

DIANA MARIE MOWERY - DIRECT BY DEBUSK

133

- 1 Q. Okay. On August the 26th of 2008, were you at that
2 residence?
- 3 A. No sir.
- 4 Q. Where were you?
- 5 A. I was in Georgia at a funeral.
- 6 Q. Okay. And when did you return -- when was the last
7 time you saw your mother?
- 8 A. I want to say August the 23rd.
- 9 Q. How was she at that time?
- 10 A. She -- when I left it was about nine o'clock at night.
11 Me and my husband left late that night, and she was sober that
12 night.
- 13 Q. What was she celebrating?
- 14 A. Sir?
- 15 Q. I'm sorry. What -- you said ---
- 16 A. She was sober. She wasn't drinking that night, not the
17 night I left.
- 18 Q. Did she drink every night?
- 19 A. No. She drank every two or three -- two or three days.
- 20 Q. Now when did you return to. ?
- 21 A. I want to say the 26th. Well, actually it would have
22 been the 27th, because it was about twelve o'clock at night,
23 midnight, when I got home.
- 24 Q. And what did you do?
- 25 A. I come home. I -- we brought all our bags in the

DIANA MARIE MOWERY - DIRECT BY DEBUSK

134

1 house, and I went back to her apartment and knocked on her
2 door but she didn't answer so I just figured she went up to my
3 aunt's house, so I went back to my house and I went to sleep,
4 and I got up the next morning, because I always drove her to
5 work, and I went back there and knocked on her door but she
6 still didn't answer, and I still heard the T.V. going, because
7 the T.V. was going when I had knocked on the door the night
8 before.

9 Q. And to your knowledge, was she scheduled to work that
10 day?

11 A. Yes sir.

12 Q. And was she very punctual and prompt about getting to
13 work?

14 A. Yes sir. Well, some days she didn't like to get up,
15 but she would -- she would always answer the door. I would
16 have to get her started.

17 Q. Okay. Tell us what happened that day. You heard the
18 television and ---

19 A. Yes sir. I heard the television going, but she didn't
20 answer the door, and the door was locked, and I kept knocking
21 on the door, and then that's when I called Jeff, and I asked
22 him if he had seen her, or actually -- I'm sorry. I got that
23 messed up. I called Michelle first, and Michelle said that
24 the last person ---

25 Q. Michelle is your cousin, Michelle Rainey, who just

DIANA MARIE MOWERY - DIRECT BY DEBUSK

135

1 testified.

2 A. Yes. Michelle Rainey, is my cousin. And I called her
3 and she said ---

4 MS. WILLIAMS: Your Honor, I would object to hearsay.

5 THE COURT: I do not believe it to be hearsay since the
6 witness has already testified as to the facts. I'm going to
7 allow it.

8 MR. DEBUSK: Thank you, Your Honor.

9 Q. What did you ask Michelle?

10 A. I asked Michelle if she had seen my mom, and she said,
11 no, that the last person that was with her was Jeff. So I
12 called Jeff on his cell phone and asked him if he had seen
13 her, and he didn't say nothing on the phone, so I hung up on
14 him, and ---

15 Q. Was that usual, for him to not say anything about it?

16 A. No. Cause usually he would talk.

17 Q. So you felt that that was not normal behavior?

18 A. No.

19 MS. WILLIAMS: Your Honor, I object to the leading
20 nature of that question.

21 THE COURT: Please don't lead your witness.

22 Q. Was that normal behavior for him?

23 A. Sir?

24 Q. Was that normal behavior for Jeffrey Riebe?

25 A. No, no sir.

1 Q. What happened next?

2 A. I went and got the key from the cleaning lady, and I
3 opened the door, and that's when I found my mother laying face
4 down on the floor, and I shook her back and said, mama, wake
5 up, and she didn't wake up.

6 Q. Could you tell that there was something terribly wrong
7 at that point?

8 A. Yes, cause she was stiff. And then that's when I
9 called 911.

10 Q. Okay. Tell me about the door to Phyllis's apartment.
11 Are you familiar with that door?

12 A. Yes sir, cause I used to stay in that apartment.

13 (PHOTO MARKED STATE'S EXHIBIT NUMBER 3, FOR
14 IDENTIFICATION ONLY.)

15 Q. Okay. Let me show you State's Exhibit 3 and ask if you
16 recognize that.

17 A. Yes sir.

18 Q. What is it?

19 A. The doorknob.

20 Q. To your mother's apartment?

21 A. Yes sir, cause you could stick a butter knife in there
22 and open the door.

23 Q. Okay.

24 A. I just know that because I locked myself out one day.

25 Q. Okay. Now, when you were trying to get in to check on

DIANA MARIE MOWERY - DIRECT BY DEBUSK

137

- 1 your mother was the door locked?
- 2 A. Yes sir.
- 3 Q. How does that doorknob function?
- 4 A. It -- it -- on the inside of the door you can lock it,
5 but when you turn it from the inside it unlocks, it like
6 unlocks.
- 7 Q. So you can always turn the knob from the inside to get
8 out?
- 9 A. Yes. You just turn the doorknob on the inside and it
10 will automatically unlock and open, but it's locked on the
11 outside.
- 12 Q. Okay. So it stays locked on the outside ---
- 13 A. Yes.
- 14 Q. ---Even though turns from the inside.
- 15 A. Yes sir.
- 16 Q. Did you see Jeff Riebe that day?
- 17 A. The day that the ---
- 18 Q. That you found your mother:
- 19 A. I did. I seen him. He was standing behind the -- when
20 I first seen him he was standing behind the fence where the
21 bar was. The second time I seen him he was sitting at a round
22 table writing his statement.
- 23 Q. How long have you known Jeff Riebe?
- 24 A. About -- I don't really know how long, but it's been a
25 while. I've known him a long time.

DIANA MARIE MOWERY - DIRECT BY DEBUSK

138

- 1 Q. Did you know him fairly well?
- 2 A. Yes sir.
- 3 Q. Was he a friend of your mother's?
- 4 A. Yes sir.
- 5 Q. Okay. How was his demeanor when you talked -- saw him
- 6 that day? Did he seem normal, did anything seem unusual?
- 7 A. To be honest with you, I really didn't pay attention.
- 8 I was just -- I -- my mind was just gone.
- 9 Q. But when you talked to him on the phone that struck
- 10 you?
- 11 A. Yes. That did struck me weird, because normally he
- 12 would talk on the phone.
- 13 Q. Where is your mother buried?
- 14 A. Mt. Nebo Missionary Baptist Church.
- 15 Q. Where is that?
- 16 A. Loris.
- 17 Q. Now, in your experience with Jeffrey Riebe, all the
- 18 time you had known him, was it unusual for him to wash all his
- 19 clothes?
- 20 A. Yes sir.
- 21 Q. And was it unusual for him to get new shoes?
- 22 A. Yes sir.
- 23 Q. Let me ask you -- and I have to open this box.
- 24 MR. DEBUSK: I don't have anything to cut the tape
- 25 with, Your Honor.

DIANA MARIE MOWERY - DIRECT BY DEBUSK

139

1 THE COURT: That's all right. The Court Reporter
2 believes ---

3 MR. DEBUSK: Your Honor, for the record, this box has
4 been labeled as State's Exhibit 4. We are taking a specific
5 item out of the box ---

6 THE COURT: All right, sir.

7 MR. DEBUSK: ---Which will also be marked as State's
8 Exhibit 4.

9 MS. WILLIAMS: Your Honor ---

10 THE COURT: Yes Ma'am.

11 MS. WILLIAMS: ---May we approach?

12 THE COURT: Please.

13 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

14 MR. DEBUSK: Your Honor, because of the nature of these
15 items would it be all right if we labeled this piece of paper
16 in ---

17 THE COURT: Yes sir. If you would like to do so that
18 would be fine.

19 MR. DEBUSK: Your Honor, we will refer to this as
20 State's 4(A), the box being 4.

21 THE COURT: All right. Very good.

22 (BROWN BOX MARKED STATE'S EXHIBIT NUMBER 4, AND ADMITTED
23 INTO EVIDENCE. BROWN BELT MARKED STATE'S EXHIBIT NUMBER 4(A),
24 AND ADMITTED INTO EVIDENCE.)

25 Q. Ms. Mowery, I'm showing you what's been marked as

DIANA MARIE MOWERY - DIRECT BY DEBUSK

140

1 State's Exhibit 4(A). Like to ask you ---

2 MS. WILLIAMS: Your Honor ---

3 THE COURT: Yes Ma'am.

4 MS. WILLIAMS: ---I don't think that's State's Exhibit
5 Number 4.

6 THE COURT: It's 4(A). He has just marked it as a new
7 exhibit.

8 MR. DEBUSK: The box in which it was contained is
9 Exhibit 4, Your Honor.

10 THE COURT: Right. I'm sorry. Go ahead.

11 Q. I'm going to show you what's been marked as State's
12 Exhibit 4(A). I ask you if you recognize that.

13 A. Yes sir.

14 Q. What is it?

15 A. My mother's belt.

16 Q. You are familiar with this belt?

17 A. Yes sir.

18 Q. Where was the last time you saw it?

19 A. On top of her dresser, sitting next to the T.V..

20 Q. Was it usually there?

21 A. Yes sir. I put it there. She never wore it.

22 Q. Do you know the history of that belt, how your mother
23 came to have it?

24 A. Sir?

25 Q. Do you know the history of that belt, how your mother

JURY OUT/ON RECORD

141

1 came to be in possession ---

2 A. Yes sir. A guy named Vondell that worked with her at
3 Sam's gave her the belt one day because she had broke her belt
4 and her pants -- or her shorts kept falling down, so had given
5 her to belt to wear that day, and he just told her to keep it.

6 Q. And where was it usually kept?

7 A. Normally in her drawer, but I had took it out and put
8 it on top of the T -- by the -- on the lefthand side of the
9 T.V..

10 MR. DEBUSK: Your Honor, at this time I would seek to
11 use the exhibit that the Defense objects to in order to
12 explain the location.

13 THE COURT: All right. Ladies and gentlemen of the
14 jury, I'm going to need for you to go back to your jury room
15 for a few moments.

16 Thank you very much.

17 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
18 JURY.)

19 THE COURT: All right. We'll need to mark this for
20 identification with some State's number first.

21 (PHOTO MARKED STATE'S EXHIBIT NUMBER 47, FOR
22 IDENTIFICATION ONLY.)

23 MR. DEBUSK: What number was that, Your Honor?

24 THE COURT: It's now 47 for I.D., State's Number 47 for
25 I.D..

JURY OUT/ON RECORD

1 MR. DEBUSK: Thank you, Your Honor.

2 THE COURT: All right, Solicitor, what don't you --
3 since the jury is out, ask the witness about this photo, and
4 then I will hear from you, Ms. Williams?

5 Q. Ms. Mowery, I'm going to show you an exhibit -- a
6 little bit disturbing, but I ask that you -- if you can use
7 this Exhibit to explain to the jury, or in this case, to the
8 Court, where the belt was. ---

9 A. Okay.

10 Q. ---When last you saw it. What does that exhibit show?

11 A. The belt would have been sitting right here, next to
12 the T.V..

13 Q. And is that in very close proximity to where you found
14 your mother?

15 A. Yes sir.

16 Q. Just for purposes as a foundation, what does that photo
17 show? What is that room?

18 A. Her apartment. The bathroom is here, the kitchen is
19 here, the bed is here, and then that's this dresser and that
20 dresser.

21 Q. The person shown in the photo, is that your mother?

22 A. Yes sir.

23 Q. Is that the position you found her in when you opened
24 that door?

25 A. Yes sir.

JURY OUT/ON RECORD

143

1 Q. That's ---

2 MR. DEBUSK: Your Honor, we would be using this with
3 other witnesses for different purposes, but the present
4 purpose, it shows the proximity of where the belt was last
5 seen to the body.

6 THE COURT: All right, sir. And you would like to move
7 State's 47 into evidence.

8 MR. DEBUSK: Correct, Your Honor.

9 THE COURT: All right. Let me hear from you.

10 MS. WILLIAMS: Your Honor, my objection to this, at
11 this particular time is -- the Court may allow it at another
12 time, but if the Solicitor's purpose at this moment is to show
13 where that belt was, there are other pictures that don't have
14 Ms. Mowery in there, Your Honor, and there is no doubt that
15 that is upsetting to her daughter to see her mother deceased
16 on the floor, which I would submit is simply designed to
17 elicit emotion from the witness, and therefore elicit emotion
18 from the jury. Your Honor, there are certainly other
19 pictures that are available that I haven't objected to that
20 could be used for the purposes at this point.

21 THE COURT: All right. So, Solicitor, the purpose that
22 you want to introduce it is to -- as far as the location of
23 the belt, not the location of the decedent, nor the scene
24 where the decedent was found by this witness; is that correct?

25 MR. DEBUSK: Both, Your Honor. Both. Both the

JURY OUT/ON RECORD

144

1 position where she was when she was found, the position of the
2 belt relative to where her body was found, so it would be
3 both, Your Honor.

4 THE COURT: All right. Very good.

5 I'm going to state on the record that I've conducted a
6 Rule 403 analysis. I do find that the introduction of the
7 evidence is -- the probative value of it substantially
8 outweighs any possible prejudice to the Defendant, and it is
9 proper under several grounds as to this being the witness that
10 first located the victim, the -- where the victim was located,
11 her condition, and the item, which the Court understands will
12 be important in later testimony, so I'm going to allow ---

13 And it's -- I'm sorry, Madame Court Reporter, was that
14 47 again?

15 COURT REPORTER: Yes sir.

16 THE COURT: I'm going to allow State's 47 into
17 evidence, over the objection of the Defense.

18 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
19 47.)

20 THE COURT: All right. Bring the jury back in, please.

21 MS. WILLIAMS: Your Honor ---

22 THE COURT: Yes Ma'am.

23 MS. WILLIAMS: ---My client would like a two-minute
24 break, please.

25 THE COURT: Well, we are getting fairly close to lunch

JURY IN
DIANA MARIE MOWERY - DIRECT BY DEBUSK CONTINUED

145

1 break. We can move along and ---

2 MS. WILLIAMS: Okay. Thank you, Your Honor. He says
3 he can wait. That will be fine. Thank you. Sorry.

4 THE COURT: Very good.

5 When the jury comes back in I'll state for the record
6 that I'm allowing it into evidence, but you will need to
7 review the testimony presented with the witness before the
8 jury.

9 MR. DEBUSK: Yes, Your Honor.

10 THE COURT: Thank you.

11 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
12 JURY.)

13 THE COURT: All right. As previously stated, I'm going
14 to allow State's 47 into evidence over the objection of the
15 Defense.

16 You may proceed, Solicitor.

17 MR. DEBUSK: Thank you, Your Honor.

18 Q. Ms. Mowery, I know this is difficult, but would you
19 look at State's 47, and explain to the jury, what does that
20 picture show? What is that room?

21 A. It's my mother's apartment.

22 Q. And the body on the floor.

23 A. It's my mother.

24 Q. Is she in the same position she was when you found her
25 when you opened that door?

JURY IN
DIANA MARIE MOWERY - DIRECT BY DEBUSK CONTINUED

146

1 A. Yes sir.

2 Q. Would you point out to the jury where that belt was the
3 last time you saw it?

4 A. Last time I saw the belt it was sitting right here next
5 to the T.V., on the dresser.

6 Q. Is that to the left of the T.V.?

7 A. Yes sir.

8 Q. When was that time -- the last time you saw it?

9 A. Probably like two or three days before I went to
10 Georgia.

11 MR. DEBUSK: Thank you. Please answer any questions
12 the Defense may have.

13 THE COURT: All right. Cross-examination.

14 MS. WILLIAMS: Thank you, Your Honor. Court's
15 indulgence for just one moment.

16 MR. DEBUSK: Your Honor, may I publish ---

17 THE COURT: I'm sorry. Which ones are they?

18 MR. DEBUSK: That would be 47, 1, 2 and 3.

19 MS. WILLIAMS: Your Honor, could I request that the
20 publication be after the term of my cross so that ---

21 THE COURT: Yes Ma'am. And State's 3 is not in
22 evidence at this point in time.

23 MR. DEBUSK: I'm sorry, Your Honor. State would move
24 to -- State's 3 to be in evidence. I don't think there was
25 any objection to it.

DIANA MARIE MOWERY - CROSS BY WILLIAMS

147

1 THE COURT: All right. Is there any objection to
2 State's 3?

3 MS. WILLIAMS: 3 is -- no sir.

4 THE COURT: All right. So, State's 3 is in evidence
5 without objection.

6 MR. DEBUSK: Thank you.

7 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
8 3.)

9 THE COURT: You may proceed, Ma'am.

10 CROSS-EXAMINATION BY MS. WILLIAMS:

11 Q. Ms. Mowery, you know Jeff, don't you?

12 A. Yes Ma'am.

13 Q. And Jeff -- in fact, Jeff actually used to live with
14 you, your mom and your children, right?

15 A. Yes Ma'am.

16 Q. Okay. How long did he live with you guys?

17 A. About three or four months. I'm guessing. I'm not too
18 sure.

19 Q. But for a little while?

20 A. Yes.

21 Q. Okay. And this belt that your mom had, when did she
22 get that belt? Do you recall?

23 A. She's had that belt for a long time. It's not like a
24 new belt. It's -- she's had it for a long time. She ---

25 Q. I'm sorry.

- 1 A. She never wore it.
- 2 Q. She didn't wear it?
- 3 A. No. No, he didn't.
- 4 Q. And I think you testified that you took it out of the
5 drawer and put it on top the dresser, correct?
- 6 A. Yes Ma'am. I took it out to spank my kids. I'm just
7 being honest.
- 8 Q. All right. And that would have been, obviously, before
9 you went to Georgia. Do you know when you took it out?
- 10 A. No Ma'am. I just know I took -- I just remember taking
11 it out.
- 12 Q. Let me ask you, you testified that you called Jeff the
13 morning when you were looking for your mom, prior to finding
14 her, right?
- 15 A. Yes Ma'am.
- 16 Q. Do you know if he was at work when you called him?
- 17 A. No Ma'am, I don't.
- 18 Q. So you don't know if he was at work or not?
- 19 A. No, I don't.
- 20 Q. Okay. Let me ask you this, if he had been at work
21 would he have been talking?
- 22 A. I don't even know, cause I really didn't call him like
23 that, so probably no.
- 24 Q. Okay. Let me ask you this, you testified that it was
25 pretty well easy access to get in that door, right?

DIANA MARIE MOWERY - CROSS BY WILLIAMS

149

- 1 A. Yes Ma'am.
- 2 Q. A butter knife and, boom, you are in.
- 3 A. Uh huh (indicating positive)
- 4 THE COURT: You need to say yes or no.
- 5 A. Yes Ma'am.
- 6 MS. WILLIAMS: She has to take down yes and nos, and
- 7 that's why you have to do that, Ms. Mowery.
- 8 Q. Let me ask you this, Phyllis -- your mom and Jeff were
- 9 good friends, right?
- 10 A. Yes Ma'am.
- 11 Q. Didn't you talk to your mom after she had actually
- 12 asked Jeff to come over Monday night?
- 13 A. No. I talked to my mother before she called him. I
- 14 talked to her about five -- about five o'clock, five-thirty,
- 15 and she was telling me that her -- she -- her feet were
- 16 hurting, and that she was ready for me to come home so I could
- 17 drive her to work.
- 18 Q. Did you know she was going to ask him to come over?
- 19 A. No, I did not.
- 20 Q. Did she have -- was it her pattern to ask him to come
- 21 over a good bit?
- 22 A. Yes Ma'am.
- 23 Q. And what did they do when they got together?
- 24 A. Drank and talk.
- 25 Q. Is it fair to say your mom and Jeff were friends?

DIANA MARIE MOWERY - CROSS BY WILLIAMS

150

1 A. Yes Ma'am.

2 Q. And do you know if your mom had any reason to believe
3 he would hurt her?

4 A. No, not that I know of.

5 Q. Okay. I believe you testified that your mom drank
6 every other day or so ---

7 A. Yes Ma'am.

8 Q. ---And when she drank she drank a good bit; is that
9 right?

10 A. Yes Ma'am.

11 Q. Did she fall down a lot when she drank?

12 A. Sometimes.

13 Q. Did she ever get hurt when she fell before?

14 A. No.

15 Q. Not that you know.

16 A. Not that I know of.

17 Q. But she would fall down. Did she ever pass out?

18 A. No.

19 Q. Okay. So you never saw her actually pass out?

20 A. No.

21 Q. Okay.

22 MS. WILLIAMS: Beg the Court's indulgence for just one
23 second.

24 THE COURT: Yes Ma'am.

25 Q. Ms. Mowery, you -- it was -- you said it was a couple

ROBERT STANLEY HODGES - DIRECT BY DEBUSK

151

1 of months, give or take, that you, Jeff, and your mom and your
2 children lived together, right?

3 A. Yes Ma'am.

4 Q. Did you ever suspect Jeff of having reason to think he
5 would ever hurt you or your children?

6 A. No Ma'am.

7 MS. WILLIAMS: That's all the questions we have, Your
8 Honor. Thank you.

9 THE COURT: Redirect.

10 MR. DEBUSK: No, Your Honor.

11 THE COURT: All right. You may step down, Ma'am.
12 All right, Solicitor, your next witness, please.

13 MR. DEBUSK: The State calls Robert Stanley Hodges.

14 ROBERT STANLEY HODGES, being first
15 duly sworn, testifies as follows:

16 DIRECT-EXAMINATION BY MR. DEBUSK:

17 Q. Mr. Hodges, do you go by any other name?

18 A. Buddy.

19 Q. Mr. Hodges, where do you live, and what do you do?

20 A. Right now I live in Myrtle Beach, and I manage bars,
21 restaurants. I work at -- for what it's worth -- at the
22 Melting Pot.

23 Q. Okay. Now back in 2008, specifically on the night of
24 August 26, and the early morning hours of August 27, where
25 were you?

1 A. I had -- I was the manager at Decker's on Main Street
2 in North Myrtle at the time, and had worked at the bar that
3 evening. A couple of my friends were there, Glen and Norman,
4 and I worked at the bar there with them, and then after work -
5 - I got off work, took my girlfriend home, and Norman and Glen
6 and I went fishing.

7 Q. Where did you go fishing?

8 A. In the pond in the park behind Decker's.

9 Q. Where did -- where did your two friends -- where did
10 they live?

11 A. They lived in the apartment complex right nextdoor to
12 I knew them from managing the restaurant. They
13 were in there a lot.

14 Q. Let me show you State's Exhibit 2, and ask if you
15 recognize that.

16 A. Yes. That is the apartment next to Decker's. Norman
17 lived right there.

18 Q. Did you have reason to go to that apartment that night?

19 A. Yes. I -- when we were done fishing, or -- we had been
20 drinking, and I didn't want to drive all the way back to my
21 place, and so I asked Norman if I could lay down at his place
22 for a little while before I drove home.

23 Q. And when you were there did you go to -- you, in fact,
24 went to Norman's apartment.

25 A. Yes, I did go to the apartment.

ROBERT STANLEY HODGES - DIRECT BY DEBUSK

153

1 Q. While you were there did you hear anything unusual?

2 A. I heard an argument, fighting, yelling.

3 Q. Where was it going on?

4 A. In the apartment directly next to Norman's.

5 Q. Again, referring to State's 2, which one was the
6 other ---

7 A. This is the apartment we were in, and this is the
8 apartment I heard the arguing in.

9 Q. This other apartment.

10 A. Yes sir.

11 Q. What was the nature of the argument? Did you ---

12 A. I really -- I don't know much about what they were
13 arguing about -- fighting about. I just know that it was a
14 couple fighting. I asked Norman about it. I'm like, you hear
15 this, you know.

16 MS. WILLIAMS: Your Honor ---

17 THE COURT: Yes Ma'am.

18 MS. WILLIAMS: ---I'm just going to make sure he
19 doesn't testify what his friend said.

20 THE COURT: All right. All right. Just stick with
21 your testimony as to what you saw, observed, heard, that sort
22 of thing.

23 A. Okay. That's what I heard.

24 Q. Could you understand the words?

25 A. No sir.

1 Q. Did it sound angry, or playful or ---

2 A. Angry.

3 Q. What time was that argument going on; do you recall?

4 A. The bar had closed about two in the morning. I had
5 taken my girlfriend home, come back, we had fished. Around
6 four o'clock in the morning.

7 Q. Okay. Did you hear any other sounds from over there?

8 A. I heard a loud bang, like somebody had thrown
9 something, or something slammed against the wall, or something
10 like that, and I was trying to lay down and go to sleep when I
11 heard that, and I just -- you know, I don't know if I was
12 asleep and it woke me up, or if I just heard it, but I do
13 remember hearing a loud bang like somebody threw a piece of
14 furniture, or something hit the wall really hard.

15 Q. Do you remember approximately what time that happened?

16 A. That was, like I said, probably around four in the
17 morning, you know, it was sometime between 3:30, probably when
18 I laid down, four in the morning when I heard it, you know.

19 Q. What time did you leave?

20 A. It was the next morning when I woke up, you know, in
21 the A.M., early, you know.

22 Q. Okay. Now, just to be fully honest with the jury, did
23 you review anything -- any documents preparing for your
24 testimony?

25 A. Yes sir. I wrote a statement for the police department

ROBERT STANLEY HODGES - CROSS BY WILLIAMS

155

1 when they asked me about it the next day, and I had looked
2 over that statement before I came in today.

3 Q. And was the incident fresh in your mind back then when
4 you wrote that statement?

5 A. Yes. It was very fresh in my mind. It was quite the
6 topic everyone was talking about around the bar and the
7 apartment. Everybody was, you know, what had happened. When
8 I wrote the statement it was very fresh in my mind, and the
9 reason I looked it over today was because it's been three
10 years since I wrote that statement and ---

11 Q. Would it be fair to say that if you had not had the
12 opportunity to review that statement you would have difficulty
13 remembering all these things?

14 A. Absolutely. Yes sir.

15 Q. And that's why you wrote the statement back in 2008?

16 A.. Yes sir.

17 MR. DEBUSK: Thank you. Please answer any questions
18 the Defense might have.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION BY MS. WILLIAMS:

21 Q. Good morning, Mr. Hodges.

22 A. Good morning.

23 Q. You wrote a statement for the police shortly after
24 the -- well, shortly after the incident was found, correct?

25 A. Yes Ma'am.

1 Q. And your testimony after -- obviously you said you
2 refreshed your memory from your statement that you gave -- was
3 that you heard arguing, and then you heard a loud bang.

4 A. Yes Ma'am.

5 Q. Did you hear them back to back?

6 A. I heard the arguing throughout -- we had gone from the
7 pond to the -- to the apartment a couple of times. Like we
8 first -- when I first go back we were at the apartment and I
9 heard the arguing. Then we had gone down to the pond, and we
10 would come back to the house and get some beer, or whatever,
11 and then go back down to the pond, so I heard the arguing at a
12 couple of different times, and then I heard the loud bang when
13 I was actually laying -- lying down trying to go to sleep.

14 Q. Did you see who was nextdoor?

15 A. No Ma'am.

16 Q. Did you know who was nextdoor?

17 A. No Ma'am.

18 Q. Can you identify who was arguing?

19 A. No Ma'am.

20 Q. Let me ask you, if you heard the arguing did you hear a
21 T.V. on?

22 A. I don't remember. There was a T.V. on in Norman's, but
23 I don't remember if I heard a T.V. on coming from the other
24 side.

25 Q. Okay. But you were right nextdoor?

ROBERT STANLEY HODGES - REDIRECT BY DEBUSK
ROBERT STANLEY HODGES - RECROSS BY WILLIAMS

157

1 A. Yes Ma'am, directly next door.

2 MS. WILLIAMS: Thank you. No further questions.

3 THE COURT: Any redirect?

4 MR. DEBUSK: Just one.

5 REDIRECT-EXAMINATION BY MR. DEBUSK:

6 Q. You said you heard the fighting, you left, came back,
7 heard the fighting again. Over how long a period do you think
8 that was, from ---

9 A. Like I said, we probably left the bar -- the bar closed
10 at two, clean up, everything. I'm going to have to estimate
11 some times. Just say we leave the bar 2:30, 2:45, I'm back at
12 Norman's probably, you know, right around 2:45, so between
13 2:45 and when I laid down around four I had heard it several
14 times during that, back and forth to the pond, to the
15 apartment.

16 Q. About an hour and a quarter; is that fair to say?

17 A. Something like that. Yes sir.

18 MR. DEBUSK: Thank you. No further questions.

19 MS. WILLIAMS: Just briefly. I just want to make sure.

20 RECROSS-EXAMINATION BY MR. WILLIAMS:

21 Q. You were at the -- at Norman's ---

22 A. Yes Ma'am.

23 Q. ---And then y'all left and went fishing, and came
24 back ---

25 A. Yes. The pond we were fishing in -- if I'm standing at

ROBERT STANLEY HODGES - REDIRECT BY DEBUSK
ROBERT STANLEY HODGES - RECROSS BY WILLIAMS

158

1 the door of the apartments, the pond we are fishing in is
2 about -- approximately from me to that wall from the door, so
3 we would walk from the pond to the apartment, from the pond to
4 the apartment.

5 MS. WILLIAMS: Okay. Thank you.

6 A. Yes Ma'am.

7 MS. WILLIAMS: No further questions, Your Honor.

8 THE COURT: You may step down.

9 A. Thank you, sir.

10 THE COURT: Do you wish this witness to be excused,
11 Solicitor?

12 MR. DEBUSK: Yes, Your Honor.

13 THE COURT: Any objection?

14 MS. WILLIAMS: Without objection, Your Honor.

15 THE COURT: All right, sir. You are released from your
16 Subpoena. You may go back to your regular activities. Thank
17 you, sir.

18 All right, Solicitor, your next witness, please.

19 MR. DEBUSK: Vicky Sharrer.

20 Your Honor, while the witness is coming may we approach
21 for scheduling?

22 THE COURT: Absolutely. Please.

23 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

24 THE COURT: All right. Please come forward, Ma'am, to
25 be sworn. Thank you very much.

VICKY SHARRER - DIRECT BY DEBUSK

159

1 VICKY SHARRER, being first duly
2 sworn, testifies as follows:
3 DIRECT-EXAMINATION BY MR. DEBUSK:
4 Q. Ms. Sharrer, where do you live?
5 A. In North Myrtle Beach.
6 Q. And where do you work?
7 A. At Sam's Place.
8 Q. What is Sam's Place?
9 A. It's a restaurant.
10 Q. Who owns it?
11 A. Sam Georgakopoulos.
12 Q. Okay. A how long have you worked for Sam?
13 A. Twenty-one years.
14 Q. Did you know Phyllis Mowery?
15 A. Yes, I do.
16 Q. Where did she work?
17 A. She worked at Sam's Place with us.
18 Q. How long had she worked there?
19 A. Well, we've been there five years, but she worked with
20 us about fifteen.
21 Q. You said -- was it at another location?
22 A. Yes. We used to be Harry's Pancake in North Myrtle
23 Beach.
24 Q. Okay. So you worked with her at both ---
25 A. Yes, I did.

VICKY SHARRER - DIRECT BY DEBUSK

160

1 Q. ---Sam's Place ---

2 A. Yes.

3 Q. ---Sam Georgakopoulos.

4 A. Yes.

5 Q. How well did you know Phyllis?

6 A. Pretty good.

7 Q. Were you friends?

8 A. Yes.

9 Q. How about Jeffrey Riebe, did you know him?

10 A. Yes.

11 Q. How did you know him?

12 A. I worked with him.

13 Q. Okay. And what did he do? Well, let me ask you this -
14 - go back a little further. What do you do at Sam's?

15 A. Oh, kind of waitress/manager.

16 Q. And what did Phyllis Mowery do?

17 A. She bussed tables, washed dishes.

18 Q. And how Jeff Riebe?

19 A. He worked -- he would wash dishes, bus tables when we
20 needed him.

21 Q. Was he a regular employee like the rest of you?

22 A. No. Sam just filled him in when he could.

23 Q. Okay. How often did you see Jeff Riebe?

24 A. Well, he was there even if he wasn't working. He would
25 come up.

VICKY SHARRER - DIRECT BY DEBUSK

161

- 1 Q. And what would he do if he wasn't working?
- 2 A. Just talk, or Sam gave him something to eat.
- 3 Q. Okay. When was the last time you saw Phyllis?
- 4 A. Well, I don't even remember the dates, honey. I guess
- 5 two days before she ---
- 6 Q. When did you ultimately find out that she had died?
- 7 A. I guess it was the day after she died.
- 8 Q. The last time you saw Phyllis. I'm sorry.
- 9 A. I'm trying to think of the date. That's three years
- 10 ago.
- 11 Q. I know the date is hard, but can you say how many days
- 12 relative to when you found out she had died?
- 13 A. I guess two days.
- 14 Q. Okay. Did she seem unusual in any way at that time?
- 15 A. No. Phyllis was always sweet and funny, and ---
- 16 Q. Now, let me ask you about August 27, 2008. That's the
- 17 day before you found -- you found out about Phyllis, according
- 18 to prior testimony. Did you work that day?
- 19 A. Yes, I did.
- 20 Q. Did you see Jeffrey Riebe at Sam's that day?
- 21 A. Yes, I did.
- 22 Q. And was Phyllis working that day?
- 23 A. No. She didn't show up.
- 24 Q. Well, let's talk about the day Phyllis didn't show up.
- 25 What happened?

VICKY SHARRER - DIRECT BY DEBUSK

162

1 A. Phyllis didn't show up for work ---

2 Q. Was that unusual?

3 A. Yes. She -- even if she wasn't coming she would call.
4 And she didn't show up, and I was kind of mad at her cause she
5 didn't show up, but anyway, Jeff stopped by and he worked.
6 Since she didn't show up Jeff -- Jeff worked.

7 Q. What happened the day after that?

8 A. The day after that Phyllis's daughter called me, and
9 she said, Vicky, I think my mom's dead, so I went down there.
10 I left my job and I went there, and she was, so -- I'm sorry.

11 Q. That's all right. Let me ask you -- I want to make
12 clear what day I'm talking about now. The day before you
13 found out Phyllis was dead, the day before ---

14 A. Right.

15 Q. ---You say Phyllis didn't show up for work.

16 A. She didn't show up for work.

17 Q. And Jeff Riebe was there?

18 A. Right.

19 Q. How was his demeanor that day? Did he act normal,
20 anything unusual?

21 A. Well, I guess he was maybe a little fidgety, but ---

22 Q. What do you mean?

23 A. He didn't -- I don't know, just fidgety, and not
24 talking a lot, and just kind of keeping to himself.

25 Q. Was there anything unusual about what he did that day,

VICKY SHARRER - CROSS BY WILLIAMS

163

1 any unusual behavior, any unusual requests or anything?

2 A. I -- I'm trying to remember if that was the day he kept
3 saying he had to have new shoes. I think he did. He went
4 back in the kitchen and he kept saying, I have to have new
5 shoes, I have to have new shoes.

6 Q. Did he say why?

7 A. No.

8 Q. Okay. Now, you had known Jeffrey Riebe a while before
9 that, right?

10 A. Not a real long time.

11 Q. Well, let me ask you this, did you know him well enough
12 to answer this question. Was it unusual for him to wash all
13 his clothes?

14 A. Yes. It was unusual.

15 Q. So you knew him well enough to answer that question.
16 Was it unusual for him to go out and buy new shoes?

17 A. Yes.

18 Q. Okay.

19 MR. DEBUSK: Thank you. Please answer any questions
20 the Defense might have.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION BY MS. WILLIAMS:

23 THE COURT: That's for identification.

24 MS. WILLIAMS: For identification now, Your Honor,
25 please.

1 (PHOTO MARKED DEFENDANT'S EXHIBIT NUMBER 1, FOR
2 IDENTIFICATION ONLY.)

3 Q. Ms. Sharrer, you testified that, on the day prior to
4 Ms. Mowery being found Jeff wanted to buy new shoes; is that
5 right?

6 A. Uh huh (indicating positive)

7 THE COURT: Ma'am, you need to say yes or no. I'm
8 sorry.

9 A. Oh, I'm sorry.

10 THE COURT: That's okay.

11 A. Yes.

12 Q. Let me hand you what's been marked for identification
13 as State's Exhibit Number 2, and ask you if you recognize
14 those.

15 A. No.

16 Q. You don't recognize these, right?

17 A. No.

18 Q. Okay. On the morning that you received that phone call
19 you went over to Ms. Mowery's apartment, correct?

20 A. Yes.

21 Q. And you saw Jeff on the way, correct?

22 A. Yes, I did.

23 Q. And you stopped -- you are actually the one that
24 stopped and picked him up, right?

25 A. Yes, I did.

VICKY SHARRER - CROSS BY WILLIAMS

165

- 1 Q. And what was Jeff's demean -- and would it be a fair
2 assumption to say that you told him why y'all were going to --
3 why you were headed to Ms. Mower's apartment?
- 4 A. Yes, I did.
- 5 Q. And what was Jeff's reaction when you told him that?
- 6 A. I'm trying to think. It's a long time ago.
- 7 Q. I understand. Did he get in the car and go with you?
- 8 A. Yes, he did.
- 9 Q. Do you recall if he got upset?
- 10 A. I don't think he cried, no, or anything like that.
- 11 Q. He didn't cry, but did he get upset?
- 12 A. Well, like, you mean upset, or just ---
- 13 Q. If you don't remember it's okay.
- 14 A. Yes, I don't, honey.
- 15 Q. Okay. Do you recall -- it's been a long time, so I'm
16 sure you may not remember, but I'll ask you. Do you -- well,
17 let me ask you this, normally during August is it fair to say
18 that we call August, lots of times, the "Dog Days" of August?
- 19 A. Right.
- 20 Q. And why do we normally say that?
- 21 A. Cause it's so hot, humid, muggy.
- 22 Q. And does it have to do with raining?
- 23 A. Yes.
- 24 Q. And is it fair to say that normally in August there's a
25 lot of rain?

1 A. Yes.

2 Q. And lots of times in July there's a lot of rain.

3 A. Right.

4 Q. In fact, that would be a good time -- I don't want to
5 put words in your mouth, but would it be fair to say, that's
6 where that expression, these are the "Dog Days"?

7 A. Right.

8 Q. Okay. Do you recall -- and I know it's a long time,
9 but I'll ask -- do you recall about what the weather was
10 during that August? Do you remember if it was a particularly
11 rainy August, or particularly dry or particularly hot?

12 A. It rained. It was -- it had rained a lot in August,
13 and I know for a fact it had rained, I think a night before
14 Phyllis was killed, somewhere around that time.

15 Q. Okay. So it had rained, and it had rained a lot, and
16 you remember it had been raining right up to that point
17 Phyllis was found, August ---

18 A. I think so. I think so.

19 Q. And you are pretty sure about that. Sure enough.

20 THE COURT: Ma'am.

21 A. Yes.

22 MS. WILLIAMS: Thank you.

23 Q. Did you notice -- do you know if Jeff actually went out
24 and bought new shoes?

25 A. No, I do not.

VICKY SHARRER - CROSS BY WILLIAMS

167

- 1 Q. Do you know where Jeff lived?
- 2 A. He didn't live anywhere. I think he had just got
- 3 kicked out of his apartment.
- 4 Q. Did he live in the park, basically?
- 5 A. I think that's what he said.
- 6 Q. Okay. So he was homeless?
- 7 A. I think so.
- 8 Q. Okay. I just want to clarify. I think you told the
- 9 Solicitor that it would be unusual for him to wash his
- 10 clothes, right?
- 11 A. Yes.
- 12 Q. But if all of his clothes were wet, and outside, then
- 13 they would need washing; is that a fair statement?
- 14 A. I don't know. I guess. I don't know.
- 15 Q. But if your clothes were wet you would want to wash
- 16 them, right?
- 17 A. Yes.
- 18 Q. Ms. Sharrer, I have one last question.
- 19 A. Okay.
- 20 Q. If I'm correct in my understanding of what happened,
- 21 even after you left Ms. Mowery's apartment and went back to
- 22 Sam's, Jeff went back there as well, correct?
- 23 A. Yes. Not with me. He didn't ride with me.
- 24 Q. But eventually, later that day, he was back at Sam's?
- 25 A. Yes.

VICKY SHARRER - REDIRECT BY DEBUSK

168

1 Q. And you were there too?

2 A. I think so.

3 Q. Do you recall telling anyone that Jeff couldn't have
4 possibly have done it because of how he reacted when you told
5 him the news?

6 A. No. I don't remember saying that. I don't -- no, I
7 don't remember saying that.

8 Q. Okay.

9 MS. WILLIAMS: That's all the questions that I have.
10 Thank you so much.

11 THE COURT: Redirect.

12 MR. DEBUSK: Briefly, Your Honor.

13 REDIRECT-EXAMINATION BY MR. DEBUSK:

14 Q. Ms. Sharrer, so that it -- the August was rainy; is
15 that correct? I know it's been a long time and it's hard to
16 recall the weather. Is it fair to say that it was raining
17 both before and after the -- Phyllis was found?

18 A. It was not raining the morning that she was found.

19 Q. Did it rain on subsequent days, not specifically that
20 day, but ---

21 A. I think it rained a day or two before.

22 Q. And after, did it rain?

23 A. After -- now I don't know that.

24 Q. You don't -- you just don't recall. But it would be
25 safe to say that it continued to rain at some point. It has

JURY OUT/LUNCH
JURY OUT/ON RECORD

169

1 rained since ---

2 A. Yes. It did rain one of those days in there somewhere.

3 Q. I guess my point is, it was raining on certain days,
4 not on a specific day, on certain days. It rained both before
5 Phyllis was found and after.

6 A. Yes. Yes, I'm sure.

7 MR. DEBUSK: Thank you. No further questions.

8 THE COURT: All right. Do you wish this witness to be
9 excused?

10 MR. DEBUSK: Yes, Your Honor, please.

11 THE COURT: Any objection?

12 MS. WILLIAMS: Without objection, Your Honor.

13 THE COURT: All right, Ma'am. You are released from
14 your Subpoena. You may go back to your regular activities.

15 A. Thank you. Thank you.

16 THE COURT: All right, ladies and gentlemen, the --
17 understand the next witness might be a little bit longer than
18 these witnesses. I find it to be an appropriate time to break
19 for lunch.

20 What I'll have you do is, if you can be back in your
21 jury room by five till two, please, five till two, at one
22 fifty-five, all right. Please remember, don't talk about the
23 case, don't allow anybody to talk to you about it.

24 You are excused.

25 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE

JURY OUT/LUNCH
JURY OUT/ON RECORD

170

1 JURY.)

2 THE COURT: All right, Solicitor, anything from the
3 State before we break for lunch?

4 MR. DEBUSK: No, Your Honor. I was just -- for
5 scheduling purposes I'll let the Court know, I have about four
6 more witnesses for the day, and I could not go ahead of --
7 call more because the rest of my witnesses for tomorrow are
8 from out of town, are driving from Columbia and various other
9 places. Some of these witnesses will be lengthy, so I think
10 it will take us the rest of the afternoon, but I only have
11 four more for the afternoon.

12 THE COURT: All right. Very good. All right.
13 Anything from the Defense before we break for lunch, Ms.
14 Williams?

15 MS. WILLIAMS: No sir, not before we break for lunch.
16 Thank you.

17 THE COURT: All right. Thank you very much. I'll see
18 y'all back at 1:55 then.

19 Thank you.

20 (THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK AND
21 OUTSIDE THE PRESENCE OF THE JURY.)

22 THE COURT: All right. Deputy, if you don't mind,
23 would you ask one of the jurors, Mr. Eric Roberts, to come in,
24 please.

25 Thank you.

JURY OUT/LUNCH
JURY OUT/ON RECORD

171

1 (JUROR NUMBER 274, ERIC ROBERTS, ENTERS THE COURTROOM.)

2 THE COURT: Mr. Roberts, could you -- you want to come
3 up here and -- Solicitor, and Ms. Williams, if y'all want to
4 come up here for just a second.

5 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD. JUROR
6 NUMBER 274, ERIC ROBERTS, IS PRESENT FOR A PORTION OF THE
7 BENCH CONFERENCE.)

8 THE COURT: Why don't we cover the issue about the
9 photographs first, and then we will do the thing about the
10 weather.

11 All right, Solicitor, what is the photos that you
12 believe there might be an issue about?

13 MR. DEBUSK: Your Honor, first set of photos is on the
14 autopsy. We just want to authenticate them with one of the
15 witnesses today.

16 THE COURT: Okay.

17 MR. DEBUSK: And then we would have Dr. Proctor come
18 testify tomorrow ---

19 THE COURT: So you just want to identify them today,
20 and then, if they come in they would come in through the
21 testimony of Dr. Proctor.

22 MR. DEBUSK: Yes, Your Honor. Which, if any he felt
23 would -- he would lay the foundation ---

24 THE COURT: Right. But these -- you would have -- you
25 know, whoever took them, or whatever the situation was, so ---

JURY OUT/LUNCH
JURY OUT/ON RECORD

172

1 MR. DEBUSK: Yes, Your Honor. Exactly.

2 THE COURT: Okay. Very good.

3 MR. DEBUSK: The Officer who took the pictures is here
4 to authenticate them ---

5 THE COURT: Okay.

6 MR. DEBUSK: ---Doctor -- he's going to lay the
7 foundation.

8 THE COURT: Okay. All right. All right. Is there a
9 problem -- I mean, obviously the jury is not seeing them until
10 they come into evidence, so do you have a problem with
11 somebody ---

12 MS. WILLIAMS: I don't have a problem with them
13 identifying them ---

14 THE COURT: But obviously when they come in ---

15 MS. WILLIAMS: I didn't stipulate and ---

16 THE COURT: Okay. But when they are introduced then
17 whatever objections you will have you would raise them at that
18 point in time.

19 MS. WILLIAMS: Yes sir.

20 THE COURT: Okay. Great. All right.

21 MR. DEBUSK: Next, Your Honor, we've got a picture ---

22 THE COURT: All right. So these are -- well, they are
23 not marked. Well ---

24 MR. DEBUSK: We were beginning to mark them, and we
25 unmarked them.

JURY IN
COURT TO JURY

173

1 THE COURT: Okay. Very good. So why don't you hand
2 those four ---

3 Do you want to work on those four before we go into the
4 next ones, Dixie?

5 COURT REPORTER: I've got the stickers ready on ---

6 MR. DEBUSK: What numbers would they be?

7 COURT REPORTER: 48 through 51 for I.D..

8 THE COURT: Okay.

9 (PHOTOS MARKED STATE'S EXHIBIT NUMBERS 48 THROUGH 51,
10 FOR IDENTIFICATION ONLY.)

11 THE COURT: All right. And -- all right, what are the
12 next ones then?

13 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

14 (PHOTO MARKED STATE'S EXHIBIT NUMBERS 52, FOR
15 IDENTIFICATION ONLY.)

16 MR. DEBUSK: Your Honor, these two are pictures of the
17 victim's shirt, taken after it was collected by the North
18 Myrtle Beach Police Department.

19 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

20 (PHOTOS MARKED STATE'S EXHIBIT NUMBERS 53 AND 54, FOR
21 IDENTIFICATION ONLY.)

22 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

23 THE COURT: All right. With all that, then let's have
24 the jury come back in, please.

25 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE

JURY IN
COURT TO JURY

174

1 JURY.)

2 THE COURT: All right. Thank you, ladies and
3 gentlemen, I appreciate we took a little bit of time, but
4 there were some matters I had to go over with the attorneys,
5 so hopefully the testimony this afternoon will flow as
6 smoothly as possible with the least of interruptions.

7 Mr. Foreman, you had also delivered to the Court a note
8 about taking notes during the trial. At this point and stage
9 of the proceeding, since we have already had some witnesses
10 testify I'm not going to allow you to take notes. It might
11 have been something we had taken up at the very beginning, but
12 I'll tell you, that, in and of itself, is the norm. It is
13 common that notes are not taken, except in cases that we
14 really expect to -- and these are rare cases -- go over a
15 number of weeks. The reason for this is, we find -- and it's
16 more, again, by human nature, that when we are taking notes
17 two things happen, one, the person is concentrating on putting
18 down on paper what they just heard, and they are not hearing
19 what's going on when they are writing down the notes, so you
20 miss that, and secondly, there is some hesitancy by some
21 jurors that, if they remember something, or their view of the
22 testimony is a certain way, if somebody wrote it down on
23 paper, well, it's got to be that case. Well, that's not the
24 case. It might be, but it's your common collective wisdom
25 that we are looking for here. It's got to be a unanimous

SAM GEORGAKOPOULOS - DIRECT BY DEBUSK

175

1 decision, so we are looking for your -- you know, your common
2 remembrance, knowledge of what you believe happened, and your
3 evaluation of the facts and evidence in this case, so those
4 are the basic reasons that, except for trials that we know
5 will take an extended period of time, that we don't take
6 notes.

7 All right. With that we'll go on to the next witness.
8 Solicitor.

9 MR. DEBUSK: Thank you, Your Honor.

10 The State calls Sam Georgakopoulos.

11 THE COURT: All right. Please come around to be sworn,
12 right here, sir.

13 SAM GEORGAKOPOULOS, being first
14 duly sworn, testifies as follows:

15 DIRECT-EXAMINATION BY MR. DEBUSK:

16 Q. Mr. Georgakopoulos, where do you live?

17 A. I live in Longs.

18 Q. And what's your occupation?

19 A. I'm a restaurateur.

20 Q. What -- what restaurant do you own?

21 A. Sam's Place, in North Myrtle Beach.

22 Q. Where in North Myrtle Beach is Sam's Place?

23 A. It's on 116 Highway 17 South.

24 Q. What cross street is that close to?

25 A. It's between Sixth and Main Street.

1 Q. Did you own that business in August of 2008?

2 A. Yes sir.

3 Q. Did you know Phyllis Mowery?

4 A. Absolutely.

5 Q. How did you know her?

6 A. She worked for me for fifteen years, because I was
7 managing the restaurant for my family, which was called
8 Harry's Breakfast, right across the street from that, and then
9 when my family sold it, and I went to 206, I brought her with
10 me across the street.

11 Q. How -- and how long did she work for you, how many
12 years?

13 A. Fifteen years, sir.

14 Q. And what were her duties when she worked for you?

15 A. Everything. She was -- washed dishes, bus tables,
16 cook. She did everything.

17 Q. And how frequently would she work for you?

18 A. She worked six days a week.

19 Q. And when she wasn't able to come into work what would
20 she do?

21 A. She will call me.

22 Q. Okay. Let me ask you about the Defendant. Do you know
23 the Defendant, Jeffrey Riebe?

24 A. Yes sir.

25 Q. How did you know him?

SAM GEORGAKOPOULOS - DIRECT BY DEBUSK

177

- 1 A. When I opened up my restaurant Jeff was working for
2 Papa John's, and he will come over and, you know, get a drink
3 or something, and that's how I met him.
- 4 Q. Did he ever work for you?
- 5 A. Yes. Off and on, I mean, he'll fill in.
- 6 Q. Was he a full-time employee?
- 7 A. No sir.
- 8 Q. Okay. Now when was the last time you saw Phyllis
9 Mowery?
- 10 A. That was the Tuesday, she worked for me. She left
11 Tuesday afternoon about two o'clock.
- 12 Q. Did she seem normal at that time?
- 13 A. Yes sir.
- 14 Q. Okay. Was Phyllis scheduled to work on August 27th?
15 That would be the Wednesday following?
- 16 A. Yes sir.
- 17 Q. Did she show up?
- 18 A. No sir.
- 19 Q. What did you do when she didn't show up?
- 20 A. I didn't hear from her, and of course she had no phone,
21 so there was no way I can contact her, so I called Jeff --
22 like I say, he will fill in for her, you know, and I say, hey,
23 you know, can you come to work and he says -- come and help
24 out, I said, because I don't know what happened with Phyllis -
25 - and he says, okay, he says -- he said, I'll be right over,

1 and he came -- came to work to fill in for her.

2 Q. When he arrived was there anything unusual about his
3 appearance?

4 A. Yes. He was nervous. He seemed very nervous, and he -
5 - I noticed he was wearing a pair of jeans and there was brown
6 marks all over his jeans, and you know, I mean, he had
7 scratches in his -- like scrapes or something on his knuckles.

8 Q. Let me ---

9 A. Yes sir.

10 Q. ---Start with the jeans, the brown spots. Were you
11 able to tell what those brown spots on his jeans were?

12 MS. WILLIAMS: Your Honor, I'll object to that. May we
13 approach?

14 THE COURT: No, it's not necessary. It's not
15 necessary.

16 Solicitor, why don't you rephrase your question, and
17 have the witness confine his remarks to what he saw, and what
18 he actually observed, rather than what he thought.

19 MR. DEBUSK: Very well, Your Honor.

20 Q. What did you see on his pants?

21 A. Brown spots.

22 Q. Was there anything about those brown spots that allowed
23 you, in your experience, to tell what they were?

24 A. No sir.

25 Q. Okay. Did you ask Mr. Riebe what they were?

SAM GEORGAKOPOULOS - DIRECT BY DEBUSK

179

1 A. Yes sir.

2 Q. Did he have an explanation?

3 A. Yes.

4 Q. What did he say?

5 A. He told me that he slept on the park and there was --
6 he slept on bricks, and it was like marks of brown bricks that
7 he slept on. That's -- that was his remark.

8 Q. Did it look like brown brick marks to you?

9 MS. WILLIAMS: Your Honor ---

10 MR. DEBUSK: Your Honor, I'm asking him from his
11 observations, if it looked like brown brick.

12 THE COURT: I will allow him, again, to testify what
13 his observations were, not any supposition that he may make,
14 but what he actually saw and observed, and experienced at that
15 point in time, not some supposition of thinking about
16 something.

17 MR. DEBUSK: Okay. Thank you, Your Honor.

18 Q. Sir, let me ask you about the hands. What did you see
19 on his hands?

20 A. It looked like scrapes on his knuckles, right here, but
21 I never questioned him about it.

22 Q. Let me ask you -- show you State's Exhibit 33.

23 A. Yes sir.

24 Q. What is it?

25 A. It looks like cuts or something that's -- that's the

SAM GEORGAKOPOULOS - DIRECT BY DEBUSK

180

1 same thing that I witnessed the day he came over.

2 Q. On Mr. Riebe's hands?

3 A. Yes sir.

4 MR. DEBUSK: Thank you.

5 Q. Now, back to the marks on his pants. Do you remember
6 anything about the shapes of those marks, or how extensive
7 they were? Were they round, were they elongated?

8 A. I can't remember. It was just like, all over his
9 pants, but I can't ---

10 Q. But it did -- it did draw your attention.

11 A. Yes sir.

12 Q. I've asked you this already, but was there anything
13 unusual about his demeanor that day, the way he was acting?

14 A. Yes sir. He was kind of nervous.

15 Q. Did he show any emotions?

16 A. No, not really.

17 Q. Now did he work for you the next day?

18 A. Yes sir.

19 Q. Let me go back -- I'm sorry -- let me go back to that
20 Wednesday. Did he make any requests of you?

21 A. I'm sorry.

22 Q. Did he request anything from you?

23 A. Yes sir.

24 Q. What was that?

25 A. He told me the day -- he says, can you give me like

SAM GEORGAKOPOULOS - DIRECT BY DEBUSK

181

1 Twenty Dollars and drop me off at Wal-Mart, and I'm going
2 like, okay, and he says -- so, what's the reason. He says, I
3 need to get a new pair of shoes. I said, what's the -- what's
4 wrong with the shoes you are wearing, and he says, oh, I need
5 to get another pair.

6 So at the end of the day I -- you know, I dropped him
7 off at Wal-Mart, and I gave him Twenty Dollars and I left. I
8 went home.

9 Q. Okay. Was it unusual for him to ask for money like
10 that?

11 A. Not really. But for a pair of shoes, yes, but you know
12 ---

13 Q. You say it's unusual for him to ask for a pair of
14 shoes?

15 A. Yes sir.

16 Q. Why is that?

17 A. Well, he never has before when he want to buy a pair of
18 shoes.

19 Q. Okay. And on that day did you -- where did you last
20 see him?

21 A. I must have dropped him off at Wal-Mart, I would say
22 probably like maybe three, three-thirty, sometime. I'm not
23 really -- I can't remember exactly.

24 Q. Did he work the next day?

25 A. Yes sir. He came by.

SAM GEORGAKOPOULOS - DIRECT BY DEBUSK

182

1 Q. What happened that day?

2 A. Oh, he was -- well, the police came by, start asking
3 questions and all that, and -- and he was in the back, and all
4 of a sudden he broke out crying, and I said, what's the
5 matter, I said, why are you crying, and he wouldn't tell me,
6 and that's when the police came in and they took him and took
7 him to the North Myrtle Beach Police Station and questioned
8 him.

9 Q. But he didn't cry until the police arrived?

10 A. I'm sorry.

11 Q. He didn't cry until the police arrived?

12 A. Yes sir. Once he saw the police in front of the
13 restaurant, sir, that's when he broke down crying.

14 Q. He you talk to him after that day? Did you talk to
15 Jeff Riebe after that day?

16 A. Yes. They came back after the police questioned him,
17 and of course you know the police station, it's only like, you
18 know, right behind us, so he walked back and he wouldn't say
19 anything, and then that afternoon the detectives, two
20 detectives -- I can't recall their names -- I'm sorry -- they
21 came in, and we were outside and we were talking to them,
22 and ---

23 Q. After that, after he left with the detectives did you
24 hear from him again, in person or by phone?

25 A. Yes. He -- I'd say that was Friday when I talked to

SAM GEORGAKOPOULOS - CROSS BY WILLIAMS

183

1 him again. Actually the police came in and picked him up
2 Thursday, between ten and eleven o'clock -- no, Friday -- I'm
3 so sorry -- Friday -- I'm sorry. It's been three years so I'm
4 trying to go back and think. Friday the police came by and
5 picked him up. It was between ten and eleven o'clock, and
6 then he -- about -- maybe an hour or two hours later he called
7 me from his little track phone that he had, and he called me
8 and he says, I can't believe I did this, he says I -- you
9 know, I don't remember, and he -- I said -- he said, I saw the
10 pictures, I saw the pictures, and I guess the police must have
11 shown him the pictures, and that's what he was telling me, and
12 I didn't talk -- I talked to him briefly and that was it. I
13 have not seen Mr. Riebe or talked to him since then.

14 MR. DEBUSK: Thank you, Mr. Georgakopoulos. Please
15 answer any questions the Defense might have.

16 A. Thank you.

17 THE COURT: All right. Cross-examination, please.

18 MS. WILLIAMS: One moment, Your Honor.

19 CROSS-EXAMINATION BY MS. WILLIAMS:

20 Q. I want to pronounce your name correctly. It's Mr. ---

21 A. Georgakopoulos.

22 Q. Georgakopoulos.

23 A. Yes Ma'am.

24 Q. I'm sorry if I said it wrong.

25 A. That's okay.

1 Q. I apologize in advance.

2 Mr. Georgakopoulos, you knew Jeff fairly well; is that a
3 fair statement?

4 A. Yes Ma'am.

5 Q. And you knew Ms. Mowery fairly well, right?

6 A. Yes Ma'am.

7 Q. And is it fair to say that they were friends? Did you
8 know that they were friends?

9 A. Yes. They argued a lot, but they were friends. I
10 guess they were friends.

11 (STATEMENT MARKED DEFENDANT'S EXHIBIT NUMBER 3, FOR
12 IDENTIFICATION ONLY.)

13 Q. All right. Let me hand you what's been marked for
14 identification as Defendant's Exhibit Number 2, and ask you if
15 you can identify that. Do you know what that is?

16 A. Yes Ma'am.

17 Q. What is that?

18 A. That's Jeff's shoes.

19 Q. Those are the shoes he was wearing?

20 A. Yes. I believe, yes Ma'am. Well, that's -- Ma'am, I
21 can't recall now. I could be, could be not. I'm not sure,
22 because it's been, like I said, three years ago, so they was
23 like -- I don't know. Like I said, it's been a while.

24 Q. That's fine. But you aren't sure if these are Jeff's
25 shoes or not?

SAM GEORGAKOPOULOS - CROSS BY WILLIAMS

185

1 A. No Ma'am. I can't see from the bottom. They were --
2 they were -- if it was a picture on the top I probably could
3 have.

4 Q. Okay. All right.

5 A. But I can't identify the shoes from the bottom, Ma'am.

6 Q. Now let me ask you ---

7 A. Sure.

8 Q. Mr. Georgakopoulos, when this initial investigation
9 started, did the police come talk to you and interview you at
10 all?

11 A. No. But the detective -- Well, I spoke with a couple
12 of detectives. Yes, they came by and talked to me, but I
13 didn't ---

14 Q. You didn't give a statement, or write a statement, or
15 anything like that, right?

16 A. Not that I can remember, Ma'am, not that I can recall.

17 Q. Let me ask you if you recognize what has been marked
18 for identification as Defendant's Number 3.

19 If you need to take a minute and read it, just so you
20 can either recognize it or not.

21 A. Okay. Yes, it's correct.

22 Q. So I've showed you that. Let me ask you, Mr.
23 Georgakopoulos ---

24 A. Yes Ma'am.

25 Q. ---Did an investigator from the Solicitor's Office come

1 to talk to you after this incident, and this case began; is
2 that right?

3 A. Yes Ma'am.

4 Q. All right. And in fact he took a report. Did he
5 record that statement or did he write it; do you know?

6 A. He did both.

7 Q. Pardon me.

8 A. He did both.

9 Q. He did both. Now let me ask you, was one of the
10 questions you guys talked about, based upon everything you
11 remembered, everything you thought about, give details? Was
12 that what you were telling him about at that time?

13 A. Yes. If I can recall right, yes Ma'am.

14 Q. And do you recall telling him at that time what you
15 just testified to, that -- that, in the middle day that Jeff
16 actually cried?

17 A. Yes Ma'am.

18 Q. So you told him that?

19 A. I can't recall. I probably did. I can't remember,
20 Ma'am.

21 Q. Okay. Do you recall that you told him that Jeff just
22 kind of said, I can't remember, or I couldn't have done that?

23 A. He told me that -- and I can't remember if I told the
24 private investigator, or either from the Solicitor's Office.

25 Q. Okay. Mr. Georgakopoulos, do you know how many pairs

SAM GEORGAKOPOULOS - CROSS BY WILLIAMS

187

- 1 of shoes Mr. Riebe owns?
- 2 A. No. I can't recall that, Ma'am, maybe one.
- 3 Q. So you don't really -- a good chance Jeff only owns
- 4 one; is that right?
- 5 A. Yes.
- 6 Q. Is that a fair statement. Do you know where Jeff
- 7 lived?
- 8 A. At the time?
- 9 Q. Yes sir.
- 10 A. He lived in the park.
- 11 Q. He was homeless; is that right?
- 12 A. Yes Ma'am. At McLain Park, yes Ma'am.
- 13 Q. Okay. Do you know where he kept his clothes?
- 14 A. No Ma'am.
- 15 MS. WILLIAMS: Okay. One moment, please, Your Honor.
- 16 Q. Well, you testified that Jeff appeared nervous. Do you
- 17 know why he was nervous?
- 18 A. I had no clue.
- 19 Q. Okay. But he was nervous?
- 20 A. Yes Ma'am.
- 21 MS. WILLIAMS: Okay. That's all the questions that I
- 22 have, Your Honor. Thank you.
- 23 THE COURT: All right. Redirect, Solicitor.
- 24 MR. DEBUSK: Nothing, Your Honor.
- 25 THE COURT: All right. Do you wish the witness to be

1 excused?

2 MR. DEBUSK: Yes, please, Your Honor.

3 THE COURT: Any objection?

4 MS. WILLIAMS: No objection, Your Honor.

5 THE COURT: All right, sir, you are released from your
6 Subpoena. You may go back to your regular activities, or your
7 restaurant, whichever you chose.

8 A. Thank you, sir.

9 THE COURT: Thank you.

10 All right, your next witness, Solicitor.

11 MR. DEBUSK: Lance Corporal Heather Swarthout.

12 THE COURT: All right.

13 All right, Ma'am, if you would come up here to be sworn,
14 please.

15 HEATHER SWARTHOUT, being first duly
16 sworn, testifies as follows:

17 DIRECT-EXAMINATION BY MR. DEBUSK:

18 Q. Lance Corporal Swarthout, who is your employer?

19 A. City of North Myrtle Beach.

20 Q. Okay. What are your duties?

21 A. I'm a uniform patrol officer, and a firefighter.

22 Q. How about in August of 2008?

23 A. I was also a uniform patrol officer and a firefighter.

24 Q. On that -- on August 28th, 2008, did you respond to the
25 area?

HEATHER SWARTHOUT - DIRECT BY DEBUSK

189

1 A. Yes sir, I did.

2 Q. Let me show you what's already marked as State's
3 Exhibits 1 and 2, and ask if you recognize these.

4 A. State's Exhibit 1 is going to be the front entrance, or
5 the front of , as it faces ,
6 and State's Exhibit 2 is going to be the rear, in the
7 courtyard area of

8 Q. Let me show you what's been marked as State's Exhibit
9 5, and ask you if you recognize this.

10 A. Get my bearings, but ---

11 THE COURT: All right, Ma'am, if you are going to say
12 something you have to be in front of the microphone.

13 A. I'm sorry.

14 Q. What, in general, is this exhibit?

15 A. It's an overview of North Myrtle Beach.

16 Q. Is it a fair and accurate representation of the streets
17 around that part of North Myrtle Beach?

18 A. Yes, it is.

19 MR. DEBUSK: Your Honor, we would move to admit this as
20 ---

21 THE COURT: Is there any objection to State's Number 5?

22 MS. WILLIAMS: Well, Your Honor, if I could look at it,
23 since I haven't seen it prior to today.

24 THE COURT: All right.

25 MR. DEBUSK: I apologize, Your Honor. She was standing

HEATHER SWARTHOUT - DIRECT BY DEBUSK

190

1 with me when we marked it. I thought she had seen it.

2 MS. WILLIAMS: No sir, Your Honor.

3 THE COURT: I'm sorry. There's no objection?

4 MS. WILLIAMS: No objection.

5 THE COURT: All right. Very good. So State's 5 is in
6 evidence without objection.

7 (LARGE AERIAL POSTER OF NORTH MYRTLE BEACH ADMITTED INTO
8 EVIDENCE AS STATE'S EXHIBIT NUMBER 5.)

9 MR. DEBUSK: Your Honor, as long as I can set it up for
10 the witness to point out to the jury without blocking her
11 view.

12 THE COURT: Well, if you want the witness -- if you
13 want to hold it and have the witness come and stand right in
14 front of the jury, right next to that microphone box, I'll let
15 you do that.

16 On the front of the jury box is a microphone. You need
17 to stand right next to it and speak up.

18 A. Yes sir.

19 Q. Okay. You said this was North Myrtle Beach. Where is
20 the beach?

21 A. This is the beach. (Indicating)

22 Q. Where is Highway 17?

23 A. This right here is Highway 17. (Indicating)

24 Q. Where is Main Street?

25 A. Right here is Main Street. (Indicating)

HEATHER SWARTHOUT - DIRECT BY DEBUSK

191

1 Q. And in relation to Main Street, where is

2 ?

3 A. is, from the beach, about two streets
4 up, right here. (Indicating)

5 Q. Okay. Where is , where you responded?

6 A. It's going to be right here where I'm pointing my
7 finger. (Indicating)

8 Q. Can you put an indicator that says at that
9 spot?

10 THE COURT: She moved away from the microphone. You
11 need to speak up, Ma'am.

12 Q. Is that -- again, what does that spot indicate?

13 A. That's going to be

14 Q. Do you know where Sam's Place is, the restaurant owned
15 by Mr. Georgakopoulos?

16 A. Yes sir, I do.

17 Q. Where is that?

18 A. It's up here off Highway 17, within this little strip
19 mall right here.

20 Q. Could you put an indication there where Sam's Place is?

21 A. (Indicating)

22 Q. I hate to ask the obvious, but what county is this in?

23 A. Horry County.

24 MR. DEBUSK: Okay. Thank you.

25 Q. Okay. Thank you for the orientation, Lance Corporal

HEATHER SWARTHOUT - DIRECT BY DEBUSK

192

1 Swarthout. Now what was -- when you went there, what did you
2 find?

3 A. When I first arrived on the scene Morry County medics
4 were there, at the door. They advised me that they did have a
5 deceased body inside, and they wanted me to go inside and take
6 over the scene for them.

7 When I started to go inside the door I had a hard time
8 actually opening the door, and the door actually struck the
9 body that was laying directly behind the door, so I had to
10 kind of squeeze to actually get into the room, and when I got
11 inside the room I did have a female laying face down, lots of
12 blood all around her, and it was obvious that she was
13 deceased, and had been for a little bit of time.

14 Q. Let me show you what's been marked -- and I think
15 already ---

16 MR. DEBUSK: Is this in evidence, or is it still I.D.?

17 COURT REPORTER: 47 is in.

18 Q. ---State's Exhibit 47, in evidence, and ask you if you
19 recognize this.

20 A. Yes sir, I do.

21 Q. What is that?

22 A. It's going to be a picture taken from the far wall,
23 showing the door, and also showing the victim laying face
24 down.

25 Q. Okay.

HEATHER SWARTHOUT - DIRECT BY DEBUSK

193

1 MR. DEBUSK: Your Honor, may I publish this to the jury
2 at this time ---

3 THE COURT: Yes sir.

4 MR. DEBUSK: ---Along with State's Exhibit 1 and 2 I
5 showed the ---

6 THE COURT: You may.

7 MR. DEBUSK: Thank you, Your Honor.

8 Q. Just to go back into the obvious again, was it clear
9 from your first impression of the scene that something was
10 seriously wrong?

11 A. Yes sir.

12 Q. Was it clear that there was blood on that scene?

13 A. Lots of blood.

14 Q. What did you do after ascertaining that you had a
15 fatality?

16 A. I basically backed out of the apartment, shut the door.
17 I called for my supervisor and my area partner to come down,
18 immediately set up crime scene tape, and had my partner start
19 a crime scene log, and just wait till some higher-ranking
20 officials could get there and assist me.

21 Q. While you were there working the scene, did you see the
22 Defendant, Jeffrey Riebe?

23 A. Yes sir, I did.

24 Q. What was the context that you saw him?

25 A. Well, I was waiting for higher officials to get there.

1 I was kind of standing out front. Members of the victim's
2 family were coming up and asking me questions, as well as Mr.
3 Riebe came up and was asking me -- I don't recall the exact
4 conversation, but sort of asking me what we were doing there
5 and what was going on, and I started handing out voluntary
6 statements, just kind of blank forms, asking for their
7 information at the top, and to tell me anything they knew
8 about the victim, and they knew -- that could help me figure
9 out what had happened there.

10 Q. Did you give one such form to Mr. Riebe?

11 A. Yes, I did.

12 Q. What did he do with it?

13 A. He went over to a table in the courtyard area, and I --
14 with the pen that I had given him, and began to write a
15 statement.

16 MR. DEBUSK: Your Honor, I believe we have agreed on
17 State's Exhibit 8.

18 THE COURT: Is there any objection to State's Number 8,
19 Ms. Williams?

20 MS. WILLIAMS: No sir.

21 THE COURT: All right. State's 8 is in evidence
22 without objection.

23 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
24 8.)

25 Q. I'm going to give you State's Exhibit 8 and ask if you

HEATHER SWARTHOUT - DIRECT BY DEBUSK

195

- 1 recognize that.
- 2 A. Yes sir.
- 3 Q. What is that?
- 4 A. It's going to be the courtyard area, with the small
- 5 table that Mr. Riebe was sitting at and -- with his statement.
- 6 Q. Okay. What kind of form did you give to him to fill
- 7 out?
- 8 A. A Voluntary Statement.
- 9 Q. Was he under arrest at that time?
- 10 A. No sir.
- 11 Q. Was he a suspect?
- 12 A. No sir.
- 13 Q. At that point did you even know you had a crime, at
- 14 that point?
- 15 A. Not at that point.
- 16 Q. Okay. Before you gave him the statement form, did you
- 17 fill out any part of it?
- 18 A. I filled out the top line with the time and the
- 19 address, and the case number, and my name, who he was writing
- 20 a statement to.
- 21 Q. Okay. Let me show you what's been marked as State's
- 22 Exhibit 7 and ask if you recognize this.
- 23 A. Yes sir, I recognize it.
- 24 Q. Okay. What is that?
- 25 A. It's going to be the -- a copy of the Voluntary

1 Statement that I gave to Mr. Riebe.

2 Q. Okay. Why did you ask him to fill out that statement?

3 A. I was basically asking everybody that was there to fill
4 it out, especially the top portion. It gives me their name
5 and their address, and a telephone number, and since he was
6 asking what was going on, and appeared to be a friend, I
7 figured he may have some information.

8 Q. Now, after you gave it to him did that form ultimately
9 come back into your possession?

10 A. It eventually did, yes sir.

11 Q. How did it get to you?

12 A. My partner actually took it from him later in the
13 afternoon.

14 Q. And you received it from your partner?

15 A. Yes sir.

16 Q. Okay. How did Mr. Riebe leave the scene?

17 A. I didn't see him leave the scene.

18 Q. Okay. Did you speak to other witnesses at the scene?

19 A. I did.

20 Q. Okay. What else did you do at the scene?

21 A. I was basically an assistant inside with the detectives
22 when they were processing the crime scene.

23 Q. How long were you at that scene?

24 A. The entire time, all day. I think we finally -- I got
25 there about seven, and we finally left about one-thirty.

HEATHER SWARTHOUT - DIRECT BY DEBUSK

197

1 MR. DEBUSK: Thank you.

2 Your Honor, at this time I believe we have State's 7
3 identified. We will bring in further testimony about it from
4 the lay witnesses.

5 THE COURT: All right. Very good.

6 MS. WILLIAMS: Your Honor ---

7 THE COURT: Yes Ma'am.

8 MS. WILLIAMS: ---I'm sorry. I didn't hear what ---

9 MR. DEBUSK: I'll lay the further foundation for 7 with
10 a later witness. At this time it's just for I.D.

11 MS. WILLIAMS: Okay.

12 (DEFENDANT'S (2 pg.) HANDWRITTEN STATEMENT MARKED
13 STATE'S EXHIBIT NUMBER 7, FOR IDENTIFICATION ONLY.)

14 Q. Let me ask you some -- were you at the scene when they
15 processed the crime scene?

16 A. Yes sir.

17 Q. Who was responsible for processing the crime scene?

18 A. It was a combination of Detective Pitsinger and
19 Detective Abercrombie.

20 Q. Okay. Let me show you another exhibit ---

21 MR. DEBUSK: Court's indulgence one moment, Your Honor.
22 The order is completely ---

23 Q. Show you State's 11, 12 and 13, and ask if recognize
24 these.

25 A. Yes sir, I can.

1 Q. What are they?

2 A. Exhibit 11 is going to be the north side of
3 , underneath the window of the actual apartment that
4 the victim was found in.

5 Number 12 is going to be a black suitcase that was found
6 underneath that window.

7 And Number 13 is going to be the contents that we found
8 inside of the suitcase.

9 Q. In what condition were the contents of that suitcase?

10 A. They were wet.

11 Q. Okay. After you left that scene, did you do anything
12 else further in this case?

13 A. Yes. I went back to the Police Department with
14 Detective Abercrombie and Detective Pitsinger, and helped
15 them, basically being their secretary and writing down things
16 for them, and helping them get items into evidence, and then
17 the next morning I did go to the autopsy with Detective
18 Abercrombie.

19 MR. DEBUSK: Your Honor, State's 11, 12 and 13, we have
20 stipulated to these.

21 THE COURT: Any objection to State's 11, 12 and 13, Ms.
22 Williams?

23 MR. DEBUSK: No, we have not with these, Your Honor, so
24 I'll let her determine which ones they are.

25 MS. WILLIAMS: No objection, Your Honor.

HEATHER SWARTHOUT - DIRECT BY DEBUSK

199

1 THE COURT: All right. So State's 11, 12 and 13 are in
2 evidence without objection.

3 MR. DEBUSK: Thank you, Your Honor.

4 (PHOTOS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
5 NUMBERS 11, 12 AND 13.)

6 Q. Where was the autopsy held, Officer Swarthout?

7 A. Grand Strand Regional Medical Center.

8 Q. Do you know who the prosecuting -- the person
9 conducting the autopsy was?

10 A. Dr. Proctor.

11 Q. Okay. I'm going to show you some items and ask if you
12 recognize these. Were any photographs taken at the autopsy?

13 A. Yes sir.

14 Q. I'm showing you State's 48, 49, 50 and 51, and ask if
15 you recognize these.

16 A. Yes sir, I recognize all of them.

17 Q. What are they?

18 A. 51 is going to be a close-up picture of the victim's
19 forehead, and the injury that we were able to see.

20 50 is also a close-up, with a scale, of the injuries to
21 the forehead.

22 49 is the neck, and the visible injuries to the neck.

23 And 48 is also of the neck, with the visible injuries
24 with a scale.

25 Q. Okay. Are those fair and accurate representations of

1 the appearance of those injuries at autopsy?

2 A. Yes sir.

3 MR. DEBUSK: Your Honor, we will have these identified
4 with even subsequent further foundations laid by witnesses.

5 THE COURT: All right. Very good.

6 MR. DEBUSK: Thank you, Your Honor.

7 Q. I'm showing you another exhibit, Officer Swarthout,
8 which is State's Exhibit 4(A), in evidence. I ask you if you
9 that.

10 A. Yes sir, I do.

11 Q. What is that?

12 A. It's the belt that we located when we actually moved
13 the victim, and that was transported with her to the hospital
14 for the autopsy.

15 Q. Where did you first see this belt?

16 A. You could briefly see a piece of it when she was laying
17 face down on the floor, kind of sticking out from underneath
18 her, but when we actually rolled the body it was laying like
19 across her stomach.

20 Q. Okay. What happened to that belt when you turned the
21 body over?

22 A. We moved the belt and the body into the body bag, and
23 sealed it up, and it was taken by the Coroner to Grand Strand.

24 Q. Who was present when she was placed in the body bag?

25 A. Myself, Detective Pitsinger, Detective Abercrombie, the

HEATHER SWARTHOUT - DIRECT BY DEBUSK

201

1 Coroner, and I believe you were also in the room with us.

2 Q. Okay. Was everyone who touched the body or the belt
3 wearing gloves for the most ---

4 A. Yes sir.

5 Q. Surgical type rubber gloves?

6 A. Yes sir.

7 Q. Okay. And the body bag that she was placed in, was
8 that a new body bag, or one that was being reused or ---

9 A. It was a new body bag. It was sealed until we opened
10 it.

11 Q. Okay. And then she was transported from the scene to
12 the autopsy?

13 A. Correct.

14 Q. I want to show you another item, State's Exhibit 52,
15 ask if you recognize that.

16 A. Yes sir, I do.

17 Q. What is that?

18 A. It's going to be the victim's left hand, still on the
19 scene, inside the apartment.

20 Q. Is there anything in the hand?

21 A. It's very bloody, and there's the ---

22 MS. WILLIAMS: Your Honor, I would object to -- if she
23 doesn't necessarily know what that is in the victim's hand at
24 this point.

25 THE COURT: All right. I'm going to overrule the

HEATHER SWARTHOUT - DIRECT BY DEBUSK

202

1 objection. You may continue.

2 Q. Please continue your answer.

3 A. There's a red substance all over the hand, and what
4 appears to be hair inside the hand.

5 Q. Okay. Was that hand -- I mean, was that ultimately --
6 at autopsy was the hair collected?

7 A. Yes, at the autopsy, it was.

8 Q. Who collected it?

9 A. It was actually Detective Abercrombie.

10 MR. DEBUSK: Thank you.

11 Q. But when Ms. Mowery was placed in the body bag, was
12 that hair still in her hand?

13 A. It was. We attempted to get it out at the scene, but
14 we were unable to. It was dried and we couldn't get it out.

15 Q. Okay. So it was sort of firmly stuck there?

16 A. Yes sir.

17 Q. But you did recover it at autopsy?

18 A. Yes sir.

19 Q. Okay. Now, at autopsy, did they do what's known as a
20 Criminal Sexual Conduct kit on the victim?

21 A. Dr. Proctor did, yes.

22 Q. Was that collected by the -- someone from the North
23 Myrtle Beach Police?

24 A. It was, by Detective Abercrombie.

25 (SEXUAL ASSAULT KIT BOX MARKED STATE'S EXHIBIT NUMBER

HEATHER SWARTHOUT - DIRECT BY DEBUSK

203

1 39, FOR IDENTIFICATION ONLY.)

2 Q. Let me show you what's State's 39. Ask if you
3 recognize that.

4 A. Yes, I do.

5 Q. What is that?

6 A. It's going to be the actual box that the sexual assault
7 kit was placed into after Dr. Proctor did it.

8 Q. And once again, Detective Abercrombie took that?

9 A. He did. I was there with him, and my handwriting is on
10 here as well for -- I was basically being his secretary.

11 Q. Okay. Just for the juror's edification, which part is
12 your handwriting?

13 A. Requesting agency's name, North Myrtle Beach, and then
14 date of collection, 8/29/08 is my handwriting.

15 Q. And do you recognize that?

16 A. I do.

17 MR. DEBUSK: Thank you.

18 Q. Did anyone collect the victim's clothing?

19 A. At the autopsy, yes. Dr. Proctor took it off, and they
20 placed it into a bag.

21 Q. And was it collected by anyone from the North Myrtle
22 Beach Police Department?

23 A. It was, by Detective Abercrombie.

24 Q. Did you view the clothing at the autopsy?

25 A. I did.

1 (BAG CONTAINING RED PANTIES MARKED STATE'S EXHIBIT
2 NUMBER 40, FOR IDENTIFICATION ONLY.)

3 Q. This has not yet been opened. It's a bag marked
4 State's Exhibit 40. I would ask you to open that and please
5 tell us if you recognize the contents.

6 THE COURT: I'm sorry. It's marked as State's what?

7 MR. DEBUSK: 40, Your Honor.

8 THE COURT: 40. Okay. I'm -- didn't hear you.

9 A. I do recognize.

10 Q. What is it?

11 A. It's going to be the underwear that was taken from the
12 autopsy.

13 Q. And that was, again, collected by Detective
14 Abercrombie?

15 A. Yes.

16 MR. DEBUSK: Thank you.

17 Your Honor, would you wish it to be marked, and it was
18 the only thing in the bag?

19 THE COURT: No. Just leave it in the bag.

20 MR. DEBUSK: These are the two exhibits here.

21 Q. Let me ask you just about State's 52. Is that a fair
22 and accurate representation of the appearance of the victim's
23 hand when you found her in her apartment?

24 A. Yes sir.

25 MR. DEBUSK: Your Honor, at this time we would proffer

JURY OUT/ON RECORD

205

1 State's 51, and ask -- 52, into evidence.

2 THE COURT: Any objection to State's 52.

3 MS. WILLIAMS: May I see the ---

4 THE COURT: Yes Ma'am.

5 MS. WILLIAMS: Your Honor, I don't really want to make
6 the objection with ---

7 THE COURT: I'm sorry.

8 You have an objection?

9 MS. WILLIAMS: Yes sir. I do have an objection.

10 THE COURT: All right.

11 If you would, Ladies and gentlemen, go to your jury room
12 for just a few moment. Be very short.

13 Just leave them right there.

14 Thank you very much.

15 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
16 JURY.)

17 THE COURT: All right, Ms. Williams, let me hear you
18 about State's 52, please.

19 MS. WILLIAMS: Your Honor, we would object under Rule
20 403 that that is in the full color. I'm aware it is -- but it
21 is just dramatic, and used for shock value, Your Honor. It is
22 totally more prejudicial than probative, and we would ask that
23 that picture not be admitted into evidence.

24 THE COURT: All right, Solicitor, let me hear you,
25 please.

JURY OUT/ON RECORD

206

1 MR. DEBUSK: Your Honor, if I might approach the
2 Exhibit.

3 THE COURT: Yes sir.

4 MR. DEBUSK: The probativity of this is in two
5 particular items, Your Honor. One, the hair is on the hand we
6 later collected at autopsy and sent off for testing. This
7 shows where they were at the scene, that they were, in fact,
8 in the hand of the victim at the scene.

9 It also shows that the hand has blood on it, and there
10 was some blood transfer elsewhere in the apartment that might
11 be linked to a bloody hand, and we wanted to show that her
12 hand, in fact, had blood on it.

13 THE COURT: All right. And the results of the testing
14 on the hair, that ---

15 MS. WILLIAMS: Your Honor, my position would be, in
16 response to that, that she's testified that they found it, she
17 testified that there was blood on her hand. She has testified
18 that there was the item that she thought would be hair.

19 The State intends to -- I'm sure the State is going to
20 present evidence through Dr. Proctor that he removed it and
21 sent it off, and there's a series of chains that -- ultimately
22 that hair ended up in Arizona, and was tested and was found to
23 be Ms. Mowery's. That -- all of that testimony will come in,
24 Your Honor. It would seem to me that that is already there,
25 and that is cumulative, and more inflammatory, and not

JURY OUT/ON RECORD

207

1 necessary to the testimony that we are going to hear.

2 And Your Honor, there will be a series of witnesses that
3 testify about the fact that that hair was on her hand.

4 THE COURT: I appreciate that.

5 Regarding the 403 analysis, I would find the State's 52
6 is more probative handwriting prejudicial. I believe it is --
7 set's forth relevant factors as to the nature of what
8 occurred, to help the jury understand what occurred, what
9 violence, if any, may have occurred, which would be indicated
10 by the transfer of the hair to a hand, and obviously the
11 blood, so I'm going to overrule your objection.

12 I'm going to allow State's 52 in evidence over the
13 objection of the Defense.

14 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
15 52.)

16 MR. DEBUSK: Your Honor, just to avoid ---

17 THE COURT: I'm sorry.

18 Is there anything else as to 52?

19 MR. DEBUSK: I'm just going to authenticate 53 and 54,
20 for use by the witness -- possible use by that witness.

21 MS. WILLIAMS: That's fine at this point.

22 And Your Honor, while they are out, if I may, we've been
23 going at this about an hour. My client asks if he could take
24 a possible small break, so that we would not have to ---

25 THE COURT: All right.

JURY OUT/ON RECORD

208

1 We -- I'm going to do that, but I'm going to say, we are
2 not going to be doing this every time we take a short break.
3 Okay. We need to move along. There's a lot of witnesses. We
4 are not going to be in and out of here.

5 All right.

6 MS. WILLIAMS: Yes sir.

7 THE COURT: All right. Five minutes. That's it.

8 Thank you.

9 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
10 THE PRESENCE OF THE JURY.)

11 (THERE WAS COMMUNICATION BETWEEN THE BAILIFF AND THE
12 COURT, OFF THE RECORD.)

13 THE COURT: Yes Ma'am, I would appreciate it if there
14 was an issue -- and so we are clear. That's one of the
15 foreperson's jobs. We need to communicate with the foreperson
16 -- can't hear, is that what it is?

17 BAILIFF: That's right.

18 THE COURT: All right. Very good.

19 So, that's -- either he has to write out a note or he
20 has to come in the courtroom. That's ---

21 BAILIFF: Okay.

22 THE COURT: ---That's how we operate.

23 THE COURT: All right.

24 Solicitor, are you ready for the jury?

25 MS. WILLIAMS: Defense is ready, Your Honor.

JURY IN
HEATHER SWARTHOUT - DIRECT BY DEBUSK CONTINUED

209

1 Thank you, Your Honor.

2 THE COURT: Thank you.

3 Bring the jury in, please.

4 All right.

5 So, Solicitor and Ms. Williams, y'all understand,
6 please, as best you can, stay behind a microphone and speak
7 up.

8 And the witness also needs to be behind the microphone,
9 and I'll keep trying to remind people.

10 (NOTE FROM THE JURY MARKED OFF THE RECORD AS COURT'S
11 EXHIBIT NUMBER 1.)

12 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
13 JURY.)

14 THE COURT: All right.

15 State's Number 52 is in evidence over the objection of
16 the Defense.

17 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
18 52.)

19 THE COURT: You may proceed, Solicitor.

20 MR. DEBUSK: Thank you, Your Honor.

21 Excuse me, Your Honor.

22 We have so many exhibits I'm getting a little tied up.

23 DIRECT-EXAMINATION OF HEATHER SWARTHOUT BY MR. DEBUSK

24 CONTINUED:

25 Q. Let me show you what's been marked as State's Exhibit

HEATHER SWARTHOUT - DIRECT BY DEBUSK

1 6 and ask if you recognize that?

2 A. Yes sir, I do.

3 Q. Where was that picture taken?

4 A. It was taken at Grand Strand Regional during the
5 autopsy.

6 Q. Is that a fair and accurate representation of the
7 state of the victim during the autopsy?

8 A. Yes.

9 MR. DEBUSK: Your Honor, again, so the foundation is
10 laid.

11 THE COURT: Very good.

12 Q. Let me show you State's 53 and 54 and ask if you
13 recognize these?

14 A. Yes sir, I do recognize them.

15 Q. What are they?

16 A. It's going to be front and the back of the shirt that
17 was taken from the victim at the autopsy.

18 Q. Is that a fair and accurate representation of the
19 shirt when it was recovered at the autopsy?

20 A. Yes sir.

21 MR. DEBUSK: Your Honor, this is just for
22 authentication at this point. It might be brought up at a
23 later date.

24 THE COURT: All right, sir. Thank you very much.

25 Q. Officer Swarthout, I have one more thing for you to

HEATHER SWARTHOUT - DIRECT BY DEBUSK
CROSS BY WILLIAMS

- 1 label on the map.
- 2 MR. DEBUSK: If she could get up.
- 3 A. Come back up?
- 4 THE COURT: All right. If you would come down and
- 5 please remember to stand by the microphone, please Ma'am.
- 6 A. Yes sir.
- 7 Q. I would ask you to indicate to the jury the location
- 8 of the North Myrtle Beach Wal-Mart.
- 9 A. The North Myrtle Beach Wal-Mart is going to be right
- 10 here.
- 11 Q. Thank you.
- 12 A. You're welcome.
- 13 MR. DEBUSK: The Court's indulgence one moment.
- 14 Please answer any questions the Defense might have.
- 15 THE COURT: All right, cross-examination.
- 16 MS. WILLIAMS: Beg the Court's indulgence for just one
- 17 moment, Your Honor.
- 18 THE COURT: Yes Ma'am.
- 19 FIVE PHOTOS MARKED AS DEFENDANT'S EXHIBIT NUMBER 4, 5,
- 20 6, 7, AND 8 FOR IDENTIFICATION ONLY.)
- 21 CROSS-EXAMINATION BY MS. WILLIAMS:
- 22 Q. Ms. Swarthout, did I understand it was -- I could say
- 23 Officer, but I know he called your title and I did not ---
- 24 A. Lance Corporal.
- 25 Q. Lance Corporal?

HEATHER SWARTHOUT - CROSS BY WILLIAMS

- 1 A. Yes Ma'am.
- 2 Q. Okay. If I understand your testimony, you were -- you
- 3 and your partner were the responding officers?
- 4 A. Yes Ma'am. I was there first.
- 5 Q. Okay, and part of the duty of the responding officer,
- 6 once you had determined that there was a potential crime
- 7 scene was to secure it, correct?
- 8 A. Yes Ma'am.
- 9 Q. And that's what you guys did?
- 10 A. Yes Ma'am.
- 11 Q. And, in fact, you guys created a crime scene log, is
- 12 that right?
- 13 A. Yes Ma'am.
- 14 Q. Tell me what a crime scene log is and what it does.
- 15 A. It's basically a log of anyone who comes into the
- 16 secure area, tells the time that they were there and how long
- 17 they were there.
- 18 Q. And why do you do that?
- 19 A. So we know everyone that actually stepped foot inside
- 20 the crime scene. You can tell if someone shouldn't have been
- 21 inside or how long they were inside.
- 22 Q. Okay. Now, you were, if I -- if I recall correctly --
- 23 don't let me put words in your mouth, but you were there as
- 24 the scene was processed as well, is that right?
- 25 A. Yes Ma'am.

HEATHER SWARTHOUT - CROSS BY WILLIAMS

- 1 Q. And basically that means that was when the evidence
2 that was collected was collected, is that correct?
- 3 A. Yes Ma'am.
- 4 Q. And you testified it was Detective Pitsinger and
5 Detective Abercrombie, correct?
- 6 A. Correct.
- 7 Q. Did you actually process any yourself?
- 8 A. No Ma'am.
- 9 Q. So they were the ones that collected this?
- 10 A. Yes Ma'am.
- 11 Q. Your job was just to make sure it was secured?
- 12 A. Yes Ma'am. I was helping if they needed something,
13 hand me this, write this down.
- 14 Q. All right. I'm going to hand you a series of
15 pictures, ask if you can recognize what these are?
- 16 A. Yes Ma'am, I recognize them.
- 17 Q. Okay. Defendant's Exhibit Number 5, can you tell me
18 what that is?
- 19 A. It's a washcloth or a rag in the sink in the bathroom.
- 20 Q. Let me pause for a second. Who took all the pictures
21 at the crime scene?
- 22 A. We all did. I took a few. The main ones inside were
23 taken by Detective Pitsinger.
- 24 Q. So you took some; Detective Pitsinger took some. Did
25 anybody else take any that you know of?

HEATHER SWARTHOUT - CROSS BY WILLIAMS

1 A. I believe Detective Abercrombie took some as well, but
2 I'm not certain.

3 Q. Is that picture an accurate representation of the
4 scene, at that particular scene?

5 A. I don't recall. I didn't take this picture.

6 Q. You didn't take that?

7 A. No.

8 Q. And that's Defendant's Number 5?

9 THE COURT: For identification?

10 A. Yes Ma'am.

11 MS. WILLIAMS: For identification.

12 Q. How about Defendant's Exhibit Number 6 for
13 identification?

14 A. I do recognize it, yes Ma'am.

15 Q. What is that?

16 A. It's going to be the trash can that we found inside
17 the apartment.

18 Q. Is that an accurate representation of the trash can as
19 it was at the time?

20 A. Yes Ma'am.

21 Q. Can I ask you about Defendant's Number 7 for
22 identification.

23 A. Yes Ma'am. It's going to be a picture taken from just
24 inside the front door showing the bathroom and the dining
25 room area of the apartment.

HEATHER SWARTHOUT - CROSS BY WILLIAMS

- 1 Q. And let me ask you this. Isn't part of what you --
2 well, let me say this. Is this picture an accurate
3 representation of what you saw at that scene?
- 4 A. Yes Ma'am.
- 5 Q. All right, and isn't part of what you guys do in
6 securing the scene is to make sure basically nobody comes in
7 and messes with anything, or moves anything, or takes
8 anything away, or adds anything to it until the police do
9 their job to process it, right?
- 10 A. Yes Ma'am.
- 11 Q. Okay, so you made sure that nobody brought anything in
12 or nobody took anything out basically?
- 13 A. Yes Ma'am.
- 14 Q. All right. Defendant's Number 8 for identification,
15 please.
- 16 A. It's going to be a red substance believed to be blood
17 from a bottom of a shoe right inside the front door, and
18 there's also a small pill of some sort right inside the front
19 door.
- 20 Q. Is this an accurate representation of what you saw
21 that day?
- 22 A. Yes.
- 23 Q. Let me ask you for identification Defendant's Number
24 4, ask you if you can identify that?
- 25 A. It's a mark that was found on the victim during the

1 autopsy. I don't recall exactly where it was on the -- on
2 the body.

3 Q. But it's a mark that was on the victim at the autopsy?

4 A. Yes Ma'am.

5 Q. Is that an accurate reflection of that mark?

6 A. Yes Ma'am.

7 Q. Now, let me ask you, you said that this came up to the
8 -- I don't want to put words in your mouth, but I believe you
9 testified that Jeff came up to the scene after you guys were
10 there, is that right?

11 A. Yes Ma'am.

12 Q. And he actually approached you?

13 A. Yes Ma'am.

14 Q. And you asked him to write a statement, and he did, is
15 that right?

16 A. Yes Ma'am.

17 Q. Would it be fair to say that he was courteous?

18 A. Very.

19 Q. Polite?

20 A. Very.

21 Q. Was he even helpful?

22 A. Yes Ma'am.

23 Q. Okay. Detective Swarthout, how long have you been
24 with the North Myrtle Beach Police Department?

25 A. I'm not a detective. I'm a Lance Corporal.

HEATHER SWARTHOUT - CROSS BY WILLIAMS

1 Q. A Lance Corporal. I'm sorry.

2 A. That's okay. I've been with the City of North Myrtle
3 Beach for ten years.

4 Q. Approximately how many crime scenes have you worked,
5 do you know?

6 A. That was my first, and ---

7 Q. Really?

8 A. Yes Ma'am.

9 Q. Okay.

10 MS. WILLIAMS: Beg the Court's indulgence.

11 That's all the questions that I have. Thank you.

12 THE COURT: Any redirect?

13 MR. DEBUSK: No, Your Honor.

14 THE COURT: You may step down, Ma'am.

15 Do you wish the witness to be excused?

16 MR. DEBUSK: Yes, Your Honor. She may stick around,
17 but I would like her to be excused, Your Honor.

18 MS. WILLIAMS: Your Honor, if I may, just for the
19 Court's knowledge, I have under a Defense subpoena -- I have
20 the officers subpoenaed for the North Myrtle Beach --
21 however, I did not want them to hang out at the Courthouse --
22 just in case I needed to call them back.

23 THE COURT: You do not release them from their subpoena
24 is what you're telling me?

25 MS. WILLIAMS: Yes sir. I would like them not released

VANT ABERCROMBIE - DIRECT BY DEBUSK

1 from my subpoena, but ---

2 THE COURT: All right, very good.

3 MS. WILLIAMS: --- they are welcome to leave.

4 THE COURT: Ma'am, you are not released from your
5 subpoena. You may go back to your regular duties, but you
6 are subject to the call of the Court. Thank you very much.

7 Your next witness, sir.

8 MR. DEBUSK: The State calls Detective Vant
9 Abercrombie.

10 THE COURT: All right, sir, if you would come around up
11 here to be sworn, sir.

12 VANT ABERCROMBIE, being first duly
13 sworn, states as follows:

14 THE COURT: All right, sir. As best you can, if you
15 will please remember to stay behind the microphone, sir.

16 All right, Solicitor.

17 DIRECT-EXAMINATION BY MR. DEBUSK:

18 Q. Detective Abercrombie, who is your employer?

19 A. The City of North Myrtle Beach.

20 Q. How long have you been employed by them?

21 A. Approximately eighteen years.

22 Q. What is the nature of your work at this time?

23 A. Investigator with the -- in the Detective Division.

24 Q. What about in August of 2008?

25 A. I was a detective working with the City at that time.

VANT ABERCROMBIE - DIRECT BY DEBUSK

1 as well.

2 Q. Does one of your duties include working a crime scene?

3 A. Yes, it is.

4 Q. Have you had training in working crime scenes?

5 A. Yes. I have training with the South Carolina Criminal
6 Justice Academy, as well as SIRCHIE.

7 Q. On August 28th, 2008, did you respond to
8 in North Myrtle Beach?

9 A. That's correct.

10 Q. What did you do there?

11 A. I was notified that road patrol was out with a
12 deceased body at a residence and was requesting assistance.
13 I got there to the scene approximately 7:54 in the morning.
14 I was informed by Officer Heather Swarthout, who was one of
15 the officers on the scene, of the situation. I observed as
16 you push open the door to the residence at
17 -- that was -- when you push open the
18 door, it was a small -- small apartment, and it's like one
19 room with a little bathroom off to the side. In plain sight
20 right there when you push open the door was the body of --
21 that would later be identified as Phyllis Mowery, was laying
22 face down by the -- some dressers right there as you look
23 into the front door.

24 Q. Okay. Did you obtain a search warrant for that
25 residence?

VANT ABERCROMBIE - DIRECT BY DEBUSK

1 A. It was at that point that I left, went back to the
2 Police Department to get a search warrant. Once I had the
3 search warrant in hand, I went back to the residence there at
4 the crime scene and it was at that point that Detective
5 Pitsinger was there as well, and myself, Detective Pitsinger
6 and Officer Heather Swarthout entered the apartment.

7 Q. Okay. Are you trained in searching for and
8 identifying latent fingerprints?

9 A. I'm sorry?

10 Q. Are you trained to search for and recover latent
11 fingerprints?

12 A. Yes, I am.

13 Q. Did you look for any prints at that scene?

14 A. Yes, I did. I looked for latent prints around the
15 door area, as well as there's a white-topped long dresser
16 that's right next to the front door. I also searched there
17 for latent prints as well.

18 MR. DEBUSK: The Court's indulgence one moment, Your
19 Honor.

20 Q. Let me show you what's been marked as State's Exhibit
21 25 and ask if you recognize this?

22 A. Yes, I do. That's the white countertop to the dresser
23 that's right there at the door as you first come in.

24 Q. It doesn't appear white in the photo. Why is that?

25 A. That's latent fingerprint powder dust that's on there,

VANT ABERCROMBIE - DIRECT BY DEBUSK

- 1 that I dusted on there.
- 2 Q. To help you locate those prints?
- 3 A. Correct. That helps you locate the prints there,
- 4 which there was none discernable, no -- no -- nothing that
- 5 jumped out, no ridge detail or anything there that we could
- 6 find.
- 7 Q. Were there partial fingerprints?
- 8 A. I didn't even find any partial fingerprints.
- 9 Q. Did you leave a copy of the search warrant at the
- 10 scene?
- 11 A. That is correct.
- 12 Q. Okay, and did you make a return to the Judge who
- 13 issued the search warrant?
- 14 A. That's correct.
- 15 Q. Okay. Did you attend the autopsy of Phyllis Mowery?
- 16 A. The following morning. Myself and Officer Heather
- 17 Swarthout attended the autopsy that was performed at Grand
- 18 Strand Regional Medical Center.
- 19 Q. Let me show you a few exhibits and ask if you
- 20 recognize these. That would be State's 10, 6, 48, 49, and
- 21 51, and ask if you recognize these?
- 22 A. Yes, I recognize these.
- 23 Q. What are these?
- 24 A. These were photo -- these were photos taken at the
- 25 autopsy.

VANT ABERCROMBIE - DIRECT BY DEBUSK

- 1 Q. Are they a clear and accurate representation of the
2 state of the victim at the autopsy?
- 3 A. Yes, they are.
- 4 Q. Back to State's 25, I think I asked you this already,
5 but were you able to recover or develop any identifiable
6 prints from that surface or from any other surface in the
7 apartment?
- 8 A. No sir, no, I was not.
- 9 Q. What other surfaces did you check?
- 10 A. Around the door.
- 11 Q. Why did you check the area around the door?
- 12 A. Just as procedure to check to see if there was any
13 prints around the front door.
- 14 Q. Let me show you what's been marked as -- I'm sorry, in
15 evidence as State's Exhibit 4(A) and ask if you recognize
16 this?
- 17 A. Yes, I do.
- 18 Q. What is that?
- 19 A. It's a brown leather woven belt that was found
20 underneath the victim's body.
- 21 Q. Where did you first see that belt?
- 22 A. At the -- at the crime scene there in the living room.
- 23 Q. Where was it in relation to the victim's body?
- 24 A. It was found underneath her.
- 25 Q. How did it leave the scene?

VANT ABERCROMBIE - DIRECT BY DEBUSK

1 A. It was transported with the body to the morgue.

2 Q. In a body bag?

3 A. That's correct.

4 Q. What happened to it at autopsy? Did you see it again?

5 A. Yes sir. It was photographed again with a scale. I
6 believe there's some photographs in here with it, and then
7 taken back afterwards, seized as evidence.

8 Q. Specifically, State's Exhibit 10, what does that show?

9 A. That's the scale put up against the same brown leather
10 belt for measurement.

11 Q. Who is on that scale, do you know?

12 A. I believe Dr. Proctor is.

13 Q. Okay. Is that a fair and accurate representation of
14 the belt at autopsy?

15 A. That's correct.

16 MR. DEBUSK: Your Honor, I would move this into
17 evidence.

18 THE COURT: Any objection?

19 MS. WILLIAMS: May I see the picture?

20 THE COURT: Yes Ma'am.

21 Go ahead, show it to the Defense Counsel.

22 MS. WILLIAMS: No objection to Number 10.

23 THE COURT: All right. State's 10 is in evidence
24 without objection.

25 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER

VANT ABERCROMBIE - DIRECT BY DEBUSK

1 10.)

2 MR. DEBUSK: Your Honor, the photo has been partially
3 redacted. I just wanted to inform the Court.

4 THE COURT: All right. Let me look. All right, thank
5 you.

6 Q. Now, at the crime scene, later at the autopsy, did
7 anyone handle that belt without wearing rubber gloves?

8 A. No.

9 Q. And when it was collected, how was it packaged?

10 A. It was packaged in a brown bag, I believe, a brown
11 paper bag.

12 (BROWN BAG [PREVIOUSLY CONTAINED BELT] MARKED AS STATE'S
13 EXHIBIT NUMBER 4(B) FOR IDENTIFICATION ONLY.)

14 Q. Let me show you what's been marked as State's Exhibit
15 4(B) and ask if you recognize that?

16 A. Yes, I do.

17 Q. What is it?

18 A. It's the North Myrtle Beach types of bag that we bag
19 evidence in with our evidence sticker affixed on the front.

20 Q. Is that the bag that the belt was collected in?

21 A. Either that or a bag like this, that's correct.

22 Q. Is there identifiable writing on the bag?

23 A. Yes, there is, from Detective Pitsinger, with the case
24 number, the evidence number, and the date.

25 Q. Okay, but at any rate, that's the type of bag?

VANT ABERCROMBIE - DIRECT BY DEBUSK

- 1 A. That's correct.
- 2 Q. Were you the one who collected the belt?
- 3 A. That's correct.
- 4 Q. What did you do with it after it had been packaged?
- 5 A. Took it back to the Police Department and it was
- 6 dropped in Evidence at the Police Department.
- 7 Q. Was it altered or changed in any way while it was in
- 8 your possession?
- 9 A. No, it was not.
- 10 Q. Was it handled by anybody with bare hands?
- 11 A. No, it was not.
- 12 Q. Did you collect the victim's clothing?
- 13 A. That's correct. The victim's clothing was taken from
- 14 the autopsy as well.
- 15 Q. Let me show you what's been marked as State's Exhibit
- 16 40 and ask if you recognize the contents of that bag?
- 17 A. This is another North Myrtle Beach Department of
- 18 Public Safety Evidence Bag.
- 19 Q. What is inside?
- 20 A. Do you want to pull it out?
- 21 Q. Yes.
- 22 A. Some red panties.
- 23 Q. Okay. Were those collected from the victim at
- 24 autopsy?
- 25 A. That's correct.

VANT ABERCROMBIE - DIRECT BY DEBUSK

1 Q. And what did you do with those panties?

2 A. They were taken back from the autopsy and logged in as
3 evidence.

4 Q. And to whom did you relinquish custody?

5 A. It was dropped in at Evidence to the evidence
6 custodian.

7 MR. DEBUSK: The Court's indulgence one moment.

8 Q. I show you State's Exhibit 53 and 54 and ask if you
9 recognize those?

10 A. Yes, I do.

11 Q. What are they?

12 A. This was a tee shirt that the victim, Ms. Phyllis
13 Mowery, was wearing.

14 Q. Is that a fair and accurate representation of the
15 state of that tee shirt when it was collected?

16 A. Yes, it is.

17 MR. DEBUSK: Again, Your Honor, just for identification
18 at this time.

19 THE COURT: All right, sir.

20 MR. DEBUSK: At this time, the State would move to put
21 into evidence Exhibit 25.

22 THE COURT: All right. Any objection to State's 25?

23 MS. WILLIAMS: No objection to State's 25, Your Honor.

24 THE COURT: All right. It's in evidence without
25 objection.

VANT ABERCROMBIE - DIRECT BY DEBUSK

1 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
2 25.)

3 Q. Let me show you another exhibit, Detective
4 Abercrombie, State's Exhibit 39 and ask if you recognize
5 this?

6 A. That is correct.

7 Q. What is it?

8 A. This is the S.L.E.D. Sexual Assault Kit commonly known
9 as a rape kit.

10 Q. Where was that collected?

11 A. At the autopsy.

12 Q. Who created the contents of that kit?

13 A. Dr. Proctor.

14 Q. And when you received that, how did that box come into
15 your possession?

16 A. Basically just like this right here; it's sealed.

17 Q. From whom did you get it?

18 A. From the North -- from the autopsy room there. Dr.
19 Proctor has those kits inside there.

20 Q. Dr. Proctor gave you ---

21 A. Yes sir.

22 Q. And, again, in what condition was the kit when you
23 received it?

24 A. Just like this except it's sealed. They were all
25 sealed.

VANT ABERCROMBIE - DIRECT BY DEBUSK
CROSS BY WILLIAMS

1 Q. What did you do with that kit, that sealed kit, once
2 you collected it?

3 A. Well, Dr. Proctor took the samples that are required
4 for the tissue or whatever samples that are needed for the
5 kit. He conducts all of that there during the autopsy. Then
6 it's re-sealed and then taken back -- I took it back to the
7 Evidence Locker there in our Police Department. There's a
8 refrigerator in there where it's kept.

9 Q. Now, from the time you took it from Dr. Proctor until
10 the time you put it into Evidence at the North Myrtle Beach
11 Police Department, was it altered or changed in any way?

12 A. No, it was not.

13 Q. Was it unsealed?

14 A. No, it was not.

15 Q. So you put it into Evidence in a sealed condition?

16 A. Correct. I put it in the refrigerator in a sealed
17 condition.

18 MR. DEBUSK: Thank you. Please answer any questions
19 the Defense may have.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION BY MS. WILLIAMS:

22 Q. Detective Abercrombie, how long have you been with the
23 North Myrtle Beach Police Department?

24 A. Approximately eighteen years.

25 Q. And is that the only Police Department you have served

VANT ABERCROMBIE - CROSS BY WILLIAMS

- 1 with or did you have prior police ---
- 2 A. This is the only police department I've served with.
- 3 Q. You testified that you have had SIRCHIE training, I
- 4 believe?
- 5 A. Yes Ma'am.
- 6 Q. What did that specifically involve?
- 7 A. Crime scene analysis, working crime scenes with
- 8 different types of re-agents and powders and different kinds
- 9 of techniques for different surfaces to remove latent prints
- 10 off of the different kinds of surface that you will come in
- 11 contact with.
- 12 Q. Tell me, is SIRCHIE training the name of the training,
- 13 or is that who provided it, or explain that to me.
- 14 A. Both. It's a company that provides the training.
- 15 Q. Are they accredited?
- 16 A. Yes.
- 17 Q. Okay. Tell me, was your SIRCHIE training basic or was
- 18 it a -- what you would consider advanced?
- 19 A. Basic.
- 20 Q. Okay. Have you had any advanced training in
- 21 fingerprint retrieval?
- 22 A. No, I have not.
- 23 Q. What would you consider to be a latent print?
- 24 A. Any print that's left behind by a suspect or a victim
- 25 or only on a surface.

VANT ABERCROMBIE - CROSS BY WILLIAMS

1 Q. Does it come from a finger, from a palm, from a foot?

2 A. It can, all three.

3 Q. All three surfaces, correct?

4 A. Correct.

5 Q. Okay. Have you been trained to retrieve prints from a
6 body, or from skin, or anything like that?

7 A. No, I have not.

8 Q. Okay. Let me talk about the fingerprint
9 identification. Tell me about background and training
10 specifically if there was anything additional to that SIRCHIE
11 training with fingerprint identification.

12 A. That's really basically it as far as that's concerned,
13 that and in training I received on the job.

14 Q. Okay, and can you tell me what the four main aspects
15 are that you look for in fingerprint identification?

16 A. I'm sorry?

17 Q. The four main aspects that you look for in fingerprint
18 identification.

19 A. As far as the ridge detail, as far as what type of
20 ridge detail you're looking for, whether it's an ending ridge
21 or a bifurcation, things like that, or whorls or loops.

22 Q. Or an arch?

23 A. Or an arch. When I say ridge detail, ridge detail to
24 me is -- and everybody has looked at their fingers and have
25 been quite familiar with it, and you know that the ridge

VANT ABERCROMBIE - CROSS BY WILLIAMS

1 isn't all that -- when I say ridge detail, I use that term to
2 cover the entire print, what it looks like if you took your
3 fingerprint and then lay it down on a surface like that.

4 When I say ridge detail, that's what I mean.

5 Q. Okay, and let me ask you this. You said you had --
6 have you had any training in basic footwear identification?

7 A. No, I have not.

8 Q. Okay. Can you tell me about your basic investigative
9 training that you received?

10 A. That was such a long time ago. The course mostly goes
11 along through what an investigation entails, the paperwork,
12 the types of crimes that you're going to be associated with.
13 You're no longer going to be necessarily dealing with, you
14 know, petit larcenies. You're going to be dealing with stuff
15 that, you know, higher crime, the types of investigations,
16 the types of evidence that are out there, the types of
17 information resources that are available to you, are there --
18 there are other agencies, or the Internet, or things like
19 that.

20 Q. Have you had any training in drug identification?

21 A. Pardon?

22 Q. Have you had any training in drug identification?

23 A. No, I have not.

24 Q. Okay. Let me ask you with regard to this specific
25 crime scene, who was in charge of the crime scene, if you

VANT ABERCROMBIE - CROSS BY WILLIAMS

1 will?

2 A. Detective Dennis Pitsinger was in charge.

3 Q. So it was, in theory, his crime scene, correct?

4 A. Correct.

5 Q. Tell me what that means to be the in-charge person at
6 a crime scene.

7 A. Well, like any crime scene, you need one person in
8 charge to make decisions, someone who has more experience,
9 someone who is the primary investigator on the crime scene.
10 In this particular case, it would have been Detective
11 Pitsinger.

12 Q. Is that important to have one person in charge?

13 A. It's important. I mean, it's not necessary, but yes,
14 it's important.

15 Q. Tell me this. Whose job is it then to determine what
16 evidence is collected and is not collected? Is that the
17 person who's in charge?

18 A. Basically it would be the person who is in charge.

19 Q. All right, so your role at this crime scene was as
20 support? I am assuming that with your years of experience
21 you didn't say, do you think we need this, do you think we
22 need that? Is that fair?

23 A. That's partially fair. Although the lead investigator
24 in something like this is going to be the primary person to
25 decide on this and that. They can't -- they might not see

VANT ABERCROMBIE - CROSS BY WILLIAMS

- 1 everything that's there. You know, more eyes, the better.
2 They might overlook something, so even though the primary
3 investigator would be the person who is in charge of the
4 evidence or what not, it doesn't mean that you don't need
5 other pairs of eyes there that they might not see something.
- 6 Q. Did you actually collect any evidence from the crime
7 scene?
- 8 A. No, I did not.
- 9 Q. Okay, so you were there to assist Detective Pitsinger
10 in essence?
- 11 A. Yes.
- 12 Q. Okay.
- 13 A. And we -- there were some different evidences that
14 were collected, but we were all there basically together at
15 the time. The only evidence that I logged in was the blood
16 smears, the swabs from the blood smears that Detective
17 Pitsinger took.
- 18 Q. So he took the blood swabs, but you logged them in?
- 19 A. Correct.
- 20 Q. But he was the one that actually took them?
- 21 A. Correct.
- 22 Q. And he was the one that decided which ones to take?
- 23 A. That's correct.
- 24 Q. All right. Let me ask you this. What was done with
25 the evidence once it was collected?

VANT ABERCROMBIE - CROSS BY WILLIAMS

- 1 A. Depending on the type of evidence this is, it will be
2 logged in and dropped in as evidence there at the Police
3 Department.
- 4 Q. Okay. Is there a 911 tape in this case?
- 5 A. I'm not sure.
- 6 Q. You don't know?
- 7 A. I don't know.
- 8 Q. Tell me, do you know what evidence from this crime
9 scene were, if any, submitted to S.L.E.D.?
- 10 A. I don't know. I did not submit any evidence to
11 S.L.E.D.
- 12 Q. Okay, so you didn't submit any?
- 13 A. That's correct.
- 14 Q. All right, but if I understand correctly, you were at
15 the autopsy, correct?
- 16 A. That is correct.
- 17 Q. So is it fair to say that you were in charge of the
18 autopsy, or how does that work?
- 19 A. I guess that's fair to say.
- 20 Q. And correct me if I'm wrong; I don't want to misstate
21 something, but if you're -- tell me who decides how to do an
22 autopsy. I'm assuming the police decide they want to have an
23 autopsy done, correct?
- 24 A. That's correct.
- 25 Q. And then tell me what happens? What happens when

VANT ABERCROMBIE - CROSS BY WILLIAMS

1 y'all decide that?

2 A. The coroner, who is notified, and the time is set that
3 the autopsy is to be performed.

4 Q. And then you appear, correct?

5 A. That's correct.

6 Q. Does the autopsy ever start without the police?

7 A. Not with me personally, no.

8 Q. Let me ask you this. Would it be safe that at the
9 autopsy if there's evidence collected at the autopsy, who is
10 in charge of who collects the evidence at autopsy?

11 A. I guess I would be.

12 Q. Okay, so you're in charge of that, so I'm assuming --
13 do you actually collect it or does the doctor performing the
14 autopsy collect it?

15 A. Both.

16 Q. So from the autopsy, you collected some evidence in
17 this case, is that right?

18 A. That's correct.

19 Q. Okay, and once you collected that evidence, what, if
20 anything, did you do with it?

21 A. The evidence I collected was clothing and some
22 personal effects from the victim. They were placed into
23 Evidence and dropped there at the Police Department. The
24 clothing was, for lack of a better term, kind of messy, so
25 you don't want to take clothing that has blood or body fluids

VANT ABERCROMBIE - CROSS BY WILLIAMS

1 on it and drop it right in because of mold and you want the
2 mold and other body fluids to dry completely dry, so when I
3 say dropped into Evidence, these clothes were taken into the
4 Evidence Room.

5 They were -- they were put there with -- you know,
6 behind a lock. These clothes were hung up and dried. I
7 think there was a picture with the shirt on a hanger, and the
8 reason why is to allow the clothing to completely dry before
9 it's put into a bag, you know, individual bags.

10 Q. Do you know if any of that clothing was sent to
11 S.L.E.D. or the F.B.I. or anybody to process?

12 A. I do not know.

13 Q. Would you have been the one to decide if they were to
14 be sent?

15 A. No, I would not.

16 Q. Okay. Let me ask you what's been marked for
17 identification as Defendant's Number 13, ask you if you
18 recognize that?

19 A. Yes. It appears to be some blood type smears on the
20 floor.

21 Q. Is that an accurate reflection of what you saw at that
22 crime scene?

23 A. It looks to be.

24 Q. Defendant's Exhibit Number 12, can you tell me about
25 that?

VANT ABERCROMBIE - CROSS BY WILLIAMS

1 A. It appears to be some sort of blood markings on the
2 floor right there at the -- in the apartment.

3 Q. Is that an accurate reflection of what you saw at the
4 crime scene?

5 A. Yes, it is.

6 MR. DEBUSK: Your Honor, I'm going to object to
7 publishing those to the jury. It's not in evidence.

8 MS. WILLIAMS: I'm sorry. I was not trying to do that.

9 Q. Defendant's Number 11.

10 A. Yes, I recognize it.

11 Q. And what is that?

12 A. This appears to be a shot of the floor. It looks like
13 it could possibly be right there at the entranceway where the
14 front door is.

15 Q. Is this an accurate reflection of what you saw at the
16 crime scene?

17 A. Yes, it is.

18 Q. Let me ask you, did -- did -- I just want to make sure
19 I am clarified. Did you take any pictures at the crime
20 scene?

21 A. I believe I took a picture of the front door area, but
22 that was -- that was it. I believe that Dennis Pitsinger
23 took the -- most of the pictures.

24 Q. Okay. Defendant's Exhibit Number 10 for
25 identification.

VANT ABERCROMBIE - CROSS BY WILLIAMS

1 A. Yes, I think that's some blood patterns there on the
2 floor of the living room area.

3 Q. Let me ask you if this is an accurate reflection of
4 what you saw?

5 A. It appears to be, yes.

6 Q. You don't know if you took this picture or Detective
7 Pitsinger took it?

8 A. Detective Pitsinger.

9 Q. All right. Do you know who put that -- the ruler in
10 that picture?

11 A. I'm going to assume Detective Pitsinger.

12 Q. Okay, but it wasn't you, correct?

13 A. No Ma'am.

14 Q. Okay. Number 9 for identification.

15 A. It appears to be the same -- the same scene.

16 Q. Okay, but is this an accurate reflection of what you
17 saw?

18 A. Correct.

19 Q. Defendant's Number 8.

20 A. Yes, that's correct.

21 Q. And this is an accurate reflection, too, of what you
22 saw?

23 A. Yes, it is.

24 Q. Defendant's Number 7 for identification.

25 A. Yes, I recognize it.

VANT ABERCROMBIE - CROSS BY WILLIAMS

- 1 Q. Is that an accurate reflection of what you saw at that
2 scene?
- 3 A. Yes, it does.
- 4 Q. And Defendant's Number 6 for identification.
- 5 A. That's correct; I recognize it.
- 6 Q. This is an accurate reflection of what you saw at the
7 scene?
- 8 A. Yes, it is.
- 9 Q. I ask you if you can identify Defendant's Number 5 for
10 identification?
- 11 A. I don't -- don't recognize this one.
- 12 Q. You don't recognize that one?
- 13 A. No Ma'am.
- 14 Q. So you're pretty sure that's not a picture you are
15 familiar with?
- 16 A. No Ma'am.
- 17 Q. Okay. Defendant's Number 4 for identification, do you
18 recognize that?
- 19 A. It appears to be; yes, I do.
- 20 Q. When you were at the autopsy, who took pic- --
21 pictures were taken at the autopsy, correct?
- 22 A. Correct.
- 23 Q. Who took those pictures?
- 24 A. I did.
- 25 Q. So is this an accurate reflection of the pictures that

VANT ABERCROMBIE - CROSS BY WILLIAMS

1 you would have taken at the autopsy?

2 A. That's correct.

3 Q. Let me ask you something, Detective Abercrombie.
4 Approximately how many autopsies have you gone to in your
5 career, do you know?

6 A. No, I don't. Quite a few.

7 Q. Quite a few?

8 A. Yes Ma'am.

9 Q. And what's the purpose of you going to the autopsy?

10 A. To observe and photograph -- it depends on the reason
11 for the autopsy; in a case like this right here to observe
12 and photograph any injuries.

13 Q. Would it be fair to say if there's any evidence to be
14 collected from the autopsy, that that would be part of why
15 you are there because you're going to collect the evidence?

16 A. That's correct.

17 Q. And part of what you do is observe and look, and look
18 for things that are potential evidence?

19 A. That, plus a lot of times Dr. Proctor will point out
20 things. I mean, I'm not a medical physician, so he'll point
21 out things, that this looks like this, this looks like that,
22 so I'll photograph it.

23 Q. Okay, so between you and -- and typically -- I'm going
24 to say typically Dr. Proctor does the autopsies here in Horry
25 County, right?

VANT ABERCROMBIE - CROSS BY WILLIAMS

- 1 A. That's correct.
- 2 Q. Unless they go to M.U.S.C., but if they're done here,
3 they're by Dr. Proctor, right?
- 4 A. Typically, yes.
- 5 Q. So somewhere between you and Dr. Proctor, you guys are
6 trying to figure out if there's anything at the autopsy to
7 enter into evidence or that could be of potential evidentiary
8 value, right?
- 9 A. That's correct.
- 10 Q. Let me ask you this. If you saw something that, say,
11 perhaps Dr. Proctor didn't see, would you point it out to
12 him?
- 13 A. There's a possibility.
- 14 Q. Okay, but if you thought it had evidentiary value,
15 would you point it out to him?
- 16 A. That's a possibility, yes.
- 17 Q. I'm going to ask you what's been marked for
18 identification as Defendant's Number 15 and ask you if you
19 recognize that?
- 20 A. This appears to be the white dresser that was next to
21 the door.
- 22 Q. Is this an accurate reflection of what you saw that
23 day at that apartment?
- 24 A. Correct.
- 25 Q. Let me ask you what's been marked for identification

VANT ABERCROMBIE - CROSS BY WILLIAMS

1 as Defendant's Number 14 and ask you if you recognize that?

2 A. That's correct.

3 Q. What is that?

4 A. It appears to be where latent fingerprint powder was
5 dusted on the countertop there from that dresser right there
6 that you showed me.

7 Q. Is Defendant's Number 14 for I.D. an accurate
8 reflection of what you saw that day?

9 A. That's correct.

10 MS. WILLIAMS: Your Honor, at this time ---

11 MR. DEBUSK: Your Honor, 14 appears to be identical to
12 one of the exhibits the State has already put in evidence.
13 Other than that, no objection.

14 MS. WILLIAMS: Your Honor, my position on 14 is if you
15 compare it to the State's, this is in high gloss and it is
16 more easily identifiable.

17 THE COURT: Let me see it.

18 MS. WILLIAMS: Here is State's 25.

19 THE COURT: All right, very good. I'm going to allow
20 Defendant's Exhibit 14 into evidence. Whatever can be made
21 of it will be up to the jury. It is their job to judge the
22 evidence.

23 MS. WILLIAMS: Thank you, Your Honor.

24 (PHOTO ADMITTED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
25 NUMBER 14.)

VANT ABERCROMBIE - CROSS BY WILLIAMS

1 Q. Now, Detective Abercrombie, let's talk about this
2 Number 14. Tell me exactly what you did, please, when you
3 were looking at that.

4 A. When I was processing it or looking at it?

5 Q. Well, tell me what you did. You looked at it and then
6 you obviously decided to try to process it?

7 A. That's correct.

8 Q. Tell me what you did, please.

9 A. I used latent fingerprint powder, which is really
10 basically like a volcanic ash, very fine ash. All of y'all
11 that watch T.V. has probably seen somebody sprinkle this
12 stuff around, so you use a fine brush and dip it in this -- a
13 jar that has this latent, very fine powder and dust around
14 here to expose the -- any kind of ridge detail.

15 Q. And your testimony is you didn't find sufficient ridge
16 detail, correct?

17 A. Correct.

18 Q. All right. Did you ask anybody else to look at it?

19 A. That's correct.

20 Q. You did ask somebody else or did not?

21 A. Sure. We always ask for an opinion if you've got
22 somebody there to say, hey, what do you think about this?

23 Q. Who did you ask?

24 A. I believe Detective Pitsinger.

25 Q. Okay, and the two of you decided that there's not

- 1 enough ridge detail on this to identify it?
- 2 A. That's correct.
- 3 Q. And, Detective Abercrombie, are you familiar with
- 4 amino black?
- 5 A. Yes, I am.
- 6 Q. Tell me about that. What do you know about it?
- 7 A. It's used to adhere to blood so you can see blood
- 8 stains.
- 9 Q. Did you process this with amino black at all?
- 10 A. No, I did not.
- 11 Q. Why not?
- 12 A. I was only processing there for the latent prints.
- 13 Detective Pitsinger was, you know, like I said, the lead
- 14 investigator.
- 15 Q. So you were processing them for latent prints. Was
- 16 Detective Pitsinger looking for prints as well?
- 17 A. I don't believe so.
- 18 Q. So you were the only one looking for prints?
- 19 A. Basically, yes Ma'am.
- 20 Q. Okay, and in this print you used dusting powder?
- 21 A. Correct.
- 22 Q. And it didn't -- didn't reveal to your level what
- 23 would be sufficient ridge detail, correct?
- 24 A. Correct.
- 25 Q. And you didn't try anything else, did you?

VANT ABERCROMBIE - CROSS BY WILLIAMS

- 1 A. No, I did not.
- 2 Q. Are you familiar with Leuco crystal violet?
- 3 A. I believe, again, that's used to adhere for blood
- 4 stains, but I'm not sure.
- 5 Q. You're not sure what it does?
- 6 A. No Ma'am.
- 7 Q. So you're not sure if it would actually maybe possibly
- 8 stick to what this -- let me ask you this. When you look at
- 9 Defendant's Number 14, if those weren't fingerprints, even if
- 10 you're saying they weren't sufficient for ridge detail, what
- 11 were they made in? What would you suspect they were made in?
- 12 A. I'm sorry; I don't understand the question.
- 13 Q. How do you think those fingerprints were made?
- 14 A. Done by someone laying their hand or finger there.
- 15 Q. Okay. Do you know what they're made out of?
- 16 A. The amino acids left behind by the skin.
- 17 Q. Okay. Did you test this to see what this was?
- 18 A. No, I did not.
- 19 Q. Okay, and Defendant's Number 15 is the dresser when
- 20 you had finished with it, right?
- 21 A. That's correct.
- 22 Q. You left the dresser at the scene, correct?
- 23 A. That's correct.
- 24 Q. Are you familiar with Coomassie blue?
- 25 A. No, I'm not.

VANT ABERCROMBIE - CROSS BY WILLIAMS

1 Q. Okay.

2 MS. WILLIAMS: Beg the Court's indulgence for just one
3 moment, please.

4 Q. Detective Abercrombie, let me ask you for my
5 knowledge, okay, if I am making a fingerprint, let's say, and
6 I do this, you just said that the fingerprint would be made
7 out of the amino acids off of my finger, correct?

8 A. Basically, yes.

9 Q. But if we looked at this, odds are we wouldn't be able
10 to see it, correct?

11 A. Depending on the surface. Sometimes you can;
12 sometimes you can't. It just depends.

13 Q. You may see a little oil residue, correct?

14 A. That's correct.

15 Q. Do you see oil residue in that picture, Detective?

16 A. I see some smears. Is that what you're trying -- is
17 that what you're saying?

18 Q. Yes.

19 A. Yes, I do see some smears.

20 Q. Are those smears in oil?

21 A. No. It looks as though they were made by some kind of
22 dried blood possibly.

23 Q. But I just asked you about amino black and you didn't
24 use that ---

25 MR. DEBUSK: Your Honor, once again I'm going to object

VANT ABERCROMBIE - CROSS BY WILLIAMS

1 to publishing it to the jury without making it a -- I'm
2 sorry; is that ---

3 MS. WILLIAMS: They're in; they're both in.

4 MR. DEBUSK: Withdraw my objection.

5 THE COURT: Go ahead.

6 MS. WILLIAMS: Thank you.

7 Q. So, Detective Abercrombie, you have what in your mind
8 appears to be fingerprints made in dried blood and you don't
9 test them in amino black, correct?

10 A. That's correct.

11 Q. You only use latent fingerprint dust powder?

12 A. That's correct.

13 Q. Okay, and then once you couldn't find it, did you do
14 anything else with them other than that picture?

15 A. That's it.

16 Q. So we just left them?

17 A. Correct.

18 MS. WILLIAMS: Beg the Court's indulgence just one more
19 moment, please.

20 THE COURT: Yes Ma'am.

21 Q. Can I ask you just a few more questions, Detective
22 Abercrombie. At the autopsy you said you gathered certain
23 items, correct?

24 A. Yes Ma'am.

25 Q. And I'm assuming those were Ms. Mowery's clothes?

VANT ABERCROMBIE - CROSS BY WILLIAMS
REDIRECT BY DEBUSK

1 A. Clothes and some personal effects.

2 Q. And why did you gather those?

3 A. For evidence and also her personal effects just in
4 case the family would like to have them back.

5 Q. Certainly, but the clothes you collected, because they
6 may have potential evidentiary value, is that a fair
7 statement?

8 A. That's correct.

9 Q. So we've got those and we put them into evidence?

10 A. Correct.

11 Q. Preserved appropriately, but in evidence?

12 A. Correct.

13 Q. I need to make sure. When the body -- when Ms. Mowery
14 was transported from her apartment to the hospital, she was
15 clothed?

16 A. That's correct.

17 Q. And her clothes were removed at the autopsy?

18 A. That's correct.

19 Q. By Dr. Proctor, I'm assuming?

20 A. That's correct.

21 MS. WILLIAMS: That's all the questions that I have at
22 this time.

23 THE COURT: Redirect?

24 REDIRECT-EXAMINATION BY MR. DEBUSK:

25 Q. I direct you to Defendant's Exhibit 14, Detective

VANT ABERCROMBIE - REDIRECT BY DEBUSK

1 Abercrombie. Are there, in fact, some spots of ridge detail
2 there?

3 A. What I would consider a smear, but yes.

4 Q. Was there enough ridge detail there to identify those
5 to any particular person?

6 A. No, there's not.

7 Q. Based on your training, did you feel that further
8 processing of the scene was necessary?

9 A. No, there was not.

10 MR. DEBUSK: No further questions, Your Honor.

11 THE COURT: All right. Do you wish the witness to be
12 excused?

13 MR. DEBUSK: Yes sir.

14 THE COURT: Is this witness under subpoena also from
15 the Defense?

16 MS. WILLIAMS: Yes sir, he is.

17 THE COURT: All right, Detective, you are not released
18 from your Defense subpoena. You remain at the call of the
19 Court, but you are released to go back to your regular
20 activities.

21 DETECTIVE ABERCROMBIE: Thank you, sir.

22 THE COURT: All right, next witness, sir.

23 MR. DEBUSK: Your Honor, may we approach?

24 THE COURT: Yes sir.

25 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 **THE COURT:** Your next witness.

2 **MR. DEBUSK:** The State calls Detective Dennis
3 Pitsinger.

4 **DENNIS JAMES PITSINGER**, being first
5 duly sworn, states as follows:

6 **THE COURT:** You may proceed, Solicitor.

7 **DIRECT-EXAMINATION BY MR. DEBUSK:**

8 Q. Detective Pitsinger, who is your employer?

9 A. The City of North Myrtle Beach Department of Public
10 Safety.

11 Q. How long have you been employed by them?

12 A. Twenty-seven years.

13 Q. Can you describe briefly the nature of your work to
14 the jury.

15 A. I'm assigned to the Investigative Division. We
16 investigate all major crimes anywhere from B & E auto,
17 burglaries, sexual assaults, major assaults, and homicides,
18 and suicides.

19 Q. How long have you been engaged in that particular type
20 of investigation?

21 A. Since October of 2000, ten years.

22 Q. Okay. Have you had any training in the area of crime
23 scene investigation?

24 A. Yes, I have.

25 Q. Do your duties include crime scene investigation?

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF HORRY) (09-GS-26-01053)
3)
4 STATE)
5 VERSUS) TRANSCRIPT OF RECORD
6)
7 JEFFREY WAYNE RIEBE) May 20, 2011
8) May 24, 25, 26, 27, 31, 2011
9) Conway, South Carolina

10 B E F O R E:

11 HONORABLE STEVEN H. JOHN, Judge; AND A JURY.

12 A P P E A R A N C E S:

13 GEORGE HENRY DeBUSK, JR., ESQ.
14 ASSISTANT SOLICITOR FOR HORRY COUNTY
15 ATTORNEY FOR STATE

16 BRANA J. WILLIAMS, ESQ.
17 ATTORNEY FOR DEFENDANT

18
19
20 DIXIE COX EUBANK
21 CIRCUIT COURT REPORTER
22 FIFTEENTH JUDICIAL CIRCUIT
23

24 VOLUME 2 OF 4
25

	<u>I N D E X</u>			
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u> <u>RC</u>
1	May 20, 2011			
2	MOTIONS			17
3	HEATHER SWARTHOUT			
4	MR. DEBUSK	18		25
5	MS. WILLIAMS		22	
6	OWEN LYNAM			
7	MR. DEBUSK	27		
8	MS. WILLIAMS		35	
9	COURT'S RULING			37
10	OWEN LYNAM			
11	MR. DEBUSK	45		
12	(PUBLISHED PORTION OF DVD OF VIDEO STATEMENT)			46
13	(PUBLISHED PORTION OF DVD - STATEMENT OF DEFENDANT)			58
14	MS. WILLIAMS		59	
15	DEFENSE'S SUMMATION (WILLIAMS)			62
16	STATE'S SUMMATION (DEBUSK)			64
17	COURT'S RULING			66
18	REVIEW OF DEFENDANT'S STATEMENT			69
19	COURT'S RULING			82
20	COURT TO DEFENDANT			86
21				
22				
23				
24				
25				

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	
May 20, 2011		<u>(FOR MOTIONS ONLY)</u>
S-1	Statement of Defendant (2 photograph.)	22
S-2	Miranda Rights	32
S-3	Response from State to request	42
S-4	Transcribed statement (1st statement)	71
S-5	Transcribed statement (2nd statement)	71
S-6	Video of statement	72
S-7	(NOT ADMITTED)	
S-8	Photo of Defendant	22
D-1	Request to redact	40

1	<u>I N D E X</u>				
2	May 24, 2011				
3	JURY SELECTION (NOT TRANSCRIBED - JURY SELECTION FORM ATTACHED)				
4	(BATSON MOTION WAS MADE - DENIED)				
5	JURY OUT/ON RECORD (BATSON MOTION)				101
6	COURT'S RULING				106
7	MOTION TO SEQUESTER				107
8	JURY IN/SWORN				109
9	COURT TO JURY				109
10	STATE'S OPENING STATEMENT (DEBUSK)				110
11	DEFENDANT'S OPENING STATEMENT (WILLIAMS)				117
12	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
13	MICHELLE JACQUELINE RAINEY				
14	MR. DeBUSK	119		130	
15	MS. WILLIAMS		126		
16	DIANA MARIE MOWERY				
17	MR. DeBUSK	131/145			
18	JURY OUT/ON RECORD/JURY IN				141/145
19	MS. WILLIAMS		147		
20	ROBERT STANLEY HODGES				
21	MR. DEBUSK	151		157	
22	MS. WILLIAMS		155		157
23					
24					
25					

1	<u>I N D E X</u>				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	VICKY SHARRER				
4	MR. DEBUSK	159		168	
5	MS. WILLIAMS		163		
6	LUNCH				169
7	JURY OUT (as to Juror #274)				170
8	JURY IN				173
9	SAM GEORGAKOPOULOS				
10	MR. DEBUSK	175			
11	MS. WILLIAMS		183		
12	HEATHER SWARTHOUT				
13	MR. DEBUSK	188			
14	JURY OUT/ON RECORD/BREAK/JURY IN				205/209
15	MS. WILLIAMS		211		
16	VANT ABERCROMBIE				
17	MR. DEBUSK	218			
18	MS. WILLIAMS		228		
19	DENNIS JAMES PITSINGER				
20	MR. DEBUSK	250			
21	JURY OUT/BREAK/ON RECORD/JURY IN				262
22	JURY OUT/ON RECORD/JURY IN				289
23	END DAY				310
24					
25					

	<u>I N D E X</u>				
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
1	May 25, 2011				
2	JURY OUT/ON RECORD/JURY IN				310
3	MS. WILLIAMS		312		
4	JURY OUT/ON RECORD/JURY IN				356
5	DEBRA THOMPSON				
6	MR. DEBUSK	377			
7	MS. WILLIAMS (NONE)				
8	RENEE BEST				
9	MR. DEBUSK	379			
10	MS. WILLIAMS		389		
11	JURY OUT				394
12	AMY STEPHENS				
13	MR. DEBUSK	395			
14	MS. WILLILAMS (NONE)				
15	LORI GILES				
16	MR. DEBUSK	405			
17	MS. WILLIAMS		409		
18	SHERREE BROWN				
19	MR. DEBUSK	413			
20	MS. WILLIAMS (NONE)				
21					
22					
23					
24					
25					

1		<u>I N D E X</u>			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	MELINDA RAINES				
4	MR. DEBUSK	419			
5	MS. WILLIAMS		423		
6	KATIE URKA				
7	MR. DEBUSK	425		452	
8	MS. WILLIAMS		434		457
9	JURY OUT/LUNCH/JURY IN				458
10	ROBERT L. EDGE, JR.				
11	MR. DEBUSK	459			
12	MS. WILLIAMS		460		
13	PAM SMITH				
14	MR. DEBUSK	463			
15	MS. WILLIAMS (NONE)				
16	TINA GOFF				
17	MR. DEBUSK	464			
18	MS. WILLIAMS		469		
19	RACHEL WYLIE GRANT				
20	MR. DEBUSK	470		511	
21	JURY OUT/ON RECORD/JURY IN				477
22	MS. WILLIAMS		487		
23	JURY OUT/ON RECORD/BREAK/JURY IN				514
24					
25					

1	<u>I N D E X</u>			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u> <u>RC</u>
3	CARL DAVID FARMER			
4	MR. DEBUSK	516		
5	MS. WILLIAMS		518	
6	JURY OUT/BREAK/JURY IN			521
7	EDWARD LEROY PROCTOR, JR.			
8	MR. DEBUSK	522		547
9	MS. WILLIAMS		535	
10	END DAY			
11				
12	May 26, 2011			
13	JURY OUT/ON RECORD/COURT'S RULING			550
14	OWEN LYNAM			
15	MR. DEBUSK	555		614
16	PUBLISHED S-45, DVD, INTERVIEW			560
17	JURY OUT/BREAK/ON RECORD/JURY IN			564
18	PUBLISHED S-46 (DVD)			570
19	LUNCH			571
20	JURY IN			571
21	MS. WILLIAMS		572	618
22	JURY OUT/ON RECORD/JURY IN			583
23				
24				
25				

1		<u>I N D E X</u>			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	JEFFREY WHITE				
4	MR. DEBUSK	622			
5	MS. WILLIAMS		624		
6	JURY OUT/ON RECORD				628
7	PUBLISHED PORTION OF S-46				630
8	STATE'S CASE (MOTIONS)				630
9	COURT'S RULING				632
10	CHARLES MICHAEL BOWERS				
11	MS. WILLIAMS	650			
12	MR. DEBUSK		656		
13	JURY IN/COURT TO JURY/JURY OUT/ON RECORD				666
14	COURT'S RULING				670
15	END DAY				675
16					
17	May 27, 2011				
18	JURY OUT/ON RECORD/JURY IN				675
19	CHARLES MICHAEL BOWERS				
20	MS. WILLIAMS	689		726	
21	MR. DeBUSK		721		
22	JURY OUT/BREAK/JURY IN				728/729
23					
24					
25					

	<u>I N D E X</u>			
	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u> <u>RC</u>
1				
2	ROBERT JOHN BELLOTO, JR.			
3				
4	MS. WILLIAMS	729		
5	JURY OUT/ON RECORD/JURY IN			743/745
6	MS. WILLIAMS	745		
7	JURY OUT/ON RECORD/COURT'S RULING			755/758
8	MS. WILLIAMS	758		
9	JURY OUT/ON RECORD/JURY IN			760/764
10	MR. DEBUSK		766	
11	JURY OUT/ON RECORD/BREAK/JURY IN			768/770
12	DONALD GIRNDT			
13	MS. WILLIAMS	770		
14	MR. DEBUSK		798	
15	JURY OUT/ON RECORD/LUNCH/JURY IN			801/803
16	BRIAN W. MEEHAN			
17	MS. WILLIAMS	803		
18	JURY OUT/ON RECORD/JURY IN			803/832
19	MR. DEBUSK		844	
20	JURY OUT/BREAK/JURY OUT			859
21	COURT TO DEFENDANT (Concerning his Rights)			859
22	JURY IN			865
23	END DAY			
24				
25				

1	<u>I N D E X</u>				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
3	MAY 31, 2011				
4	JURY OUT/ON RECORD/MOTIONS				868
5	REVIEW CHARGE AND VERDICT FORM				
6	JURY IN/COURT TO JURY				885
7	DEFENDANT'S SUMMATION (WILLIAMS)				886
8	STATE'S SUMMATION (DEBUSK)				899
9	JURY OUT/BREAK/JURY IN				926
10	CHARGE BY THE COURT				927
11	JURY OUT @ 11:30 A.M.				936
12	JURY OUT/ADDITIONS, EXCEPTIONS, OBJECTIONS				936
13	JURY TO DELIBERATE AT 11:30 A.M.				
14	JURY IN @ 12:50 A.M.				939
15	VERDICT - GUILTY (MURDER)				
16	JURY POLLED (ALL AFFIRM)				
17	JURY DISMISSED				
18	MOTIONS				936
19	COURT'S RULING				
20	SENTENCING				936
21	END DAY				
22					
23					
24					
25					

<u>E X H I B I T S</u>				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2	S-1	Photo		121
3	S-2	Photo		121
4	S-3	Photo	137	148
5	S-4	(Brown box) (containing S-4 (A) (B) (C)	140	516
6	S-4 (A)	Brown leather belt		140/516
7	S-4 (B)	Brown bag	224	516
8	S-4 (C)	Swabs	303	
9	S-5	Large aerial poster		191
10	S-6	Photo (later became D-29)		
11	S-7	Handwritten statement (2pg) Defendant	198	562
12	S-8	Photo	195/630/666	
13	S-9	Photo		260
14	S-10	Photo		233
15	S-11	Photo		200
16	S-12	Photo		200
17	S-13	Photo		200
18	S-14	Photo		260
19	S-15	Photo		260
20	S-16	Photo		260
21	S-17	Photo		260
22	S-18	Photo		260
23	S-19	Photo		260
24	S-20	Photo		260

EXHIBITS

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-21	Photo		260
4	S-22	Photo		260
5	S-23	Photo		260
6	S-24	Photo		260
7	S-25	Photo	227/260	
8	S-26	Photo		260
9	S-27	Photo		260
10	S-28	Photo		260
11	S-29	Photo		260
12	S-30	Photo		260
13	S-31	Photo		260
14	S-32	Photo	125/518	
15	S-33	Photo		561
16	S-34	Photo		561
17	S-35	Floor plan (hand drawn)		563
18	S-36	Photo		260
19	S-37	Photo		260
20	S-38	Diagram of the scene		255
21	S-39	Sexual Assault Kit	203/630/666	
22	S-40	Brown bag containing red panties	204/630/666	
23				
24				
25				

1	<u>EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-41	Four teeth		308
4	S-42	Meds (Aleve)		266
5	S-43	Bag containing 2 shoes and 2 socks		564
6	S-44	Miranda form	558	559
7	S-45	DVD of interview with Defendant	559	560
8	S-46	DVD of interview with Defendant		570
9	S-47	Photo	142	145
10	S-48	Photo	174	527
11	S-49	Photo	174	527
12	S-50	Photo	174	527
13	S-51	Photo	174	527
14	S-52	Photo	174	208
15	S-53	Photo	174	
16	S-54	Photo	174	
17	S-55	Photo		261
18	S-56	Photo		261
19	S-57	Photo	261/311	
20	S-58	Photo		261
21	S-59	DNA chart	452	455
22	S-60	DNA chart	452	455
23	S-61	REPORT OF RACHAEL GRANT	476	484
24		(3 pages with Table)		
25				

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-62	Bulletin	848	
S-63	(2 pg.) Bulletin		853
D-1	Statement of D.M. Rainey	164	
D-2	Photo of shoes	354	359
D-3	Statement of Mr. Georgakopoulos	185	
D-4	Photo	211	543
D-5	Photo	211	343
D-6	Photo	211	
D-7	Photo	211	331
D-8	Photo	211	337
D-9	Photo	354	362
D-10	Photo	354	362
D-11	Photo		340
D-12	Photo	354	376
D-13	Photo	354	376
D-14	Photo	242	
D-15	Photo		354
D-16	Photo		361
D-17	Photo	518	519
D-18	Photo	577	578
D-19	Photo	579	580
D-20	Photo	578	579

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	D-21	Photo (NOT ADMITTED)		
4	D-22 (A) (B) (C)	DNA charts	501	503
5	D-23	DNA chart	444	445
6	D-24	DNA chart	444 445/730	
7	D-25	DNA chart	446	446
8	D-26	Photo	579	580
9	D-27	Photo	579	580
10	D-28	(3 pg.) Report - Richland Co.	481	
11	D-29	Photo (formerly S-6 (ID)	540	543
12	D-30	Photo	542	
13	D-31	Photo	542	
14	D-32	CV of Brian W. Meehan	770	
15	D-33	CV of Donald C. Girndt	770	
16	D-34	CV of Robert J. Belloto, Jr.	770	
17	D-35	CV of Charles Michael Bowers	770	
18	D-36	(4 pages) of SLED manual	828	
19				
20	C-1	Note from Jury	209	
21	C-2	Defendant's Voir Dire	310	
22				
23				
24				
25				

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

- 1 A. Yes, they do.
- 2 Q. Let me ask you, in the City of North Myrtle Beach, do
- 3 you have crime scene specialists?
- 4 A. I guess you could say we do. I'm probably the most
- 5 trained. I actually train other employees within the
- 6 department.
- 7 Q. But you also have other duties?
- 8 A. Yes, I do.
- 9 Q. In fact, I think one officer testified she is also a
- 10 firefighter?
- 11 A. Correct.
- 12 Q. Is that common?
- 13 A. Yes; yes, we do.
- 14 Q. Now, were you on duty on August 28, 2008?
- 15 A. Yes, I was.
- 16 Q. Did you respond to ?
- 17 A. Yes, I did.
- 18 Q. Where did you go?
- 19 A. , .
- 20 Q. What was your role at the scene?
- 21 A. To process the crime scene for physical evidence.
- 22 Q. What did you see when you got there?
- 23 A. As we opened the door, we had a search warrant in
- 24 hand. That was the first time I entered the apartment. I
- 25 was -- I actually came in at 9:00. Others had came in at

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 8:00 that particular day. When we opened the door, we saw a
2 body in what I would say would be a pool of blood lying on
3 the floor.

4 MR. DEBUSK: Beg the Court's indulgence for a moment.

5 THE COURT: Yes sir.

6 Q. Detective Pitsinger, let me show you State's Exhibit 2
7 and ask if you recognize that?

8 A. Yes, I do.

9 Q. Just so the jury will know, I know that you are
10 referencing some notes there. What do you have with you?

11 A. These are the actual pictures that I took at the crime
12 scene. I'm just making sure they match up to these that I'm
13 viewing.

14 Q. Those are your copies?

15 A. Yes, they are.

16 Q. Okay. Does that show the apartment where you went to
17 process the scene?

18 A. Yes, it does.

19 Q. Which apartment was it.

20 A. , the unit. It's actually on the rear
21 portion of the house.

22 Q. Let me show you State's Exhibit 47 in evidence and ask
23 if you recognize that?

24 A. Yes, I do.

25 Q. What is that?

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 A. This is a picture I took. I was standing in the rear
2 portion or the kitchen area of the apartment taking a
3 photograph towards the front door or the victim's body.

4 Q. Does that accurately represent the position of the
5 victim when you arrived?

6 A. Yes, it does.

7 Q. Let me show you -- let me ask you this first. Did you
8 create any crime scene diagram of that apartment?

9 A. Yes, I did.

10 Q. Let me show you what's been marked as State's Exhibit
11 38 and ask if you recognize that?

12 A. Yes, I do.

13 Q. What is it?

14 A. This is a diagram that -- our records clerk has a
15 program, a crime scene program, on her computer, and I sat
16 down with her with a hand-drawn one that myself and Officer
17 Swarthout completed while we were there, and then we just
18 formatted it in the diagram portion.

19 Q. Is it a scale diagram? Is that a scale diagram of the
20 crime scene?

21 A. No, it is not to scale.

22 Q. However, is it sufficient enough to help you explain
23 the crime scene to the jury?

24 A. Oh, yeah. It's a representation of the actual hand-
25 drawing.

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 **MR. DEBUSK:** Your Honor, we would move State's Exhibit
2 38 into evidence.

3 **THE COURT:** Any objection?

4 **MS. WILLIAMS:** Your Honor, I would object. I mean, he
5 says it's not to scale. It's not there. I don't mind if he
6 uses it for, you know, for reference purposes, but I don't
7 know that it needs to be in evidence, Your Honor. I don't
8 think it's -- you know, it's a diagram that they've created
9 amongst themselves and it's ---

10 **THE COURT:** How about just ask a few more questions of
11 the Detective about the details that are located therein.

12 **Q.** What does this diagram show?

13 **A.** It shows a layout of the apartment with certain items,
14 the body, and, I mean, it just shows basically items of an
15 evidentiary nature that we can go back and show where the
16 victim was, where chairs were, where the bed was, the stove,
17 refrigerator, sink, the trash can, the bathroom area.

18 **Q.** Is it a roughly accurate diagram of the crime scene?

19 **A.** With the exception of it being not to scale, it is.

20 **Q.** Would it aid you in explaining the crime scene to the
21 jury?

22 **A.** Absolutely.

23 **THE COURT:** I'm going to allow State's 38 in evidence
24 over the objection of the Defense.

25 **MR. DEBUSK:** Thank you.

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 (DIAGRAM OF SCENE ADMITTED INTO EVIDENCE AS STATE'S
2 EXHIBIT NUMBER 38.)

3 MR. DEBUSK: Your Honor, is it all right if I publish
4 it to the jury?

5 THE COURT: Yes sir, you may.

6 MR. DEBUSK: Your Honor, I may have to pull out some
7 photos.

8 THE COURT: All right. Go ahead and do that.

9 MR. DEBUSK: I apologize for the delay.

10 Q. Detective Pitsinger, let me show you State's Exhibit
11 36, 37, 48, 42, 30 -- I'm sorry -- 28, Exhibit 28, 30 ---

12 THE COURT: I'm sorry. Which one was 28 now? Is that
13 another one?

14 Q. Let's do these in batches. You have Exhibit 28, 30,
15 31, 36, and 37. I ask if you recognize those?

16 A. As far as these five, yes, I do.

17 Q. What are they? If you would read the exhibit number
18 and speak about each photo.

19 A. I'll go in order. Number 28, this is a dresser
20 section that was directly in front of where the victim's body
21 was positioned on the floor.

22 Q. Okay. What does that further depict?

23 A. A blood stain pattern on the -- it shows the floor,
24 the baseboard behind the dresser, and the lower portion of
25 the dresser, and the lower two drawers of the dresser with

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 the blood stain pattern on it.

2 Q. I would ask if you could you approach the diagram and
3 demonstrate to the jury where on the crime scene the dresser
4 was?

5 A. You're just going to publish this?

6 Q. No, no. Just show them on the crime scene where that
7 dresser was.

8 A. This is the dresser we're talking about here. If I'm
9 not mistaken, there's three drawers on each side as it sits
10 there, on this side and on this side, and the picture depicts
11 the lower drawer from the floor and on the left side with the
12 pattern analysis on -- that same pattern on ---

13 THE COURT: All right, sir, you're going to have to --
14 Solicitor, you are going to have to move that board closer
15 and you're going to have to stand next to that microphone and
16 speak up so the people can hear you because you are bending
17 down and your voice is going to the ground.

18 MR. DEBUSK: This microphone right here.

19 A. This is the dresser that the victim was laying in
20 front of face down. The dresser here has three drawers on
21 either side. The drawer in the picture that we are talking
22 about is the lower drawer closest to the floor, and the
23 baseboard I'm talking about is a white baseboard on the wall
24 -- the floor on the wall behind it with a blood stain on it
25 also.

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 Q. Would you go -- proceed to the next picture, Detective
2 Pitsinger.

3 A. This is Number 30. This is the dresser with -- I'm
4 sorry, the refrigerator in the kitchen with a blood pattern
5 on it.

6 Q. And the next picture.

7 A. 31. This is the inside portion of the door that would
8 butt up against the frame, not the outside of the door, not
9 the inside of the door, but the metal frame. It has -- what
10 appears to be on it is a blood stain, and this one has a --
11 this particular one has a scale in it.

12 Q. Would that be the entrance door and not -- how many
13 doors were there in ---

14 A. Just one.

15 Q. Was there also a door to the bathroom?

16 A. Yes. I'm sorry.

17 Q. But this is the door that -- the entrance and exit
18 door, is that correct?

19 A. Yes, it was.

20 Q. Okay, and what's the next ---

21 A. 36. This is a white and a beige dresser. It's got a
22 white top and a beige painting on the dresser. This one is
23 -- when you enter the door, the first dresser I was talking
24 about is directly in front of you to the right. This dresser
25 is to the left as you enter the door.

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 Q. And what does that reflect on that dresser?

2 A. On the top portion of it there's numerous blood
3 stains, appear to be a hand swipe on top of it.

4 Q. Is that based on your training and experience?

5 A. Yes, it is.

6 Q. Okay. Is there another photo?

7 A. Yes sir, Number 37. This is the -- there's an
8 overturned chair in the diagram there. This is the one to
9 the left closest to the foot of the bed. It's overturned.
10 You can actually see my feet in it, and there's a blood
11 droplet or blood stain on the tile there that's inconsistent
12 with anything that's up at the front where the victim is at.

13 Q. What do you mean, it's not consistent?

14 A. Well, there's no trail leading to it. All the area or
15 where the victim was laying, there's, you know, a lot of
16 blood stain pattern around her, and this is -- each tile is
17 one foot, so it's probably about ten feet away from her, and
18 it's just one single drop.

19 Q. Is that the -- was that the last picture?

20 A. This is the last picture.

21 Q. Let me show you State's 1, 9, 14, 15, 16, 25, 17, 18,
22 19, 20, 21, 22, 23, 24, 26, and move State's 25 back to --
23 26, 27, 29, 52, and ask you if you recognize these photos?

24 A. Yes, I do.

25 Q. Are those all fair and accurate representations of

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 what you saw at the crime scene?

2 A. Yes, they are.

3 Q. Did you take those photos?

4 A. I believe all but one of them.

5 Q. Would all those photos aid you in explaining the crime
6 scene?

7 A. Absolutely.

8 MR. DEBUSK: Your Honor, I think that we have some of
9 these in evidence and some of them still pending, but I don't
10 think we have any objection on these, so I will hand them to
11 the Defense to ---

12 THE COURT: All right, very good.

13 MR. DEBUSK: And some are already in.

14 MS. WILLIAMS: Your Honor, that's correct. I believe
15 some are already in evidence, and the remaining ones I do not
16 -- the Defense doesn't object to.

17 THE COURT: All right, so why don't you just read them
18 all off so that we are clear.

19 MR. DEBUSK: Your Honor, if I may have just a moment to
20 put them in order to try to clear up the record a little bit.

21 THE COURT: All right, very good.

22 MR. DEBUSK: Okay, Your Honor, these pictures are
23 either already in evidence that we are seeking to admit now,
24 are State's Exhibit 1, I believe already in evidence; State's
25 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 28, 29, 30, 31, 36, 37, and 52, which I believe is also
2 already in evidence.

3 THE COURT: All right, very good.

4 MS. WILLIAMS: Your Honor, if I may, just to make sure
5 we are clear for the record, there's -- there are certain
6 ones in there that I did object to and the Court has allowed
7 those in. I just wanted to make sure that, Your Honor, I
8 wasn't waiving my initial objection. It's just the
9 additional ones that we do not object to, that the Court
10 allowed in some over my objection and I know they're in
11 evidence, but they were in part of that stack the Solicitor
12 just had.

13 THE COURT: All right, so that was 52. It looks like
14 52 is the only one. Anyway, they're in evidence. All of
15 them are in evidence.

16 (TWENTY-ONE PHOTOS ADMITTED INTO EVIDENCE AS STATE'S
17 EXHIBIT NUMBER 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,
18 25, 26, 27, 28, 29, 30, 31, 36, AND 37.)

19 MR. DEBUSK: Thank you, Your Honor.

20 Q. Finally, four final photos, State's 55, 56, 57, and
21 58.

22 MR. DEBUSK: State's 2 and 47 are already in evidence,
23 Your Honor.

24 THE COURT: All right, sir.

25 A. Yes, I do.

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 Q. Okay. Are those photos you took at the crime scene?

2 A. Yes, they are.

3 Q. Are they fair and accurate representations of the
4 crime scene?

5 A. Yes, they are.

6 Q. Would they help you to explain various aspects of the
7 crime scene and the patterns of blood there?

8 A. Absolutely.

9 MR. DEBUSK: Your Honor, these are items that the State
10 -- the Defense has objection to. I don't know if ---

11 THE COURT: All right. Let me see these, please.

12 All right, over the objection of the Defense, I'm going
13 to allow in 55, 56, 57, and 58 with the understanding that 57
14 will be redacted as indicated by the Court.

15 MR. DEBUSK: As we spoke about earlier, Your Honor?

16 THE COURT: Yes.

17 MR. DEBUSK: With the Court's permission, I will
18 substitute a redacted version for ---

19 THE COURT: 57.

20 MR. DEBUSK: --- 57 after I get a chance to print the
21 new one.

22 THE COURT: Yes sir.

23 (FOUR PHOTOS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
24 NUMBER 55, 56, 57, AND 58.)

25 MR. DEBUSK: Before I move on to publishing those --

JURY OUT - ON RECORD

1 well, Your Honor, at this time the State would like to
2 publish these to the jury via power point.

3 THE COURT: All right, sir; you may do so.

4 MR. DEBUSK: Your Honor, it will take just a moment to
5 redact that photo for publishing. If you would care to take
6 a brief break, it will take about five minutes.

7 THE COURT: All right. We will take a short break for
8 five minutes. Thank you very much.

9 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE
10 PRESENCE OF THE JURY.)

11 THE COURT: Are we ready for the jury? State?

12 MR. DEBUSK: Yes, Your Honor.

13 THE COURT: All right, very good. Defense?

14 MS. WILLIAMS: We're ready to proceed, Your Honor.

15 THE COURT: All right.

16 MS. WILLIAMS: If I may, ---

17 THE COURT: Yes Ma'am.

18 MS. WILLIAMS: --- I don't know if this is -- it's
19 probably not the appropriate time, Your Honor, so we will
20 proceed.

21 THE COURT: All right, very good. Ask the jury to come
22 in, please.

23 So you are withdrawing 57, is that correct, Solicitor?

24 MR. DEBUSK: No, Your Honor. I will provide a
25 corrected -- a redacted version of it. She took it to ---

JURY OUT - ON RECORD
JURY IN

1 **THE COURT:** You're just not going to do it at this
2 point in time?

3 **MR. DEBUSK:** That's correct.

4 **THE COURT:** You're not going to publish it to the jury
5 at this point in time?

6 **MR. DEBUSK:** Correct, Your Honor.

7 **THE COURT:** All right, very good.

8 All right, Counsel, the jurors are still having trouble
9 hearing both of you, so you need to be more conscious of
10 being behind a microphone and speak up because they say they
11 are having an extremely difficult time hearing both of you.

12 **MR. DEBUSK:** Yes, Your Honor.

13 **THE COURT:** The placard and the podium, we will need to
14 move those if you're going to show something on the screen
15 because you're going to block the jury's view, so we'll have
16 to move that back around the corner. Is that connected?

17 **MR. DEBUSK:** It is connected, Your Honor.

18 **THE COURT:** All right, so make sure you don't roll it
19 too far and jerk it out. All right, and then let's move the
20 placard, too.

21 **MR. DEBUSK:** Is that sufficient, Your Honor?

22 **THE COURT:** Hopefully. We'll find out in a second. I
23 don't know.

24 All right, ask the jury to come in, please.

25 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 JURY.)

2 THE COURT: All right, Solicitor, you may proceed.

3 MR. DEBUSK: Thank you, Your Honor.

4 CONTINUING DIRECT-EXAMINATION BY MR. DEBUSK:

5 Q. Detective Pitsinger, did you review this power point
6 presentation with me in my office?

7 A. Yes, I did.

8 Q. Several circles indicating location came up. Did we
9 agree on those as the correct locations for each photo?

10 A. Yes, we did.

11 Q. Okay. What does this show? This is State's Exhibit
12 14 for the record.

13 A. This is the -- I try to get like an overall photograph
14 so I can kind of sandwich the primary crime scene between
15 other buildings in case something changes. I'm actually
16 standing on the north side of close to the
17 sidewalk there taking a picture of the house.

18 Q. For the record, this is Exhibit 2. What does that
19 show?

20 A. This is the back of the house or the apartment
21 complex.

22 Q. Again, which apartment was it that you found Phyllis
23 Mowery's body?

24 A. Number . It's the lower left unit with the green
25 door.

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

265

1 Q. And is this the crime scene diagram that you admitted
2 as State's Exhibit 38?

3 A. Yes, it is.

4 Q. And looking at this particular portion here, State's
5 Exhibit 9, I ask you what does that show?

6 A. It shows the front entranceway or the only
7 entranceway. The front door is partially open with some
8 blood patterns on the tile.

9 Q. Let's start with the blue objects in this view. What
10 are those?

11 A. The two that -- there's one item that's crushed back
12 there at the top of the screen, and I can't really tell you
13 what that is. The other two -- and then there was a third
14 one that's in the picture, I believe it was under her, are
15 Aleve ---

16 Q. Well, let me show you State's Exhibit 42 and ask if
17 you recognize this?

18 A. Yes. It's the pills collected from the floor.

19 Q. And were you able to determine what those pills were?

20 A. Well, the ones that were whole, like I said, they had
21 the word Aleve stamped on them, and I believe one of them ---

22 MS. WILLIAMS: Your Honor, I don't believe those are in
23 evidence.

24 MR. DEBUSK: Oh, I'm sorry, Your Honor. He's
25 identified them, Your Honor, before we move them into

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 evidence, but I will at this time, based on the
2 identification ---

3 Q. Did you collect those at the scene?

4 A. Yes, I did.

5 MR. DEBUSK: We would move those into evidence.

6 THE COURT: Any objection?

7 MS. WILLIAMS: Could I see it, please?

8 THE COURT: Yes Ma'am.

9 MS. WILLIAMS: Your Honor, I have no objection to
10 Number 42 coming in.

11 THE COURT: All right. It's in evidence without
12 objection.

13 (MEDS (ALEVE) ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
14 NUMBER 42.)

15 Q. Were you able to determine what Exhibit 42, what those
16 pills were?

17 A. Again, the ones that are whole, you can see Aleve
18 stamped on them. There was one that's broken, or actually
19 two that are -- one that is broken, but is broken into two
20 pieces. Without gloves on, I can't really put them together.

21 Q. But those are the pills you collected from this
22 location here?

23 A. That's correct, they are.

24 Q. Moving on, and this location right here, this would be
25 State's Exhibit 55. I ask if you can identify that?

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 A. Yes. That's my shoes, again, there. This is just a
2 photo over the top of the victim, and then you can see the
3 doorway to the right and the dresser we spoke of earlier
4 towards the top or to the head of the victim.

5 Q. Okay. Is that a fair and accurate representation of
6 how she was positioned when you arrived?

7 A. Yes, it is.

8 Q. This is State's Exhibit 15. I ask if you could
9 explain to the jury what that is?

10 A. This is a picture -- I'm standing just inside the
11 doorway. I'm just doing some general shots all around the
12 apartment. This one is actually -- you can see the T.V. on
13 there to your right, the bathroom straight ahead of you, and
14 there's like a goblet there on the ground and a blood stain
15 pattern on the short bathroom wall there.

16 Q. This is State's Exhibit 16. What does that show?

17 A. Standing in the doorway, I've kind of turned to my
18 left. The victim would be to my right. The bathroom would
19 be to my right, and this is shooting towards the back portion
20 of the apartment, the bed to the left and the kitchen to the
21 right.

22 Q. And what does this show, State's Exhibit 17?

23 A. Again, I'm at the front door shooting inward, focusing
24 on the overturned chair here to the left and the uprighted
25 chair to the right, and you can see the kitchen there to the

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 right of the corner.

2 Q. State's 18.

3 A. Again, this is part of the bathroom with the blood
4 stain pattern on the wall, and there's a blanket or a sheet
5 rolled up in the chair there. There's a book on the table
6 and some clothes in a laundry basket there next to the
7 refrigerator.

8 MR. DEBUSK: Sorry, Your Honor; this exhibit is already
9 in evidence, and I've forgotten the number.

10 THE COURT: Well, they're all in evidence at this point
11 in time.

12 MR. DEBUSK: Yes, Your Honor. This was in evidence
13 before this witness.

14 MS. WILLIAMS: It is 47.

15 MR. DEBUSK: It is Number 47, Your Honor, 47 already in
16 evidence.

17 THE COURT: All right, very good.

18 Q. What does that show?

19 A. I'm standing in the kitchen area shooting towards the
20 front door. You've got the uprighted chair to the left, the
21 overturned chair to the right, the victim face down in the
22 floor straight ahead of me.

23 Q. State's Exhibit, I believe, 12 -- no, I'm sorry, 21.

24 A. This is the trash can in the kitchen, just showing
25 some empty canisters, Coca Cola cans, and an alcohol beverage

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

- 1 bottle.
- 2 Q. State's 22.
- 3 A. It's just the refrigerator showing the food, or lack
4 thereof.
- 5 Q. What is that at the left under what appears to be your
6 shadow?
- 7 A. Oh, I'm sorry. That's the stove. It's some noodles
8 to the right on the back burner that are hardened, and I
9 can't see it in that photo, but I know it's spaghetti, a pot
10 of spaghetti. Everything is cool to the touch.
- 11 Q. Okay. Let's look, if we might, in detail of some of
12 the patterns of blood in here. We've seen this photo
13 already. Let me ask you, have you been trained in
14 recognizing blood spatter patterns?
- 15 A. I have.
- 16 Q. What kind of training have you received?
- 17 A. Cumulative. I have a little bit over four hundred and
18 fifty hours of advanced crime scene training. I've done
19 internships with S.L.E.D. I was up there for three weeks
20 doing an internship with them in their Crime Scene Unit and
21 going to various classes, a homicide investigation class, a
22 week -- it was forty hours or thirty-five hours. I have a
23 plethora of training on determining pattern types, different
24 general crime scene investigation classes, photography
25 classes.

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 Q. Specifically, do you have any training in the
2 recognition of blood spatter patterns and how they are
3 caused?

4 A. Yes, I do.

5 Q. Let me ask you as to this particular pattern right
6 here, the round droplets. What does that indicate to you
7 based on your training?

8 A. If you could see it from an overhead, you could see
9 that when the droplet hits, if it drops at a ninety degree or
10 close to a ninety degree angle, it simply spheres out. It
11 just makes a circle. Sometimes depending on the height of
12 it, you could have satellite drops that would -- that would
13 plunge out of that, but these are obviously -- if I make an
14 educated guess, because I don't have a scale on them, maybe a
15 foot to two foot in height as they were dropped close to
16 ninety degrees.

17 Q. Okay, and so for want of a better term, that's free-
18 falling blood?

19 A. Correct, just letting. It has no external force
20 acting upon it, just gravity.

21 Q. Let me ask you here, what appears to happen here?

22 A. It appears there was either a stain on the floor or on
23 an item and it was drug -- you can see how it starts out bold
24 and it narrows as it goes toward the victim's body there.

25 Q. So relative to the opening of the door and where the

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 body lies, can you tell based on that which way the smear
2 goes?

3 A. From the door towards the victim's body or from the
4 bottom right corner towards the top left corner.

5 Q. What is that white substance right at the -- in the
6 middle of the grout line there?

7 A. I believe that's one of the crushed pills that I was
8 speaking of earlier.

9 Q. Okay, so in the area of that smear mark, the pill
10 within that smear mark was crushed?

11 A. Correct.

12 Q. What did that depict?

13 A. I actually looked at that quite extensively, and it
14 appears to be that there was blood that was let on the floor
15 there or dripped on the floor.

16 Q. This is a closer view of Exhibit 24.

17 A. Yes, it is. I think initially we thought it might be
18 a shoe pattern. On closer examination, and I blew it up a
19 number of times on my computer, it almost seemed like a hand
20 had -- had smeared through it as if that the two, the drag
21 mark and the hand smear could have been together.

22 Q. So it appears to be something that smeared that?

23 A. Correct.

24 Q. Can you tell for sure what it was?

25 A. No; no, cannot.

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 Q. Let's move a little over to where the body was lying.
2 We've already talked about some of the blood spatter directly
3 by the door. Was there more blood patterns around the
4 victim?

5 A. Yes, there was, quite a few.

6 Q. Okay. Let's look back towards the door.

7 MR. DEBUSK: Your Honor, I removed the picture that
8 would have been the guide here, but I will be preparing a
9 redacted version of it.

10 Q. Where was this particular pattern located?

11 A. This was on the inside lower portion of the door.

12 Q. Approximately how high from the floor was that?

13 A. About a foot, maybe twelve or fourteen inches high.

14 Q. Now, based on the pattern you see in that particular
15 blood pattern, can you tell anything about how it was formed?
16 Was it free-falling blood? How -- how did it get there?

17 A. No. These are transfers or smears. The lower one you
18 can actually see like a hair swipe ---

19 MS. WILLIAMS: Your Honor, I apologize. May we
20 approach for a moment?

21 THE COURT: Yes Ma'am.

22 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

23 Q. This is already in evidence, again. I think -- I'm
24 sorry.

25 MR. DEBUSK: Your Honor, we have so many photos, it's

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

273

1 hard to keep track of them.

2 Q. State's Exhibit 36, what did you see here? Where is
3 this located?

4 A. This is on the dresser just to the left of the opening
5 of the door.

6 Q. Relative to where that smear was, that pattern was on
7 the back of the door, where was this located?

8 A. Again, I didn't do a measurement, but as the door
9 shuts, there's about that much room between the door and
10 where this dresser starts. It's in very close proximity to
11 it.

12 Q. Referring back to Item 38, which dresser and what
13 portion of that dresser was that on?

14 A. It was this dresser right here, and it was right on
15 this -- if you're facing the dresser on the front left corner
16 of it here.

17 Q. Okay. Based on your experience as a crime scene
18 analyst, were you able to -- can you tell what nature of --
19 how that blood got there? Was it a result of ---

20 A. It appears to be a ---

21 MS. WILLIAMS: Your Honor, I would object to this at
22 this point. I don't think he's been offered as an expert,
23 offered to render opinions in that area, Your Honor, without
24 qualifying him that.

25 THE COURT: Are you offering him as a crime scene

DENNIS JAMES PITSINGER - VOIR DIRE BY WILLIAMS

1 expert in ---

2 MR. DEBUSK: Yes, Your Honor, because he's testified to
3 his training.

4 THE COURT: All right. You're offering him as an
5 expert in the analysis of crime scenes, is that correct?

6 MR. DEBUSK: Yes, Your Honor.

7 THE COURT: All right. Do you wish to voir dire the
8 witness as to his qualifications?

9 MS. WILLIAMS: Yes sir. May I?

10 THE COURT: Yes Ma'am.

11 MS. WILLIAMS: Thank you.

12 VOIR DIRE EXAMINATION BY MS. WILLIAMS:

13 Q. Detective Pitsinger, can you please tell me about your
14 education and experience in the area of crime scene
15 analysis?

16 A. Yes. I began my law enforcement career in 1984 with
17 the City of North Myrtle Beach Department of Public Safety.
18 In 1986, I was transferred from inside, which is the
19 Communication Division of the jail, to the road as a public
20 safety officer. Between the time from '84 to 2000 to where I
21 was promoted to a detective, I received over two hundred and
22 fifty hours of advanced training to include traffic accident
23 reconstruction, which deals with -- basically you're
24 investigating an accident as a crime.

25 I had law enforcement photography and a law enforcement

DENNIS JAMES PITSINGER - VOIR DIRE BY WILLIAMS

1 instructor course where I was qualified as an instructor to
2 teach. In October of 2000 when I was promoted to a
3 detective ---

4 Q. I'm sorry; qualified to instruct in what area?

5 A. A specific scale through the South Carolina Criminal
6 Justice Academy.

7 Q. I'm sorry. I didn't understand that.

8 A. And to teach law enforcement related courses to other
9 law enforcement officers, other law enforcement agencies.

10 Q. I understand, but were you qualified or did you
11 instruct in the area of crime scene analysis?

12 A. Not at that point.

13 Q. Okay.

14 A. I'm getting there.

15 Q. Okay.

16 A. In 2000 when I was promoted to a detective until now,
17 I received over four hundred and sixty hours of advanced
18 training to include crime scene technician in evidence.
19 That's a forty hour course. Detective Level One, that's a
20 forty hour course. In 2002, I attended a homicide and death
21 investigation course. That's thirty-five hours.

22 I joined at that time the International Association of
23 Homicide Investigators, and also in 2002, I attended a basic
24 forty hour fingerprint course, and in 2002, I attended a
25 crime scene techniques for investigators, which was a forty

DENNIS JAMES PITSINGER -- VOIR DIRE BY WILLIAMS

1 hour course.

2 In 2003, I did a hundred and twenty hour or three week
3 internship with S.L.E.D., otherwise known as the South
4 Carolina Law Enforcement Division. In 2003, I joined the
5 South Carolina International Association of Identifiers. In
6 2003, I developed a course in crime scene processing and in
7 evidence collection and taught it to newly trained officers
8 that were entering our department.

9 In 2004, I attended an interview and interrogation
10 class. That was a twenty-one hour course. Also in 2004, I
11 attended through the South Carolina International Association
12 of Identifiers a forensic training course which was sixteen
13 hours.

14 In 2005, I was certified to run fingerprints and palm
15 prints on -- it's a latent station training. It's called
16 A.F.I.S. That was a eight hour course taught at our
17 department.

18 In 2006, I attended a forensic anthropology course,
19 which was eight hours, and it was taught in Columbia. In
20 2007, I attended an advanced crime scene photography class
21 which was sixteen hours, and it was taught in Columbia. In
22 2010, I attended an advanced ridgeology training course that
23 was forty hours, and it was taught in North Carolina, and
24 also in 2010, I attended a joint conference between South
25 Carolina and Georgia International Association of Identifiers

DENNIS JAMES PITSINGER - VOIR DIRE BY WILLIAMS
VOIR DIRE BY THE COURT

1 which was a thirty-two hour course, and that's where I
2 received the majority of my training in blood stain pattern
3 analysis.

4 Q. Detective Pitsinger, were these seminars accredited?

5 A. Yes, they were.

6 Q. Who sanctioned the accreditation?

7 A. Each course that's certified through the South
8 Carolina Criminal Justice Academy is given a course number
9 and those numbers, I don't have.

10 Q. So they are certified through our South Carolina
11 training or our Criminal Justice Academy, correct?

12 A. Through the South Carolina Criminal Justice Academy
13 itself.

14 Q. Okay.

15 MS. WILLIAMS: That's all the questions I have, Your
16 Honor.

17 THE COURT: All right.

18 Detective, can you give some rough estimate as to the
19 number of crime scenes you have investigated?

20 A. I'm not being arrogant; I mean, a lot. I mean, I do
21 anything from sometimes simple assaults to where there's
22 bruising, to car break-ins to where there could be blood-
23 letting, blood smears, fingerprints, sexual assaults, violent
24 assaults. It may not always end in a death, in homicides and
25 suicides.

DENNIS JAMES PITSINGER - VOIR DIRE BY THE COURT
DIRECT BY DEBUSK

1 **THE COURT:** Any rough approximation of a number?
2 A. Since 1984?
3 **THE COURT:** Yes sir.
4 A. I'm just putting a ballpark figure out there, Your
5 Honor, probably close to five hundred or more.
6 **THE COURT:** All right, thank you.
7 Anything else, Solicitor?
8 **MR. DEBUSK:** No, Your Honor.
9 **THE COURT:** Anything else, Ms. Williams?
10 **MS. WILLIAMS:** No sir. Well, I would ask if he's ever
11 been qualified as a crime scene analyst in our Circuit
12 Courts.
13 **THE COURT:** Sir?
14 A. What was the question?
15 **THE COURT:** Could you repeat -- and speak up.
16 **MS. WILLIAMS:** I'm sorry. Has he ever been qualified
17 as a crime scene analyst in a court?
18 A. No. This would be the first.
19 **THE COURT:** All right. I'm going to qualify Detective
20 Pitsinger as a -- to give his opinion in the field of crime
21 scene analysis. Thank you very much.
22 **CONTINUING DIRECT-EXAMINATION BY MR. DEBUSK:**
23 Q. Detective Pitsinger, let's go back a couple of
24 pictures to State's Number 19 again. Do you have an opinion
25 of how this blood pattern is formed?

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 A. Yes. The upper portion, in my opinion, is a
2 combination of hair and skin in this area, and it's starting
3 from the right side and going towards the left side simply
4 because you have more and you go to less.

5 The bottom one appears to be some type of wound close to
6 the hair line. You have hair striations going up into the
7 left, and then you have the larger blood droplet. I can't
8 say it was dropped there, but obviously you can see to where
9 on the lower ridge there to whether an amount of blood has
10 hardened.

11 Q. And just to be clear for the jury, was this formed by
12 free-falling blood or by transfer from another object?

13 A. It was transferred.

14 Q. And here again, do you have an opinion what caused
15 this particular pattern?

16 A. Yes. I mean, as it was processed, you could see small
17 amounts of ridge detail, but there was insufficient ridge
18 detail for any determination and it appears to be a hand. I
19 can't tell you left or right, but it appears to be a hand.

20 Q. Is this the same area?

21 A. Yes. This is just after it was processed with latent
22 print powder.

23 Q. Okay. With latent print powder, was there any better
24 ridge detail developed?

25 A. No, I don't believe so.

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 Q. What is this, State's Exhibit 26?

2 A. I believe this was a combination of dirt and some sort
3 of blood transfer. There was no ridge detail that was
4 developed there.

5 Q. Where is this located on the ---

6 A. The upper portion of the door. You know, the door
7 would be to the left as it would open on that side.

8 MR. DEBUSK: Again, Your Honor, State's 26.

9 Q. And what would this, State's Exhibit 31, show?

10 A. That's the inside portion of the door. It's a smear
11 that appears to run from top to bottom.

12 Q. Where is that in relation to the one we just saw,
13 State's Exhibit 26?

14 A. It's a little bit lower. I mean, you can see the
15 window there. The other one was on the inside of the door,
16 the white portion of the door just above it maybe six inches.

17 Q. Now, I want to draw your attention to the patterns
18 around State's Exhibit 56. Is this the location where you
19 found Phyllis Mowery's body?

20 A. Yes, it is.

21 Q. And I want to look in this particular spot, compare it
22 to this photo, does that seem to be to you the same spot?

23 A. Yes, it is.

24 Q. So this is the area where her face was contacting the
25 floor?

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 A. Yeah. This picture simply has the dresser moved so I
2 can photograph under it.

3 MR. DEBUSK: State's 58, Your Honor.

4 Q. What -- can you form an opinion about what caused
5 these particular patterns on the floor?

6 A. Okay. The larger patterns of blood, those are of
7 simply gravity taking over.

8 Q. What do you mean?

9 A. Well, if you have something at an angle and you put a
10 liquid item on it, gravity is going to take it ---

11 Q. You're talking about the things off to the right?

12 A. Yeah, the larger, the running stains.

13 Q. Okay.

14 A. The smaller stains indicate, depending on the size of
15 them, indicate different -- whether it be low velocity or
16 medium velocity impact spatter.

17 Q. What does that mean in basic terms?

18 A. Well, if I could explain it like, you know, slapping
19 or putting some force into a liquid, the lower the force to
20 the liquid, the bigger the drops and the patterns are going
21 to be. The harder you hit, the smaller the patterns are
22 going to be, and I don't see any high velocity, which would
23 be consistent with a gunshot or something like that, which
24 would give you mist-like patterns.

25 Q. What does that indicate about the force that caused

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 that blood stain?

2 A. Well, I would say they're low and medium velocity
3 impact spatters.

4 Q. What kind of impact could have caused that?

5 A. Bats, foreign objects being swung by the human hand.

6 Q. Would there have to be some source of blood to ---

7 A. Well, the first -- if there was -- if there was blood
8 first, ---

9 Q. Like a puddle?

10 A. Yes. The first impact spatter would give off or the
11 first trauma that went into it would give off a pattern if
12 that is done and it's the first strike to, say, the head, the
13 first strike is pretty much what we call free. The second
14 strike would draw blood and transfer it at that point.

15 Q. Just to be clear, this is -- are you saying that some
16 form of -- some object impacting on an existing blood source,
17 a puddle of blood or something?

18 A. Correct.

19 Q. This is State's Exhibit 28.

20 A. This is the -- you can actually see like a little
21 void, a little white void. That's where the victim was at
22 prior to her being removed. I simply set the camera down on
23 the ground on a napkin and took some pictures up under, and
24 it shows the impact spatter on the lower portion of the
25 dresser and also ---

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

- 1 Q. What's the wooden object at the top of the photo
2 there?
- 3 A. I'm sorry?
- 4 Q. What is the wooden object at the top of the photo?
- 5 A. Oh, I'm sorry. That's the dresser that was directly
6 in front of her.
- 7 Q. Which dresser? Was that the same dresser with the
8 blood hand transfer on it or is that ---
- 9 A. No, no. This is the one directly in front of her.
- 10 Q. Referring back to crime scene diagram number 38, which
11 dresser are you referring to here, in what location?
- 12 A. This dresser here, and it's on this lower left drawer
13 or -- yes, drawer.
- 14 Q. What is this particular photo?
- 15 A. This is the baseboard after the dresser had been
16 moved, took some more photographs, and this is the baseboard
17 on the wall, on the floor and the wall directly behind the
18 dresser.
- 19 Q. Where is this baseboard relative to this particular
20 picture?
- 21 A. It would be at the top portion.
- 22 Q. So it would be the baseboard at the top of that
23 section of floor?
- 24 A. Correct.
- 25 Q. What does the blood pattern here tell you?

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 A. It's kind of hard to see it in this one, but on
2 expired blood or something that's aspirated out of the
3 mouth or nose, there's three key indicators. One is that
4 they be different sizes and colors, if there be voids in them
5 to where air is pocketed in it, and that there be mucous
6 strands attached to some or all of the stains that you see.

7 Q. Did you see any of these three characteristics,
8 aspirated blood, in the blood on that baseboard?

9 A. Yes, I did.

10 Q. Does that indicate to you about how that blood got
11 there?

12 A. It was aspirated out of the mouth.

13 Q. Now, where was the victim's head relative to this
14 baseboard?

15 A. When we arrived, I mean, it was on the floor, and then
16 there was a dresser, and then this baseboard was some
17 eighteen, twenty inches behind it.

18 Q. So this is the baseboard behind the dresser?

19 A. Correct.

20 Q. So all of this went under the dresser?

21 A. Under that ---

22 MS. WILLIAMS: Your Honor, I am going to object to the
23 leading question.

24 MR. DEBUSK: I withdraw.

25 THE COURT: All right. Obviously, don't lead your

DENNIS JAMES PITTSINGER - DIRECT BY DEBUSK

285

1 witness.

2 Q. Now, you testified that those blood stains on the
3 floor being caused by impact and you're saying these were
4 aspirated blood?

5 A. The vast majority of them, yes..

6 Q. Is there -- which one of these is going on, or both?

7 A. Both. If you -- if you -- if it's blown up, you can
8 see some that are consistent with just a forward impact, and
9 then others you can see -- the vast majority of them you can
10 see that would be the characteristics, the color change, the
11 voids, air bubbles, and the mucous strains.

12 Q. So just to make it clear, you're saying some of that
13 blood under the dresser came about by some impact and some
14 aspirated out of the mouth?

15 A. Yes.

16 Q. Where was this located?

17 A. This is on the refrigerator door.

18 Q. Just again for the jury, where in the crime scene
19 diagram is that refrigerator?

20 A. Okay, this is the refrigerator right here.

21 Q. Okay. Any idea how that particular pattern came
22 about?

23 A. It appears to be like a flicker. There's no -- it
24 appears to be a flicker. There's no ---

25 Q. What does that term mean, for the jury?

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 A. Just that it could be something off of the hand,
2 something, you know, if someone had something on them, to
3 shake.

4 Q. So it's not transfer; it's not free-falling; it's not
5 aspirating?

6 A. Correct.

7 MS. WILLIAMS: Your Honor, ---

8 THE COURT: Again, Solicitor, ---

9 MR. DEBUSK: Thank you, Your Honor.

10 Q. What about this particular pattern?

11 A. This, again, has a -- it's a large volume, but again,
12 it has the telltale signs of color change, mucous strands,
13 and this one doesn't particularly have any air pockets or air
14 bubbles in it, but it has two of the three characteristics of
15 the aspirated or expired blood.

16 Q. So that would be mouth blood, again?

17 A. Correct.

18 Q. How do you suppose that got -- how far from the body
19 is that particular -- where you found the body?

20 A. About four feet maybe.

21 Q. Any idea how that got from the body -- from that
22 location to that wall?

23 A. In my opinion, during a struggle it could have been
24 spat out, it could have been hit out, or it could have just
25 came out during some type of struggle.

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

287

1 MS. WILLIAMS: Your Honor, I would object to this. I
2 mean, he said he doesn't know, it could be this, it could be
3 that. I don't think he has given us a ---

4 THE COURT: I appreciate that. You will be able to
5 cross-examine him. I'm going to allow it. Thank you.

6 MS. WILLIAMS: Thank you, Your Honor.

7 Q. And what is this?

8 A. It was a blood stain that ---

9 MR. DEBUSK: State's Exhibit 37, Your Honor, for the
10 record.

11 A. This is the chair that's overturned at the foot of the
12 bed, and this stain, again as I said earlier, it's just --
13 it's totally inconsistent with the acts that have occurred in
14 front.

15 Q. Just speaking of the diagram here, where was the
16 majority of the blood spatter in this case?

17 A. Right around the shoulder area and head area, and then
18 forward under the dresser towards the back wall and the
19 baseboard.

20 Q. So there were small amounts at other parts of the ---

21 A. Yes, there was.

22 Q. But most of it was right there by the victim?

23 A. Yes.

24 Q. Once again, we've shown this one. I'll draw your
25 attention particularly to this area right here.

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 **MR. DEBUSK:** And this, Your Honor, is already in
2 evidence, and the number is 11, State's Exhibit 11.

3 **Q.** What area is that?

4 **A.** This is north side of the apartment. I'm standing
5 just outside of this fenced area. The bed would be up
6 against this wall here where you see these other bed frames.

7 **Q.** What is this item behind the -- on there?

8 **A.** As it's blown up, you can see it's a suitcase, like a
9 rolling type suitcase?

10 **MR. DEBUSK:** State's Exhibit 12, Your Honor, already in
11 evidence.

12 **Q.** Is that the ---

13 **A.** Yes, it is.

14 **Q.** Is that a fair and accurate representation of the
15 contents of that item?

16 **A.** Yes, it was.

17 **Q.** Okay. Referring to that suitcase in particular, did
18 you collect that suitcase at the scene?

19 **A.** At the time, no, we did not.

20 **Q.** Did you see that suitcase at a later date?

21 **A.** Yes, I did.

22 **Q.** Where did you see it?

23 **A.** J. Reuben Long Detention Center.

24 **Q.** Did you ---

25 **MS. WILLIAMS:** Your Honor, I think there may be a

JURY OUT - ON RECORD
DENNIS JAMES PITSINGER - EXAMINATION BY DEBUSK

1 matter of law we need to take up in regard to this.

2 THE COURT: All right, thank you.

3 MS. WILLIAMS: May we approach?

4 THE COURT: Ladies and gentlemen, go to your jury room
5 for a few moments. Thank you.

6 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
7 JURY.)

8 THE COURT: Yes Ma'am, Ms. Williams.

9 MS. WILLIAMS: Your Honor, I believe the testimony is
10 going to lead to that basically Detective Pitsinger did not
11 collect this suitcase at the scene and later, if I recall,
12 the suitcase was with Mr. Riebe at the jail.

13 Correct? (Mr. Riebe speaks quietly with Ms. Williams.)

14 THE COURT: Well, Solicitor, why don't you ask the
15 witness so that we hear the testimony and we'll know exactly
16 what he's going to say.

17 EXAMINATION BY MR. DEBUSK:

18 Q. Detective Pitsinger, did you see that suitcase again?

19 A. Yes, I did.

20 Q. Where did you see it?

21 A. At J. Reuben Long Detention Center.

22 Q. What did you do at that -- when you saw it at
23 J. Reuben Long Detention Center?

24 A. Well, we spoke briefly about it and there was a
25 question as to whether there might be some evidence contained

JURY OUT - ON RECORD
DENNIS JAMES PITSINGER - EXAMINATION BY DEBUSK

1 in that.

2 Q. Did you obtain a search warrant?

3 A. I did.

4 Q. Did you serve that search warrant?

5 A. Yes, I did.

6 Q. Pursuant to that search warrant, what did you do?

7 A. I spot-tested numerous spots on clothing.

8 Q. How did you test it?

9 A. With leucomalachite. It's a chem -- it's a chemical
10 that reacts with a color change to blood.

11 Q. Did you find any on those clothes?

12 A. No, I didn't.

13 Q. What areas did you ---

14 THE COURT: All right, thank you.

15 MR. DEBUSK: Yes sir.

16 THE COURT: Ms. Williams.

17 MS. WILLIAMS: Your Honor, our position would be I
18 don't believe he's accurately testified with regard to a
19 search warrant and the probable cause for a search warrant
20 and for him to get it, Your Honor.

21 What happened, if I may tell the Court, my client got a
22 letter while he was at J. Reuben, because he was there, not
23 on bond, and he got a letter that his suitcase was at the
24 Department of Public Safety, if he either wanted it or not,
25 so he asked them to come get it. The jail went and got it

JURY OUT - ON RECORD
DENNIS JAMES PITSINGER - EXAMINATION BY DEBUSK
EXAMINATION BY THE COURT

291

1 and took it to him there, which is why it was at J. Reuben.
2 They had to get a search warrant, Your Honor. I don't think
3 he's testified with regard to probable cause for a search
4 warrant, I mean, the appropriate testimony to lay the
5 foundation for that.

6 THE COURT: Solicitor.

7 CONTINUING EXAMINATION BY MR. DEBUSK:

8 Q. Do you have a copy of the search warrant, Detective
9 Pitsinger?

10 A. I do not in here.

11 THE COURT: While you're looking for that, Solicitor,
12 -- before you do that ---

13 Detective, how do you know that the suitcase in the
14 photograph is the same suitcase you examined at the J. Reuben
15 Long Detention Center?

16 A. It is the same color, shape, size. It was transferred
17 from our department to his personal property at J. Reuben
18 Long Detention Center.

19 THE COURT: Who seized it?

20 A. Officer Aaron Best with our department.

21 THE COURT: What did Officer Aaron Best do with it?

22 A. He -- he took it from the side of the house where the
23 picture indicated that it was at and took it to our
24 department.

25 THE COURT: Did you direct him to do that?

JURY OUT - ON RECORD
DENNIS JAMES PITSINGER - EXAMINATION BY DEBUSK

1 A. No.

2 THE COURT: I don't think a proper chain has been
3 identified at this point in time for him to say it is the one
4 that was seen at the scene. It may be one similar in type,
5 but he will not be allowed to say it is the same one without
6 the other officer testifying.

7 MR. DEBUSK: We would argue it's not a fungible item,
8 but I understand your ruling, Your Honor.

9 THE COURT: It is similar in type. You cannot say it
10 is the same one without the officer's testimony, unless he
11 has some other evidence that he examined it at the scene and
12 then he examined it at the J. Reuben Long Detention Center
13 and based upon his personal observations it's the same, there
14 may be some argument it not being fungible at that point in
15 time.

16 MR. DEBUSK: May I examine him to that point?

17 THE COURT: Yes sir.

18 CONTINUING EXAMINATION BY MR. DEBUSK:

19 Q. Detective Pitsinger, were there individual
20 characteristics of this bag that allowed you to recognize it
21 as the same one that was at the scene, this bag and the
22 contents?

23 A. As in the power point, I took numerous or several
24 pictures ---

25 Q. Right.

JURY OUT - ON RECORD
DENNIS JAMES PITSINGER - EXAMINATION BY THE COURT

1 A. --- of the bag open, and at J. Reuben, the same
2 pictures -- if you looked at the pictures, you could draw a
3 conclusion, I guess, with the clothing type and things ---

4 THE COURT: Solicitor, let me ask.

5 MR. DEBUSK: Yes sir.

6 THE COURT: Detective, you found -- you found this bag
7 at the scene, is that right?

8 A. It was -- it was pulled by other officers there, or it
9 was pointed out by other officers there.

10 THE COURT: Pointed out by other officers, and you went
11 and retrieved the bag yourself?

12 A. No. A officer walked to the back side of the house
13 and pulled it out.

14 THE COURT: And gave it to you?

15 A. Well, they set it on the ground and said we believe
16 this belongs to the Defendant, or at the time he wasn't the
17 defendant. He was just a person of interest.

18 THE COURT: And what did you do with it?

19 A. I opened it up -- I photographed it. I opened it up.
20 I photographed some items in it. I went through it to see if
21 there was any items that I could readily see had any kind of
22 evidence that I might need or use in determination of the
23 suspect.

24 THE COURT: And then what happened to it?

25 A. It was sealed back up and placed back where it was

JURY IN
DENNIS JAMES PITTSINGER - DIRECT BY DEBUSK

1 located, beside the house or behind the house.
2 THE COURT: All right, and after that, when is the next
3 time you believe you saw this item?
4 A. On November 17th, 2010.
5 THE COURT: Where at?
6 A. At J. Reuben Long Detention Center.
7 THE COURT: And how do you know it is the same item ---
8 A. I can't ---
9 THE COURT: --- that you examined at the scene?
10 A. I can't say.
11 THE COURT: We're not going to ---
12 MR. DEBUSK: Thank you, Your Honor. We'll move on.
13 THE COURT: All right, very good.
14 Ask the jury to come back.
15 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
16 JURY.)
17 THE COURT: All right, Solicitor, you may proceed.
18 MR. DEBUSK: Thank you, Your Honor.
19 CONTINUING DIRECT-EXAMINATION BY MR. DEBUSK:
20 Q. I show you what's been marked as State's Exhibit 43
21 and ask if you recognize it?
22 A. Yes, I do.
23 Q. Did you -- could you open the bag and check the
24 contents, please.
25 A. (Witness opens bag.)

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

- 1 Q. What is the nature of the items in the bag?
- 2 A. It's a pair of shoes and a pair of socks.
- 3 Q. Have you seen that pair of shoes and pair of socks
- 4 before?
- 5 A. Yes, I have.
- 6 Q. Where did you see them?
- 7 A. In our lab at the department.
- 8 Q. Where did you get them from to look at them in the
- 9 lab?
- 10 A. They were in evidence and I was asked to, yeah.
- 11 Q. They were in evidence. That particular item in
- 12 evidence, did you conduct any tests on that item, those
- 13 items, the shoes and the socks?
- 14 A. I did on the shoes.
- 15 Q. What tests did you conduct on them?
- 16 A. I used Luminol. Prior, I used phenylphaline to do a
- 17 spot test.
- 18 Q. What does phenylphaline do?
- 19 A. It reacts to the presence of blood or proteins in the
- 20 blood.
- 21 Q. Did you get any positive results from that pair of
- 22 shoes?
- 23 A. I did not.
- 24 Q. Did you conduct any subsequent tests?
- 25 A. Yes, I did.

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 Q. What tests did you conduct subsequently?

2 A. In a darkened room I used Luminol, which reacts with
3 the blood or proteins in the blood to give off a
4 luminescence.

5 Q. So in the presence of blood there would be
6 luminescence?

7 A. Correct.

8 Q. Did you find any luminescence on the shoes or the
9 socks?

10 A. No, I didn't.

11 Q. What does that indicate about the presence or absence
12 of blood?

13 A. That there was none when I tested them.

14 MR. DEBUSK: Your Honor, I just wanted to get that
15 testimony in about the tests. Then we will close the chain
16 on these items.

17 THE COURT: All right, very good.

18 MR. DEBUSK: And what was that State's exhibit again?

19 MS. WILLIAMS: Your Honor, may we approach briefly?

20 MR. DEBUSK: 43, Your Honor.

21 THE COURT: Yes Ma'am.

22 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

23 THE COURT: Proceed on, Solicitor.

24 MR. DEBUSK: Thank you, Your Honor.

25 DIRECT-EXAMINATION BY MR. DEBUSK:

DENNIS JAMES FITSINGER - DIRECT BY DEBUSK

1 Q. Okay, did you see Jeffrey Riebe when you were
2 processing the scene at ?

3 A. No, I didn't.

4 Q. Did there come a time subsequently when you saw him?

5 A. At the jail, I believe I did.

6 Q. Let me ask you specifically at Conway Hospital. Did
7 you ever see the Defendant at Conway Hospital?

8 A. Oh, yes, I did.

9 Q. What did you do there?

10 A. The first time or second time?

11 Q. Well, yes, there were two times. Let's talk about the
12 first time first. What date was that? Again, just so the
13 jury will know, what is it that you are consulting, what
14 documents?

15 A. These are my personal notes that I'm looking through.
16 I've got the second one listed in here.

17 THE COURT: You need to speak up, sir, directly to that
18 microphone. I'm having a hard time hearing you, so I am sure
19 the jury is.

20 A. I have the second Conway Hospital visit, not the first
21 one. I believe I did an amended investigative notes and sent
22 them to you.

23 Q. Let me give you a document that might refresh your
24 memory. I would ask you to tell the jury what this document
25 is.

DENNIS JAMES PITTSINGER - DIRECT BY DEBUSK

1 A. These are my investigative notes and this last page,
2 more specifically, at the lower portion is the amended
3 section.

4 Q. And when did you write that amended portion?

5 A. Eleven -- or November 6th, 2008.

6 Q. What did you do at that time?

7 A. As indicated here, I met with you here. We had a
8 Schmerber hearing before Judge John. Schmerber was granted.
9 Riebe was transported to Conway Hospital where a blood sample
10 and hair sample was taken.

11 Q. Who actually took the sample?

12 A. The Conway Hospital nursing supervisor, Tammy Trulove.

13 Q. I'm sorry. Was it Tammy Trulove or was it ---

14 A. The first time was Tammy Trulove.

15 Q. Did you observe the collection of the sample?

16 A. Yes, I did. I was present.

17 Q. What samples were collected?

18 A. Blood and hair.

19 Q. What did you do with those blood and hair samples?

20 A. I returned to the Police Department after the
21 paperwork was completed by Ms. Trulove. I completed my own
22 paperwork and put the blood and hair into a paper bag,
23 labeled it properly and placed it into the police -- the
24 laboratory refrigerator.

25 Q. While those blood samples and hair samples were in

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

299

1 your possession, did you alter them or change them in any
2 way?

3 A. No, I did not.

4 Q. Tell me about the second time you saw Mr. Riebe.

5 A. That was on November 16th of 2010. Again, I met with
6 -- we had a second Schmerber hearing before Judge Hyman. He
7 granted the Schmerber. I asked for assistance from Conway
8 Police Department. At the time I didn't have a cage in my
9 car and couldn't transport anyone. Conway Police transported
10 Riebe to the hospital. I met them there. We went in and
11 they -- Nurse Pam Smith collected at this particular time two
12 purple-top vials of blood.

13 Q. Let me show you again the copy of that same document,
14 the highlighted portion, and ask you if that refreshes your
15 memory?

16 A. This is the first one.

17 Q. Yes.

18 A. Yes; yes, it does.

19 Q. What date is it?

20 A. It's on November 11th, 2008.

21 Q. And who actually collected the samples?

22 A. Lab Supervisor Debra Thompson.

23 Q. Who was Tammy Trulove?

24 A. I spoke to the Nursing Supervisor, Tammy Trulove, and
25 I have a phone number indicated here.

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 Q. But it was not, in fact, Tammy Trulove who took the
2 samples that first time?

3 A. That's correct.

4 Q. Who was it?

5 A. It was Debra Thompson, the lab -- or one of the lab
6 supervisors.

7 Q. Did you observe Ms. Thompson take that sample in
8 November of 2008?

9 A. Yes, I did. I was in the room.

10 Q. And, again, those samples you put into evidence, you
11 testified about already, right?

12 A. Yes, I did.

13 Q. Did you alter or change those samples in any way while
14 they were in your possession?

15 A. No, I did not.

16 Q. Moving back to the second sample that was taken, who
17 collected that sample?

18 A. Conway Hospital employee Pam Smith.

19 Q. Okay. The sample with Pam Smith, what was the date of
20 that one?

21 A. November 16th, 2010.

22 Q. What did you do with that sample?

23 MS. WILLIAMS: Your Honor, I think that's asked and
24 answered. I think we've already covered that ground
25 actually.

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

301

1 THE COURT: I don't ---

2 MR. DEBUSK: We've not covered the second sample.

3 THE COURT: Solicitor.

4 There was no testimony as to the second sample as to
5 what happened. Proceed. Thank you very much.

6 MR. DEBUSK: Thank you, Your Honor.

7 Q. The second sample, again, the November of 2010 sample
8 that you're testifying about, who collected that?

9 A. Pam Smith.

10 Q. The sample you took that -- did you watch Ms. Smith
11 take the sample?

12 A. Yes, I did.

13 Q. Did you collect the sample from her?

14 A. Yes, I did.

15 Q. What did you do with that sample?

16 A. I, immediately upon receiving the sample, completed my
17 paperwork in my car at the Conway Hospital. I drove it to
18 Richland County Sheriff's Department lab.

19 Q. Who did you turn it over to at the Richland County
20 Sheriff's Department?

21 A. A Patty Weed, W E E D. She's the evidence custodian
22 there.

23 Q. Now, with that second sample, the one from November
24 2010, that you took to Richland County, did you take any
25 other evidence with it at that time?

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 A. Yes, I did.

2 Q. What was that?

3 A. The belt, and some swabs from the belt.

4 Q. Let me show you State's Exhibit 4(A). I ask if you
5 can identify that?

6 A. Yes. This is the belt that I took.

7 Q. What -- when did this belt come into your possession?
8 Well, let me -- let me go back a little farther. When is the
9 first time you saw the belt?

10 A. On August 28th, 2008.

11 Q. Okay, and where did you see it?

12 A. It was -- when we rolled the victim over, face up, it
13 was kind of between her. It was in a loop, the belt, but the
14 belt was up under her. We couldn't see it from looking at
15 her until we rolled her over.

16 Q. How did that belt leave the scene?

17 A. It went with the body to the autopsy.

18 Q. Okay. When did you next see that belt again?

19 A. It would have been November 16th, 2010.

20 Q. And what did you do with it?

21 A. Along with that belt and some swabs that were taken
22 from the belt, along with the last blood draw, the second
23 blood draw, I personally transported it to Richland County
24 Sheriff's Department to the lab.

25 MR. DEBUSK: Can we get that labeled as 4(C).

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

- 1 (SWABS MARKED AS STATE'S EXHIBIT NUMBER 4(C) FOR
2 IDENTIFICATION ONLY.)
- 3 Q. Let me show State's Exhibit 4 and ask if you recognize
4 that?
- 5 A. Yes, I do.
- 6 Q. What is that?
- 7 A. This is the box that this evidence was placed into at
8 that Richland County Sheriff's Department.
- 9 Q. State's 4(C), I ask if you recognize that?
- 10 A. Yes, I do.
- 11 Q. What is it?
- 12 A. These are the swabs from the belt.
- 13 Q. 4(B).
- 14 A. This would be the packaging that the belt was in.
- 15 Q. Okay. When you retrieved -- where did you get the
16 belt from?
- 17 A. The evidence custodian.
- 18 Q. How was it packaged?
- 19 A. It would have been in this bag.
- 20 Q. Was that bag sealed when you received it?
- 21 A. Yes, it was.
- 22 Q. Did you unseal it?
- 23 A. Yes.
- 24 Q. Did you unseal it before you took it to Richland
25 County?

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 A. Yes, I did.

2 Q. Okay. What did -- did you alter or change the belt in
3 any way?

4 A. No. I had to open it at least, I believe it was,
5 twice for the Defendant's attorney to view.

6 Q. So at some point Ms. Williams visited with you and you
7 opened the packaging for her to see?

8 A. Yes; yes, I did.

9 Q. At that time, was the belt changed or altered in any
10 way?

11 A. No; no, it was not.

12 Q. When you received it from Evidence on November 16th, I
13 think you said, 2010, how was it packaged?

14 A. I had re-sealed it and it was in its original seal
15 with the seal tape on it.

16 Q. Now, when you unseal this evidence, do you wear
17 plastic gloves? Do you wear gloves?

18 A. Yes, I do.

19 Q. Do you handle it carefully?

20 A. Yes, I do.

21 Q. Was it altered or changed in any way during the time
22 you opened it for Ms. Williams or when you took it to
23 Richland County?

24 A. No, it was not.

25 Q. Okay. Who did you relinquish it to in Richland

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 County?

2 A. Patty Weed, W E E D. She is the evidence custodian.

3 Q. Just to review, when you went to Richland County and
4 relinquished the evidence to Ms. Weed, how did you package --
5 was it re-packaged at that time?

6 A. It was -- this is actually Richland County's box and
7 their evidence seal here.

8 Q. And what items did you give them to put in that box?

9 A. The belt and the previous collected swabs.

10 Q. Okay, and what about the blood standard?

11 A. And Riebe's blood.

12 Q. So there were three items in that box?

13 A. No. In this box it simply says the web belt and the
14 swabs from the belt.

15 Q. Okay. Did you also at that time deliver them a blood
16 sample?

17 A. Yes, I did.

18 Q. Okay. That was turned over, again, to?

19 A. Patty Weed.

20 Q. Okay, the belt, the swabs, the blood sample, were they
21 altered or changed in any way while they were in your
22 possession?

23 A. No, they were not.

24 Q. And I think I've asked this already, but just to be
25 safe, the first blood sample, the one from November of 2008,

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 to whom did you relinquish that?

2 A. That was given to the evidence -- our in-house
3 evidence custodian, Renee Best.

4 Q. Did you alter that or change it in any way?

5 A. No, I did not.

6 Q. And the hair samples that were taken at the same time
7 as that first blood sample, did you alter them or change them
8 in any way?

9 A. No, I did not.

10 Q. And to whom did you relinquish those?

11 A. Our North Myrtle Beach Department of Public Safety
12 evidence custodian, Renee Best.

13 Q. I show you what's been marked as State's Exhibit 41
14 and ask if you recognize that?

15 A. Yes, I do.

16 Q. What are they? What is that item?

17 A. They appear to be human teeth.

18 THE COURT: I'm sorry, sir; I didn't understand what
19 you said.

20 A. They appear to be human teeth.

21 Q. Where did you first see those items in that exhibit?

22 A. Again, when we rolled the victim over.

23 Q. Where were they located relative to the victim?

24 A. Under her as she was rolled over.

25 MS. WILLIAMS: Your Honor, do you know what number that

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

307

1 exhibit is?

2 THE COURT: 41.

3 MS. WILLIAMS: Thank you.

4 Q. Under which part of her body was it?

5 A. I don't recall exactly. I mean, it was under her
6 body, but the upper torso.

7 Q. The upper torso. Thank you. What did you do with
8 those teeth when you found them at the scene?

9 A. They were collected.

10 Q. And what did you do with them after you collected
11 them?

12 A. Filled out the proper evidence paperwork and turned
13 them in to Evidence.

14 Q. So they were placed into evidence?

15 A. Yes, they were.

16 MR. DEBUSK: Your Honor, at this time the State would
17 move Exhibit 41 into evidence.

18 THE COURT: Any objection?

19 MS. WILLIAMS: May we approach?

20 THE COURT: Yes Ma'am.

21 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

22 THE COURT: All right, State's 41 is in evidence with
23 the modification that it will be placed in a different
24 envelope.

25 Continue on.

DENNIS JAMES PITSINGER - DIRECT BY DEBUSK

1 (FOUR TEETH ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
2 NUMBER 41.)

3 MR. DEBUSK: No further questions, Your Honor.

4 THE COURT: All right. Ladies and gentlemen, we're
5 going to stop for today and we will do the cross-examination
6 of the witness by the Defense tomorrow morning. Now, I'm
7 going to ask you to be back tomorrow morning in your jury
8 room at 9:00 A.M. If you arrive just a little bit before
9 that, I expect that as tradition, the Clerk of Court will
10 have something in the jury room for you, but we will need for
11 you to be here by 9:00 A.M. At that point in time, barring
12 something unknown at this point in time, I will call you out
13 immediately and we will go into the cross-examination.

14 Now, when you go home, you may not talk about this case.
15 I've told you you can't talk about it among yourselves, but
16 certainly you can't talk about it with anybody else. If you
17 did so and you went home to see your husband, wife,
18 boyfriend, girlfriend, neighbor, unintentionally they would
19 give you their opinion about this case. They don't have one.
20 You shouldn't have one at this point in time, so don't do
21 that.

22 Also, please remember what I told you earlier. You
23 can't look up anything on the Internet, can't do any research
24 on your own. You must base your decision solely and
25 completely on the evidence you hear in this courtroom and

JURY OUT - ON RECORD

309

1 from no other source.

2 With that, I'll see you back tomorrow morning at 9:00
3 A.M.

4 Everyone else remain seated until the jury retires.

5 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
6 JURY.)

7 THE COURT: All right, Detective, in the interim,
8 obviously you will be released to go about your regular
9 activities, to be back here tomorrow morning at 9:00 A.M.,
10 but in the interim, you may not discuss this case in any
11 fashion with the Solicitor or any of his representatives.

12 Anything further from the State at this point in time?

13 MR. DEBUSK: Nothing further, Your Honor.

14 THE COURT: From the Defense?

15 MS. WILLIAMS: Nothing from the Defense, Your Honor.

16 THE COURT: All right. Thank you very much. We will
17 see you back tomorrow morning at 9:00 A.M.

18 Dixie, will you make sure that you have -- before y'all
19 go, don't go until the Court Reporter tells you she has all
20 the exhibits, and if you can, if there are some -- Ms.
21 Williams, I noticed that you were marking some. If you've
22 got some more, how about take the opportunity now to mark
23 them with the Court Reporter so we don't have to use time
24 later on doing it.

25 You can step down, Detective. Just make sure you don't

JURY OUT - ON RECORD

1 have any exhibits in your paperwork. Hand those to the Court
2 Reporter, please.

3 THE COURT REPORTER: I have marked fifteen for the
4 Defense.

5 THE COURT: All right. See you back tomorrow morning
6 at 9:00 A.M.

7 (THE FOLLOWING TAKES PLACE ON MAY 25, 2011, OUTSIDE THE
8 PRESENCE OF THE JURY.)

9 (DEFENDANT'S VOIR DIRE MARKED OFF THE RECORD AS COURT'S
10 EXHIBIT NUMBER 2.)

11 THE COURT: All right.

12 MS. WILLIAMS: Your Honor, do we need to, for the
13 record to maybe put anything in this transcript that we had
14 the Jackson -- the Jackson hearing on Friday and that I made
15 motions with regard to certain -- that the motions that I
16 made Friday that would be continuing, and I know Your Honor
17 was -- he denied them on Friday and I am sure you -- I just
18 wanted this transcript to make sure it includes ---

19 THE COURT: All right, I appreciate that. Well, the
20 same Court Reporter has done them. It's up to -- if there's
21 some appeal, then that will be up to appellate counsel to
22 take care of.

23 MS. WILLIAMS: Thank you, Your Honor.

24 MR. DEBUSK: We've now incorporated them by reference.

25 THE COURT: Well, I appreciate that, but, I mean, it's

JURY OUT - ON RECORD
JURY IN

1 up to the appellate counsel to do their job.

2 MR. DEBUSK: Your Honor, Exhibit 57 from yesterday you
3 had asked me to redact ---

4 THE COURT: Yes. Have you shown that to Ms. Williams?

5 MR. DEBUSK: Yes.

6 THE COURT: All right, that's great. If you would just
7 give that back to the Court Reporter, then, please.

8 MR. DEBUSK: It is in evidence.

9 THE COURT: With agreement, Ms. Williams, the old 57,
10 we'll just substitute that out and give that one back to the
11 State.

12 MS. WILLIAMS: Certainly, Your Honor.

13 THE COURT: And if you just want to, you know, scratch
14 through the exhibit or whatever you want to do.

15 (ORIGINAL STATE'S EXHIBIT NUMBER 57 IN EVIDENCE RETURNED
16 TO COUNSEL FOR THE STATE AND REDACTED STATE'S EXHIBIT NUMBER
17 57 RE-MARKED IN EVIDENCE.)

18 THE COURT: All right, if you would, Detective, then,
19 if you'd re-take the witness stand, please, sir.

20 All right, bring the jury in, please.

21 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
22 JURY.)

23 THE COURT: All right, if you would, Ms. Williams, if
24 you want to start your cross-examination, please, Ma'am.

25 MS. WILLIAMS: Thank you, Your Honor.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 **CROSS-EXAMINATION BY MS. WILLIAMS:**

2 Q. Good morning, Detective Pitsinger.

3 A. Good morning.

4 Q. All right, let's take a minute and let's start back to
5 refresh. Can you tell me specifically your training and
6 background in blood stain pattern interpretation.

7 A. As I mentioned when I went through all the training
8 that I've had basically since 1984, sometimes when you go to
9 one specific training, another training is encompassed in it.
10 For instance, you go to fingerprint training, you learn other
11 aspects of fingerprint such as ridge detail, pattern
12 determination, things like that, so since 1984, some of --
13 and I don't know exactly each individual training, which one
14 would encompass blood stain pattern.

15 The vast majority, as I indicated, in 2010, I attended a
16 South Carolina and Georgia International Association of
17 Identifiers training conference in Savannah, Georgia. There
18 I received training from -- I don't have the gentleman's name
19 that did the training, but he was an approved instructor
20 which was accepted by Georgia. I don't know what Georgia's
21 training council is, but in South Carolina, it has to go
22 through the South Carolina Criminal Justice Academy and it's
23 given a course number which is approved by the South Carolina
24 Criminal Justice Academy.

25 Q. And what kind of -- I'm sorry; I did not catch -- what

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

313

1 was that class and that training?

2 A. Blood stain pattern analysis.

3 Q. In 2010?

4 A. Yes Ma'am.

5 Q. Okay, and you've had specific training in fingerprint
6 identification, correct?

7 A. Yes, I have.

8 Q. And where was that, as opposed to cross-referencing.
9 I'm not talking about like when you're in there and they
10 cover a little bit of all of it, but something that's
11 specifically about fingerprint identification.

12 A. In 2002, I attended a forty hour class at the South
13 Carolina Criminal Justice Academy that dealt specifically
14 with fingerprint pattern recognition, fingerprint
15 identification. That was forty hours in 2002. In 2010, I
16 attended SIRCHIE. It's a -- in Youngstown; it's just outside
17 of Raleigh, and that was a forty hour class in advanced
18 ridgeology, which is just dealing with the fingerprints, but
19 it's an advanced class from the basic class.

20 Q. All right, so the SIRCHIE training in 2010 was
21 advanced, correct?

22 A. Correct.

23 Q. And SIRCHIE is an approved accredited training
24 facility, correct?

25 A. Yes Ma'am, it is.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 Q. Can you tell me the four main aspects that you look
2 for when you're doing fingerprint identification?

3 A. If you're talking about any ridges, bifurcations, the
4 delta, and the core, yes Ma'am.

5 Q. Loops, whorls, arches?

6 A. Okay, those are fingerprint patterns, ---

7 Q. Okay.

8 A. --- and then there was subcategories to those
9 patterns.

10 Q. All right, and I'm sure you know, how many are the
11 minimum characteristics required to make a positive I.D.?

12 A. There are none.

13 Q. There are none?

14 A. Correct, so there is no -- no certain number of
15 identifying points to categorize the fingerprint.

16 Q. Is there a minimum where you're supposed to stop or is
17 that when you get to what you call a partial identification?

18 A. No Ma'am. There is no -- you go until you, the
19 latent print examiner, are comfortable or confident in your
20 decision.

21 Q. Okay. Tell me about the specific training that you
22 may have had in footwear identification.

23 A. It was covered maybe an hour when I attended the crime
24 scene tech and evidence class in SIRCHIE in 2001.

25 Q. Okay, and have you had training in drug

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 identification?

2 A. Through SIRCHIE.

3 Q. Just your general training. Have you had specific
4 training in drug identification?

5 A. Yes, through SIRCHIE.

6 Q. Okay, through SIRCHIE. I'm sorry, and basically what
7 do you do with drugs that you find at a crime scene?

8 A. We return them to the lab or our evidence custodian
9 and if there's a need to send them off for further
10 examination, we can either send them to Horry County Police
11 Department who has a chemist, or we can send them to the
12 State Law Enforcement Division.

13 Q. Who makes the decision if they get sent or not?

14 A. Depending on the crime, the Solicitor.

15 Q. Okay. Let me take -- can you tell me about your -- I
16 think you testified yesterday that you've never actually been
17 qualified as an expert to testify in crime scene analysis
18 prior to this testimony, correct?

19 A. Correct.

20 Q. Okay, but can you -- I don't know if you said -- I
21 don't recall your answer. How many cases in the field have
22 you worked but yet rendered an opinion in, do you know?

23 A. Again, since 1984, I -- without going and pulling all
24 the stats, I said well over five hundred yesterday, and I'm
25 very confident with that answer.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 Q. And I'm assuming in those you would have rendered an
2 opinion in finger- -- you've rendered an opinion with regard
3 to fingerprints, were fingerprints there or were they not,
4 correct?

5 A. Yes.

6 Q. All right, and since those fields require -- if I
7 understand it right, when you're making a positive
8 identification of somebody to -- as a fingerprint, you're
9 supposed to have a second person agree with you that that's a
10 positive I.D., correct?

11 A. Correct.

12 Q. Who at North Myrtle Beach do you use as your second
13 expert with regard to fingerprints?

14 A. Okay. If I could back up just a minute, there are a
15 different -- my understanding, four different levels of
16 fingerprint professionalism, if you'll call it that. I have
17 basic and advanced ridgeology training. I am certified on
18 the latent print station that we have. We had one prior.
19 They made advances. Now we have an advanced one. I'm
20 certified to operate this system. In my opinion and others'
21 opinion, there's a big difference in certified and qualified.

22 I am qualified to render an opinion to this Court on
23 certain aspects of crime scene investigation. There is a --
24 I don't want to mess it up, but the highest level is a
25 certified latent print examiner. I am not a certified latent

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

317

1 print examiner. That's someone who can take a fingerprint,
2 enter it into a system, have respondents come back and do a
3 one to one comparison with those respondents. I'm not
4 certified to do that, so I can't render an opinion as to how
5 I can make an opinion ---

6 Q. A positive identification?

7 A. --- not being -- exactly.

8 Q. Okay, but you testified that you are qualified to
9 determine at the scene if there's enough there to get a
10 fingerprint or not?

11 A. I don't believe I said that yesterday. There was --
12 if you'll point out a specific print that you're talking
13 about, I'll give an opinion.

14 Q. Well, we'll come back to that. I'll address that in a
15 minute. Let me ask you this. You said a term that I'm
16 interested in. What is a latent print?

17 A. A latent is a hidden print.

18 Q. It's a -- hidden?

19 A. It's invisible to the naked eye typically.

20 Q. Okay. You were -- when you were -- when you -- let me
21 start this again. When you arrived at the crime scene, had
22 the body been moved to your knowledge?

23 A. Not that I know of, no.

24 Q. And would it be very important that the body not be
25 moved prior to the scene being processed, is that right?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 A. Unless there were some lifesaving techniques that were
2 done.

3 Q. But otherwise, we leave it alone, correct?

4 A. Yes.

5 Q. And if I understand correctly, it's very important for
6 the scene to be as is so that when the police come in they
7 can do their job and process -- what we call process the
8 scene, correct?

9 A. Yes, that's true.

10 Q. Okay. Who at this particular case was in charge of
11 documenting and collecting the evidence?

12 A. I was.

13 Q. You were. Tell me -- can you give me a kind of a
14 quick overview of what it is when you arrive at a potential
15 homicide scene how you start that process?

16 A. We always photograph first. That way, you can get
17 shots of anything before anything is disturbed. Sometimes
18 you have to open the door to get in. Sometimes you may have
19 to move an item to get a better picture, but to photograph
20 the scene as is to begin with is the first initial step.

21 Q. Okay. Do you typically put on protective clothing.

22 A. Sometimes; sometimes not, typically always gloves.

23 Q. Okay, but if there's a lot of blood at the scene, that
24 would -- could be a standard procedure?

25 A. We could. I mean, I've only put on a body suit one

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

319

1 time.

2 Q. Okay. All right, so you walk through and you document
3 how the scene is. Then what -- in general, what would you do
4 next?

5 A. Well, a lot of times a scene dictates, you know, what
6 you do next. You typically deal with your most fragile
7 evidence first, which is basically physiological fluid, and
8 you can -- you can do any number of analyses at one time.
9 You know, I mean, you don't -- it's not set in stone that you
10 have to do one, then you have to do two, then you have to do
11 three.

12 Q. That's basically a -- a call that you make as the
13 person who is processing the scene, correct?

14 A. Correct.

15 Q. Do you document those analyses as you perform those?

16 A. No. I mean, if I photograph -- if we're talking about
17 this specific incident, I'm not taking a picture and writing
18 down that I took a picture, and I'm not taking a swab and
19 writing down that I'm taking a swab. I believe Officer
20 Swarthout, she can testify to what she did. She was
21 assisting me that particular day.

22 Q. So you didn't take pictures as you processed the
23 scene, correct?

24 A. I took all the pictures at once, and then I may have
25 gone back and taken closeups with scales. We typically take

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 pictures that need to be scaled. We take a picture without a
2 scale first so there's no distortion or anything to it, and
3 then we put a scale in and take a picture.

4 Q. Why do you put a scale in, Detective?

5 A. In case there's a need to determine a size factor.

6 Q. Would it be a safe assumption to assume that you don't
7 put a scale beside something that when you're processing the
8 scene at that time you think there's potential evidentiary
9 value to it, correct?

10 A. If you'll give me an example, I can tell you.

11 Q. Well, why would you just randomly lay it -- I'm sure
12 you don't just go randomly lay a scale down in the middle of
13 the floor and take a picture, right?

14 A. If I need the measurement, I could, yes. If you'll
15 give me an example, I'll try to explain it for you.

16 Q. Well, I don't want an example. Specifically what I
17 want in general at this point is I'm assuming that it's
18 correct to say that you use a scale when you think you may
19 need to measure something and you need to measure it because
20 that could potentially be important?

21 A. If I think it's necessary, yes, I'll put a scale in.

22 Q. Okay, and you wouldn't do that if you didn't think it
23 was necessary, correct?

24 A. Typically not.

25 Q. Okay. Let me ask you this. Are you a member of the

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

321

1 International Association for Identification?

2 A. Yes, I am, the South Carolina Division.

3 Q. The South Carolina Chapter. That's when you said that
4 you were a member of the Association of Identifiers?

5 A. Yes Ma'am.

6 Q. Now, let's move to this scene. Can you tell me
7 specifically what evidence was collected at this scene, and
8 if you need to refer to your case notes, you have those with
9 you, correct?

10 A. Yes Ma'am. There were two brown in color dresser
11 drawers taken from the apartment with blood spatter on them.
12 I have the whole list. Do you want what I collected, because
13 that's all I'm going to testify to is what I collected. I
14 mean, someone else went to the autopsy and collected things.

15 Q. Oh, yes sir, correct. We've covered that.
16 Absolutely, the things you collected from the scene.

17 A. As I indicated, the two dresser drawers; a swabbing
18 from the outside of the bathroom wall; a swabbing from the
19 lower left door inside; a swabbing from the front door jamb,
20 and I am referring to blood swabbings or what we believed to
21 be blood; a swabbing from the floor by the corner of the bed;
22 a swabbing from the lower portion of the refrigerator door.

23 An envelope containing a green leafy substance recovered
24 from the nightstand next to the bed; an envelope containing
25 an unknown substance recovered from the floor; an envelope

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 containing hair recovered from the floor; an envelope
2 containing hair recovered from the back of the victim's
3 shirt; an envelope containing teeth recovered from under the
4 victim's body; an envelope containing pills recovered from
5 the floor by the front door; that's what I have.

6 Q. Okay. Now, what was done with that evidence when you
7 collected it, Detective?

8 A. Well, they were put -- at the scene, later completely
9 put ---

10 Q. Well, tell me, what did you do with it at the scene?

11 A. At the scene, they were collected and put in the
12 individual packaging. When we got back to the station, the
13 evidence forms were completed and then depending on what type
14 of evidence it was, it was sent to the evidence custodian.

15 Q. So basically most all -- it's safe to say all of it
16 was placed into evidence, correct?

17 A. Yes Ma'am. The drawers were set out to dry. We just
18 wanted to make sure they were dry before we -- we sent them
19 on.

20 Q. Absolutely, but once they were preserved as they
21 needed to be preserved, they were placed into evidence,
22 correct?

23 A. Yes Ma'am.

24 Q. Okay. Now, Detective, is there a 911 tape into
25 evidence in this case?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 A. I wouldn't have had anything to do with that. That
2 would have come from the evidence custodian. She supervises
3 the Communications Division.

4 Q. So your job in this case was just to process the crime
5 scene?

6 A. Yes Ma'am.

7 Q. Were you the lead detective in this investigation or
8 who was the lead detective in this investigation?

9 A. As far as the crime scene, I was.

10 Q. So you were just the lead at the crime scene, but not
11 the overall investigation?

12 A. Well, Detective Lynam did the interview with the
13 suspect. He's been deemed the lead investigator by the
14 Solicitor.

15 Q. By the Solicitor, but internally, let me ask you isn't
16 it typically that when you have an investigation in a Police
17 Department that one person is assigned as the lead detective
18 for that particular case?

19 A. We're not that big of a department, you know. I mean,
20 a lot of times we have to do multiple tasks.

21 Q. Okay. What I'm getting at is there was a 911 call
22 made, correct?

23 A. I don't -- I don't know. That would have to be --
24 come from the evidence custodian, Renee Best.

25 Q. So you don't even know if this call came in as a 911

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 call, Detective?

2 A. I can read from my notes what I have. On August 28,
3 2008, at 7:00 A.M., Fire Department and E.M.S. were
4 dispatched to a scene for a medical call.

5 Q. And if they were dispatched to a scene for a medical
6 call, how would that have typically been done?

7 A. I can't answer that, Ma'am. I don't know.

8 Q. Okay, so we don't know if they just showed up?

9 A. (No response.)

10 Q. All right. Well, I'll move on. Let me ask you this.
11 Which items that you listed for me that you collected from
12 the scene were actually submitted to S.L.E.D.?

13 A. I -- I'd have to review the S.L.E.D. Evidence Log.

14 Q. You don't have that with you?

15 A. No Ma'am.

16 Q. So you don't know what was taken -- what, if anything,
17 was taken to S.L.E.D.?

18 A. I know there were a number of items that were taken to
19 S.L.E.D.

20 Q. Do you know what -- who makes the decision as to what
21 goes to S.L.E.D.?

22 A. The Solicitor.

23 Q. The Solicitor makes the decision in this case? The
24 Police don't?

25 A. Correct.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 Q. So is it the Solicitor who is investigating this case
2 or is it the Police?

3 A. We investigate the case. The Solicitor, we confer,
4 and, you know, we -- I would follow the Solicitor's lead as
5 to what evidence he wants.

6 Q. Okay. Well, then, tell me which evidence did the
7 Solicitor ask you to send to S.L.E.D. to get analyzed?

8 A. He wouldn't have asked me. That would have been
9 between him and the evidence custodian. We would have
10 conferred on it.

11 Q. Which evidence did you confer with the Solicitor and
12 the evidence custodian that were sent to S.L.E.D., do you
13 know?

14 A. The evidence custodian, Renee Best, would have that
15 paperwork.

16 Q. Well, let me ask you this. Is it safe to assume that
17 you know that the belt was sent to S.L.E.D. and analyzed, is
18 that correct?

19 A. Yes, it was.

20 Q. Were the blood swabs that you testified that you took
21 sent to S.L.E.D. and analyzed?

22 A. I'm not sure of that.

23 Q. You don't know?

24 A. If I could see the S.L.E.D. paperwork, I can tell you.

25 Q. One moment. If I hand you this, Detective, will that

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 refresh your memory?

2 A. Yes, it would.

3 Q. Okay.

4 A. And your question being?

5 Q. Do you know what items that were sent to S.L.E.D. to
6 actually be tested at S.L.E.D.?

7 A. Yes, I do. Reading from the sheet returned by
8 S.L.E.D. with their analysis on it, Item 1 submitted, hair
9 from left hand, and the results of the exam also?

10 Q. No.

11 A. Okay, just the items submitted?

12 Q. I just want to know what was tested or submitted for
13 testing.

14 A. Item Number 1, hair from the left hand. Item 2.1,
15 debris from red panties, victim. Item 2.1.1, hair. Item
16 2.1.2, hair. Item 3.1, swab from outside brown leather weave
17 belt. Item 3.2, swab from inside brown leather weave belt.

18 Q. Let me pause you for a second. The swab from the
19 outside and the swab from the inside, who did those swabs?
20 Did you do them?

21 A. Oh, no, Ma'am. No Ma'am.

22 Q. You didn't do those?

23 A. No Ma'am.

24 Q. Okay.

25 A. Continue?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 Q. Please.

2 A. Item 3.3, debris from brown leather weave belt. Item
3 4, sexual assault evidence collection kit from Phyllis S.
4 Mowery. Item 4.1, blood standard from within that kit. Item
5 4.2, saliva. Item 4.3, smear, vaginal, oral, or rectal.
6 Item 4.4, vaginal swab. Item 4.5, oral swab. Item 4.6,
7 rectal swab. Item 4.7.1, fingernail scrapings, right. Item
8 4.7.2, fingernail scrapings, left.

9 Item 4.8, known head hair. Item 4.9, known pubic hair.
10 Item 4.10, pubic hair combings. Item 4.10.1, hair. Item 10
11 -- or I'm sorry. Item 4.10.2, hair. Item 4.10.3, hair.
12 Item 4.11, miscellaneous materials.

13 Item 6, blood standard from Jeffrey W. Riebe. Item 7,
14 known head hair from Jeffrey W. Riebe, and that's it.

15 Q. Okay. All right, do you know if all of those items
16 were actually tested?

17 A. Again, I'd have to look at the results.

18 Q. I didn't want you to -- I just -- do you recall if
19 they were tested?

20 A. Without seeing them, no.

21 Q. You just don't know? I don't want you to read the
22 results because that would be S.L.E.D.'s providence to read
23 the results, but I just want to know if you know if all of
24 those items were tested?

25 A. All, no.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 Q. Okay, and let me ask you this. When items are
2 collected from a scene, they are collected for a purpose? Is
3 that a fair statement?

4 A. Typically. If I could explain.

5 Q. Please.

6 A. Our philosophy is it's better to have and not need
7 than to need and not have, so I typically take a lot of
8 pictures and I collect a lot of stuff. We can always sort
9 through what we don't need, but if I don't have it, I can't
10 use it.

11 Q. Okay, so you collected -- what you're telling me is
12 you collected things that you didn't even know if they had
13 evidentiary value or not, but to better be safe than sorry,
14 right?

15 A. Exactly.

16 Q. And so the things that you didn't collect, is it safe
17 to say that you didn't think they had any evidentiary value?

18 A. Typically.

19 Q. Is that a fair statement?

20 A. Yes.

21 Q. Okay. Now, do you know if -- let me ask you this. Do
22 you know if the hair on -- there was hair collected from the
23 back of the decedent's -- from Ms. Mowery's shirt, correct?

24 A. Yes, I recall that.

25 Q. Do you know if that hair was tested?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 A. Without looking at the results, no.

2 Q. See if you can tell from this if it actually was
3 tested.

4 A. Well, there are on the first page two items listed as
5 hair, other than hair from left hand, and on the following
6 page, two of five, there are -- well, that's it. The back
7 page comes from the sexual assault kit. On the first page
8 there are two items listed as hair, but they don't
9 differentiate between hair from floor and hair from -- hair
10 from floor and hair from hand.

11 Q. So we don't know if that hair was tested or not, do
12 we?

13 A. Well, it says, See DNA Analysis, and the analyst would
14 have to indicate which one was tested or which one was which.

15 Q. Okay, but let me ask you, do you think that it would
16 have been important to test the hair on the back of her
17 shirt?

18 A. Well, it says, See DNA Analysis, so I can't say that
19 they didn't test it.

20 Q. But you can't tell me they did?

21 A. No Ma'am. That's something that S.L.E.D. would have
22 to answer.

23 Q. Let me ask you this, Detective. Did you review the
24 case file prior to coming in here today?

25 A. Yes, I did.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 Q. So you're familiar -- and I'm assuming the case file
2 has not only your notes, but everybody else's notes, correct?

3 A. I -- I keep a -- what I call a working file. I don't
4 -- I didn't review Detective Lynam's interview. I didn't
5 review what evidence custodian Renee Best did. I didn't
6 review what somebody else did. I'm here to testify about
7 what I did.

8 Q. Okay, but you were the lead detective at the crime
9 scene on this?

10 A. It you want to put a title on something. I don't put
11 on a shirt when I go to work. I do what I'm charged with
12 doing.

13 Q. Okay, but I believe there's been prior testimony that
14 at the crime scene you were in charge of what was -- what was
15 to be collected. Would that be a fair statement?

16 A. For lack of a better term, if you want to call me the
17 lead detective, you can, but I guess I was the most
18 experienced at the time.

19 Q. Okay. Let's move on to the swabs you said you
20 collected. Can you, Detective, -- there have been a lot of
21 pictures submitted into evidence. Can you -- well, let me do
22 this. I'll take this one to begin with. This has been
23 marked for identification as Defendant's Number 7, and I ask
24 if you can recognize that?

25 A. Yes, I can.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 Q. And is that a fair and accurate description of what
2 you saw at the crime scene that day?

3 A. Yes, it is.

4 MS. WILLIAMS: Your Honor, I would move Defendant's
5 Number 7 into evidence at this time.

6 THE COURT: Any objection?

7 MR. DEBUSK: Without objection, Your Honor.

8 THE COURT: All right. Defendant's 7 is in evidence
9 without objection.

10 (PHOTO ADMITTED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
11 NUMBER 7.)

12 Q. Detective, when you look at that picture, can you tell
13 me where you took swabs from in that picture, or did you take
14 any swabs of something that's shown in that picture?

15 A. Yes, the swab from the outside bathroom wall.

16 Q. Can you show me on this picture where that would be?

17 A. (Indicating.)

18 Q. Can you tell me where on that did you actually test?

19 A. The upper portion.

20 Q. Where at, Detective?

21 A. The largest.

22 MS. WILLIAMS: Your Honor, may we go in front of the
23 jury? Can he come off the stand?

24 THE COURT: Yes Ma'am. You must stand in front of that
25 microphone box there.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

- 1 MS. WILLIAMS: Right here.
- 2 Q. This picture, there's two spots, correct?
- 3 A. Yes, it is.
- 4 Q. Tell me where you collected the swab from?
- 5 A. The upper portion of the larger ---
- 6 Q. Number 1? If we call this one 1 and that one 2,
- 7 Number 1?
- 8 A. Correct.
- 9 Q. Where at in there? How would you have collected the
- 10 swab? Tell me what you did.
- 11 A. They are sterile cotton swabs. You open a packet,
- 12 pull one out, ---
- 13 Q. Like a Q-Tip?
- 14 A. Correct, just on a longer stick, put the sterile water
- 15 on it, shake off and roll across it.
- 16 Q. Okay. This swab was approximately how big in real
- 17 life, this spot?
- 18 A. I believe there's another picture with a scale ---
- 19 THE COURT: You need to speak up, sir.
- 20 A. I'm sorry. I believe there's another picture with a
- 21 scale in it.
- 22 Q. Well, do you have an approximation?
- 23 A. Not without a scale.
- 24 Q. Well, let's -- I don't know -- let's look for that.
- 25 THE COURT: While she's doing that, why don't you

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

333

1 return to the ---

2 MS. WILLIAMS: Here it is.

3 THE COURT: All right. Then he's got to speak up
4 because nobody can hear him.

5 MS. WILLIAMS: Okay. I'll move right here.

6 Q. And this is State's Number 23 that has a scale in it,
7 correct, Detective?

8 A. Yes, it is.

9 Q. Tell me approximately how big that spot was.

10 A. I've actually got a scale, if I could refer to
11 that, ---

12 Q. Certainly.

13 A. --- that's blown up.

14 THE COURT: Why don't you just have a seat.

15 A. See that? Where is that other one? This isn't blown
16 up all the way, but this is the scale that I use. I would
17 say, you know, without, you know, the proper lighting, the
18 proper conditions and all, I can give you a rough estimate of
19 about one inch.

20 Q. An inch?

21 A. In width, that inch, and this is two inches, but half
22 of that as it says on the scale.

23 Q. All right, and when you swab, did you swab in the
24 middle, did you swab at the top, did you swab at the bottom?
25 Where did you swab?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

- 1 A. The top portion.
- 2 Q. All the way at the top?
- 3 A. Yes, just below the scale, between the scale and the
- 4 swab -- or between the scale and the stain.
- 5 Q. Do you have a picture of where you actually swabbed?
- 6 A. No Ma'am.
- 7 Q. All right. Where did you take the next swab from,
- 8 Detective?
- 9 A. The lower left door jamb.
- 10 Q. Do you have a picture of where you took that swab at?
- 11 A. If I could refer to one of the pictures.
- 12 Q. State's Number 31, would that be it?
- 13 A. This is the upper -- this is mid-way of the door here.
- 14 Q. Did you swab there?
- 15 A. That would be the third one to front -- third one from
- 16 the front door jamb.
- 17 Q. I'm sorry; was that a yes or a no? Did you swab
- 18 there?
- 19 A. Yeah, this is the third one. I don't know what you
- 20 have there, but this is the third swabbing, not the next
- 21 swabbing.
- 22 Q. So you did swab here?
- 23 A. Yes.
- 24 Q. All right. Well, tell me where you swabbed in that
- 25 one.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

- 1 A. It would be above the -- the tape here. You can't see
2 it that well in that picture.
- 3 Q. This is State's Number 57. Did you swab in that
4 picture?
- 5 A. No.
- 6 Q. That on the back of the door you didn't swab?
- 7 A. No Ma'am -- oh, I'm sorry. Yeah, that's the second
8 one, lower -- swabbing from lower left door inside.
- 9 Q. Okay. There are two marks here, right?
- 10 A. Correct.
- 11 Q. Which one did you swab?
- 12 A. The lower one.
- 13 Q. So you left the upper one alone?
- 14 A. Yes Ma'am.
- 15 Q. State's Number 37, is that the one you swabbed?
- 16 A. Yes. This is a swabbing from the floor by the corner
17 of the bed.
- 18 Q. Can you tell me where exactly you swabbed in there?
- 19 A. That stain is so small, probably the entire stain.
- 20 Q. So if it's small, it would take up the whole stain,
21 but if it's a big stain, you only get a little portion of it,
22 right?
- 23 A. Correct.
- 24 Q. State's Number 36, did you swab any there?
- 25 A. No Ma'am.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

- 1 Q. This one you did not swab?
- 2 A. No Ma'am.
- 3 Q. Okay. State's Number 30, did you swab in there?
- 4 A. Yes, I did.
- 5 Q. What is that one?
- 6 A. It's the refrigerator.
- 7 Q. Which one did you swab there, Detective?
- 8 A. That one, I can't tell you.
- 9 Q. So we don't know?
- 10 A. No Ma'am.
- 11 Q. And it's safe to say there's several spots there,
- 12 correct?
- 13 A. There were numerous.
- 14 Q. Okay. State's Number 55, did you swab in there?
- 15 A. Where, anywhere?
- 16 Q. Well, I mean, it's all over; yes. I mean, did you
- 17 swab in this one?
- 18 A. No Ma'am.
- 19 Q. None of these?
- 20 A. No Ma'am.
- 21 Q. Defendant's Number 7, you testified you swabbed along
- 22 the wall. What about any of that other?
- 23 A. No Ma'am.
- 24 Q. None of those other spots?
- 25 A. Not on the floor, no Ma'am.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 Q. Let's me show you what's been marked for
2 identification as Defendant's Number 8 for identification.
3 Can you tell me if you recognize that?

4 A. Yes, I do.

5 Q. Is that an accurate reflection of what you saw and did
6 at the scene?

7 A. Yes.

8 MS. WILLIAMS: At this time I would move to enter in
9 evidence State's Number -- or Defendant's Number 8.

10 THE COURT: Any objection?

11 MR. DEBUSK: No objection, Your Honor.

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

13 MS. WILLIAMS: Thank you.

14 (PHOTO ADMITTED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
15 NUMBER 8.)

16 Q. Detective, could you tell me what that is and what it
17 represents?

18 A. That's a blood pattern that appears to have been
19 altered at the -- just inside the front door.

20 Q. Did you test it?

21 A. No, I didn't.

22 Q. You didn't test that?

23 A. No Ma'am.

24 Q. Now, let me ask you, this in Number 8, this particular
25 spot right there, does it indicate anything, anything you

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

- 1 notice about it, anything that jumps out at you?
- 2 A. It's not in the original or the bigger stain.
- 3 Q. It's not part of the bigger stain?
- 4 A. No Ma'am.
- 5 Q. How about its shape?
- 6 A. It's round in its content.
- 7 Q. Is that indicative of anything when their shapes are
- 8 round?
- 9 A. Typic- ---
- 10 MS. WILLIAMS: I'm sorry. May I publish this to the
- 11 jury as I'm talking to him?
- 12 THE COURT: Yes Ma'am.
- 13 Q. This stain, the round one?
- 14 A. Uh huh (indicating positive).
- 15 THE COURT: You need to answer yes or no.
- 16 A. Yes.
- 17 Q. Is it indicative of anything in particular to you?
- 18 A. Typically a ninety degree -- a ninety degree drop.
- 19 Q. What does that mean?
- 20 A. It's straight down.
- 21 Q. Do you know whose blood that is?
- 22 A. No. It wasn't collected.
- 23 Q. It wasn't collected?
- 24 A. It was not.
- 25 Q. Could it have been the victim's?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

- 1 A. Could have.
- 2 Q. Could it have been the perpetrator?
- 3 A. Could have.
- 4 Q. But it wasn't collected?
- 5 A. No Ma'am.
- 6 Q. A ninety degree drop means that like I'm up and it
7 goes down?
- 8 A. It's just straight down as gravity takes it.
- 9 Q. Let me show you the top of your report on Page 2, ask
10 you if you will read that top sentence there to refresh your
11 memory, please.
- 12 A. There were several blood stains and areas of blood
13 that were observed that appeared out of place and away from
14 the body. Read on?
- 15 Q. That's all, so you know at the crime scene there were
16 several blood stains away from where she was at, right?
- 17 A. Yes, that's correct.
- 18 Q. But you didn't collect all of it?
- 19 A. No, I did not.
- 20 Q. And you didn't collect from everywhere it was, did
21 you?
- 22 A. No, I did not.
- 23 Q. Let me show you what's been marked for identification
24 as Defendant's Number 11 and ask if that -- if you recognize
25 that photo?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 A. Yes, I do.

2 Q. Is that an accurate reflection of what you saw or
3 possibly what was at that scene?

4 A. Yes, it does.

5 MS. WILLIAMS: Your Honor, at this time ---

6 Q. Did you take this photo, do you recall, or let me just
7 ask you this. This is an accurate reflection, correct?

8 A. Yes, I believe it is.

9 MS. WILLIAMS: Your Honor, at this time we would move
10 in Defendant's Number 11.

11 THE COURT: Any objection?

12 MR. DEBUSK: I think this is already a State's Exhibit,
13 Your Honor, but other than that, no objection.

14 THE COURT: All right. Is it a photo that's already in
15 evidence?

16 MS. WILLIAMS: Your Honor, I'm not sure.

17 THE COURT: All right, very good. I'm going to allow
18 it into evidence. Let's try not to duplicate.

19 MS. WILLIAMS: Yes sir.

20 (PHOTO ADMITTED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
21 NUMBER 11.)

22 Q. Can you tell me in Number 11 what -- where you
23 collected swabs from?

24 A. In this picture, as I indicated earlier, I didn't
25 collect any swabs in this area.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

- 1 Q. None?
- 2 A. No Ma'am.
- 3 Q. Did you collect those pills?
- 4 A. Yes, I did.
- 5 Q. Did you collect all of them?
- 6 A. I'm not sure if that crushed one was collected. I
- 7 know there were, I think, four of the blue ones and one of
- 8 them was busted in half.
- 9 Q. Do you know if those pills were sent to the lab for
- 10 analyzing?
- 11 A. I don't believe they were, but again, without looking
- 12 at the analysis report.
- 13 Q. But any pills that are up here, is it safe to say that
- 14 the pills that were up that actually have already been
- 15 entered into evidence are what you collected, correct?
- 16 A. Yes, they would be.
- 17 Q. Okay, so it's safe to say that if that one crushed up
- 18 isn't in there, you didn't collect it?
- 19 A. That's true.
- 20 Q. Let me ask you, you collected numerous swabs
- 21 throughout this apartment, correct?
- 22 A. That's correct.
- 23 Q. This apartment wasn't very big, was it?
- 24 A. No Ma'am, it wasn't.
- 25 Q. And it wasn't a great big ol' area to process, right?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

- 1 A. No, it wasn't.
- 2 Q. Let me ask you this. You testified there are two
3 dresser drawers that were collected. Why did you collect
4 those?
- 5 A. They had blood spatter and impact spatter on them.
- 6 Q. Did you swab them?
- 7 A. No. We still have those.
- 8 Q. So you have them, but they weren't swabbed?
- 9 A. No, they weren't.
- 10 Q. Were they tested in any way?
- 11 A. As far as DNA analysis?
- 12 Q. Anything.
- 13 A. Not to my knowledge, no.
- 14 Q. All right, so we've talked about some of the things
15 we've collected. Let's take a minute and talk about some of
16 the things we didn't collect, and I believe you testified
17 that you would rather be safe than sorry and collect too much
18 evidence and not enough, right?
- 19 A. Yes Ma'am.
- 20 Q. But we have a homicide scene and it's important to get
21 everything you can to figure out who did this, right?
- 22 A. Yes Ma'am.
- 23 Q. All right. Let me show you what's been marked for
24 identification as Defendant's Number 5 and ask if you
25 recognize that?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 A. Yes Ma'am.

2 Q. Is that photo an accurate reflection of what you saw
3 at that scene?

4 A. Yes Ma'am.

5 MS. WILLIAMS: Your Honor, we'd move Defendant's Number
6 5 in at this time.

7 THE COURT: Any objection?

8 MR. DEBUSK: No objection, Your Honor.

9 THE COURT: All right. It's in evidence without
10 objection.

11 MS. WILLIAMS: Thank you, Your Honor.

12 (PHOTO ADMITTED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
13 NUMBER 5.)

14 Q. Can you tell me what this is, Defendant's Number 5,
15 Detective?

16 A. It appears to be a washcloth in the bathroom sink.

17 Q. Did you do anything with that washcloth?

18 A. I don't believe I did. I don't have anything listed.

19 MS. WILLIAMS: Your Honor, may I publish this to the
20 jury?

21 THE COURT: Yes Ma'am.

22 Q. So this was the sink?

23 A. Yes, it was.

24 Q. Was it wet or was it dry?

25 A. I don't recall.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 Q. But you didn't collect it?

2 A. No, I did not.

3 Q. You left it there?

4 A. Yes.

5 Q. All right. I show you what's been marked for
6 identification as Defendant's Number 6.

7 MS. WILLIAMS: Your Honor, that one may be in. This
8 one is 21. 21 is in, right?

9 THE REPORTER: Yes.

10 MS. WILLIAMS: This is the same photo, ---

11 THE COURT: All right, very good.

12 MS. WILLIAMS: --- so I will not ---

13 THE COURT: All right, very good.

14 MS. WILLIAMS: I will give it back to you (the
15 Reporter).

16 Q. State's Number 21, Detective, what is this?

17 A. It's a kind of make-shift trash can.

18 Q. And what's in that trash can?

19 A. Specifically a -- I don't know what the size -- it
20 appears to be an empty bottle of Black Velvet Canadian
21 whiskey, several Big K Coca Cola cans, and a plastic sleeve
22 that holds the cans like in a six-pack.

23 Q. Did you collect any of these?

24 A. No, I did not.

25 Q. Detective, why didn't you collect these?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

- 1 A. They didn't have a relevance at the time.
- 2 Q. They didn't have relevance. Can you explain?
- 3 A. If you'll ask me a question, I can.
- 4 Q. How did they have relevance? Tell me how you decided
- 5 they didn't have relevance.
- 6 A. Well, I couldn't say that they were part of the crime
- 7 scene, whether they were used by the victim or anyone else.
- 8 Q. But if they had been used by somebody else and you had
- 9 tested them, maybe that would have helped you figure out who
- 10 else had been in there, right?
- 11 A. Maybe, yes.
- 12 Q. Okay, and maybe if they had been tested and they
- 13 didn't belong to Ms. Mowery, that they belonged to somebody
- 14 else, we could have found that out, right?
- 15 A. Maybe.
- 16 Q. But we don't know, do we?
- 17 A. No, we do not. It wasn't collected.
- 18 Q. Defendant's Number 7. Let me ask you, Detective, at
- 19 the bottom of this picture, what do you see?
- 20 A. A goblet or a cup.
- 21 Q. Or a stein? Is that a good name for it?
- 22 A. Whatever you want to put on it.
- 23 Q. Now, Detective, I'm going to ask you in relation to
- 24 this picture, where was Ms. -- and let me make sure. You
- 25 took this picture when you entered the crime scene before you

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 disturbed anything, right, is that fair?

2 A. I don't know if that was before the body was moved or
3 not.

4 Q. But -- but I -- but let me just ask you this. Is it
5 safe to assume that you came in and you basically
6 photographed the scene to preserve it through pictures so we
7 would know what was there and what wasn't there, right?

8 A. That's correct.

9 Q. Okay, and in relation to this picture, where would Ms.
10 Mowery have been?

11 A. Again, ---

12 Q. Approximately. Give me an idea. I mean, was she way
13 over here, was she here, was she across the room, was she
14 maybe, you know, two feet away, a foot away? A good rough
15 approximation is all I'm asking for.

16 A. Maybe right in this area just below where the picture
17 would be.

18 Q. So this stein is relatively -- it's pretty doggone
19 close to where she was, right?

20 A. Within a foot or two.

21 Q. Within a foot or so. Did you collect that stein?

22 A. I did not.

23 Q. Why?

24 A. It was of no relevance, I mean.

25 Q. And how did you determine that there was no relevance?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

- 1 This was a foot away from where Ms. Mowery was?
- 2 A. Uh huh (indicating positive)..
- 3 Q. How was it of no relevance?
- 4 A. Well, there was no injury that would have been
- 5 consistent with that, that I noted at the time when I was at
- 6 that crime scene.
- 7 Q. But you didn't know for sure, right?
- 8 A. No, I didn't.
- 9 Q. And that's why, in fact, Ms. Mowery left the scene and
- 10 was taken to the hospital to have an autopsy performed,
- 11 correct?
- 12 A. That's correct.
- 13 Q. So that you could determine exactly what injuries, if
- 14 any, she had sustained?
- 15 A. That's correct.
- 16 Q. Okay, so we didn't know at that point exactly what
- 17 injuries she may or may not have had?
- 18 A. No, we did not. No, we did not.
- 19 Q. Okay, but yet this was not collected?
- 20 A. No, it was not.
- 21 Q. Does it appear to you to be bent?
- 22 A. It does.
- 23 Q. Was this tested for fingerprints?
- 24 A. No, it was not.
- 25 Q. Could it have been?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

- 1 A. It could have been, yes.
- 2 Q. And if fingerprints had been on there, presumably they
- 3 could have belonged to Ms. Mowery, correct?
- 4 A. They could have.
- 5 Q. They could have belonged to somebody else who was in
- 6 there, correct?
- 7 A. Correct.
- 8 Q. But we don't know?
- 9 A. We do not.
- 10 Q. And we don't have this stein at all, do we?
- 11 A. No, we do not.
- 12 Q. Now, you testified you actually had advanced training
- 13 in fingerprint identification, correct?
- 14 A. Ridgeology, yes.
- 15 Q. Ridgeology, that's the term, and you went to SIRCHIE,
- 16 the SIRCHIE program is what I recall, right?
- 17 A. That's correct.
- 18 Q. Okay, and were you the one collecting fingerprints at
- 19 the crime scene or was Detective Abercrombie collecting
- 20 fingerprints?
- 21 A. Detective Abercrombie processed that area on top of
- 22 the dresser.
- 23 Q. This is Defendant's Number 14. That's the area he
- 24 processed, correct?
- 25 A. That is correct.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

- 1 Q. Were you there when he was processing it?
- 2 A. Yes, I was.
- 3 Q. Did you talk to him about it?
- 4 A. I would have taken the picture.
- 5 Q. Did you in any way assist him in that?
- 6 A. Other than taking the photograph?
- 7 Q. Yes sir.
- 8 A. No.
- 9 Q. Do you know what he used to process it with?
- 10 A. I'm assuming latent print powder.
- 11 Q. All right. Detective, let me ask you this question.
- 12 If you're the one who collected most of the evidence at that
- 13 scene and you're the one kind of in charge, if you will, of
- 14 that scene, and if you had seen somebody doing something that
- 15 you didn't think was all the way correct or proper, would you
- 16 have tried to change what they were doing?
- 17 A. Sure.
- 18 Q. Sure, and you're the one who has had advanced finger
- 19 -- finger ---
- 20 A. Print.
- 21 Q. --- fingerprint analysis?
- 22 A. Ridgeology training.
- 23 Q. Ridgeology training, right?
- 24 A. Exactly.
- 25 Q. And so part of that advanced training is how do you

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 get hidden prints or latent prints, right?

2 A. Correct.

3 Q. And part of it is how do you get it out if you can
4 find it in blood, what you do with that, correct?

5 A. Part of it, yes.

6 Q. All right. Are you familiar with amino black,
7 Detective?

8 A. I am.

9 Q. Tell me about it.

10 A. Amino black works with the proteins in the blood to
11 reveal a bluish, black stain.

12 Q. And so once there was fingerprint dust put on here,
13 could you have used amino black?

14 A. I don't have a chart or I don't know of a chart that
15 indicates. We have charts for developing fingerprints on a
16 number of different items and they give you a use this first,
17 use this next, use this next, and the prior one doesn't alter
18 or damage the print for further processing, but I don't know
19 of one that indicates amino black.

20 Q. So you don't know if you could have used amino black
21 or not?

22 A. Well, if I could read out of the text that I learned
23 from about amino black, it says -- it says amino black reacts
24 with the proteins found in blood to form a black reaction
25 product. Amino black is useful only on blood-contaminated

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 prints. It is highly sensitive. It is useful on non-porous
2 and some slightly porous surfaces. It sometimes offers
3 successful development of blood prints on dead human skin,
4 and I have one more.

5 Amino black is a biological dye that stains the proteins
6 present in blood and some other body fluids producing a dark
7 blue-black image. It is extremely useful in developing
8 latent fingerprints contaminated with blood, but it will not
9 successfully develop a normal perspiration-based print.

10 Q. So it's really designed for prints in blood, right?

11 A. Yes.

12 Q. Detective, isn't that print that was there in blood?

13 A. Yes.

14 Q. So we didn't use amino black?

15 A. No, because it wouldn't develop fingerprints that are
16 normal perspiration prints.

17 Q. But these prints are in blood?

18 A. Well, we can see those prints.

19 Q. So your testimony is amino black wouldn't have worked
20 on this?

21 A. No, I'm not saying that. I'm saying we could see the
22 blood prints, but we couldn't see if there were any other
23 prints on that dresser top.

24 Q. My question to you is do you think if you had used
25 amino black it would have further helped you develop any

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 possible ridge detail in these prints?

2 A. With all exceptions out of the way, I can't say that,
3 no.

4 Q. You don't know?

5 A. I can't -- no, that's correct.

6 Q. Do you know whose prints these are?

7 A. Do not.

8 Q. Let me ask you this. If we had been able to determine
9 whose prints these were, would that have been useful in this
10 investigation?

11 A. I think if there was enough ridge detail, certainly,
12 but it was our opinion at the time that there was
13 insufficient ridge detail to make a determination.

14 Q. I understand that, but if we had been able to develop
15 these further and determine whose fingerprints these were, it
16 would have certainly been useful in this investigation,
17 correct?

18 A. If there was enough ridge detail, yes.

19 Q. Because they could have been Ms. Mowery's
20 fingerprints, right?

21 A. Could have been.

22 Q. Could have been the perpetrator's fingerprints, right?

23 A. Could have been.

24 Q. But we don't know?

25 A. We do not know.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 Q. I show you what's been marked for identification as
2 Defendant's Number 15 and ask you if that accurately reflects
3 what you saw and what happened at the crime scene or, you
4 know, basically what occurred there, if that's an accurate
5 reflection?

6 A. Yeah. I believe this has been moved away from the
7 wall from the original position.

8 Q. And this is a photograph that would have been taken at
9 some point while y'all were processing the crime scene, is
10 that right?

11 A. I believe we were done then because I had the search
12 warrant on the counter.

13 Q. So this is one of the ones that we took after you
14 processed the scene pretty much, right?

15 A. That's correct.

16 MS. WILLIAMS: Your Honor, at this time we would move
17 Defendant's Number 15 into evidence.

18 THE COURT: Any objection?

19 MR. DEBUSK: Your Honor, I thought it was already in
20 evidence. No objection.

21 THE COURT: That's not a photograph that's already in?

22 MS. WILLIAMS: When we asked last night, Your Honor,
23 the Court Reporter said 14 was in yesterday, not 15.

24 THE COURT: All right, very good. It's in evidence
25 without objection.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 (PHOTO ADMITTED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
2 NUMBER 15.)

3 Q. And this is the dresser in Number 15 that those
4 potential fingerprints were on, correct?

5 A. Correct.

6 Q. Okay, and ---

7 MS. WILLIAMS: May I publish this to the jury, Your
8 Honor?

9 THE COURT: Yes Ma'am.

10 Q. Tell me where is that dresser at now?

11 A. Without having an exploded view of the picture, it's
12 -- it is hard to tell you.

13 Q. Well, let me ask you this. Did y'all collect this
14 dresser and take it into evidence?

15 A. No, we did not.

16 Q. So you left it there?

17 A. Yes, we did.

18 Q. So that was my question. This dresser in this picture
19 with those potential fingerprints on it were not -- was not
20 taken into evidence, correct?

21 A. Correct.

22 (PHOTO OF SHOES MARKED AS DEFENDANT'S EXHIBIT NUMBER 2
23 FOR IDENTIFICATION ONLY.)

24 (FOUR PHOTOS MARKED AS DEFENDANT'S EXHIBIT NUMBER 9, 10,
25 12, AND 13 FOR IDENTIFICATION ONLY.)

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 Q. Detective, I'm going to hand you what's been marked
2 for identification as Defendant's Number 2, 9, 10, 12, and
3 13, and ask if you would look at those and tell me if they
4 are an accurate reflection of what you saw at the crime scene
5 or photos that you have taken and developed as a part of this
6 investigation?

7 A. Yes, they are. That's another one; that was taken
8 later.

9 Q. But it's a photograph you took, correct?

10 A. I'm not sure. I don't recognize the background.

11 Q. Are you familiar with what that is or is that an
12 accurate reflection of what's in this photograph?

13 A. I'd have to compare them to the original.

14 Q. Will you do that, please.

15 A. Do you have some gloves? I have to compare them to
16 the -- if you're referring to these are the shoes we have in
17 evidence, I'd have to compare them to the shoes again. I'd
18 have to have some gloves.

19 Q. I don't have any plastic gloves. Did you bring any?

20 A. Uh uh (indicating negative).

21 MS. WILLIAMS: Just a minute. I'll get them.

22 MR. DEBUSK: Your Honor, I think the Detective has
23 already testified he doesn't recognize the photo.

24 THE COURT: Well, I ---

25 MR. DEBUSK: I don't know how he's going to testify

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS
JURY OUT - ON RECORD

1 from another exhibit that's not in evidence.
2 THE COURT: That's not what I understood that he said.
3 A. I ---
4 Q. Detective, ---
5 THE COURT: I'm sorry. Is there something else you
6 wanted to say?
7 A. I don't recognize this background. I recall taking
8 photos and doing some supplemental tests and ---
9 THE COURT: So you don't recognize taking that
10 photograph?
11 A. No sir, I do not.
12 THE COURT: All right, very good.
13 Q. So will you compare these and see if these are the
14 same shoes, that that's the same that's in that bag?
15 A. Well, I'm not a footwear impression examiner.
16 MR. DEBUSK: Your Honor, at this time, I don't think
17 those shoes are in evidence.
18 MS. WILLIAMS: Your Honor, may we take a -- a matter of
19 law?
20 THE COURT: Yes Ma'am.
21 Ladies and gentlemen of the jury, go to the jury room,
22 please.
23 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
24 JURY.)
25 THE COURT: Yes Ma'am.

JURY OUT - ON RECORD

1 **MS. WILLIAMS:** Defendant's Number 2 was provided to me
2 by the State and photographed. That was processed as part of
3 this investigation. Detective Pitsinger is the person who
4 tested Defendant Riebe's shoes, Jeff's shoes. The test is in
5 there. You have his investigative notes. He took the
6 picture.

7 **THE COURT:** He just said he doesn't recognize it and
8 could not say he took the picture. What do you want him to
9 do?

10 **MS. WILLIAMS:** Your Honor, the reality, if -- if they
11 were ---

12 **THE COURT:** What do you want him to do?

13 **MS. WILLIAMS:** I want him to look at these shoes and
14 compare this and compare and make sure that that's the shoes
15 that are in that box that he has that he tested.

16 **THE COURT:** Detective, is that something you can do?

17 A. I'm not a certified footwear impression examiner. Any
18 picture, if it may clear it up, that I would have taken with
19 these shoes at some later time would have been in the lab.
20 It would have either been on a stainless steel table
21 background, or we have -- it's a tan or off-white paper that
22 I would have pulled out to lay these on in case there was any
23 debris on it. That is some kind of formica or something it
24 looks like.

25 **THE COURT:** He's saying he's not a footwear examiner.

JURY OUT - ON RECORD

1 MR. DEBUSK: Your Honor, ---

2 THE COURT: Yes sir.

3 MR. DEBUSK: --- there may be a point of confusion
4 here. Detective Lynam took some pictures of those old shoes
5 as well. This may be one that Detective Lynam took.

6 THE COURT: All right, but going to the point of you
7 want him to use the photograph and examine the shoes in the
8 photograph and say they are the same or not the same, he just
9 said he's not a footwear examiner and can't do that, so
10 you're asking him something he's not qualified to do, nor can
11 do.

12 MS. WILLIAMS: Okay.

13 THE COURT: So obviously I'm not going to allow him to
14 do it.

15 MS. WILLIAMS: I understand, Your Honor. What I --
16 what I would want is this picture, is a picture provided to
17 me by police. I intend to introduce it into evidence.

18 THE COURT: Do you have an objection to -- what's the
19 number?

20 MS. WILLIAMS: Defendant's 2.

21 THE COURT: Defendant's 2. Solicitor, do you have an
22 objection to Defendant's 2 coming into evidence?

23 MR. DEBUSK: Not an objection to the picture, Your
24 Honor, just the question of ---

25 THE COURT: All right, Defendant's 2 is in evidence

JURY OUT - ON RECORD

1 without objection.

2 MR. DEBUSK: Thank you, Your Honor.

3 MS. WILLIAMS: Thank you, Your Honor.

4 (PHOTO OF SHOES ADMITTED INTO EVIDENCE AS DEFENDANT'S
5 EXHIBIT NUMBER 2.)

6 THE COURT: All right. If you're going to go further
7 and ask him to compare the two, obviously you can't do that
8 because he just said he can't.

9 MS. WILLIAMS: Your Honor, if I may, ---

10 THE COURT: Yes Ma'am.

11 MS. WILLIAMS: --- in his -- the Detective sent a
12 report, and so the Court knows why we're doing this out of
13 the presence of the jury, there was a supplemental crime
14 scene photograph here that said, smeared footprint pattern at
15 door. This appears to be a bloody footwear impression.
16 Impression is not sufficient for quality for comparison.
17 Impression not preserved for exam. Note the victim was
18 barefoot.

19 Your Honor, obviously it was compared. There was some
20 comparison done. She was barefoot ---

21 THE COURT: Who did the report?

22 MS. WILLIAMS: Detective Pitsinger.

23 THE COURT: Then ask him about his report.

24 MS. WILLIAMS: Your Honor, I will, but I just wanted
25 Your Honor to know that when I start talking about

JURY IN
DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 comparisons, I'm not going to ask him to identify that,
2 but ---

3 THE COURT: Well, you're on cross-examination, okay?
4 You can ask him the questions that you want to ask him. If
5 the questions you ask open some door that you didn't want
6 opened, be that as it may.

7 MS. WILLIAMS: Yes sir.

8 THE COURT: You're in control of the questions you ask,
9 all right?

10 MS. WILLIAMS: Yes sir.

11 THE COURT: Bring the jury back in.

12 How much longer are you going to go just for planning
13 here? Do you have any idea, Ms. Williams?

14 MS. WILLIAMS: Thirty, thirty or forty minutes.

15 THE COURT: All right.

16 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
17 JURY.)

18 THE COURT: All right, let's continue, Ma'am.

19 MS. WILLIAMS: Thank you.

20 CONTINUING CROSS-EXAMINATION BY MS. WILLIAMS:

21 Q. Detective, I'm going to show you what's been marked
22 for identification as Defendant's Number 16 and ask if you
23 can identify that?

24 A. Yes, I can.

25 Q. Is that an accurate reflection of the activity going

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 on in that photo?

2 A. Yes, it is.

3 MR. DEBUSK: No objection, Your Honor.

4 THE COURT: All right. Defendant's 16 is in evidence
5 without objection.

6 (PHOTO ADMITTED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
7 NUMBER 16.)

8 Q. Detective, let me ask you, Defendant's Number 13 and
9 Number 12 are photographs taken of that impression at the
10 scene, correct?

11 A. The blood stain, yes Ma'am.

12 Q. All right, two different photographs taken, correct?

13 A. I believe one is just a little bit closer.

14 Q. But two different photographs taken at the scene is my
15 point?

16 A. Oh, yes Ma'am, yes.

17 Q. Okay, but this was not tested?

18 A. As far as blood collection?

19 THE COURT: When you say this, you need to identify
20 what you're talking about.

21 Q. This blood in Defendant's 12 and Defendant's 13 was
22 not tested, correct?

23 A. No, it was not.

24 Q. Okay. Now, Defendant's 9 and Number 10, what do they
25 show?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 A. Relatively the same picture with a scale in it.

2 Q. Why would you put a scale there?

3 A. At the time I believed it was some sort of footwear
4 impression.

5 Q. So at the time you thought it was a footwear
6 impression?

7 A. Yes, I did.

8 Q. But later you made another determination, correct?

9 A. Yes, I did.

10 MS. WILLIAMS: Your Honor, I would move Defendant's
11 Number 9 and 10 into evidence at this time.

12 MR. DEBUSK: No objection, Your Honor.

13 THE COURT: All right. 9 and 10 are in evidence
14 without objection.

15 MS. WILLIAMS: Thank you.

16 (TWO PHOTOS ADMITTED INTO EVIDENCE AS DEFENDANT'S
17 EXHIBIT NUMBER 9 AND 10.)

18 Q. So while you were processing the scene, collecting
19 things that you thought were important, because it's better
20 to be safe than sorry, you actually put a scale down,
21 correct?

22 A. Yes, I did.

23 Q. And photographed it?

24 A. Yes, I did.

25 Q. Which is preserving it, correct?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 A. Yes.

2 Q. All right, but later you determined that it was
3 insufficient quality for comparison, correct?

4 A. I believe that's the terminology I used.

5 Q. Okay, and if you would like to refresh your memory,
6 that impression was not preserved?

7 A. You've got a different one highlighted.

8 THE COURT: I'm sorry, sir. We can't understand what
9 you are saying, sir.

10 A. The notes I have indicate it is a smeared footwear
11 pattern at door, just indicating the picture and the number.
12 This appears to be a bloody footwear impression. Impression
13 is not sufficient quality for comparison. Impression not
14 preserved for examination. Note the victim was barefoot.

15 Q. So in reality, you did do a comparison because you
16 compared it to the victim's feet at least, right?

17 A. A one to one comparison, no Ma'am.

18 Q. But you compared it because you mentioned that the
19 victim's foot wasn't -- barefooted, right, that the victim
20 was barefooted?

21 A. Well, the impression at the door is clearly not a foot
22 impression.

23 Q. Let me ask you, Detective, does that look like a
24 footwear impression to you?

25 A. I think anybody can derive their own opinion from it.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 Q. No. I asked you your opinion.

2 A. At the onset, as I indicated in my notes, the reason I
3 put the scale down and all was because I believed it was a
4 footwear impression. I didn't have time to sit and study ---

5 Q. Does it look like that?

6 A. Again, I'm not a footwear examiner. I'm not certified
7 to do that, and I'm not going to render that opinion from
8 that picture that you're showing me.

9 Q. Did you preserve that potential footwear impression in
10 any other manner than these photographs?

11 A. No, I did not.

12 Q. Okay. Let me ask you your opinion, since you are a
13 crime scene analyst, on Exhibit Number 8. Where is the
14 outside versus the inside in this picture?

15 A. It would be at the top portion here. This tile is on
16 the inside of the door and that grayish area is the outside.

17 Q. So from the bottom to the top, this is in going out,
18 correct?

19 A. Yes, it is.

20 Q. Does it look like the footprint is going out the door?

21 A. That's an impression. I did not say it was a
22 footprint.

23 Q. Does it look like an impression is going out the door?

24 A. I can't tell you, you know, exactly what kind of
25 impression it is, so I can't render that opinion.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 Q. And let's look at Number 11 and see if that helps any.

2 A. No, it does not. It's the same picture, just a
3 different view.

4 MS. WILLIAMS: Your Honor, may I publish Number 8 and
5 Number 11 to the jury?

6 THE COURT: Let's find out. 8 and 11 are in evidence.
7 Yes Ma'am, you may.

8 Q. So you're not willing to tell me if it looks like that
9 impression is heading out the door?

10 A. No, I'm not. I'm not a footwear examiner.

11 Q. Well, let me ask you as part of this investigation,
12 did y'all try to find a footwear analyst to look at these?

13 A. Was that picture sent to somebody, are you saying?

14 Q. Yes.

15 A. Not to my knowledge, no.

16 Q. Did you maybe while you were there you just call
17 anybody else who had any other experience with this type of
18 potential evidence?

19 A. No. We don't have anybody in our agency, no.

20 Q. Okay. Did you contact anybody at any other agency who
21 may have experience in this area?

22 A. To come to the scene?

23 Q. To come to the scene or to give you advice on what you
24 could do to preserve it if they didn't have time to come to
25 the scene, anything like that?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 A. Not to my knowledge, no.

2 Q. So we just took a picture and quit with that?

3 A. I wouldn't say that. I took numerous pictures and
4 scaled it.

5 Q. Let me ask you something else. Detective, I think you
6 testified you've been doing this for -- since 1984, a long
7 time?

8 A. Yes Ma'am.

9 Q. So do you know how long it takes for blood to dry, ten
10 minutes, fifteen minutes?

11 A. It's depend- -- it's depending on the volume of the
12 blood and the atmosphere around it.

13 Q. Typically?

14 A. I don't know, no.

15 Q. Does it take days?

16 A. It could in some situations, but I don't have a chart
17 or any kind of training in that.

18 Q. Okay. Well, let me ask you this. When you look at
19 this, does it look like the blood basically dried all at the
20 same time to you?

21 A. I can't render that opinion.

22 Q. So you don't know?

23 A. No, I don't.

24 Q. But you've had how much training in homicide
25 investigation?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

- 1 A. I've had over four hundred and fifty hours of advance
2 training, a forty hour homicide investigation class.
- 3 Q. Detective, when Mr. Riebe, when Jeff was named a
4 suspect and was interviewed, didn't he tell the police where
5 his shoes were at?
- 6 A. Detective Lynam interviewed Mr. Riebe.
- 7 Q. I understand, but my question to you is do you know if
8 he told the police where his shoes were at?
- 9 A. I do not.
- 10 Q. You don't know?
- 11 A. (NODS HEAD NEGATIVE.)
- 12 Q. All right. Well, let me ask you this. As part of
13 what you did in this investigation, didn't you come around
14 later and ask to check the shoes that were Mr. Riebe's?
- 15 A. Yes, I did.
- 16 Q. And Defendant's Number 16, what is that a photograph
17 of?
- 18 A. This is a photograph of me testing the actual shoes.
- 19 MS. WILLIAMS: Your Honor, may I publish?
- 20 Q. And Number 2, that's in evidence. That's a photograph
21 of Mr. Riebe's shoes.
- 22 A. I can't testify to this one.
- 23 Q. You don't know if that's a photograph of his shoes?
- 24 A. I'm not a ---
- 25 THE COURT: You can just say yes or no.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

- 1 A. I can't tell you, no.
- 2 Q. Okay, but what were you testing for, Detective?
- 3 A. The presence of blood.
- 4 Q. What did you find?
- 5 A. On the spots that I tested, none.
- 6 Q. How many times -- how many times did you test his
- 7 shoes?
- 8 A. Of this particular one or the other? There were two
- 9 separate tests.
- 10 Q. No, in total; in total during this investigation?
- 11 A. There were two separate tests I conducted.
- 12 Q. So you actually tested his shoes twice?
- 13 A. Yes, I did.
- 14 Q. What did you test them with the first time?
- 15 A. I believe that was phenylphaline.
- 16 Q. Phenylphaline, and what is phenylphaline supposed to
- 17 do, Detective?
- 18 A. It reacts with blood with a color change.
- 19 Q. And you didn't find any blood?
- 20 A. No, I did not.
- 21 Q. And then you've testified you tested them a second
- 22 time?
- 23 A. Yes, I did.
- 24 Q. When did you do that?
- 25 A. That would be on November 3rd, 2010.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

- 1 Q. So two years later you tested them?
- 2 A. Yes, I did.
- 3 Q. And what did you test them with that time?
- 4 A. Luminol.
- 5 Q. And what did you find?
- 6 A. No fluorescence.
- 7 Q. So that means no blood?
- 8 A. Yes.
- 9 Q. So two tests and no blood on Mr. Riebe's shoes?
- 10 A. That's correct.
- 11 Q. Now, let me ask you have you ever been to a crime
- 12 scene or are you familiar with crime scenes where people try
- 13 to what they call clean it up?
- 14 A. I don't know that I've ever been to one.
- 15 Q. But you're familiar with that, correct?
- 16 A. T.V., yeah.
- 17 Q. Okay, but let me ask you this. If somebody tried to
- 18 clean it up, is it your opinion that they really could clean
- 19 it up?
- 20 A. Uh ---
- 21 Q. Well, let me rephrase it. I'll help you out. In part
- 22 of your training, did y'all discuss like when people try to
- 23 use bleach to take a carpet and clean things up? If they
- 24 really don't clean it all the way up, you can still attempt
- 25 to test for DNA, right?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 A. Attempt, yes.

2 Q. And bleach doesn't typically clean it up, right?

3 A. I've never -- I've never been part of an experiment to
4 do that. Again, all I can say is, you know, what they show
5 on T.V.

6 Q. All right. Let me ask you this. You actually
7 performed -- isn't it true that as part of this
8 investigation, you performed tests on some of Mr. Riebe's
9 clothes that he had, correct?

10 A. Yes, I did.

11 Q. All right, and what did you find on those tests?

12 A. On that particular test, I used -- I'm going to mess
13 it up. It's Leucomalachite. Some people pronounce it
14 different. It's another chemical that reacts with blood, and
15 I tested several what I considered stains or spots on his
16 clothing, and there was no color change, no reaction.

17 Q. No blood?

18 A. No color change; no reaction.

19 Q. No blood.

20 A. Do you want me to answer that again? There was no
21 color change or no reaction. There can be false-positives
22 and positive-negatives.

23 Q. Well, let me ask you this. Did you take those clothes
24 and send them anywhere else for additional testing?

25 A. No, I did not.

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 Q. So you were satisfied with the results of your tests,
2 correct?

3 A. Yes, I was.

4 Q. Now, let me ask you, in your opinion with what you saw
5 at that scene, would you have expected or wouldn't you have
6 expected the perpetrator to have blood on his shoes?

7 A. If they were wearing shoes, there's the possibility,
8 yes.

9 Q. And if there had been blood on his shoes, it probably
10 would have been all over his shoes and all over his clothes,
11 right?

12 A. I can't say that.

13 Q. You don't know, but there was a lot of blood at this
14 crime scene I believe you testified to, correct?

15 A. Yes, there was.

16 Q. We started this dialogue off with training, and there
17 is no doubt you've had lots of training on this investigative
18 techniques, correct?

19 A. Correct.

20 Q. All right, and so with all that training, and this is
21 a potential homicide, why didn't you collect samples of all
22 the blood?

23 A. Because the blood in one area is typically from my
24 training and experience as a result of that particular
25 trauma, so all the blood up under the victim and around her

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 would typically be associated with her or letting from her.

2 Q. But there were ninety degree drops right there in
3 close vicinity to her, correct?

4 A. Correct.

5 Q. That would have indicated they dropped down?

6 A. Correct.

7 Q. And we don't know whose blood that was, right?

8 A. No, we do not.

9 Q. And that blood looked pretty different than the blood
10 right beside it, right?

11 A. Other than the smear? Are you talking about the smear
12 right there at the door?

13 Q. Yes, the shape of it.

14 A. Well, there is -- there is a number of different stain
15 patterns, and if you let blood and it drops, it forms a ring
16 if it's a ninety degree stain. If you move it or alter it,
17 or some outside force interacts with it, it changes that
18 pattern.

19 Q. Let me ask you this. If we had tested that blood and
20 actually gotten a DNA hit, so to speak, wouldn't that have
21 identified -- if it hadn't been Ms. Mowery, it would have
22 identified another person at that scene, right?

23 A. If it was not her blood, yes.

24 Q. Which would typically have been the perpetrator,
25 correct?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 A. Well, I believe it was her blood. That's all I can
2 say.

3 Q. But we don't know?

4 A. No, we do not. It was not collected.

5 Q. And let me ask you, would you have expected with the
6 blood here and the blood that happened, that the person -- I
7 want to make sure I'm clear -- that the perpetrator who did
8 this would have gotten blood on them or possibly on their
9 hands?

10 A. They could have possibly gotten blood on themselves,
11 yes.

12 Q. And maybe if they had gotten blood on themselves, they
13 would have gone to the sink and washed their hands off,
14 right?

15 A. They could have, yes.

16 Q. And so the picture of that rag in that sink could have
17 had the perpetrator's blood on it, right?

18 A. It could have. It could not have, yes.

19 Q. So we don't know?

20 A. We don't know.

21 MS. WILLIAMS: Beg the Court's indulgence.

22 THE COURT: Yes Ma'am.

23 Q. Detective, since you guys processed this scene, hasn't
24 the North Myrtle Beach Public Safety Department changed the
25 way that you process a scene and y'all do a little different

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 procedures now?

2 A. No Ma'am.

3 Q. You don't now actually put little markers on the scene
4 of where you take it and enter it into the computer and
5 photograph it a little differently?

6 A. No Ma'am.

7 Q. Really?

8 A. That's the truth. I would be the one that would most
9 likely complete the training.

10 Q. So y'all's system hasn't changed at all?

11 A. No Ma'am.

12 Q. Detective, you just testified that you've had a lot of
13 this advanced training and some of it was even last year, is
14 that right?

15 A. 2010, yes Ma'am.

16 Q. All right, and knowing what you know now, would you
17 have processed this scene differently maybe?

18 A. I guess maybe not so much the training. I think every
19 crime scene yields you a little better to embark on the next
20 one. Obviously getting -- being asked different questions,
21 why didn't I do this, why didn't I do that, it would better
22 set me up, you know, for the next crime scene to do things
23 differently, you know. I gathered a lot of stuff. Maybe I
24 didn't gather everything that, you know, Ms. Williams wanted
25 or thought was relevant, but in my training and experience, I

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 gathered; you know, an appropriate amount of evidence from
2 the scene.

3 Q. But my question is if you had to do it again, would
4 you do it differently?

5 A. Parts of it I believe I would, sure.

6 Q. Okay. Would you characterize this scene as a violent,
7 bloody scene that you processed?

8 A. Again, you know, you can put whatever you want on
9 violent. I've seen homicides with far less blood, far more
10 blood. It was -- the vast majority of the impact spatter was
11 -- was really contained to a four foot area maybe. I've seen
12 them all over. You know, was there a struggle? Yes, just
13 into the impact spatter. Was it violent? In a sense, yes.
14 Was it as violent as I've seen? No, but I have seen less
15 violent.

16 Q. But you only tested the couple of spots that you
17 thought might be important, right?

18 A. Yes Ma'am.

19 Q. But you've testified, too, that you collected more
20 than you thought was necessary, right?

21 A. Yes.

22 Q. Let me ask you this one last thing. This other stuff
23 on the floor in Defendant's Number 7, some of that was
24 collected, too, right?

25 A. You're talking about this greenish stuff here?

DENNIS JAMES PITSINGER - CROSS BY WILLIAMS

1 Q. Yes.

2 A. Yes; yes, it was.

3 Q. Was it analyzed?

4 A. Again, I'd have to look at the report, but I don't
5 believe it was.

6 Q. Okay.

7 MS. WILLIAMS: The Court's indulgence, please.

8 Your Honor, that's all the questions that I have at this
9 time.

10 THE COURT: Could y'all come talk to me for one second,
11 please.

12 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

13 MS. WILLIAMS: If I may, I'd also like to move
14 Defendant's 12 and 13 into evidence, Your Honor.

15 THE COURT: So there's no objection, Solicitor?

16 MR. DEBUSK: That's correct, Your Honor.

17 THE COURT: They're in evidence without objection.

18 (TWO PHOTOS ADMITTED INTO EVIDENCE AS DEFENDANT'S
19 EXHIBIT NUMBER 12 AND 13.)

20 THE COURT: Anything else, Ms. Williams?

21 MS. WILLIAMS: No sir.

22 THE COURT: All right. Redirect?

23 MR. DEBUSK: None, Your Honor. Thank you.

24 THE COURT: All right, sir, you may step down.

25 Do you wish the witness to be excused?

DEBRA THOMPSON - DIRECT BY DEBUSK

1 MR. DEBUSK: Yes, Your Honor.

2 THE COURT: All right. Is there any objection to that?

3 MS. WILLIAMS: Your Honor, he is under my subpoena, the
4 same rules from yesterday, please.

5 THE COURT: All right, Detective, you remain under the
6 subpoena from the Defense. You are released to go about your
7 regular activities, but you are not released from your
8 subpoena. If you have any exhibits there, make sure that
9 you've turned those over to the Court Reporter, please.

10 DETECTIVE PITSINGER: Okay. Thank you.

11 THE COURT: All right, Solicitor, your next witness,
12 please.

13 MR. DEBUSK: Debra Thompson, Your Honor.

14 THE COURT: All right, Ma'am, if you would please come
15 around to be sworn, please, Ma'am. Thank you.

16 DEBRA THOMPSON, being first duly sworn,
17 states as follows:

18 THE COURT: Please, Ma'am, if can scoot up as close as
19 you can to the microphone and speak directly into the
20 microphone. Thank you.

21 Go ahead, Solicitor.

22 DIRECT-EXAMINATION BY MR. DEBUSK:

23 Q. Ms. Thompson, who is your employer?

24 A. Conway Medical Center.

25 Q. What are your duties?

DEBRA THOMPSON - DIRECT BY DEBUSK

1 A. I am the Assistant Lab Manager, Phlebotomy Supervisor.

2 Q. How long have you been employed by Conway Medical
3 Center?

4 A. Thirty-seven years..

5 Q. Were you on duty on November 1, 2008?

6 A. Yes, I was.

7 Q. And during that time, did you come in contact with
8 Defendant, Jeffrey Riebe?

9 A. Yes sir.

10 Q. What did you do in relation to Mr. Riebe?

11 A. I collected blood samples and hair samples.

12 Q. How were those contained?

13 A. I put them in a tamper-proof container with a seal
14 across them, and the hair samples were put in a tamper-proof
15 container as well and given to Dennis Pitsinger.

16 Q. All right. While they were in your custody, did you
17 alter them or change them in any way?

18 A. No sir, I did not.

19 MR. DEBUSK: Thank you. Please answer any questions
20 the Defense might have.

21 THE COURT: Cross-examination.

22 MS. WILLIAMS: I have no questions for Ms. Thompson.

23 THE COURT: All right, Ma'am -- Solicitor, do you wish
24 the witness to be excused?

25 MR. DEBUSK: Yes, please, Your Honor.

RENEE BEST - DIRECT BY DEBUSK

379

1 THE COURT: Any objection?

2 MS. WILLIAMS: No sir.

3 THE COURT: All right, Ma'am, you are released from
4 your subpoena and may go back to your regular activities.
5 You are excused.

6 MS. THOMPSON: Thank you.

7 THE COURT: All right, Solicitor, your next witness,
8 please.

9 MR. DEBUSK: Renee Best, Your Honor.

10 THE COURT: While the next witness is approaching, may
11 we approach?

12 THE COURT: Yes. Ms. Williams.

13 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

14 THE COURT: All right, Ma'am, if you would please come
15 right up here to be sworn. Thank you.

16 RENE E BEST, being first duly sworn,
17 states as follows:

18 THE COURT: Go ahead, Solicitor.

19 DIRECT-EXAMINATION BY MR. DEBUSK:

20 Q. Ms. Best, who is your employer?

21 A. The City of North Myrtle Beach, the Department of
22 Public Safety.

23 Q. How long have you been working there?

24 A. Twenty-six plus years.

25 Q. What are your duties?

RENEE BEST - DIRECT BY DEBUSK

- 1 A. Right now I'm the Evidence Custodian and also the
2 Supervisor for the Communications/Detention area.
- 3 Q. How about on August 28, 2008?
- 4 A. I was in that same division.
- 5 Q. Okay. Describe for the jury the evidence facility at
6 North Myrtle Beach.
- 7 A. We have different drop locations where they drop the
8 evidence, and it's locked, secured, and only I have the keys
9 to it.
- 10 Q. So it's kind of like a mailbox you can put in ---
- 11 A. A mailbox or just a box. Anyway, it's secured, and
12 then I have the keys, and then I take it, log it in to our
13 computer system and then put it into the Evidence Room.
- 14 Q. Are you the one that logs in all the evidence?
- 15 A. Yes sir.
- 16 Q. I'll show you what has been marked as State's 4(A),
17 and this is State's 4(B), and ask if you recognize them?
- 18 A. I recognize this being our evidence, yes, I do.
- 19 Q. Okay. Tell me if that item -- was that placed into
20 evidence at some point?
- 21 A. It was.
- 22 Q. When was that?
- 23 A. What date and time?
- 24 Q. When and by whom, or by whom?
- 25 A. It was logged in by Dennis Pitsinger.

RENEE BEST - DIRECT BY DEBUSK

1 Q. Okay, and when? Do you have a -- sorry -- originally
2 the first time it was put into evidence. Do you have -- how
3 do you keep track of it? I'm sorry.

4 A. How do I keep track of it? All the evidence should
5 have a case number and also a evidence number on it and it
6 should correspond with what's on the paper that's attached to
7 it.

8 Q. Okay. What are those papers?

9 A. It's the evidence sheets.

10 Q. Okay. Do you have evidence sheets for that belt?

11 A. I should. Yes sir, I have one.

12 Q. Okay. When was that first logged in and by whom?

13 A. It was logged in by Detective Vant Abercrombie, given
14 to me, and then I signed it back out to Detective Dennis
15 Pitsinger and then back to ---

16 Q. When was it given to Detective Pitsinger?

17 A. Detective Pitsinger got it on 11/16 of '10.

18 Q. How about when did it come into evidence?

19 A. When did it come into evidence? It came into evidence
20 -- I logged it in on September 9th, 2008.

21 Q. Okay, and did you -- was it ever sent to S.I.E.D.?

22 A. Yes, it was.

23 Q. When was that?

24 A. I'll have to look. I mean, I -- there was so many
25 days, I couldn't ---

RENEE BEST - DIRECT BY DEBUSK

- 1 Q. This is the reason you keep these evidence sheets,
2 right?
- 3 A. That's correct. It was submitted to S.L.E.D. on
4 December 12th, 2008.
- 5 Q. And was it securely packaged when it was ---
- 6 A. Yes sir, it was.
- 7 Q. Was it received back from S.L.E.D.?
- 8 A. Yes, it was.
- 9 Q. When was it received back from S.L.E.D.?
- 10 A. Again, ---
- 11 Q. I understand that's what your sheets are for.
- 12 A. I do not have that sheet telling when it was brought
13 back. All I have is -- the only sheets I have is when it was
14 logged in.
- 15 Q. Okay. Do you know that that evidence was returned
16 from S.L.E.D.?
- 17 A. Yes, it was returned to (sic) S.L.E.D. and put back
18 into our Evidence Room.
- 19 Q. Is that indicated on the packaging?
- 20 A. On this packaging -- on these sheets, no.
- 21 Q. But the item was, again, to review, originally put in
22 by Detective Pitsinger -- I'm sorry, not Detective Pitsinger,
23 Detective Abercrombie?
- 24 A. Right.
- 25 Q. Placed in secure evidence, sent to S.L.E.D.?

RENEE BEST - DIRECT BY DEBUSK

1 A. Brought back from S.L.E.D.

2 Q. Brought back from S.L.E.D. and then given to Detective
3 Pitsinger?

4 A. That's correct.

5 Q. Did it return to evidence?

6 A. It was returned to evidence after Detective Pitsinger
7 gave it to me, and then he took it out again ---

8 Q. Okay.

9 A. --- and took it to Richland County Sheriff's Office --
10 or -- or we're talking about the belt, correct?

11 Q. Yes, the belt, and did it come back from Richland
12 County?

13 A. Yes, it did.

14 Q. When did it come back from ---

15 A. Again, I don't have that date. I don't have the
16 paperwork in front of me.

17 Q. But once again, it was taken to evidence originally by
18 who?

19 MS. WILLIAMS: Your Honor, I believe that's asked and
20 answered.

21 THE COURT: You've asked it twice already.

22 MR. DEBUSK: Yes, Your Honor. I was just trying to
23 clarify.

24 THE COURT: All right, sir.

25 Q. At any rate, while it was in the custody of the

RENEE BEST - DIRECT BY DEBUSK

- 1 Evidence Section at North Myrtle Beach, was it altered or
2 changed in any way?
- 3 A. No, it was not.
- 4 Q. Was it kept secure and packaged?
- 5 A. Yes, it was.
- 6 Q. Was it kept in a sealed package?
- 7 A. Yes, it was.
- 8 Q. Okay. Did anybody handle it while it was in evidence?
- 9 A. No sir.
- 10 Q. I'll move on to State's Exhibit 39 and ask if you
11 recognize that?
- 12 A. It's the sexual assault collection kit.
- 13 Q. Was that placed into North Myrtle Beach Evidence?
- 14 A. It was.
- 15 Q. At what point was that and from whom was it received?
- 16 A. It was turned in by Detective Vant Abercrombie on 8/29.
17 of two thou- ---
- 18 Q. Was it sent to S.L.E.D. for analysis?
- 19 A. It was.
- 20 Q. When was that?
- 21 A. On the 12th.
- 22 Q. While it was in evidence, after receipt from Detective
23 Abercrombie, was it altered or changed in any way?
- 24 A. No. It was sealed.
- 25 Q. Was it ever unsealed?

RENEE BEST - DIRECT BY DEBUSK

- 1 A. Not until it got to S.L.E.D.
- 2 Q. Okay. Did there come a point where you received the
- 3 C.S.E. kit and its contents back?
- 4 A. The C.S.E. kit, the box itself I brought back the same
- 5 day I took it. The contents were brought back at a later
- 6 time.
- 7 Q. Okay. When the contents came back, what did you do
- 8 with those?
- 9 A. I secured them back in the Evidence Room.
- 10 Q. Were they ultimately taken anywhere else?
- 11 A. They were taken to Phoenix, Arizona by me.
- 12 Q. While they were -- after they came back from S.L.E.D.
- 13 while they were in your custody and control, did you alter
- 14 them or change them in any way?
- 15 A. No, I did not.
- 16 Q. Who did you turn them over to in Phoenix?
- 17 A. I don't have the name. I don't have the sheet in
- 18 front of me.
- 19 Q. What agency was it?
- 20 A. It was the Department of Public Safety in Arizona.
- 21 Q. The Arizona Department of Public Safety.
- 22 I now show you State's 40 and ask if you recognize
- 23 that?
- 24 A. Yes, I do.
- 25 Q. Was that placed into evidence in North Myrtle Beach?

RENEE BEST - DIRECT BY DEBUSK

- 1 A. It was.
- 2 Q. By whom?
- 3 A. Detective Dennis Pitsinger and Detective Vant
- 4 Abercrombie.
- 5 Q. Detective Abercrombie placed that into evidence?
- 6 A. Uh huh (indicating positive).
- 7 Q. Was it sent to S.L.E.D.?
- 8 A. It was.
- 9 Q. While it was in North Myrtle Beach Evidence Room,
- 10 Detective Abercrombie put it in, and it went to S.L.E.D., was
- 11 it altered or changed in any way?
- 12 A. No, it was not.
- 13 Q. Did it remain packaged?
- 14 A. It did.
- 15 Q. In a sealed condition?
- 16 A. That's correct.
- 17 Q. Did you receive from -- in evidence hairs that were
- 18 collected at the autopsy? Do you have an evidence sheet for
- 19 that?
- 20 A. From the hand? Is that the one ---
- 21 Q. Yes.
- 22 A. Yes, I did. Yes sir, I did. I received that on 9/9,
- 23 September 9th, 2008.
- 24 Q. From whom?
- 25 A. From Detective Vant Abercrombie.

RENEE BEST - DIRECT BY DEBUSK

- 1 Q. And what was done with it? Where was it sent?
- 2 A. It was sent to Arizona.
- 3 Q. Was it also sent to S.L.E.D.?
- 4 A. I would have to check. I'm not -- yes, it was.
- 5 Q. Did you receive it back?
- 6 A. Yes, I did.
- 7 Q. After you received it back from S.L.E.D., what did you
- 8 do with it?
- 9 A. It was put back in the Evidence Room.
- 10 Q. Did it ultimately go anywhere else?
- 11 A. It went to Phoenix.
- 12 Q. To the Arizona Department of Public Safety?
- 13 A. That's correct.
- 14 Q. Was it with the other items that went to ---
- 15 A. That's correct.
- 16 Q. Did you receive also a blood standard from Jeffrey
- 17 Riebe and a hair standard from Jeffrey Riebe?
- 18 A. That came back from S.L.E.D.
- 19 Q. Did you -- did you receive them before they went to
- 20 S.L.E.D.? Were they placed in evidence?
- 21 A. The standard?
- 22 Q. Yes, the standard for Jeff Riebe and hair standard for
- 23 Jeff Riebe?
- 24 A. That came back from S.L.E.D. The blood and the hair
- 25 was taken to S.L.E.D. and the standards would have come back.

RENEE BEST - DIRECT BY DEBUSK

1 Q. But before they went to S.L.E.D., were they -- went to
2 S.L.E.D. from the Department -- from North Myrtle Beach?

3 A. The hair and blood, yes sir.

4 Q. Okay. Where did the -- where in North Myrtle Beach --
5 where were they -- excuse me. Who placed those originally
6 into evidence in North Myrtle Beach before they went to
7 S.L.E.D.?

8 A. Detective Pitsinger.

9 Q. Okay. Were they altered or changed in any way before
10 they were sent to S.L.E.D.?

11 A. No sir.

12 Q. When they were received back from S.L.E.D., were they
13 altered or changed in any way?

14 A. No sir, they weren't.

15 Q. What was done with them?

16 A. Again, they were taken to Arizona.

17 Q. To Phoenix to the Arizona Department of Public Safety?

18 A. The Department of Public Safety.

19 Q. Thank you. I show you what's marked as State's
20 Exhibit 43 and ask you if that was placed into evidence at
21 North Myrtle Beach?

22 A. It was.

23 Q. And what is that yellow form that is stapled to it?

24 A. That is our evidence sheet for a local -- from the
25 department.

RENEE BEST - DIRECT BY DEBUSK
CROSS BY WILLIAMS

1 Q. Okay. Who placed those in evidence?

2 A. Detective Carl Farmer -- well, excuse me. Detective
3 Carl Farmer gave them to Detective Owen Lynam, in which he,
4 in turn, gave them to me.

5 Q. Okay, and they've been under the custody and control
6 of the North Myrtle Beach Evidence Section since then?

7 A. That's correct.

8 Q. Okay. Were they checked out for any purpose?

9 A. They have not left. I have had control of them at all
10 times.

11 Q. I believe I already asked you about the contents of
12 the C.S.E. kit?

13 A. That's correct.

14 Q. State's 41 and 42, were these placed into evidence?

15 A. They were.

16 Q. By whom?

17 A. By Detective -- I'm sorry; Officer Heather Swarthout.

18 Q. Okay, and were they -- did they remain in the custody
19 of the North Myrtle Beach Evidence Section?

20 A. Yes sir.

21 MR. DEBUSK: Thank you.

22 THE COURT: Cross-examination.

23 MS. WILLIAMS: Very briefly, Your Honor.

24 CROSS-EXAMINATION BY MS. WILLIAMS:

25 Q. Good morning.

RENEE BEST - CROSS BY WILLIAMS

- 1 A. Good morning.
- 2 Q. It is -- technically, it's Officer Best, correct?
- 3 A. That's correct.
- 4 Q. Okay. Officer Best, I just want to make sure. You
- 5 testified that with regard to State's Number 43, ---
- 6 A. Uh huh (indicating positive).
- 7 Q. --- that they were in your custody and control
- 8 basically the entire time they were at North Myrtle Beach,
- 9 correct?
- 10 A. That's correct.
- 11 Q. But isn't it true that Detective Pitsinger actually
- 12 got them and tested them?
- 13 A. I was there with him at all times. I didn't -- I was
- 14 in the room with him when he was testing.
- 15 Q. Okay, so even though he had them and he was testing
- 16 them, you were still there?
- 17 A. That's correct.
- 18 Q. Great; just wanted to make sure we were clear about
- 19 that. Now, let me ask you, how long have you been doing this
- 20 at North Myrtle Beach?
- 21 A. Since 2000.
- 22 Q. Okay, and let me ask you, do you know if part of this
- 23 evidence there's a 911 tape that exists?
- 24 A. I do not know that.
- 25 Q. You don't know. Let me ask you this. If there would

RENEE BEST - CROSS BY WILLIAMS

1 have been a 91 -- 1 tape -- 11 -- if there had been a 911
2 tape that were put into this, who would have put it into
3 evidence, do you know?

4 A. The 911 tape could have came from us or it could have
5 came from Horry County.

6 Q. Who would have gotten it?

7 A. Whoever requested it. I mean, if someone requested it
8 -- I'm not familiar with anyone requesting it.

9 Q. But you didn't do it?

10 A. No sir -- no Ma'am.

11 Q. Is that normally what you do as part of your job? Let
12 me qualify that. I understand you're the Supervisor over
13 Communications. I'm with you on that, but what I'm asking
14 you specifically, is it normally part -- what -- part of what
15 you do as your job, if you're the one that actually requests
16 the 911 tape?

17 A. If it was from North Myrtle Beach, if someone
18 requested it. No, I wouldn't request it, but if an attorney
19 or someone requested it under a F.O.I.A. request, if they
20 requested it from the department, I would be the one that
21 would get it.

22 Q. All right, and if there was a part of an investigation
23 -- the -- whether it was a detective or an officer or
24 somebody would have requested you to get it?

25 A. If we had it, yes Ma'am.

RENEE BEST - CROSS BY WILLIAMS

1 Q. Okay. Do you know if one was requested in this case?

2 A. Not -- not to my knowledge.

3 Q. Not to your knowledge, okay. Since 2000, has North
4 Myrtle Beach -- you're the Evidence Custodian?

5 A. That's correct.

6 Q. So you're the one that takes it and logs it, like
7 that?

8 A. Correct.

9 Q. Has North Myrtle Beach kind of changed the way they do
10 those things in the last little bit?

11 A. No.

12 Q. They haven't? Okay. Let me ask you this. Does the
13 Solicitor -- is the Solicitor the one that instructs you who
14 to take the items to S.L.E.D. -- what items to take to
15 S.L.E.D.?

16 A. No. He might request it from the detective, but
17 normally the detective will come to me and say this needs to
18 go to S.L.E.D., or it's not my determination. It's the
19 investigator's determination as to what goes.

20 MS. WILLIAMS: That's all that I have -- let me make
21 sure. Just one moment.

22 Q. I just want to make sure I'm perfectly clear on that.
23 The Solicitor isn't the one who calls you up and says you
24 need to take one, two, and three to S.L.E.D., right?

25 A. Not to me. Now, he might do it to the detective, but

RENEE BEST - CROSS BY WILLIAMS

1 I can't answer for the detective.

2 Q. But the detective is the one that comes to you?

3 A. Yes.

4 Q. That's where your instructions come from?

5 A. That's correct.

6 MS. WILLIAMS: Thank you. That's all the questions
7 that I have, Your Honor.

8 THE COURT: Redirect?

9 MR. DEBUSK: No, Your Honor.

10 THE COURT: All right. Do you wish the witness to be
11 excused?

12 MR. DEBUSK: Yes, Your Honor.

13 THE COURT: Any objection?

14 MS. WILLIAMS: Other than, Your Honor, if she can be
15 subject to recall if I need her under my subpoena.

16 THE COURT: All right.

17 All right, Ma'am, you remain under subpoena and you are
18 released to go back to your regular duties subject to the
19 call of the Court again. Thank you, Ma'am.

20 OFFICER BEST: Thank you.

21 THE COURT: All right, ladies and gentlemen, we are
22 going to take a short break, so, Mr. Foreman, if you would
23 take your jury to the jury room and we'll call you back out
24 in about ten minutes or so.

25 Everyone else remain seated.

JURY OUT
JURY IN

1 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
2 JURY.)

3 THE COURT: All right, we'll be back in about ten
4 minutes. Thank you.

5 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE
6 PRESENCE OF THE JURY.)

7 THE COURT: All right, are we ready to go?

8 MR. DEBUSK: Yes sir.

9 THE COURT: Defense?

10 MS. WILLIAMS: Yes sir.

11 THE COURT: Ask the jury to come in, please.

12 MS. WILLIAMS: May we approach?

13 THE COURT: Yes Ma'am.

14 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

15 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
16 JURY.)

17 THE COURT: All right, Solicitor, your next witness,
18 please.

19 MR. DEBUSK: We'd call Amy Stephens.

20 THE COURT: All right, Ms. Stephens, come around right
21 up here to be sworn, please, Ma'am, right up here.

22 AMY STEPHENS, being first duly sworn,
23 states as follows:

24 THE COURT: All right, Solicitor.

25 MR. DEBUSK: Thank you, Your Honor.

AMY STEPHENS - DIRECT BY DEBUSK

395

DIRECT-EXAMINATION BY MR. DEBUSK:

Q. Ms. Stephens, who is your employer?

A. I'm employed with the South Carolina Law Enforcement Division, also known as S.L.E.D.

Q. And how long have you worked for them?

A. Approximately five years.

Q. And what do you do at S.L.E.D.?

A. I'm a Forensic Technician in the Evidence Control Department. Our duties are to log in, transfer, and package evidence for forensic analysis.

Q. Did you handle any case -- evidence in the case of the State v. Jeffrey Riebe?

A. Yes, I did.

Q. Let me ask you to go through these individually. First, how do you handle cases, evidence at the S.L.E.D. Evidence Department?

A. We have a submitting law enforcement agency that will come to our office which is located in Columbia, South Carolina. They will come to our office with a log-in sheet which basically has the case information and the evidence they are submitting to be analyzed. We will log that information into our computer system, which the computer then assigns a lab number. We package the evidence appropriately and then we will transfer that evidence to our Evidence Room.

Q. Okay. Let me ask you about some individual pieces of

AMY STEPHENS - DIRECT BY DEBUSK

1 evidence, first S.L.E.D. Item 3, State's Exhibit 4(A) and
2 4(B). Did that come into the S.L.E.D. Evidence Department?

3 A. It would have been sealed in this bag when I received
4 it, so I didn't actually physically see the actual item.

5 Q. So that bag, did it come into S.L.E.D. Evidence?

6 A. The corresponding lab number appears to match my chain
7 of custody, which is L0815467, Item 3.

8 Q. And what -- how many people are there in the Evidence
9 Department?

10 A. There are four evidence technicians who actually log
11 the evidence in, and then we have a part-time evidence
12 custodian that works just mainly in our Evidence Room.

13 Q. How do you keep track of evidence coming in?

14 A. Each -- each individual case from the submitting
15 agency is assigned a lab number.

16 Q. Okay. Let me ask you about this one in particular
17 known as Item 3. What was the history of that at the
18 S.L.E.D. Evidence Department?

19 A. It came in to me on October 16th of 2008 from Renee
20 Best of the North Myrtle Beach Department of Public Safety,
21 and I assigned Lab Number L0815467, Item Number 3, to this
22 particular item.

23 Q. Okay, and what -- from there where did it go?

24 A. Once I logged it in, I placed it in our Evidence Room
25 on E.P. Intake Shelf 280.

AMY STEPHENS - DIRECT BY DEBUSK

397

1 Q. And from there?

2 A. Selena Kinard, which is a forensic technician in my
3 department, she retrieved it off of that shelf and
4 transferred it to another shelf in our Evidence Room.

5 Q. Any idea why that was done?

6 A. We usually consolidate to try to save space.

7 Q. Okay, and what happened next?

8 A. Patricia Crooks, which is our evidence custodian, she
9 retrieved it off of the intake shelf and transferred the
10 evidence to Forensic Technician Lori Giles.

11 Q. Lori Giles. Did it come back to the -- is Lori Giles
12 in the Evidence Department?

13 A. She -- she was employed with S.L.E.D. as a Forensic
14 Technician in the Evidence Processing Department.

15 Q. Processing is different from storage?

16 A. That's correct.

17 Q. So did it come back to your Evidence Storage
18 Department?

19 A. Yes, it did.

20 Q. From whom?

21 A. Lori Giles transferred the evidence to Nikki Perry,
22 who is another technician in our department, on June 30th of
23 2009, and she placed it on our evidence return shelf 16-G
24 also on June 30th, 2009.

25 Q. And from there where did it go?

AMY STEPHENS - DIRECT BY DEBUSK

1 A. I retrieved it off of the return shelf on July 31st,
2 2009, and returned the evidence to Renee Best with North
3 Myrtle Beach D.P.S.

4 Q. Now, you testified that you didn't see what was in the
5 bag. While it was in your custody and control or the custody
6 and control of Evidence Department in general, would it have
7 been opened, unsealed, changed or altered in any way?

8 A. No, it would not.

9 Q. So it would have remained in a sealed condition all
10 the time that it was in evidence?

11 A. That's correct.

12 Q. Is that the policy of your department for everyone in
13 the department to leave it in a sealed and unaltered
14 condition?

15 A. Yes, that's correct.

16 Q. Let's move on to what we have marked as State's
17 Exhibit 39. It's marked as S.L.E.D. Exhibit 4, and ask you
18 about that.

19 A. This appears to be a sexual assault kit from Phyllis
20 Mowery. We actually, when we get the sexual assault kits
21 into our office, we do actually break the seal and remove the
22 contents and package them separately, and then we will send
23 the C.S.E. kit box back to the submitting agency.

24 Q. Okay. Would all of the contents have been packaged
25 together?

AMY STEPHENS - DIRECT BY DEBUSK

1 A. The DNA evidence would have been packaged together,
2 and any toxicology evidence that was submitted inside that
3 box would have been packaged separately from the DNA
4 evidence.

5 Q. But everything on the DNA would have been in the same
6 package?

7 A. That's correct.

8 Q. Was it a sealed package?

9 A. Yes, it was.

10 Q. Was it maintained in a sealed condition until it was
11 turned over to DNA?

12 A. Yes, it was.

13 Q. Okay. When did it come into possession of the ---

14 A. I received it at S.L.E.D. on October 16th of 2008, and
15 then I transferred it to our DNA evidence intake refrigerator
16 in our Evidence Room on October 17th of 2008. Patricia
17 Crooks retrieved it from the refrigerator and transferred the
18 evidence to our forensic technician, Sherree Brown, of the
19 DNA Department.

20 Q. Okay, so all the contents together that were going to
21 DNA went to Sherree Brown?

22 A. That's correct.

23 Q. Were they received back from the DNA Department?

24 A. Yes, they were.

25 Q. From whom?

AMY STEPHENS - DIRECT BY DEBUSK

1 A. Patricia Crooks received them from Forensic Scientist,
2 Katie Urka, on September 9th of 2009, and placed the evidence
3 on a return shelf in our Evidence Room.

4 Q. Now, were they all under the same number when they
5 came back?

6 A. Yes, they would be under the same lab number.

7 Q. How about specifically when S.L.E.D. -- the number
8 that S.L.E.D. -- Item 4, 5 ---

9 A. When we log in the main item, the C.S.E. kit would
10 receive Item Number 4. Once it gets to the DNA Department,
11 she would actually physically go through and sub-itemize each
12 item.

13 Q. Let me ask about a couple of items that were in that
14 S.L.E.D. kit, specifically S.L.E.D. 4.1 and 4.8. Were those
15 handled by the Evidence Department separately or ---

16 A. After analysis, they would have been packaged again
17 with the original Item Number 4 and transferred back down to
18 the Evidence Room.

19 Q. Okay, so all those items together, 4.1 and 4.8
20 included, what happened to those?

21 A. After analysis, we received them. Patricia Crooks
22 received them from Katie Urka and placed them on an evidence
23 shelf, and she also retrieved them again from that evidence
24 shelf and returned the evidence to Renee Best.

25 Q. Okay, went back to Renee Best. Let me ask you about

AMY STEPHENS - DIRECT BY DEBUSK

401

1 S.L.E.D. Item 1 and ask if you can tell us about that?

2 A. S.L.E.D. Item 1 is a hair from the victim's hand. I
3 received those, again, from Renee Best on October 16th of
4 2008, which I then transfer them to our DNA refrigerator.
5 After I transferred them on October 17th of 2008, Patricia
6 Crooks received them from our refrigerator and transferred
7 them to Sherree Brown of the DNA Department.

8 Q. Was Item 1 retrieved back from the DNA Department?

9 A. Yes, it was. Patricia Crooks also received those from
10 Katie Urka on September 9th of 2009, placed them on a return
11 shelf. She then retrieved those from the return shelf on
12 October 30th of 2009 and returned the evidence to Renee Best.

13 Q. They went again back to Renee Best. Okay. Let me ask
14 you about State's Exhibit 40, S.L.E.D. 2, if this item and
15 its packaging came into your department?

16 A. The lab number corresponds with my chain of custody,
17 which is L0815467, Item Number 2, which is described as red
18 panties from victim.

19 Q. In what condition -- did it come into the Evidence
20 Department and when?

21 A. I received them, again, on October 16th of 2008.

22 Q. Would they have been in a sealed condition when you
23 received them?

24 A. Yes, they would have.

25 Q. Okay. What was done?

AMY STEPHENS - DIRECT BY DEBUSK

1 A. Once I received them, I packaged them appropriately
2 and then I placed them on an intake shelf in our Evidence
3 Room, at which time on May 5th of 2009, Selena Kinard
4 retrieved them off that shelf and transferred them to a
5 different intake shelf. On June 29th of 2009, Patricia
6 Crooks retrieved them from the intake shelf, transferred them
7 to Lori Giles.

8 Q. Okay. Were they received back?

9 A. Yes, they were. On June 30th of 2009, they were
10 received from Lori Giles by Nikki Perry who placed them on a
11 return shelf, and then on July 31st of 2009, I retrieved them
12 from the return shelf and returned them to Renee Best.

13 Q. Let me ask you now about Item 6. What is that?

14 A. S.L.E.D. Item Number 6 for L0815467 is a blood
15 standard from Jeffrey W. Riebe.

16 Q. And did that come into S.L.E.D. Evidence Department?

17 A. Yes, it did.

18 Q. And what was done with it?

19 A. On December 12th of 2008, this piece of evidence was
20 received by Doris Yarbrough, who is a forensic technician in
21 my department, from Renee Best. When she received the
22 evidence, she then placed it into the DNA evidence intake
23 storage. On December 15th of 2008, this evidence was
24 retrieved by Patricia Crooks and transferred to Sherree Brown
25 of the DNA Department.

AMY STEPHENS - DIRECT BY DEBUSK

403

1 of the DNA Department.

2 Q. Okay. How about S.L.E.D. Item 7?

3 A. S.L.E.D. Item 7 for L0815467 is known head hairs from
4 Jeffrey Riebe. They were received by Doris Yarbrough on
5 December 12th of 2008 from Renee Best. She transferred them
6 to the DNA evidence intake storage. On December 15th of
7 2008, Patricia Crooks received them from the storage and
8 transferred them to Sherree Brown of the DNA Department.

9 Q. Now, once again, all these items that we've covered
10 today, they would have been -- would they have been received
11 in a sealed condition?

12 A. Yes.

13 Q. Would they have been altered or changed in any way
14 while they were in the custody of you or anyone else in the
15 S.L.E.D. Department?

16 A. No.

17 Q. Is that the policy of S.L.E.D.'s Department?

18 A. Yes, it is.

19 Q. And they would have been returned, either given to DNA
20 in a sealed condition or returned to the agency in a sealed
21 condition?

22 A. That's correct.

23 Q. Okay. In this case, all the items that you testified
24 to were received from Renee Best, is that correct?

25 A. That's correct.

AMY STEPHENS - DIRECT BY DEBUSK

1 A. That's correct.

2 MR. DEBUSK: Thank you. Please answer any questions
3 the Defense may have.

4 THE COURT: Cross-examination.

5 MS. WILLIAMS: I have no questions for this witness,
6 Your Honor.

7 THE COURT: All right. Do you wish the witness to be
8 excused?

9 MR. DEBUSK: Please, Your Honor.

10 THE COURT: Any objection?

11 MS. WILLIAMS: Your Honor, I sent additional subpoenas
12 to S.L.E.D. on -- pending the State's case, but it would be
13 okay if she returned to Columbia because I -- the corporate
14 counsel has informed me that if I needed to call, she would
15 get in touch with them and have them return if I asked them
16 to come back to Court.

17 THE COURT: All right.

18 Ma'am, you still remain under subpoena from the Defense,
19 but you are released to go back to Columbia for your regular
20 duties.

21 MS. STEPHENS: Thank you.

22 THE COURT: Thank you, Ma'am.
23 Your next witness, sir.

24 MR. DEBUSK: Lori Giles, Your Honor.

25 THE COURT: All right, Ms. Giles, if you would come

LORI GILES - DIRECT BY DEBUSK

1 right up here to be sworn, please, Ma'am.

2 LORI GILES, being first duly sworn,
3 states as follows:

4 DIRECT-EXAMINATION BY MR. DEBUSK:

5 Q. Good morning, Ms. Giles.

6 A. Good morning.

7 Q. Where do you live currently?

8 A. I live in Huntsville, Alabama.

9 Q. In 2009, where did you live and who was your employer?

10 A. I lived in Columbia, South Carolina. I was employed
11 with the South Carolina Law Enforcement Division.

12 Q. What were your duties?

13 A. I worked in evidence processing with the DNA
14 Department.

15 Q. Okay. Let me ask you about a couple of items and ask
16 if they ever came into your possession. First is State's 40,
17 also known as S.L.E.D.'s Item 2? Are you able to tell us or
18 would you need to consult with the evidence logs?

19 A. I can see on the bag. I have labeled it with my
20 initials, and the lab number, and the item number, and the
21 dates.

22 Q. What would you have done with those when you received
23 them? Do you know from whom you received it?

24 A. When I received them, I received them from the
25 evidence control.

LORI GILES - DIRECT BY DEBUSK

1 Q. Okay.

2 A. Can I refer to my notes also, sir?

3 Q. Yes, please. This is the reason you take those notes,
4 is it not, to be able to tell later?

5 A. Correct. I received them from the evidence technician
6 and upon receiving them, I inventory. I had Item 2 and Item
7 3, and this is Item 2, and under Item 2 when I opened the
8 package, it was a pair of underwear, and I had on my
9 worksheet -- I described the underwear in detail, and do you
10 want me to do that?

11 Q. Well, what did you do to the underwear when you
12 received it?

13 A. When I process an item, I open it up and I visually
14 examine it first, and it depends on what the request is for
15 the item. This item was a request for DNA or possible body
16 fluids, and so I use an alternate light source first to see
17 if there's any fluoresced areas and if there are fluoresced
18 areas on the item, I will mark them and then further test
19 them. And I also look for trace evidence, too, if there's
20 anything like possible hair or fiber, or something like that.

21 Q. Did you derive any samples from this, from the
22 underwear?

23 A. The particular Item 2, it did not fluoresce, so I did
24 not take any samples on that particular request. I did
25 collect some possible hair, though, and I labeled it

LORI GILES - DIRECT BY DEBUSK

- 1 Item 2.1.
- 2 Q. And what did you do with Item 2.1?
- 3 A. I submitted it to evidence storage area for the DNA
- 4 analyst to pick up later at their convenience.
- 5 Q. Okay, and what about the item itself, Item 2?
- 6 A. Item 2, I repackaged it and sealed it and returned it
- 7 to the evidence control.
- 8 Q. Okay. Let me ask you now about State's 4(A) and 4(B),
- 9 now separate and ask if you recognize these?
- 10 A. I recognize the bag as being -- I labeled it 3.0 Item,
- 11 with the case number and my initials and the date.
- 12 Q. Where did you receive that item from?
- 13 A. I received it from evidence control.
- 14 Q. And what did you do with it?
- 15 A. I also opened the package up and processed the item,
- 16 Item 3.0, which was a belt. I processed it for any DNA,
- 17 which means that I take swabs, control swabs, and also swabs
- 18 that I'm going to use for the sample itself, and I swab the
- 19 entire item, and I package that and submit that item -- items
- 20 as 3.1, 3.2, and then the 3.3 was the possible hair
- 21 collected, which was the trace evidence I collected also off
- 22 the belt.
- 23 Q. Let's talk specifically about Item 3.1. What was
- 24 that?
- 25 A. 3.1 was a swab from the outside of the belt.

LORI GILES - DIRECT BY DEBUSK

1 Q. How do you differentiate the outside and inside on
2 this particular ---

3 A. On this particular belt, the outside was considered
4 the belt area that wasn't labeled. Usually there's a label
5 inside of a belt as like the size or something, and that's
6 what I took as the outside.

7 Q. Okay, and what -- Item 3.2?

8 A. 3.2 was a swab from the inside of the belt.

9 Q. That would just be the opposite side?

10 A. Right; correct.

11 Q. And Item 3.3 was?

12 A. Possible hair or fiber collected.

13 Q. What did you do with 3.1 and 3.2 and 3.3?

14 A. I put them in an individual envelope and I sealed them
15 and submitted them to the evidence storage for the DNA
16 analyst to collect later.

17 Q. Could you describe for the jury how you would get a
18 swab from the belt?

19 A. Okay. I would take a clean, sterile swab and I would
20 moisten it with a little sterile water, distilled water, and
21 I would swab the entire area with that swab, and dry it, and
22 then seal it up.

23 Q. Okay, and those items were sent to DNA in a sealed
24 condition?

25 A. Yes.

LORI GILES - DIRECT BY DEBUSK
CROSS BY WILLIAMS

1 Q. How about the belt itself in the package?

2 A. The belt I would repackage and seal and return to the
3 evidence control.

4 Q. In its original package?

5 A. Yes sir.

6 Q. Now, other than swabbing the belt and taking the
7 sample -- and taking the sample of the panties, did you alter
8 them or change them in any way while they were in your
9 custody?

10 A. No sir, I didn't.

11 Q. Okay.

12 MR. DEBUSK: Thank you. Please answer any questions
13 the Defense may have.

14 THE COURT: Cross-examination.

15 MS. WILLIAMS: Just briefly.

16 CROSS-EXAMINATION BY MS. WILLIAMS:

17 Q. Good morning. Is it still Agent -- is it Giles or
18 Giles?

19 A. Giles.

20 Q. Is it still Agent Giles or ---

21 A. I am no longer with South Carolina ---

22 Q. So it's Ms. Giles?

23 A. Yes.

24 Q. Okay. I just want to be correct about that.

25 A. Okay.

LORI GILES - CROSS BY WILLIAMS

1 Q. So you are the person at S.I.E.D. that took the belt
2 and actually gathered the potential -- potential evidence off
3 of it to be tested, correct?

4 A. Correct.

5 Q. Okay, and this is an adult size belt, correct?

6 A. It's listed on my worksheet, it was a size forty-two
7 inches.

8 Q. Forty-two inches?

9 A. The length. That's what was on the label of the belt.

10 Q. Okay, and I see that you collected one swab from
11 inside and one swab from outside, correct?

12 A. Correct.

13 Q. Why didn't you collect any more?

14 A. There was only two sides, so I swabbed the whole belt
15 initially, the one side and then the other side.

16 Q. So you swooped down the whole belt?

17 A. I slowly swabbed the whole belt on one side, and took
18 another and swabbed on the inside.

19 Q. Did you swab -- do you recall if you swabbed the top
20 of the belt, the middle of the belt, or the bottom of the
21 belt?

22 A. The whole surface area is what I swabbed.

23 Q. So if I understand, so if this was the length of the
24 belt, you did that?

25 A. Yes. We ---

LORI GILES - CROSS BY WILLIAMS

411

1 Q. On the front and the back?

2 A. Yes Ma'am.

3 Q. And it would basically have been so you ended up with
4 one sample from the front and one sample from the back?

5 A. Correct.

6 Q. Okay. Is that typically the way you do it as
7 opposed to, for my education, basically testing, say, half
8 the belt, because it's forty-two inches, half the belt, and
9 then another half of the belt, so you would have like, say,
10 two swabs from the back and then two swabs from the front?

11 A. Well, usually we want to just eliminate so many
12 samples because, you know, the more samples, maybe the more,
13 you know, the chance of things, you know, not missing
14 something, but when you swab, you can use just one swab, but
15 I just chose to do that. It's up to the analyst or
16 technician.

17 Q. And this belt is a woven belt, correct?

18 A. Right.

19 Q. And so when you're doing swabs, I would assume that
20 you -- I don't want to put words in your mouth, so you tell
21 me if I'm correct. Instead of just -- it's not -- it was in
22 a slick surface, right? It was woven?

23 A. Woven, uh huh (indicating positive).

24 Q. So instead of basically gliding over the top, I'm
25 assuming you put a little pressure on it to get up in the

LORI GILES - CROSS BY WILLIAMS

1 grooves, if you will?

2 A. Just a slight, yes.

3 Q. Okay.

4 MS. WILLIAMS: Beg the Court's indulgence for just one
5 moment.

6 Q. Ms. Giles, let me ask you are you the person that just
7 looks at it and decides what to test, or is there anybody
8 that guides you or directs you in any way with what to look
9 for?

10 A. We go by what the request is from the submitting
11 agency usually.

12 Q. Was there any particular area on that belt that you
13 would have -- so -- but based on the request, that's what you
14 do?

15 A. Correct.

16 Q. And let me ask you this. If there are areas on that
17 belt that had, say, certain -- that had blood on it and areas
18 that did not, when you swabbed it once you would just get
19 everything on that one swab?

20 A. Yes. When you have a request for any DNA, you are
21 just swabbing the whole entire surface usually, and the
22 analyst takes it to the next step. What they, you know, do
23 usually is just running it for whatever -- any DNA they can
24 get off the item itself.

25 Q. So you actually did swab the entire belt?

LORI GILES - CROSS BY WILLIAMS
SHERREE BROWN - DIRECT BY DEBUSK

1 A. The entire surfaces of the belt, that's correct.

2 Q. Front and ---

3 A. Yes.

4 Q. All right.

5 MS. WILLIAMS: That's all the questions that I have.

6 Thank you.

7 THE COURT: Redirect?

8 MR. DEBUSK: No, Your Honor. Thank you.

9 THE COURT: All right. Do you wish the witness to be
10 excused?

11 MR. DEBUSK: Please, Your Honor. She has a flight back
12 to Alabama today, sir.

13 THE COURT: Any objection?

14 MS. WILLIAMS: No sir.

15 THE COURT: All right, Ma'am, you are released from
16 your subpoena and you are excused to go back to your regular
17 activities. Thank you.

18 MS. GILES: Thank you.

19 THE COURT: All right, next witness, sir.

20 MR. DEBUSK: Sherree Brown.

21 THE COURT: All right, Ms. Brown, if you want to come
22 all the way up here to be sworn, please, Ma'am.

23 SHERREE BROWN, being first duly sworn,
24 states as follows:

25 DIRECT-EXAMINATION BY MR. DEBUSK:

SHERREE BROWN - DIRECT BY DEBUSK

1 Q. Ms. Brown, I show you State's Exhibit 39 -- well, let
2 me ask you about some S.L.E.D. items.

3 Who is your employer, Ms. Brown?

4 A. I work at South Carolina Law Enforcement Division,
5 also known as S.L.E.D.

6 Q. What do you do?

7 A. I'm a Forensic Technician within the DNA Department.

8 Q. How do you obtain samples that you are going to ---

9 A. As a technician within the DNA Department, one of my
10 duties is to go down to Evidence Control to receive evidence
11 that's been submitted to S.L.E.D. for analysis.

12 Q. Did you analyze any evidence in respect to S.L.E.D.
13 Lab Number L0815467, Jeffrey Riebe?

14 A. Yes. I had to go down to Evidence Log-in to retrieve
15 evidence on a daily basis, and I came in contact with this
16 case, L0815467 on October the 17th, 2008.

17 Q. What did you get?

18 A. I got -- it was Item -- S.L.E.D. Item 1.

19 Q. What was that?

20 A. It was a heat-sealed pouch containing item described
21 as hair from victim's hand.

22 Q. Okay. What else?

23 A. Also, I came in contact with Item 4 on October the
24 17th, 2008, and it's a heat-sealed pouch containing a C.S.E.
25 kit described as Phyllis Mowery.

SHERREE BROWN - DIRECT BY DEBUSK

415

1 Q. Okay, and did you get any other items?

2 A. I have also that was in the C.S.E. kit -- a liquid
3 blood standard was submitted within the C.S.E. kit, and I
4 opened up the heat-sealed pouch and created Item 4.1.

5 Q. Did you create any other items from the contents of
6 the ---

7 A. No, I did not.

8 Q. Okay. What did you do with the remainder of the items
9 in the C.S.E. kit?

10 A. Once the liquid blood stain was prepared as a dry
11 stain, I sealed it all back up and put it in the storage
12 area.

13 Q. Would that be all of Item 4 and also 4.1 you created?

14 A. Yes.

15 Q. How did you create the 4.1, again? You said you dried
16 it?

17 A. Well, I took it out of the heat-sealed pouch and also
18 a paper envelope and went into our L.I.M.S. system and sub-
19 itemized.

20 Q. What is that, L.A.M.S. you said?

21 A. L.I.M.S., Laboratory Information Management System.
22 It's a track- -- it's a tracking program.

23 Q. So you created this other item when you dried the
24 blood stain?

25 A. Yes.

SHERREE BROWN - DIRECT BY DEBUSK

1 Q. The remainder of the C.S.E. kit and the sample, to
2 whom did you relinquish them?

3 A. They -- they travel together.

4 Q. Okay. Where did they go?

5 A. According to my records, I put it in a storage bin
6 within the DNA Department, DNA F-14.

7 Q. Okay.

8 A. And that was put on Nov- -- I mean, excuse me, October
9 the 20th, 2008.

10 Q. Do you know anything about the subsequent history of
11 that sample based on your records?

12 A. It was eventually assigned to an analyst.

13 Q. Which analyst was it assigned to?

14 A. Lindsey Thompson.

15 Q. How was that -- who assigned it?

16 A. At this time I was assigning cases.

17 Q. Okay, so while it was in storage in that area you just
18 referred to, was it -- remain in a sealed condition?

19 A. Yes.

20 Q. And was it ultimately analyzed by that analyst,
21 Lindsey Thompson?

22 A. No, it was not. We changed our way we were assigning
23 cases then, and it was assigned to another analyst.

24 Q. Who was that?

25 A. Katie Urka.

SHERREE BROWN - DIRECT BY DEBUSK

417

1 Q. Okay. From where it left you to when it got to Katie
2 Urka, was it changed or altered in any way?

3 A. No, it was not.

4 Q. Okay. Did it remain in a sealed condition?

5 A. Yes.

6 Q. So just the assignment to Ms. Thompson was temporary?

7 A. Yes.

8 Q. Okay. Did you handle any other items in reference to
9 this case?

10 A. Yes, I did, Item 6 and 7.

11 Q. What were those?

12 A. Item Number 6 is one heat-sealed pouch containing
13 blood standard described as Jeffrey W. Riebe.

14 Q. Okay, and what did you do with that?

15 A. Again, it was just -- I did not have to open this
16 container. It was just put into a DNA storage area, a DNA
17 refrigerator in Lindsey Thompson's box.

18 Q. Okay. Was that with the rest of the items that you
19 just testified about?

20 A. Yes.

21 Q. And they were maintained there in a sealed condition,
22 and they were ultimately gotten for analysis?

23 A. Yes.

24 Q. Who was it that ultimately got them for analysis?

25 A. Katie Urka.

SHERREE BROWN - DIRECT BY DEBUSK

1 Q. Okay. How about Number 7?

2 A. Also one heat-sealed pouch containing head hairs
3 described as Jeffrey W. Riebe.

4 Q. And what was done with those?

5 A. The same procedure as Number -- Item Number 6. I took
6 custody of it and then noticed that it was assigned and put
7 it in our location, DNA refrigerator, fourth floor.

8 Q. Did you unseal or alter it in any way?

9 A. No, I did not.

10 Q. Was it unsealed or altered in any way before it got to
11 Katie Urka?

12 A. I'm not sure because that's where mine lasts.

13 Q. That request for Katie Urka. Okay.

14 MR. DEBUSK: Please answer any questions the Defense
15 might have.

16 THE COURT: Cross-examination.

17 MS. WILLIAMS: I have no questions, Your Honor. Thank
18 you.

19 THE COURT: Do you wish the witness to be excused?

20 MR. DEBUSK: Please, Your Honor.

21 THE COURT: Any objection?

22 MS. WILLIAMS: No sir.

23 THE COURT: All right, Ma'am, you are released from
24 your subpoena and may go back to your regular activities.

25 All right, your next witness, please, sir.

MELINDA RAINES - DIRECT BY DEBUSK

1 MR. DEBUSK: Melinda Raines, Your Honor.

2 THE COURT: Ms. Raines, if you would come all the way
3 up front here to be sworn, please, Ma'am.

4 MELINDA RAINES, being first duly sworn,
5 states as follows:

6 THE COURT: All right, Solicitor.

7 DIRECT-EXAMINATION BY MR. DEBUSK:

8 Q. Ms. Raines, who is your employer?

9 A. Currently my employer is the City of Scottsdale in
10 Scottsdale, Arizona.

11 Q. How about prior to that?

12 A. Prior to that I worked for the Arizona Department of
13 Public Safety in Phoenix, Arizona.

14 Q. When did you change jobs?

15 A. In December of 2010.

16 Q. While you were with the Arizona Department of Public
17 Safety, what were your duties?

18 A. My duties were in the Trace Analysis Unit and to
19 examine hairs and fibers.

20 Q. Did you examine any hairs or fibers from the case
21 involving Jeffrey Riebe?

22 A. Yes, I did.

23 Q. What items of evidence did you receive?

24 A. May I refer to my notes?

25 Q. Yes, please.

MELINDA RAINES - DIRECT BY DEBUSK

1 A. I received five items of evidence. Item Number 1 was
2 a -- was marked as a blood -- victim's blood, and I didn't --
3 I received it, but I didn't analyze it. Number 2 was marked
4 as a sexual assault evidence collection kit, which contained
5 victim's hair and other items. Item Number 3 contained
6 suspect's blood, which I received but did not analyze.
7 Number 4 contained suspects known head hairs, and Number 5
8 were unknown hairs from the victim's left hand.

9 Q. From where did you receive these items?

10 A. I received these items from our Property and Evidence
11 Section.

12 Q. Okay. At the Arizona Department of Public Safety at
13 that time, what was the policy for handling evidence?

14 A. Evidence submitted to our laboratory had to be sealed
15 upon receipt. That sealed evidence was then collected by a
16 custodian, taken into custody by the custodian who placed it
17 in a locked, secure cold room.

18 The evidence would then be checked out by the analyst,
19 and when I received it I had to check and make sure that it
20 was in a sealed condition when I received it, and then it was
21 in my custody. When I was done with the evidence, then I
22 would return it back into custody in a sealed packaging.

23 Q. What did you do with this evidence you received?

24 A. When I received this evidence, I took it back to my
25 laboratory. I opened it up and I began to take notes as to

MELINDA RAINES - DIRECT BY DEBUSK

421

1 the condition of the sample, how it was sealed, what was in
2 each of those packages. The items that I received that I
3 didn't analyze, I just made notes on it, initialed it that I
4 did receive it, but then marked on it R.N.A. for received,
5 not analyzed.

6 Item Number 2 that contained the sexual assault kit that
7 had victim's hairs, it had other items in it which I kept in
8 their sealed packages and just marked as received, not
9 analyzed, and only opened the items that contained the
10 victim's head hairs.

11 Q. And what did you -- what did you do?

12 A. I actually took the hairs -- first I took the hairs
13 from the Item Number 5, which were the questioned hairs, the
14 unknown hairs from the victim's hand, and I removed each of
15 those hairs. There were a total of fourteen hairs, which I
16 placed on individual glass microscope slides so that I could
17 look at them under a microscope.

18 After I had all those placed on microscope slides, then
19 I went back and I opened the -- first the victim's hairs and
20 placed a representative sample -- I was submitted numerous
21 hairs and I looked at them and I took a representative sample
22 that represented the length and the ranges of those hairs,
23 placed them on slides.

24 Once I had those, then I opened up the suspect's
25 samples, Item Number 4, and did the same thing, took a

MELINDA RAINES - DIRECT BY DEBUSK

1 representative sample of those hairs and mounted them on
2 glass microscope slides.

3 I then moved to a microscope where I looked at each of
4 the hairs individually of the questioned hairs, and I would
5 take notes as to what I saw, and then I would do a side-by-
6 side comparison using a comparison microscope. Basically you
7 have the questioned sample on one side and the known sample
8 on the other, and when I look through the oculars, it's like
9 looking at a split-screen T.V. so I can see them side by side
10 and I do a comparison.

11 Q. Based upon your analysis of these hairs, did you reach
12 any conclusions based on your analysis?

13 A. Yes, I did.

14 Q. What was that?

15 A. I concluded that the questioned hairs in Item Number 5
16 were similar to that of Item Number 2-C, which was the hairs
17 from the victim, Phyllis Mowery.

18 Q. Okay, so the hairs from the hair matched the hairs
19 from -- the standard from Phyllis Mowery?

20 A. Yes.

21 Q. Did you also compare them to the standards from
22 Jeffrey Riebe?

23 A. Yes, I did.

24 Q. Were they similar or not?

25 A. No, they were dissimilar to those of Riebe.

MELINDA RAINES - DIRECT BY DEBUSK
CROSS BY WILLIAMS

1 Q. Okay. Did you do any further analysis?

2 A. No, I did not. I packaged them up, taped them, sealed
3 them, and put them back in the Property and Evidence Unit.

4 Q. So would it be the policy of the Arizona Department of
5 Public Safety to do any further analyst -- analysis once you
6 make -- reach that conclusion?

7 A. No.

8 Q. Okay.

9 MR. DEBUSK: Thank you. Please answer any questions
10 the Defense might have.

11 THE COURT: Cross-examination.

12 MS. WILLIAMS: Thank you.

13 CROSS-EXAMINATION BY MS. WILLIAMS:

14 Q. Good morning, Ms. Raines.

15 A. Good morning.

16 Q. Let me just make perfectly clear you received five
17 items to test, right?

18 A. That is correct.

19 Q. Two were blood that you just didn't -- you didn't
20 test?

21 A. Correct.

22 Q. And then one was hair from Ms. Mowery, and one was
23 hair from Jeff, and then one was an unknown?

24 A. That's correct.

25 Q. And that unknown was described to you as hair from Ms.

MELINDA RAINES - CROSS BY WILLIAMS

1 Mowery's hand, correct?

2 A. That is correct.

3 Q. Were you given hairs from the back of any clothing to
4 test?

5 A. No -- not -- I did not receive any hairs that were
6 labeled as from the back of clothing.

7 Q. Well, did you receive any hairs that were basically --
8 that would have been labeled collected from the crime scene
9 for ---

10 A. No; no.

11 Q. So you were only given that one grouping of hair,
12 because I think you said there were fourteen, but you were
13 only given that one to test, right?

14 A. Yes.

15 MS. WILLIAMS: That's all the questions that I have.
16 Thank you, Your Honor.

17 THE COURT: Any redirect?

18 MR. DEBUSK: No, Your Honor.

19 THE COURT: All right. Do you wish the witness to be
20 excused?

21 MR. DEBUSK: Please, Your Honor. She needs to return
22 to Arizona.

23 THE COURT: Any objection?

24 MS. WILLIAMS: Without objection, Your Honor.

25 THE COURT: All right, Ma'am, you are released from

KATIE URKA - DIRECT BY DEBUSK

1 your subpoena. You may go back to your regular duties.

2 MS. RAINES: Thank you.

3 MR. DEBUSK: Could we approach, Your Honor?

4 THE COURT: Yes sir.

5 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

6 THE COURT: Your next witness, Solicitor.

7 MR. DEBUSK: Katie Urka.

8 THE COURT: All right, Ma'am, please come forward to be
9 sworn.

10 KATIE URKA, being first duly sworn,
11 states as follows:

12 DIRECT EXAMINATION BY MR. DEBUSK:

13 Q. Ms. Coy -- Ms. Urka, who is your employer?

14 A. I work for the South Carolina Law Enforcement
15 Division.

16 Q. What are your duties?

17 A. I am a forensic DNA analyst.

18 Q. How long have you been employed by S.L.E.D.?

19 A. Five and a half years.

20 Q. Okay. Would you describe your qualifications for the
21 jury.

22 A. I have a Bachelor of Science degree in Forensic
23 Biology, and I have a Master of Science degree also in
24 Forensic Biology.

25 Q. Do you have any training in -- advanced training in

KATIE URKA - DIRECT BY DEBUSK

1 DNA analysis?

2 A. Yes. Upon my employment at S.L.E.D., I completed a
3 DNA analyst training program where I was trained in evidence
4 handling, serology, DNA analysis, and report writing.

5 Q. Have you been qualified as an expert in the field of
6 forensic serology or DNA analysis before?

7 A. Yes.

8 Q. How many times?

9 A. Seventeen.

10 MR. DEBUSK: Your Honor, we would offer Ms. Urka as an
11 expert in the field of DNA analysis.

12 THE COURT: Any -- do you wish to voir dire the witness
13 as to her qualifications?

14 MS. WILLIAMS: No sir. The Defense will stipulate to
15 her being an expert in DNA analysis.

16 THE COURT: All right. I'm going to qualify her to
17 give her opinion.

18 Q. Ms. Urka, I referred to you as Ms. Coy. Is that a
19 former name?

20 A. That's my maiden name.

21 Q. Okay, and now you are married and you are Katie Urka?

22 A. Yes.

23 Q. Thank you. Please forgive me if I make that error
24 again.

25 What is DNA?

KATIE URKA - DIRECT BY DEBUSK

427

1 A. DNA stands for deoxyribonucleic acid. It's a chemical
2 that's found in almost every cell of your body. It's
3 responsible for passing genetic information from generation
4 to generation, and you will get half of it from your mom and
5 half from your dad.

6 Q. Okay. What is forensic DNA analysis?

7 A. In forensics, we look at DNA profiles, whether
8 developed from evidence samples and known standards, and we
9 will compare the two and determine if they match.

10 Q. Did you sample any -- did you analyze any samples from
11 this case, State v. Jeffrey Riebe?

12 A. Yes.

13 Q. What evidence did you analyze?

14 A. Quite a few items.

15 Q. If you could let the jury know what they are.

16 A. These are S.L.E.D. item numbers. Item Number 1, a
17 hair from left hand. Item 2.1, debris from red panties.
18 Item 3.1, swab from outside brown leather weave belt. Item
19 3.2, swab from inside brown leather weave belt. Item 3.3,
20 debris from brown leather weave belt. Item 4 was a sexual
21 assault evidence collection kit from Phyllis Mowery. Item 6
22 is a blood standard from Jeffrey Riebe, and Item 7, known
23 head hairs from Jeffrey Riebe.

24 Q. What -- which of these items did you actually perform
25 DNA analysis on?

KATIE URKA - DIRECT BY DEBUSK

- 1 A. I performed testing on them with every item.
- 2 Q. Okay. What testing did you ---
- 3 A. Some of the items I performed a serology test on and
- 4 others I performed DNA testing.
- 5 Q. Tell the jury what serology is if you would.
- 6 A. Serology is the identification of body fluids such as
- 7 blood, semen, and saliva.
- 8 Q. How do you test items that come in? How do you do a
- 9 serology test on them?
- 10 A. First we have to determine what kind of serology test
- 11 we need to do. Generally it's either blood or semen. A
- 12 blood test is just a chemical test that creates a color
- 13 change on an item. If it turns pink, it's blood or it
- 14 indicates blood. A semen test we do, it's kind of a card
- 15 test like a pregnancy test. You put part of a sample on it
- 16 and if lines come up, it's positive.
- 17 Q. What did you do a serology test on in this case?
- 18 A. I believe I only performed serology on the sexual
- 19 assault kit.
- 20 Q. What specific items did you use from the sexual
- 21 assault kit?
- 22 A. The vaginal swabs, oral swabs, and rectal swab.
- 23 Q. What were your -- what conclusions did you reach, if
- 24 any, on those swabs?
- 25 A. No semen was identified on either of those.

KATIE URKA - DIRECT BY DEBUSK

429

1 Q. No semen identified?

2 A. Right.

3 Q. Did you do any further testing on those items?

4 A. No.

5 Q. What else -- what did you do DNA analysis on?

6 A. I did DNA analysis on several hairs, the swabs from
7 the belt, fingernail scrapings, miscellaneous materials, and
8 the known standards.

9 Q. What are the miscellaneous materials?

10 A. Miscellaneous materials, an envelope was labeled as
11 skin fragment from left hand.

12 Q. Okay. What kind of test did you carry out on these
13 items?

14 A. I'm sorry?

15 Q. What kind of test did you carry out on these items?
16 What specifically did you do with them?

17 A. Typically we take a small portion of the swab or the
18 hair and perform a chemical test to extract the DNA and then
19 carry it through DNA analysis.

20 Q. What kind of result do you get when you do one of
21 these DNA analyses?

22 A. The result of my testing is a DNA profile, which is a
23 string of numbers.

24 Q. Did you retrieve DNA profiles from any of the evidence
25 in this case?

KATIE URKA - DIRECT BY DEBUSK

1 A. Yes.

2 Q. What did you receive -- retrieve profiles from?

3 A. I developed profiles from Item 3.1, a swab from the
4 belt; 4.10.1, which was a hair; 4.10.2, which was another
5 hair; 4.10.3, a hair; Item 3.2, which was a swab from the
6 belt, and that's it.

7 Q. In those profiles you developed, did you identify any
8 of them with the DNA of the victim, Phyllis Mowery?

9 A. No DNA profile foreign to Phyllis Mowery was developed
10 from Items 3.1, 4.10.1, 4.10.2, 4.10.3, and 4.11.

11 Q. In those items, just to make clear for the jury, let's
12 go item by item. 3.1, what was that?

13 A. Swab from outside brown leather weave belt.

14 Q. And the DNA profile you developed from that, what was
15 it? Did that match Phyllis Mowery?

16 A. It was consistent with her profile, yes.

17 Q. Okay. Was there any indication of other individuals
18 present in that particular sample?

19 A. No.

20 Q. Item 4.1. -- I'm sorry, 4.10.1.

21 A. That was a hair.

22 Q. What did you find from that?

23 A. It was consistent with the victim.

24 Q. Any indication of any other DNA present?

25 A. No.

KATIE URKA - DIRECT BY DEBUSK

431

- 1 Q. 4.10.2.
- 2 A. That was another hair.
- 3 Q. Any -- what kind of profile did you receive from that?
- 4 A. It was consistent with the victim.
- 5 Q. Okay. Anyone else's DNA indicated in there?
- 6 A. No.
- 7 Q. 4.10.3.
- 8 A. Another hair also consistent with the victim.
- 9 Q. Okay, and anyone else?
- 10 A. No.
- 11 Q. And 4.11?
- 12 A. The miscellaneous materials.
- 13 Q. That was the skin?
- 14 A. Yes, skin fragment.
- 15 Q. And did that develop a profile?
- 16 A. It was consistent with Phyllis Mowery.
- 17 Q. Anyone else?
- 18 A. No.
- 19 Q. Okay. Let me -- so each one of those items, you only
- 20 found Phyllis Mowery's DNA?
- 21 A. Correct.
- 22 Q. Let me ask you about sample 3.2.
- 23 A. 3.2 was a swab from inside brown leather weave belt.
- 24 Q. What did you find on that?
- 25 A. The DNA profile developed from that item is a mixture

KATIE URKA - DIRECT BY DEBUSK

1 of at least two individuals.

2 Q. Were you able to identify any of those individuals?

3 A. The DNA profile of the major contributor to that
4 mixture is consistent with the DNA profile of Phyllis Mowery,
5 and the DNA profile of the minor contributor was from an
6 unidentified male individual.

7 Q. Okay. You said two or more. Do you know that it's
8 two people or could it be more?

9 A. Generally when we have a mixture we will say at least
10 two individuals, meaning I have an indication of at least two
11 people. There's always a possibility with mixtures that you
12 could have more than you are able to see because with
13 mixtures there tends to be drop out of profile.

14 Q. Did you compare the victim -- the Defendant, Jeffrey
15 Riebe, to that profile?

16 A. Yes.

17 Q. Were you able to tell whether his DNA was a
18 contributor there?

19 A. I excluded Jeffrey Riebe as a possible contributor.

20 Q. What exactly does that mean?

21 A. The -- I have a partial minor contributor that was a
22 male. There was some information there that could have come
23 from him, but then there was other information that could not
24 have come from him, so based on my interpretation of at least
25 two individuals in that mixture, he was excluded.

KATIE URKA - DIRECT BY DEBUSK

433

1 Q. But if there was three, could he have been a -- if
2 there was more than two, could he have been a contributor to
3 it?

4 A. It's possible.

5 Q. So when you say excluded, does that mean he could not
6 have contributed to that mixture?

7 A. From the information that I had, my interpretation was
8 that he was excluded.

9 Q. Okay. Did you suggest any further tests on that
10 particular piece of evidence?

11 A. Yes.

12 Q. What was that?

13 A. I recommended Y-STR testing for that item.

14 Q. What would that have, that test?

15 A. Y-STR testing is a test that will examine only the Y
16 chromosome, so it will only find the male DNA that is there,
17 and in this case, the male contributor was a very weak
18 profile, so I thought that it would be helpful to determine
19 comparing Jeffrey Riebe's standard to this item with Y
20 testing.

21 Q. Let me ask you this just to clarify. Is it possible
22 that Jeffrey Riebe contributed that sample if there were more
23 than two contributors?

24 A. It's possible.

25 Q. Okay.

KATIE URKA - CROSS BY WILLIAMS

1 MR. DEBUSK: Thank you. Please answer any questions
2 the Defense may have.

3 THE COURT: Cross-examination.

4 MS. WILLIAMS: Your Honor, may we approach?

5 THE COURT: Yes Ma'am.

6 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION BY MS. WILLIAMS:

9 Q. Good morning, Agent Urka. How are you?

10 A. I'm fine.

11 THE COURT: It's not morning anymore.

12 MS. WILLIAMS: I'm sorry.

13 Q. Well, good afternoon. You are the only person at
14 S.L.E.D. that did the autosomal DNA analysis, right?

15 A. Right.

16 Q. Okay, and you actually prepared a report in September
17 of '09 and then a revised report in December of '10, is that
18 correct?

19 A. Correct.

20 Q. Why did you prepare two reports?

21 A. In my original report I stated that the minor
22 contributor is from an unidentified male individual and in
23 the DNA world, that statement is interpreted as the standards
24 that you have to compare to it are excluded from it.
25 However, upon speaking with the Solicitor, I revised my

KATIE URKA - CROSS BY WILLIAMS

435

1 report to make it more clear that Jeffrey Riebe's standard
2 was actually compared to this evidence and he was excluded.

3 Q. Okay, so you revised it to include that Jeff was
4 actually excluded?

5 A. Correct.

6 Q. You listed the items that you tested to make sure you
7 did a serology with the C.S.E. kit and there was no semen
8 found, which is what you were looking for, correct?

9 A. Correct.

10 Q. None found?

11 A. Right.

12 Q. Okay, and then you listed other items you tested and
13 you included hair. Do you know where that hair was from, I
14 mean the -- I'm sure there was a known -- I think you told me
15 there was a known hair from Ms. Mowery, a known hair from
16 Jeff Riebe, and then there would have been unknown hair that
17 you were testing, correct?

18 A. The hairs that I tested were from the pubic hair
19 combings from the victim and debris from the panties, which
20 is hair.

21 Q. Did you get any hair from -- that was described as
22 hair from Ms. Mowery's hand to test?

23 A. My Item Number 1 is hair from left hand.

24 Q. Did you test it?

25 A. The hair was not suitable for STI DNA analysis.

KATIE URKA - CROSS BY WILLIAMS

1 Q. Okay, so you couldn't test it?

2 A. Correct.

3 Q. Okay, and did you get any hair that was described as
4 from Ms. Mowery's clothing to test?

5 A. I got debris from panties and debris from the belt.

6 Q. So none from Ms. Mowery's clothes?

7 A. If there were other clothes. All I have are panties
8 and the belt.

9 Q. Okay, and you didn't get -- it's safe to say you
10 didn't get any debris -- any hair which would have been
11 described from the Florida test, right?

12 A. Right.

13 Q. Okay. Now, the swabs that you tested on the belt,
14 were they -- is it safe to say that was what we call touch
15 DNA ---

16 A. Yes.

17 Q. --- analysis, and can you tell me what that means as
18 touch versus -- what does that really mean?

19 A. Touch DNA is simply if I touch a surface, I have the
20 potential to leave DNA behind. Clothing -- sometimes it is
21 also described as ownership DNA. It's just if you swab my
22 collar, that's touch DNA.

23 Q. Okay, so it's contact?

24 A. Yes.

25 Q. Ms. Urka, I heard part of what you said, but how long

KATIE URKA - CROSS BY WILLIAMS

- 1 have you been doing the DNA analysis?
- 2 A. Five and a half years.
- 3 Q. Okay, so you've been doing it a little while?
- 4 A. Yes.
- 5 Q. And you've been doing it for S.L.E.D. and do it all
- 6 the time, I assume?
- 7 A. Right.
- 8 Q. Okay, and is it safe to say that even in the five
- 9 years the analysis that you perform has changed and
- 10 progressed?
- 11 A. DNA and any science is always an evolving field. We
- 12 are pretty much using the same technology today that we were
- 13 using when I started there.
- 14 Q. But it has progressed and we can do -- is it safe to
- 15 say that now we can even do things today that we couldn't do
- 16 before, isn't that right?
- 17 A. Right.
- 18 Q. Okay, and DNA has been very helpful in the use of
- 19 solving a lot of crimes, right, and that's what you do?
- 20 A. Right.
- 21 Q. That's what makes it forensic DNA a lot of times?
- 22 A. Right.
- 23 Q. Okay, and isn't it true that nowadays that you could
- 24 actually get just a tiny bit of potential DNA, concentrate
- 25 it, maybe blow it up, I.D. it, and be able to get a DNA

KATIE URKA - CROSS BY WILLIAMS

1 match, right?

2 A. Right. We need a very small amounts of DNA to get a
3 profile.

4 Q. Really, and you guys can actually do it from little --
5 a tiny, tiny, tiny little bit, right?

6 A. Right.

7 Q. Okay, and that's routine? You guys do that all the
8 time?

9 A. Right.

10 Q. And so you're familiar with techniques to concentrate
11 or enhance small amounts of DNA, right?

12 A. Right.

13 Q. And isn't that what they call low copy number DNA
14 analysis?

15 A. Right.

16 Q. Okay. Tell me how do you know when you use this low
17 copy DNA analysis?

18 A. We don't specify that.

19 Q. What is it?

20 A. Low copy DNA is just when there's very few cells
21 there.

22 Q. There's only a little bit?

23 A. Right.

24 Q. And let me ask you this. When there's only a little
25 bit, do you have to get special training to kind of know what

KATIE URKA - CROSS BY WILLIAMS

- 1 to do when there's a little bit of DNA?
- 2 A. We quantify how much DNA is in every sample we run.
- 3 We don't do any special techniques for low level samples.
- 4 Q. So there's nothing that you do differently when it's a
- 5 tiny little bit versus a lot?
- 6 A. If there's a lot of DNA there, you would dilute the
- 7 sample to go on to the next step.
- 8 Q. Well, then tell me this. How is it possible if
- 9 there's a teeny bit of DNA to analyze it? Tell me what steps
- 10 you do.
- 11 A. We perform an amplification step which ---
- 12 Q. I'm sorry; I didn't understand you.
- 13 A. We perform an amplification step ---
- 14 Q. Amplification.
- 15 A. --- which takes very -- it takes short pieces of DNA,
- 16 because DNA is a very, very long strand, and we take real
- 17 short pieces of it and make millions of copies of it, which
- 18 allows our instruments to detect it.
- 19 Q. Okay, and that amplification step is pretty standard
- 20 procedure, right?
- 21 A. Right.
- 22 Q. And isn't it important that DNA, what you do is you
- 23 take it and -- and it's a pretty exact -- how do I say this
- 24 -- DNA analysis is an important step, correct?
- 25 A. Right.

KATIE URKA - CROSS BY WILLIAMS

1 Q. And wouldn't you agree that it's important because of
2 what we call the power of discrimination, right?

3 A. Right.

4 Q. Can you tell me what the power of discrimination is,
5 your understanding?

6 A. We use the power of discrimination as we have the DNA
7 -- we're looking at fifteen different locations, so the more
8 locations you look at, the more discriminating it is, meaning
9 you can essentially identify a person.

10 Q. You could identify somebody or keep somebody out or
11 put somebody in, right?

12 A. Right.

13 Q. So it's important to make sure when you discriminate,
14 you discriminate -- would you say you discriminate more
15 conservatively?

16 A. All of our results are reported in the most
17 conservative manner.

18 Q. And why is that?

19 A. We just -- are the most conservative.

20 Q. Well, let me ask you this. Would it be safe that
21 you're conservative because the last thing you would want to
22 do is include somebody that didn't need to be included,
23 right?

24 A. Right.

25 Q. I mean, that's the whole purpose of discrimination, is

KATIE URKA - CROSS BY WILLIAMS

441

1 because you want to make sure that whoever you identify and
2 whatever you identify is exact and it is what it is, right?

3 A. Right.

4 Q. Now, let me ask you this. In this case I believe you
5 just said that there was basically a small amount of un- -- I
6 think the term you used was unidentified DNA in this case?

7 A. Right.

8 Q. Okay, and in here, did you try to amplify it up or
9 make it bigger?

10 A. That item number is one DNA profile. You can't
11 separate the major contributor from the minor contributor and
12 perform something to increase the minor contributor.

13 Q. Okay. Can you explain to me what the difference
14 between a real peak is and what noise is with regard to what
15 you do with DNA analysis?

16 A. The data that we get off of our computers is a series
17 of peaks and colors. We have very strict guidelines on
18 interpretation and we know what is essentially noise in those
19 peaks.

20 Q. How do you know the difference? What makes noise?
21 What is that?

22 A. We have several amplification artifacts that are
23 known. They are tested. They're just accepted. We know
24 about them. We can look at them and say that is an artifact.
25 Sometimes the baseline is just not perfect.

KATIE URKA - CROSS BY WILLIAMS

1 Q. So part of it actually involves a little bit of your
2 skill and your interpretation in doing it, right?

3 A. Right.

4 Q. Okay, but in what you're looking for, I'm sure it's
5 very important to determine what is real and what is noise?

6 A. Right.

7 Q. Because noise could possibly include something that
8 should not be included?

9 A. We have very strict specifics for our programs that
10 are making these calls.

11 Q. Okay. Tell me about this. Would it be a good --
12 would it be a safe characterization if a save a sample and
13 this was low quantity, low quantity and low quality that you
14 were comparing in this particular case? Was there a lot of
15 it there?

16 A. I had a lot of DNA. It was a mixture, so the major
17 contributor is a very high quality.

18 Q. But the minor contributor, was it high quality?

19 A. I mean there was enough there that I can look at it
20 and say yes, this is a minor contributor, and I can compare
21 standards to it.

22 Q. Okay, but not enough to be able to make any kind of
23 match?

24 A. We could match to it.

25 Q. Okay, but not enough to include it as an

KATIE URKA - CROSS BY WILLIAMS

1 identification, right?

2 A. ... With a known standard, I could make comparisons to
3 that evidence sample.

4 Q. Okay, but in this case, you -- I'm just making sure I
5 understand -- you excluded Jeff Riebe as a possible
6 contributor in that mixture, correct?

7 A. Correct.

8 Q. Okay. Because if there had been enough there to match
9 him, you would have done so, correct?

10 A. Yes.

11 Q. Okay, tell me this. Is the DNA of the minor
12 contributor that you saw consistent with what we call minimum
13 contact?

14 A. It's a partial minor contributor. I can't really
15 specify how it got there.

16 Q. I understand you can't specify how it got there. My
17 question is, is it consistent with what in the DNA world is
18 called minimal touch contact, minimal contact?

19 A. I would say it could be consistent with touch DNA.

20 Q. I understand. Let me ask you this. In the DNA world,
21 isn't there a difference between what you consider minimal
22 contact and with a lot of contact?

23 A. Low level profiles are touch DNA.

24 Q. And you testified -- were there any other items that
25 you know of that were collected from the victim's -- from Ms.

KATIE URKA - CROSS BY WILLIAMS

1 Mowery's apartment tested for DNA? You didn't test any
2 utensils? You didn't test any toothbrushes? You didn't test
3 any glasses, or any signs, or anything like that, did you?

4 A. No.

5 Q. And if you had tested those type of items and you had
6 found other DNA that wasn't the Defendant -- that wasn't Ms.
7 Mowery, you would have identified that, right?

8 A. Only if I had standards to compare it to.

9 Q. If you had a known standard, you would have compared
10 it -- you could have identified it as that standard, right?

11 A. Possible.

12 (TWO DNA CHARTS MARKED AS DEFENDANT'S EXHIBIT NUMBER 23
13 AND 24 FOR IDENTIFICATION ONLY.)

14 Q. Okay. Let me show you what's been marked for
15 identification as Defendant's Number 23 and Defendant's
16 Number 24 and ask you if you recognize those?

17 A. They appear to be copies of my data for the victim and
18 the suspect's standards.

19 Q. So 23 and 24 are copies of part of the data that you
20 generated in doing your analysis, right?

21 A. This is the data that I got.

22 MS. WILLIAMS: Your Honor, I'd move Defendant's Exhibit
23 Number 23 and 24 into evidence at that time -- at this time.

24 THE COURT: Any objection?

25 MR. DEBUSK: Without objection, Your Honor.

KATIE URKA - CROSS BY WILLIAMS

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

3 (TWO DNA CHARTS ADMITTED INTO EVIDENCE AS DEFENDANT'S
4 EXHIBIT NUMBER 23 AND 24.)

5 Q. And can we come in front of the jury for a moment and
6 let you explain this to them.

7 A. Uh huh (indicating positive).

8 THE COURT: You will need to keep your voice up, Ma'am.

9 A. Yes sir.

10 Q. 23 and 24, these are the data that you generated that
11 would be Ms. Mowery and Jeff Riebe, right?

12 A. Right.

13 Q. And when I was talking about peaks and noise a while
14 ago, can you show the jury what a peak is?

15 A. All of these are peaks.

16 Q. Okay, and can you show the jury if there is -- what
17 you would consider any noise?

18 A. This is not noise, as we call it. It's called
19 stutter. It's just an artifact of amplification.

20 Q. Okay, but those are the type things that you look for,
21 right?

22 A. Right.

23 Q. And those two represent the known -- known DNA from
24 Ms. Mowery and known DNA from Jeff Riebe, right?

25 A. Right.

KATIE URKA - CROSS BY WILLIAMS

1 (DNA CHART MARKED AS DEFENDANT'S EXHIBIT NUMBER 25 FOR
2 IDENTIFICATION ONLY.)

3 Q. And I'm going to hand you what's been marked for
4 identification as Defendant's 25 and ask you if you can
5 identify that?

6 A. That appears to be my electropherogram for Item 3.2.

7 Q. Which is what?

8 A. A swab from the belt.

9 Q. So this is what you developed from the swab from the
10 belt, right?

11 A. Right.

12 MS. WILLIAMS: Your Honor, I would move this in as
13 Number 25 into evidence.

14 THE COURT: Any objection?

15 MR. DEBUSK: No objection, Your Honor.

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

17 (DNA CHART ADMITTED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
18 NUMBER 25.)

19 MS. WILLIAMS: May we approach the jury so she can
20 explain, Your Honor?

21 THE COURT: Yes Ma'am.

22 Q. Let me ask you -- well, I'll give it to you to hold up
23 because I have to look at my notes. This is a little away
24 for me. If you can look at -- so this is the peaks and the
25 valleys and all this that you developed with regard to the

KATIE URKA - CROSS BY WILLIAMS

- 1 swab from the belt, correct?
- 2 A. Correct.
- 3 Q. Was this the swab inside the belt or outside the belt,
4 do you know?
- 5 A. I'd have to look in my report.
- 6 Q. That's fine, but it is from the belt?
- 7 A. Right.
- 8 Q. Okay. Now, can you tell me this number right here,
9 this eight and one zero six? Is it true that this is a
10 marker that -- well, tell me this. Why do you put little
11 numbers in squares, sometimes and sometimes not?
- 12 A. Each of these across the top, the gray bars, those are
13 each location we are looking at on the DNA and going across
14 all of them, we have fifteen different spots we're looking
15 at. At this particular location, there were four numbers
16 identified, what we call alleles, 8, 13, 14, 15. The numbers
17 underneath it is the intensity of that piece of DNA.
- 18 Q. So those are like -- those are little markers that you
19 identified as a real marker, right?
- 20 A. Right.
- 21 Q. Okay, and if we go back and in -- so on this what you
22 would be looking for is, if I'm assuming -- I don't want to
23 put words in your mouth now -- what you're going to be
24 looking for is the markers you found that you know are Ms.
25 Mowery's and the markers that you know are Jeff Riebe's and

KATIE URKA - CROSS BY WILLIAMS

1 looking for them on here?

2 A. You take a known standard and we look at the first
3 location and we compare the numbers from the standard to this
4 one, and the next location to this one, and that's how we
5 determine if someone is included or excluded.

6 Q. Okay. Let me ask you this. This Number 8 and 106, if
7 I can hand you Defendant's Number 23 and 24, Number 8 and 106
8 isn't on either of those, is it?

9 A. Neither of these two standards have an 8 at that
10 location.

11 Q. What does that mean?

12 A. When we make exclusions or inclusions, it's based on
13 the totality of the profile. It's not based on a single
14 location.

15 Q. What does that mean? That means there wasn't an 8 on
16 those two, right?

17 A. At that locus, neither of these standards have an 8.

18 Q. What about right here on this one where there's a 10
19 and a 90, what's -- is that one on either the victim, Ms.
20 Mowery, or Jeff Riebe?

21 A. At that location, neither standard has a 10.

22 Q. So it's not on there?

23 A. Right.

24 Q. Okay. Number 17 and Number 95 right down here on the
25 third line.

KATIE URKA - CROSS BY WILLIAMS

- 1 A. Neither standard has a 17 at that location.
- 2 Q. So it's not in there, but it's showing up on here?
- 3 A. Right.
- 4 Q. Okay. Right here, Number 12, Number 94, right here,
- 5 the second line.
- 6 A. Neither standard has a 12.
- 7 Q. So it's on the belt, but it's not on Ms. Mowery or not
- 8 in Jeff Riebe's?
- 9 A. Right.
- 10 Q. Okay. Now, let me ask you if you can look at -- right
- 11 here if you will look at Jeff's, do you see a 17 on his?
- 12 A. He has a 17, 20 at that location.
- 13 Q. Is there a 17 on the one that's on the belt?
- 14 A. No.
- 15 Q. If you'll look right here on the top line, the third
- 16 one over, in Jeff's do you see a 9 and a 12?
- 17 A. He has a 9 and a 12.
- 18 Q. Is there one on the belt?
- 19 A. No.
- 20 Q. If you will look on the third line down all the way at
- 21 the end, will you look on Jeff's and see if you see a 16 and
- 22 a 17?
- 23 A. There is a 16 and 17.
- 24 Q. Is there one on the belt?
- 25 A. No.

KATIE URKA - CROSS BY WILLIAMS

- 1 Q. Okay. Will you look on the bottom line and down here
2 there is a 78 on the belt, right?
- 3 A. That's the intensity of that peak.
- 4 Q. And what does that mean?
- 5 A. The intensity is how much of that peak was seen by the
6 instrument.
- 7 Q. Okay. Is there one on -- is 79 -- tell me what that
8 means, the intensity that's seen. Tell me why that's
9 important.
- 10 A. That allows us to look at major/minor contributors.
- 11 Q. Okay. Is there like a cutoff that you normally look
12 at? I mean, is that a score in essence?
- 13 A. It's terms relative for us. It's just how much of
14 that piece of DNA was seen by the instrument.
- 15 Q. Is 78 or 79 minor for ---
- 16 A. That's low.
- 17 Q. Low, okay. Will you look on the fourth line all the
18 way at the bottom and look at Jeff's and see if you see a 23
19 and a 26?
- 20 A. His standard has a 23, 26.
- 21 Q. And on the belt was there a 23, 26?
- 22 A. No.
- 23 Q. Agent Urka, on Defense's Exhibit Number 25, those
24 standards -- those peaks and minors, I think they're called
25 alleles, is that right?

KATIE URKA -- CROSS BY WILLIAMS

451

- 1 A. Right.
- 2 Q. The alleles that we identified that are on there that
3 are on Ms. Mowery's and aren't on Jeff Riebe's, do we know
4 whose those are?
- 5 A. No.
- 6 Q. We don't know?
- 7 A. No.
- 8 Q. But they were marked -- they were enough so that we
9 knew they were there, right?
- 10 A. Right.
- 11 Q. And because we knew they were there, that means
12 there's a possible third contributor, right?
- 13 A. It's possible.
- 14 Q. But we know that these weren't Ms. Mowery's and they
15 weren't Jeff Riebe's, right?
- 16 A. Right.
- 17 Q. Let me ask you is there a reason on your updated
18 report that you testified you corrected so it would be more
19 correct, right, more accurate?
- 20 A. I was just making it -- making it clear that the
21 Defendant's standard was compared to that mixture.
- 22 Q. But you didn't mention that there was other unknown
23 DNA in that mixture as well, did you?
- 24 A. My report states the DNA profile of the minor
25 contributor is from an unidentified male individual.

KATIE URKA - REDIRECT BY DEBUSK

1 MS. WILLIAMS: May we publish this one?

2 THE COURT: Yes Ma'am.

3 MS. WILLIAMS: Your Honor, that's all the questions
4 that I have.

5 THE COURT: All right, very good.

6 All right, redirect, Solicitor?

7 MR. DEBUSK: Your Honor, can I ask the Court's
8 indulgence for just one moment?

9 THE COURT: Yes sir.

10 MR. DEBUSK: Thank you, Your Honor.

11 Your Honor, may I have two items marked as State's
12 Exhibits.

13 (TWO DNA CHARTS MARKED AS STATE'S EXHIBIT NUMBER 59 AND
14 60 FOR IDENTIFICATION ONLY.)

15 REDIRECT-EXAMINATION BY MR. DEBUSK:

16 Q. Ms. Urka, would you look at these and other than the
17 notations on them, can you recognize what those are?

18 A. It looks like a copy of the known standard for Riebe
19 and Item 3.2 are the swabs on the belt.

20 Q. Okay. Are those similar to the items you were just
21 discussing with Ms. Williams?

22 A. Yes.

23 MR. DEBUSK: Your Honor, we would move these into
24 evidence.

25 THE COURT: Show them to -- show them to Ms. Williams.

KATIE URKA - REDIRECT BY DEBUSK

1 MS. WILLIAMS: Your Honor, may we approach?

2 THE COURT: Yes Ma'am.

3 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

4 Q. Ms. Urka, would you again ---

5 MS. WILLIAMS: Your Honor, may I put that on the
6 record.

7 THE COURT: Yes Ma'am.

8 MS. WILLIAMS: Your Honor, yes sir, I would object to
9 this being entered.

10 THE COURT: All right, and the Court has noted your
11 objection, and at this point in time I'm overruling your
12 objection.

13 Solicitor, you will have to further question the witness
14 and they are not in evidence at this time.

15 MR. DEBUSK: Thank you, Your Honor.

16 Q. Ms. Urka, -- let me get the numbers straight.
17 Referring to State's 59, there are four red circles on that
18 page and they do not appear on the other page. What is 59?
19 What is that Page 59? What does that represent?

20 A. That is Item 3.2, the swab from the belt.

21 Q. That's the profile you developed from the swab from
22 the belt?

23 A. Right.

24 Q. Those four items that were circled, do they appear in
25 Mr. Riebe's profile?

KATIE URKA - REDIRECT BY DEBUSK

1 A. No.

2 Q. Okay, and you're referring to -- you're comparing it
3 to State's 60, which is Mr. Riebe's profile?

4 A. Right.

5 Q. Now, there are a number of blue circles on both items.
6 Are all of these numbers circled on 59 also appear on 60?

7 A. Yes.

8 Q. So these blue circles represent things that appear on
9 both Jeff Riebe's profile ---

10 MS. WILLIAMS: Your Honor, I would object to the
11 leading nature of the question.

12 THE COURT: I don't think it's leading.

13 You may proceed, sir.

14 Q. Are the blue circles circled items that appear on both
15 Jeff Riebe's standard profile and the Item 3.2?

16 A. Yes.

17 Q. And the red circles are items that appear on Item 3.2,
18 but not on Jeff Riebe's profile?

19 A. Yes.

20 Q. Are those also the only ones that don't appear on
21 Phyllis Mowery's profile, which I will get you a copy of.
22 It's already in evidence and it's duplicating.

23 MS. WILLIAMS: Defendant's Number 23 is Ms. Mowery.

24 MR. DEBUSK: Defendant's 23, referring to Defendant's

25 23.

KATIE URKA - REDIRECT BY DEBUSK

1 THE COURT: Defendant's 23, all right.

2 A. The numbers circled in red on the evidence profile are
3 not in the victim's standard.

4 Q. Okay.

5 MR. DEBUSK: So, Your Honor, again we move these into
6 evidence. We now have laid a foundation for the markings on
7 the exhibit.

8 THE COURT: All right.

9 Do you continue your objection?

10 MS. WILLIAMS: Yes sir. My objection is ongoing.

11 THE COURT: All right, very good.

12 I'm going to allow State's 59 and 60 in evidence over
13 the objection of the Defense.

14 (TWO DNA CHARTS ADMITTED INTO EVIDENCE AS STATE'S
15 EXHIBIT NUMBER 59 AND 60.)

16 MR. DEBUSK: Ms. Urka, would you approach the jury,
17 please.

18 Q. Now, all these blue circles from S.L.E.D. Item 3.2 are
19 shared in common with the profile of Jeff Riebe, is that
20 correct?

21 A. Yes.

22 Q. And only the four red ones that appear on State's
23 Exhibit 59 do not appear in either profile, is that correct?

24 A. The four red ones are not in the Defendant's profile.

25 Q. So if it was a mixture of three individuals, there are

KATIE URKA - REDIRECT BY DEBUSK

1 only four alleles that could not be explained by Jeff Riebe
2 that would have to be identified -- explained by another
3 individual, is that correct?

4 A. Those four alleles could not be attributed to either
5 the victim or the Defendant.

6 Q. So if it was a mixture of three people, just four of
7 the alleles would make a difference between identifying Jeff
8 Riebe in this and not, is that correct?

9 A. Correct.

10 Q. Okay. Now, I've asked you this before and I'll ask
11 you again ---

12 THE COURT: Please, just a second. Return to the
13 witness stand.

14 MR. DEBUSK: Thank you, Your Honor.

15 Q. Is that as a mixture on Item 3.2 of three individuals,
16 as well as narrowing two other individuals, could Jeff Riebe
17 be a contributor to that mixture?

18 MS. WILLIAMS: Your Honor, I believe that's already
19 been answered on Direct.

20 THE COURT: I understand, but I'm going to allow the
21 Solicitor to ask it one last time.

22 A. Based on the data that I had, I could only say it was
23 a mixture of at least two individuals.

24 Q. Yeah, but that's being conservative, is that correct?

25 A. Right.

KATIE URKA - REDIRECT BY DEBUSK
RECROSS BY WILLIAMS

1 Q. That's what you're supposed to do, ---

2 A. Right.

3 Q. --- be conservative? You only assume a mixture of two
4 because that's the conservative position, is that correct?

5 A. Right.

6 Q. But if, on the assumption, and I admit this is a
7 hypothetical, if there are three -- if there's proof that
8 there's three individuals in that mixture, is it possible
9 Jeff Riebe was one of the contributors?

10 A. It's possible.

11 MR. DEBUSK: Thank you.

12 THE COURT: Cross on those questions asked by the
13 Solicitor.

14 RECROSS-EXAMINATION BY MS. WILLIAMS:

15 Q. Just briefly, Agent Urka. There were four alleles
16 that you don't know who they belonged to, correct?

17 A. Correct.

18 Q. So they -- so we -- we don't know?

19 A. Correct.

20 Q. And you excluded Jeff Riebe as a contributor, correct?

21 A. Correct.

22 MS. WILLIAMS: That's all that I have, Your Honor.
23 Thank you.

24 THE COURT: Do you wish the witness to be excused?

25 MR. DEBUSK: Yes, please, Your Honor.

JURY OUT
JURY IN

1 THE COURT: Any objection?

2 MS. WILLIAMS: No sir.

3 THE COURT: All right, Ma'am, you are released from
4 your subpoena and may go back to your regular activities.

5 MR. DEBUSK: Are you ready for another witness?

6 THE COURT: No. All right, ladies and gentlemen, we
7 are going to break for lunch. I'd ask that you be back in
8 your jury room at 2:15, please. Be back in your jury room at
9 2:15. Remember, don't talk about the case. Don't allow
10 anybody to talk to you about it. Thank you very much.

11 Everyone else remain seated.

12 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
13 JURY.)

14 THE COURT: All right, I'll see y'all back at 2:15.
15 Thank you very much.

16 (THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK AND
17 OUTSIDE THE PRESENCE OF THE JURY.)

18 THE COURT: All right, Solicitor, are you ready for the
19 jury?

20 MR. DEBUSK: Yes, Your Honor.

21 THE COURT: All right, Defense?

22 MS. WILLIAMS: Yes sir.

23 THE COURT: Ask the jury to come in, please.

24 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
25 JURY.)

ROBERT EDGE - DIRECT BY DEBUSK

1 THE COURT: All right, Solicitor, your next witness,
2 please.

3 MR. DEBUSK: The State calls Robert Edge.

4 THE COURT: All right, sir, if you would please come
5 around up front to be sworn.

6 ROBERT L. EDGE, JR., being first duly
7 sworn, testifies as follows:

8 THE COURT: All right, Solicitor.

9 DIRECT-EXAMINATION BY MR. DEBUSK:

10 Q. Good afternoon, sir. What is your occupation?

11 A. I'm the Coroner for Horry County.

12 Q. What does that entail?

13 A. Our office is in charge of investigating deaths that
14 occur in the county, the natural and the unnatural state.

15 Q. Were you still doing that in August of 2008?

16 A. Yes sir.

17 Q. On August 28th of 2008, did you respond to

18 ?

19 A. Yes sir.

20 Q. What did you find there?

21 A. Upon arrival, Fire, and E.M.S., and police were there,
22 and they told us that we had a young lady who was inside who
23 was deceased.

24 Q. Did you see the body there?

25 A. Yes sir.

ROBERT EDGE - DIRECT BY DEBUSK
CROSS BY WILLIAMS

1 Q. What did you do with her, if anything?

2 A. Once the police came in and the crime scene was
3 processed, I called for some transportation. We have a local
4 company who transports for us. She was placed on a stretcher
5 and taken to the Grand Strand Hospital where she was placed
6 inside the morgue.

7 Q. Was she placed in any other container besides the
8 stretcher? Was she put in a body bag?

9 A. To be honest with you, I can't definitely tell you
10 that, but our normal process is to do that. My memory is not
11 quite good as it used to be.

12 Q. Where was she taken?

13 A. She was taken to Grand Strand.

14 Q. Okay, and whose possession was she left in?

15 A. In charge at the hospital. Upon arrival with her, the
16 supervisor comes in and unlocks the morgue, and she's logged
17 in to a book, and placed in a cooler.

18 Q. Okay, thank you.

19 MR. DEBUSK: Please answer any questions the Defense
20 might have.

21 THE COURT: Cross-examination.

22 MS. WILLIAMS: Just briefly.

23 CROSS-EXAMINATION BY MS. WILLIAMS:

24 Q. Good afternoon, Mr. Edge.

25 A. Good afternoon.

ROBERT EDGE - CROSS BY WILLIAMS

- 1 Q. You are the Coroner for Horry County, correct?
- 2 A. Yes Ma'am.
- 3 Q. Okay, and that -- what does that actually mean?
- 4 A. Well, again, we're -- our office is in charge of death
- 5 investigations. We issue permits; we sign certificates, order
- 6 autopsies. Pretty much anything that's involved in a death
- 7 investigation, we're involved with it.
- 8 Q. And how long have you been the Coroner?
- 9 A. About twenty-three years.
- 10 Q. Twenty-three years. Is it the Coroner that normally
- 11 determines a date and time of death?
- 12 A. Yes Ma'am, and usually if it's an autopsy and there's
- 13 some -- I don't want to say discrepancy, but there's a time
- 14 element involved, I usually try to get some advice from Dr.
- 15 Proctor who does the autopsies, but I, in the end, set the
- 16 time and the date, yes Ma'am.
- 17 Q. So you would be the one that determined if there was a
- 18 date and time, correct?
- 19 A. Yes Ma'am.
- 20 Q. With the assistance of Dr. Proctor?
- 21 A. Yes Ma'am.
- 22 Q. Because he's the medical M.D. ---
- 23 A. The pathologist.
- 24 Q. --- that does this, right?
- 25 A. Yes Ma'am.

ROBERT EDGE - CROSS BY WILLIAMS

1 Q. Do you know within this case we have a date and time of
2 death?

3 A. No Ma'am, we did not determine one. We did determine a
4 date, but not a time, and the date was the 27th was what we
5 said, and I was at the -- at her -- at the residence on 28th
6 at about 8:00 A.M. the next morning.

7 Q. A date, but no time?

8 A. Yes Ma'am.

9 Q. And you were there at 8:00 A.M. on the 28th?

10 A. The 28th, yes Ma'am.

11 MS. WILLIAMS: That's all the questions that I have.
12 Thank you.

13 THE COURT: Redirect?

14 MR. DEBUSK: No, Your Honor. We'd ask that he be
15 released.

16 THE COURT: Any objection?

17 MS. WILLIAMS: No sir, without objection.

18 THE COURT: All right.

19 Mr. Edge, you are released from your subpoena and may go
20 back to your regular activities, sir.

21 Next witness, Solicitor.

22 MR. DEBUSK: The State calls Pam Smith.

23 THE COURT: All right.

24 Ms. Smith, if you would come up around over here to be
25 sworn, please, Ma'am.

PAM SMITH - DIRECT BY DEBUSK

1 PAM SMITH, being first duly sworn, states
2 as follows:

3 DIRECT-EXAMINATION BY MR. DEBUSK:

4 Q. Ms. Smith, who is your employer?

5 A. Conway Medical Center..

6 Q. What are your duties?

7 A. I'm a phlebotomist.

8 Q. Okay. During the course of your duties, did you come
9 in contact with Defendant Jeffrey Riebe?

10 A. Yes, I did.

11 Q. Do you remember what date?

12 A. I honestly do not remember the exact date.

13 Q. Okay. Do you remember was there a detective with him?

14 A. There was.

15 Q. Do you remember that detective's name?

16 A. (No response.)

17 Q. Let me ask you this. Was it Detective Dennis
18 Pitsinger?

19 A. It was Mr. Pitsinger. Yes, it was.

20 Q. What did you do in relation to Mr. Riebe?

21 A. I drew two lavender-top blood -- tubes of blood.

22 Q. And what did you do with them?

23 A. I gave them back to Mr. Pitsinger.

24 Q. And from the time you took them out of Mr. Riebe to the
25 time you gave them to Mr. Pitsinger, did you alter them or

TINA GOFF - DIRECT BY DEBUSK

1 change them in any way?

2 A. No sir, I did not.

3 MR. DEBUSK: Thank you. Please answer any questions the
4 Defense might have.

5 THE COURT: Cross-examination.

6 MS. WILLIAMS: No questions, Your Honor.

7 THE COURT: Do you wish the witness to be excused?

8 MR. DEBUSK: Please, Your Honor.

9 THE COURT: Any objection?

10 MS. WILLIAMS: Without objection, Your Honor.

11 THE COURT: All right, Ma'am, you are released from your
12 subpoena and may go back to your regular activities. Thank
13 you.

14 Next witness, Solicitor.

15 MR. DEBUSK: Tina Goff.

16 THE COURT: All right, Ms. Goff, would you come on up
17 here to be sworn, please, Ma'am.

18 TINA GOFF, being first duly sworn, states,
19 as follows:

20 THE COURT: All right, Solicitor.

21 DIRECT-EXAMINATION BY MR. DEBUSK:

22 Q. Ms. Goff, who is your employer?

23 A. The Richland County Sheriff's Department.

24 Q. How long have you been working for them?

25 A. Almost eighteen years.

TINA GOFF - DIRECT BY DEBUSK

1 Q. What are your duties at this time?

2 A. I am one of the evidence technicians with the agency,
3 and our job is to accept, store, and maintain the evidence in
4 a case, as well as keep an electronical chain of custody on
5 that evidence, and then to give it out to the investigators or
6 to the labs when asked for testing and then make sure it comes
7 back in, and then to bring it to Court if necessary.

8 Q. Okay. Let me ask you in relation to this case, State
9 v. Jeff Riebe, did your department handle any evidence?

10 A. Yes, we did.

11 Q. What did you handle?

12 A. We were brought one webbed belt, swabs from the belt,
13 and a blood standard from Jeffrey Wayne Riebe. Is that ---

14 Q. Let me ask you, this is State's Exhibit 4, 4(A) and
15 4(B), and ask if you recognize any of these?

16 A. This is the box that contained Items 1 and 2.

17 Q. When was that -- who would have provided that box to
18 put that ---

19 A. It's one of our boxes that we have in our evidence log-
20 in area, and it's one of our evidence labels that we use.

21 Q. Do you know who you received the contents of that box
22 from?

23 A. Deputy Dennis Pitsinger.

24 Q. Okay. Can you tell me what happened when that box was
25 taken out of the possession of Dennis Pitsinger and put in the

TINA GOFF - DIRECT BY DEBUSK

1 possession of your department?

2 A. Sure. When Deputy Pitsinger turned it in, he brought
3 the evidence in, in paper bags, which are inside. We helped
4 him to seal the box up. He sealed it and put this red tape on
5 it, put his initials and date across it, and then we had him
6 fill out one of our evidence forms with the information from
7 the case.

8 This is Horry County's case number here at the top right.
9 This is our case number that we assign to the outside agency
10 so we can better track the evidence, his name, the Defendant's
11 name, and the specific items that they are turning in, and
12 then he put down here that he is requesting DNA testing.

13 He signed it with his badge number, the date and time of
14 when he submitted it to us, and once we got it and we saw that
15 everything was signed and sealed accordingly, we took it in
16 and we logged it in. We log it in and it's said to contain
17 these items. Once we logged them in and notified our DNA lab,
18 they came down and retrieved the items from us.

19 Q. Once your office takes in a box like that, is it
20 maintained in a sealed condition?

21 A. Yes.

22 Q. As long as it is in the Evidence Department, it is
23 maintained in a sealed condition?

24 A. Yes.

25 Q. Who was it passed on to?

TINA GOFF - DIRECT BY DEBUSK

1 A. On November 16th of 2010 at 16:14 or 4:14 in the
2 afternoon, it was released from Steven Griffey, another
3 evidence technician, to DNA analyst, Rachel Grant.

4 Q. And who was it that took it in?

5 A. Took it in?

6 Q. From Detective Pitsinger into evidence?

7 A. It was Evidence Tech Steve Griffey.

8 Q. And who else handled the evidence?

9 A. I received the evidence back on December 28th of 2010
10 at 11:28.

11 Q. Back from?

12 A. Locker return.

13 Q. Okay, so that would have been from the analyst or
14 from ---

15 A. No. Once the evidence has been logged out to the
16 analyst, in order for you to sign evidence out, you must have
17 your own unique password that only you know, because you have
18 to sign the evidence out. We have an internal chain of
19 custody where the DNA analyst or some of our scientists are
20 allowed to return their evidence. They scan it in and return
21 it to our temporary storage lockers called locker return. I
22 then, or someone else from the evidence room, can get that
23 evidence out of locker return and log it back in, and that's
24 what I did on December 28th of 2010.

25 Q. Okay. After that, did it leave Evidence again?

TINA GOFF - DIRECT BY DEBUSK

1 A. Yes, it did. On January 14th of 2011 at 13:09 or 1:09
2 in the afternoon, it was released from another evidence tech,
3 Patricia Weed, to Deputy Pitsinger.

4 Q. Tell me about the blood standard. Did you also receive
5 a blood standard?

6 A. We did. It was brought in the same day with this
7 evidence, but it cannot be packaged with this evidence in a
8 box because it was said to be blood.

9 Q. Okay. What was done with it?

10 A. That evidence was logged in in a plastic bag, another
11 evidence bag, sealed in somewhat the same manner and put in
12 the refrigerator until later that afternoon when Analyst
13 Rachel Grant was able to come pick it up.

14 Q. Okay, and while that was in possession of the Evidence
15 Department, was it opened, unsealed, altered or changed in any
16 way?

17 A. No.

18 Q. I think you told us who logged in the evidence and you
19 told us who got it back from the analyst. Who logged it out
20 again?

21 A. Evidence Tech Steve Griffey logged it out.

22 Q. So you've told us who logged it in, who logged it out
23 to the analyst, who logged it back in from the analyst, and
24 who logged it back out to Detective Pitsinger?

25 A. Yes.

TINA GOFF - CROSS BY WILLIAMS

1 Q. Thank you.

2 MR. DEBUSK: Please answer any questions the Defense
3 might have.

4 THE COURT: Cross-examination.

5 MS. WILLIAMS: Briefly.

6 CROSS-EXAMINATION BY MS. WILLIAMS:

7 Q. Officer Goff, that would be correct, right?

8 A. No. It's just Tina.

9 Q. Well, I will say Ms. Goff. It sounds to me like at
10 Richland County you guys have a pretty thorough tracking
11 mechanism, correct?

12 A. Yes Ma'am.

13 Q. I mean, so -- so if anything comes in, you guys know
14 that it comes in?

15 A. Yes.

16 Q. You know where it goes?

17 A. Yes.

18 Q. Who touches it?

19 A. Yes.

20 Q. And then when it goes back out?

21 A. Yes Ma'am.

22 Q. Okay, and so the only things that were sent to Richland
23 County was the belt, swabs from the belt, and Jeffrey Riebe's
24 blood, correct?

25 A. One blood standard from Jeff Riebe.

TINA GOFF - CROSS BY WILLIAMS
RACHEL WYLIE GRANT - DIRECT BY DEBUSK

1 Q. One blood standard?

2 A. Yes.

3 Q. Nothing else?

4 A. No Ma'am.

5 Q. Okay, and Richland -- and your lab has the capability
6 to do what kind of analysis?

7 A. Our lab can do DNA, serology. We can do firearms, fire
8 debris, and drugs.

9 Q. Great.

10 MS. WILLIAMS: Thank you. I have no further questions.

11 THE COURT: Redirect?

12 MR. DEBUSK: No, Your Honor. We would ask that the
13 witness be released.

14 THE COURT: Any objection?

15 MS. WILLIAMS: Without objection, Your Honor.

16 THE COURT: All right, Ma'am, you are released from your
17 subpoena and may go back to your regular activities. Thank
18 you.

19 Who is your next witness, Solicitor?

20 MR. DEBUSK: Rachel Grant, Your Honor.

21 THE COURT: All right, Ms. Grant, if you would come on
22 up here to be sworn, please, Ma'am.

23 RACHEL WYLIE GRANT, being first duly
24 sworn, states as follows:

25 DIRECT-EXAMINATION BY MR. DEBUSK:

RACHEL WYLIE GRANT - DIRECT BY DEBUSK

1 Q. Ms. Grant, who is your employer?

2 A. I'm employed with the Richland County Sheriff's
3 Department.

4 MR. DEBUSK: Could you keep your voice up. We have
5 difficulty hearing in this courtroom.

6 Q. How long have you been employed by Richland County?

7 A. A little bit over three years.

8 Q. And what are your duties?

9 A. I am a DNA analyst.

10 Q. Could you describe for the jury your qualifications for
11 working as a DNA analyst.

12 A. I have a Bachelor's Degree in Biology, with a Chemistry
13 minor from Winthrop University. I am currently obtaining my
14 Master's Degree in Forensic Serology and DNA from the
15 University of Florida.

16 Since starting my career at Richland County, I've
17 undergone extensive forensic serology and DNA training. I've
18 been trained by two court-certified DNA analysts and have
19 successfully completed competency as set forth by the F.B.I.
20 and the DNA Advisory Board.

21 MR. DEBUSK: We would offer Ms. Grant as an expert in
22 the area of DNA analysis.

23 THE COURT: All right, Ms. Williams, do you wish to voir
24 dire the witness as to her qualifications?

25 MS. WILLIAMS: No Ma'am -- No sir. We'll stipulate that

RACHEL WYLIE GRANT - DIRECT BY DEBUSK

1 Ms. Grant is an expert in the area of DNA analysis.

2 THE COURT: All right. I am going to qualify her to
3 give her opinion.

4 Go ahead, Solicitor.

5 Q. Ms. Grant, what is a Y chromosome?

6 A. A Y chromosome is one of the sex chromosomes that is
7 genetically passed down from male to male.

8 Q. Do all human beings have an X -- a Y chromosome?

9 A. No, they do not.

10 Q. Do all human beings have X chromosomes?

11 A. Yes.

12 Q. Which have just a -- have a Y chromosome?

13 A. Males.

14 Q. So only males have the Y chromosome?

15 A. Correct.

16 Q. Explain to me what is a Y-STR analysis?

17 A. Y-STR analysis is a type of DNA analysis that is
18 specifically for males, male specific.

19 Q. What -- what are the results you get when you do Y-STR
20 analysis?

21 A. Typically when you have regular DNA analysis, you get
22 what's called a devoid profile which is you can see the
23 contribution from the mother and the father. A Y-STR profile
24 is called a haploid profile and it's just the contributing
25 genetic material from the father.

RACHEL WYLIE GRANT - DIRECT BY DEBUSK

1 Q. So you get a series of -- what's the data output? What
2 does it look like?

3 A. Instead of on our data printout -- instead of having
4 possibly two peaks, one peak, depending on what is being
5 contributed, you're going to just have one peak at these
6 particular locations that we're looking at.

7 Q. So you sort of get a profile that is only one peak at
8 each location instead of two?

9 A. There are exceptions. There is a -- there are a few
10 loci that have -- multicopy loci that have -- the repeats are
11 there more than once.

12 Q. Did you perform any analysis in this case?

13 A. I did.

14 Q. What did you analyze?

15 A. I analyzed a webbed belt. Also that was submitted to
16 me I did not analyze were previous S.L.E.D. swabs from the
17 belt, and then I analyzed a blood standard from Jeffrey Riebe.

18 Q. I'll show you State's Exhibit 4(A) and also the package
19 it came in, 4 and 4(B) and ask if you recognize those?

20 A. I do.

21 Q. What are they?

22 A. That is the webbed belt and that was the bag that was
23 in the box with the belt.

24 Q. Okay. As far as the belt, what did you do to the belt?

25 A. What I did is I actually swabbed the belt. I swabbed

RACHEL WYLIE GRANT - DIRECT BY DEBUSK

1 it and scraped it. One side, did one collection of swabs, and
2 then on the other side did another collection, so I swabbed
3 each side separately.

4 Q. How did you swab it?

5 A. Taking a sterile Q-tip with some distilled water, and
6 this is a weave type belt, so every crease, nook, and cranny,
7 just very -- went thoroughly through those. On the back side,
8 I took a sterile blade and scraped down any debris that was
9 possibly off of -- off of the belt and did that separately.

10 Q. Okay. Did you have any standards to compare it to?

11 A. I did.

12 Q. What was it?

13 A. It was a blood standard from Jeffrey Riebe.

14 Q. Okay. What sort of analysis did you conduct on those
15 swabs and the blood sample?

16 A. I did the Y-STR analysis.

17 Q. What did you find in your analysis?

18 A. From Item 1.2, which is the swab from the outside of
19 the belt, I obtained a partial Y chromosomal DNA profile.
20 Therefore, neither Jeffrey Riebe nor any of his paternally
21 related male relatives can be excluded as a contributor of
22 this DNA.

23 Q. What does that mean in real terms for the jury?

24 A. These Y-STR profiles are genetically passed down from
25 father to son, so anyone that is paternally related is going

RACHEL WYLIE GRANT - DIRECT BY DEBUSK

1 to have the same identical Y-STR profile, so a grandfather, to
2 the father, to the son, all the way down, they're going to be
3 identical, so in this case, Jeffrey Riebe or any of his
4 paternally related male relatives cannot be excluded.

5 Q. What about Item 1.2?

6 A. That was the one that I just went over. Do you mean
7 1.1?

8 Q. I think you -- you didn't -- I'm sorry; I thought you
9 testified to 1.1.

10 THE COURT: No. 1.2.

11 Q. Okay. Were you able to put any statistical basis on
12 this analysis?

13 A. I was.

14 Q. And what was that?

15 A. With Y-STRs, the statistical method is called
16 accounting method and it is basically seeing how many times
17 this particular hapotype profile is observed in a database,
18 and by doing that and applying a ninety-five percent upper
19 confidence interval, it gives us a particular frequency, and I
20 can just read this to you straight from my report.

21 Applying ninety-five percent ---

22 THE COURT: You're -- you've got to be behind the
23 microphone, Ma'am. I'm sorry.

24 MR. DEBUSK: Your Honor, before she goes up, let me get
25 another exhibit marked.

RACHEL WYLIE GRANT - DIRECT BY DEBUSK

1 **THE COURT:** All right. Show it to the Defense Counsel.

2 **(THREE PAGE REPORT, WITH TABLE, OF RACHEL GRANT OF**
3 **RICHLAND COUNTY SHERIFF'S OFFICE MARKED AS STATE'S EXHIBIT**
4 **NUMBER 61 FOR IDENTIFICATION ONLY.)**

5 Q. I show you what's been marked as State's Exhibit 61 and
6 ask if you recognize that?

7 A. Yes. It appears to be a copy of my report.

8 Q. Is it a fair and accurate copy of your report? Take
9 your time if you need to check it.

10 A. Yes.

11 Q. Okay. Would that report help you to explain to the
12 jury your results of your analysis?

13 A. (No response.)

14 Q. I'm talking about Exhibit 61. Would Exhibit 61 help
15 you explain the results of your report, your analysis, to the
16 jury?

17 A. Yes.

18 **MR. DEBUSK:** Your Honor, we would move State's Exhibit
19 61 into evidence at this time.

20 **THE COURT:** Any objection?

21 **MS. WILLIAMS:** Yes sir. In fact, I have a matter of law
22 I would like to take up outside the presence of the jury.

23 **THE COURT:** All right, very good.

24 Ladies and gentlemen of the jury, go to your jury room,
25 please.

JURY OUT - ON RECORD

1 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
2 JURY.)

3 THE COURT: Yes Ma'am, let me hear from you.

4 MS. WILLIAMS: Thank you, Your Honor. Your Honor, in
5 fact in this matter there was what -- based on the discovery
6 provided to me, there are actually two reports generated.
7 There was a four page report and a three page report generated
8 on the exact same day.

9 I'm not exactly sure why we have a four page report and
10 why we have a three page report, Your Honor, and I think that
11 the admission of the report is cumulative. She's going to
12 testify to what her findings are, Your Honor, and I think it
13 is unnecessary and is cumulative to admit the additional
14 report.

15 THE COURT: Well, what I've got is a -- State's Exhibit
16 61 is a three page report, a written report, and an attached
17 Graph or Table, or probably more a Table, so what are you
18 talking about, a three page and a four page?

19 MS. WILLIAMS: All right if I may approach?

20 THE COURT: Yes Ma'am.

21 MS. WILLIAMS: The top of the ---

22 THE COURT: Are these both of them?

23 MS. WILLIAMS: This is the same four page report
24 that ---

25 THE COURT: That is State's Exhibit 61?

JURY OUT - ON RECORD

1 MS. WILLIAMS: Yes sir, and that's the three page
2 report, and, Your Honor, ---

3 THE COURT: All right, so the three page report is
4 identical to the first three pages of Page (sic) 61 ---

5 MS. WILLIAMS: Except for ---

6 THE COURT: --- except for there is an addition of the
7 Table. Now, ---

8 MS. WILLIAMS: And, Your Honor, ---

9 THE COURT: Can I ask some questions, please, Ma'am?

10 MS. WILLIAMS: Certainly.

11 THE COURT: Thank you. Did you receive the three page
12 report from the Solicitor?

13 MS. WILLIAMS: Yes.

14 THE COURT: Did you receive the four page report from
15 the Solicitor?

16 MS. WILLIAMS: Yes.

17 THE COURT: And you've had those for approximately how
18 long?

19 MS. WILLIAMS: Almost six months.

20 THE COURT: All right, thank you, and your problem is
21 what?

22 MS. WILLIAMS: Your Honor, if you look at the top of the
23 three page report, it obviously says Pages 1 of 3, so it was
24 intended and meant to be a three page report and leave off
25 this Table.

JURY OUT - ON RECORD

479

1 **THE COURT:** No Ma'am. The one that you have given to me
2 has no such determination.

3 **MS. WILLIAMS:** May I see?

4 **THE COURT:** Yes Ma'am.

5 **MS. WILLIAMS:** Your Honor, the top of Page 2 and top of
6 Page 3.

7 **THE COURT:** All right, but it's not on Page 1.

8 **MS. WILLIAMS:** No sir. On Page 2, it says Page 2 of 3,
9 and on Page 3, it says Page 3 of 3.

10 **THE COURT:** Yes Ma'am.

11 **MS. WILLIAMS:** When you look at the four page report, it
12 says Page 2 of 4, Page 3 of 4, Page 4 of 4.

13 **THE COURT:** Also 1 of 4. Yes Ma'am, and the issue is
14 what?

15 **MS. WILLIAMS:** My concern is that there was two
16 generated, one obviously to leave off the Table, and then the
17 second ---

18 **THE COURT:** All right. You say obviously to leave off
19 the Table. Do you want to produce some evidence that would
20 show that the Richland County Sheriff's Office or the
21 Solicitor's Office, or some police agency was deliberately
22 trying to hide evidence from you?

23 **MS. WILLIAMS:** No sir. I think that we eventually got
24 that Table put in here.

25 **THE COURT:** All right, so what is it you're saying that

JURY OUT
RACHEL WYLIE GRANT - EXAMINATION BY WILLIAMS

1 was deliberately left off? Where is your evidence?

2 MS. WILLIAMS: My concern is that there -- and then I
3 will address that with the officer that there were two reports
4 -- reports generated, Your Honor, but my ---

5 THE COURT: Do you want to do that now outside the
6 presence of the jury?

7 MS. WILLIAMS: No sir. I'm ---

8 THE COURT: Are you -- what I'm trying to get is you
9 have made a dramatic statement that the State has deliberately
10 left off some information, apparently trying to hide it from
11 you. I want to hear that evidence.

12 MS. WILLIAMS: Your Honor, my concern at this point in
13 this stage is -- and I'm going to ask the agent her answer to
14 with regard why she generated ---

15 THE COURT: Why don't you do that now ---

16 MS. WILLIAMS: I'll be glad to.

17 THE COURT: --- so we can cover that issue now.

18 EXAMINATION BY MS. WILLIAMS:

19 Q. Ms. Grant, I believe what the State offered you was
20 your ---

21 THE COURT: Here is the Exhibit. Please look at the
22 Exhibit.

23 Q. Page 1 of 4?

24 A. Uh huh (indicating positive).

25 MS. WILLIAMS: And, Your Honor, I have ---