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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Case No. 2012-GS-07-105

The State.....Respondent,

v.

Robert Jared Prather.....Appellant.

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SC Court of Appeals

RECORD ON APPEAL
VOLUME I OF III

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON.) ELEVENTH JUDICIAL CIRCUIT

2012-GS-32-02619; 2621; 2622

State of South Carolina,)
)
Plaintiff,)
)
v.) Transcript of Record
)
Robert Jared Prather,)
)
Defendant.)
)
_____)

November 26, 27 & 28, 2012
Lexington, South Carolina

B E F O R E:

The Honorable Clifton Newman, and a jury

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1 THE COURT: Are you ready for the jury panel?

2 MR. HUBBARD: Yes, sir, Your Honor.

3 THE COURT: All right.

4 MR. FLOYD: The Defense is ready, Your Honor.

5 (Jury in at 10:32 a.m.)

6 THE COURT: All right. The jury's back. Mr.
7 Solicitor, you may call your first case.

8 MR. HUBBARD: Thank you, Your Honor. Your Honor,
9 the State calls three indictments for trial, indictment
10 2012-GS-32-2619, the State versus Robert Jared Prather, an
11 indictment for murder. Indictment 2012-GS-32-2621, State
12 versus Robert Jared Prather, an indictment for armed
13 robbery. Indictment 2012-GS-32-2622, State versus Robert
14 Jared Prather, indicted for burglary in the first degree.
15 Your Honor, all of these are true billed. I'm passing up a
16 witness list. The State is ready for trial.

17 THE COURT: Now, ladies and gentlemen, the State
18 has called for trial the case of the State versus Robert
19 Jared Prather. This case comes into court as a result of an
20 indictment returned by the Grand Jury of Lexington County,
21 charging Mr. Prather with the offense of murder, of one
22 Gerald Stewart on or about April 22, 2005. And also, a
23 second indictment is for armed robbery. And the third
24 indictment is for burglary first degree of the dwelling of
25 Gerald Stewart located at 1737 Decree Avenue, West Columbia,

1 South Carolina on or about April 22, 2005. Mr. Prather has
2 pled not guilty to the charges contained in these
3 indictments. He is presumed to be not guilty. He cannot be
4 found guilty unless the State presents evidence, which
5 convinces a jury of his guilt beyond a reasonable doubt.
6 And that is the purpose of a trial, to determine whether the
7 State can meet that burden of proof. Mr. Prather is in
8 court with counsel.

9 And counsel, if you'd stand and introduce yourself as
10 well as anyone else you'd like to introduce.

11 MR. FLOYD: Thank you, Your Honor.

12 My name is Wayne Floyd. I practice law in West
13 Columbia, and I represent the Defendant, Robert Jared
14 Prather and his mother is here with us.

15 THE COURT: All right. Thank you very much.

16 MR. FLOYD: And his grandmother. All right.

17 THE COURT: And if the mother and grandmother will
18 stand as well? And face the jury panel, turn around.

19 (Defendant's mother and grandmother
20 stands and faces jury panel.)

21 THE COURT: All right. Thank you.

22 (Defendant's mother and grandmother
23 are seated.)

24 THE COURT: If any member of the jury panel is a
25 friend, a relative, associate, or acquaintance or if you

1 know the Defendant, Mr. Prather, or his family, if so,
2 please stand?

3 (No one stands)

4 All right. The State is represented through the
5 Eleventh Circuit Solicitor's Office and Solicitors, Mr.
6 Hubbard and Mr. Graham, if you'll introduce yourselves as
7 well.

8 MR. HUBBARD: My name is Rick Hubbard. I'm a
9 Deputy Solicitor here in Lexington.

10 MR. GRAHAM: I'm Shawn Graham, also a Deputy
11 Solicitor here in Lexington.

12 THE COURT: All right. Ladies and gentlemen, as
13 stated the indictment alleges that the offenses occurred on
14 or about April 22, 2005 here in Lexington County. And the
15 burglary offense alleged to have occurred at 1737 Decree
16 Avenue, West Columbia. The alleged victim being one Gerald
17 Stewart. If any member of the jury panel knows anything or
18 have heard anything about this case, if so, please stand?

19 (No one stands)

20 The following people are listed as prospective
21 witnesses and if you are here, I would like for you to stand
22 so the jury can see you.

23 Holly Andrew; Chris Bailey; Candace Barton; April
24 Bayne; Ralph Becknell; Harriet Bennett; Chuck Bramlett;
25 Sheree Brown from SLED; Janice Bryan; Betty Butler of SLED;

1 Robert Cobb of Lexington EMS; K.D. Corley of SLED; Marlene
2 Creech; Pat Crooks; Christie Derrick; Angela Drayton, SLED;
3 Britt Dove; Matt Edwards; Brandon Field; John Field, all of
4 West Columbia Police Department; M.L. Fitzpatrick; Glenn
5 Frick; Elizabeth Fullwood, who is an attorney; Michael
6 Gantt; Adrian Hefney; John Hendrix; Nikki Perry Hughes;
7 Clifford Jackson; James Jeffcoat, an RN; Mark Jones, West
8 Columbia Police Department; Kenny Kinsey; Selena Kinard;
9 Wayne Kleckley, West Columbia Police Department; Ann
10 Leaphart, Lexington Medical Center; Marsha J. Leitzel; Davis
11 Lunna; Lee Marshall; Nelda Mefford; George Murphy; John
12 Norman; Maxey Nowell; Frank Neely; Coconut Pantsari, is the
13 court reporter, Coconut?

14 THE CLERK: Yes, sir.

15 THE COURT: John Phillips; Joshua Phillips; Shane
16 Phillips; Ronald Rabon; Emily Reinhart; Adrienne Riley; Dr.
17 Janice Ross; Brian Setree; Laurie Shacker; Donna Sharpe, an
18 RN; Michael Stalnaker; Stephanie Stanley; Amy Stevens;
19 Ronald Lee Stokes, III; Al Stuckey; S.M. Stuffs; Ronnie
20 Suber; James Sullivan, West Columbia Police; Mike Sujelman;
21 Bill Tyson; Dwight Vinkemulder; Mark Wharton; Magistrate
22 Scott Whittle; Susan Willingham; Doris Yarborough; Virginia
23 Youmans, Lexington EMS; and Bill Zeigler, Lexington County
24 Coroner. Additionally, Barry Everett; Dr. Thomas Richard
25 Hall; Ralph Jody Beckneil; and Pam Prather.

1 If any member of the jury panel know any of these
2 people or you're a friend, relative, associate, or
3 acquaintance of any of these perspective witnesses, please
4 stand?

5 Yes, sir, you are?

6 JUROR NO. 7: Juror No. 7, Thomas Baker.

7 THE COURT: Mr. Baker.

8 JUROR NO. 7: I work for the City of West Columbia
9 and I know all of those employees ---

10 THE COURT: All right. Are you currently
11 employed?

12 JUROR NO. 7: Yes, sir.

13 THE COURT: With the City of West Columbia?

14 JUROR NO. 7: Yes.

15 THE COURT: And do you think that would effect
16 your ability to sit as a fair and impartial juror?

17 JUROR NO. 7: I don't think so.

18 THE COURT: Would you be able to set aside the
19 fact that you're employed by the West Columbia Police
20 Department and that Police Department is involved in some
21 investigation and testimony concerning this case, you would
22 be able to set all of those facts aside and decide the case
23 solely based on the evidence that is presented and the law
24 that is to be applied to this matter?

25 JUROR NO. 7: I'm not in the police department.

1 I'm in the water and sewer department.

2 THE COURT: I understand.

3 JUROR NO. 7: I would hope so.

4 THE COURT: All right.

5 JUROR NO. 7: I would rather not.

6 THE COURT: All right. All right. Thank you,
7 sir.

8 Yes, ma'am.

9 JUROR NO. 26: I'm Juror No. 26.

10 THE COURT: Yes, ma'am.

11 JUROR NO. 26: I'm a paramedic. I've a paramedic
12 for over thirty years. And I know the paramedics that were
13 on the scene, but that will not tarnish my judgment
14 whatsoever, sir.

15 THE COURT: All right. Thank you, ma'am.

16 MR. FLOYD: Your Honor.

17 THE COURT: Yes, sir.

18 THE BAILIFF: There's a juror that I know, he's a
19 social acquaintance with the victim's advocate in West
20 Columbia, Whitney Morris and I just -- I think we need to
21 make sure. She's sitting in the courtroom. I don't know if
22 she's involved with the case, but stand up, Kevin. So he
23 personally knows her. I just want the Court to know that.

24 THE COURT: All right. Thank you, sir.

25 Well, sir, I'll move to this question then since it

1 pertains. Does any member of the jury panel have family or
2 close personal friends who are employed with the Lexington
3 County Solicitor's Office or the Office of Mr. Floyd? If
4 so, please stand. And I would include the gentleman who's
5 just stood.

6 JUROR NO. 53: Yes, sir, Kevin Day, No. 53. I
7 know Whitney Morris who worked with the police department.
8 And I have one quick -- Frank Neely, does he work for the
9 police department? The Frank Neely that you called out?

10 THE COURT: Say that again?

11 JUROR NO. 53: Frank Neely?

12 THE COURT: I think I did.

13 JUROR NO. 53: Is he at the police department?

14 MR. HUBBARD: Yes, sir, Your Honor.

15 THE COURT: He is, yes.

16 JUROR NO. 53: Okay. Because I know a Frankie
17 Neely. I didn't know if that's the same one.

18 THE COURT: Chances are he might be. He's a
19 policeman?

20 JUROR NO. 53: Yes, sir. A police officer.

21 THE COURT: Chances are he would be. Frank and
22 Frankie would be the same person.

23 MR. HUBBARD: That's him, Your Honor.

24 THE COURT: A police officer. All right.

25 And, sir, would that fact effect your ability to be

1 fair and impartial as a juror?

2 JUROR NO. 53: No, sir.

3 THE COURT: All right. Thank you, sir.

4 If you have any close friends or family members who are
5 employed in law enforcement, please stand? If you have any
6 friends or close family members who are employed in law
7 enforcement, please stand?

8 (No one stands)

9 And ladies and gentlemen, as it relates to all of these
10 questions, please remember the oath that you took as I
11 mentioned to you earlier, that you are required to give full
12 and complete responses to all questions. The purpose of the
13 juror voir dire is so that the lawyers can select the jury
14 that they consider to be the most fair and impartial juror.
15 And they have the right to have the benefit of this
16 information to assist them in jury selection. So as relates
17 to all these particular questions, you must give full and
18 complete responses. Thank you.

19 Yes, sir, on the front row.

20 JUROR NO. 159: I'm a friend at, that is a
21 detective for the Lexington County Sheriff.

22 THE COURT: All right. And if you'll start by
23 giving your juror number, and then give a response. Yes,
24 sir.

25 JUROR NO. 159: Juror number 1-5-9.

1 THE COURT: 1-5-9. All right. Thank you, sir,
2 Mr. Portee.

3 JUROR NO. 159: Yes, sir.

4 THE COURT: All right.

5 JUROR NO. 161: Mark Ratigan, 1-6-1. And I work
6 amongst all the MPs and I have some personal friends that
7 police officers as well.

8 THE COURT: All right. Thank you, sir.

9 JUROR NO. 216: Juror number 216, Thomas
10 Whitehead. I have a friend on the Lexington County
11 Sheriff's Department.

12 THE COURT: All right. Thank you, sir.

13 Yes, ma'am.

14 JUROR NO. 129: 129, Sandra Brown. I have several
15 friends on the Lexington County Police Department, the
16 sheriff's office. And I have several friends Lexington,
17 through my sister, at SLED, who worked there for many years.

18 THE COURT: All right. Thank you very much.

19 Yes, sir. In the green shirt.

20 JUROR NO. 7: Number 7, Thomas Baker. I am
21 friends with several of the West Columbia Police Officers
22 and I have a brother-in-law that is a police officer for the
23 City of Columbia.

24 THE COURT: All right. Thank you, sir.

25 Yes, sir.

1 JUROR NO. 127: Cody Lybrand, number 127. I work
2 for the fire service and deal with a lot of officers on the
3 scene, and real close friends with several of them from
4 Lexington County.

5 THE COURT: All right. Thank you.

6 Yes, ma'am.

7 JUROR NO. 1: I'm Ann Thompson, Juror 1. I have a
8 nephew who is a sheriff in South Carolina.

9 THE COURT: All right. Thank you.

10 Yes, sir.

11 JUROR NO. 62: Robert Dunn, Juror No. 62. I think
12 my wife has a cousin that is, I believe, a Sergeant for the
13 City of Cayce. I also have friends on Lexington County and
14 Highway Patrol.

15 THE COURT: All right. Thank you.

16 Next to him, yes.

17 JUROR NO. 115: Teresa Knox, 115. My brother is a
18 trooper. Father is a Public Service Commissioner.

19 THE COURT: All right. Thank you.

20 Yes, ma'am.

21 JUROR NO. 92: I'm juror 92. On my previous job I
22 used to work with the police department.

23 THE COURT: All right. Thank you.

24 Yes, ma'am.

25 JUROR NO. 26: I'm also -- I'm Jacqueline Bruce,

1 No. 26. I have friends with the sheriff's department,
2 Richland and Lexington, Orangeburg County as well as with
3 the Highway Patrol.

4 THE COURT: All right. Thank you.

5 Yes, sir.

6 JUROR NO. 75: Juror 75, George Friday. I'm a
7 call taker with 9-1-1 and my father was in law enforcement.

8 THE COURT: All right. Thank you, sir.

9 Yes, sir.

10 JUROR NO. 181: Juror number 181. I have friends
11 with the Columbia Police Department and with SLED.

12 THE COURT: All right. Thank you.

13 And, yes, ma'am?

14 JUROR NO. 123: Juror 123.

15 THE COURT: A little louder, please?

16 JUROR NO. 123: Juror 123. My brother and my
17 uncle and retired Highway Patrol.

18 THE COURT: All right. Thank you.

19 And, ladies and gentlemen, as it relates to any of
20 those who have just stood regarding friends or relatives in
21 law enforcement, if that fact would prevent you from being a
22 fair and impartial juror, please stand?

23 (No one stands)

24 THE COURT: All right. Has any member of the jury
25 panel or any of your family members or close personal

1 friends ever been the victim the victim in a case that was
2 prosecuted by the Lexington County Solicitor's Office? Has
3 any member of the jury panel or any of your family members
4 or close personal friends ever been the victim in a case
5 that was prosecuted by the Lexington County Solicitor's
6 Office? If so, please stand?

7 Yes, ma'am.

8 JUROR NO. 26: My nephew was prosecuted?

9 THE COURT: All right. And your juror number?

10 JUROR NO. 26: 26.

11 THE COURT: 26. All right. Thank you.

12 Yes, sir.

13 JUROR NO. 181: Juror 181, my brother was
14 convicted.

15 THE COURT: All right. Thank you.

16 If any of those facts would prevent you from being a
17 fair and impartial juror in this case, please stand?

18 (No one stands)

19 Now, ladies and gentlemen, in this case there will be
20 testimony and evidence of homosexuality and homosexual
21 behavior, knowing this and knowing this fact, if it were to
22 prevent you from being a fair and impartial juror, please
23 stand? If the fact that there will be testimony and
24 evidence of homosexuality and homosexual behavior, knowing
25 that that will be testimony in this case, if that would

1 prevent you from serving and being a fair and impartial
2 juror, please stand?

3 (No one stands)

4 If any juror, any close family member or close friend
5 has ever been the victim of or charged with committing a
6 violent crime, please stand? If any juror member or close
7 friend or close family member ever been the victim of or
8 charged with committing a violent crime, I need you to
9 stand. Violent crimes are typically defined as rape,
10 robbery, armed robbery, burglar or murder. Those are
11 violent crimes. If you've been the victim of or a close
12 family member or close friends a victim of or charged with
13 any such offenses, please stand?

14 Yes, ma'am.

15 JUROR NO. 39: I'm juror no. 39, Victoria Cheu. I
16 was a victim of.

17 THE COURT: All right. You're the victim of?

18 JUROR NO. 39: Yes.

19 THE COURT: All right. Thank you.

20 Yes, sir.

21 JUROR NO. 62: Robert Dunn, Juror 62. My cousin
22 was convicted in the death of a highway patrolman by car
23 accident.

24 THE COURT: All right. Thank you, sir.

25 JUROR NO. 17: I'm Juror No. 17. My brother was

1 murdered.

2 THE COURT: All right. Thank you.

3 Anyone else?

4 Well, I have asked a number of questions and I know
5 what human nature is, sometimes your mind says, I should get
6 up. And then the brain doesn't move as fast as the question
7 sometimes. So if I've asked any question that you did not
8 stand and respond to, that you believe under your oath you
9 are required to stand and respond to as it relates to any
10 previous question, please stand at this time?

11 JUROR NO. 125: I have a close friend whose sister
12 was murdered.

13 THE COURT: All right. Juror number?

14 JUROR NO. 125: 125.

15 THE COURT: Thank you.

16 JUROR NO. 216: I have a son and a grandson who
17 were arrested but it never went to court. So I, you know,
18 as far as being tried in Court.

19 THE COURT: All right. Thank you very much.
20 Juror number?

21 JUROR NO. 216: I'm sorry. 216.

22 THE COURT: All right. Thank you, sir.

23 Yes, sir.

24 JUROR NO. 19: Juror No. 19. Mr. Floyd's also my
25 attorney for guilty plea next month.

1 THE COURT: All right. Mr. Floyd currently
2 represents you?

3 JUROR NO. 19: Yes, sir.

4 THE COURT: And you're juror number?

5 JUROR NO. 19: 19.

6 THE COURT: Number 19. All right Juror No. 19
7 will not be selected in this case.

8 Thank you.

9 JUROR NO. 19: Yes, sir.

10 JUROR NO. 82: I'm 82, is there way I can approach
11 the bench?

12 THE COURT: Pardon me?

13 JUROR NO. 92: Is there a way to approach the
14 bench?

15 THE COURT: Yes, ma'am, sure.

16 (Juror number 92 approached the
17 bench.)

18 (Off the record bench conference with counsel and the
19 Court.)

20 THE COURT: Yes, sir.

21 JUROR NO. 96: My step-son was charged with
22 attempted murder, but he was never convicted.

23 THE COURT: All right. And your juror number,
24 please?

25 JUROR NO. 96: 96.

1 THE COURT: 96, thank you.

2 Yes, sir, juror number?

3 JUROR NO. 83: 83.

4 THE COURT: Yes, sir.

5 JUROR NO. 83: Yes, I have a couple of other
6 friends that serve on the police department. And I had a
7 cousin that was arrested and served time.

8 THE COURT: All right. Thank you.

9 Now, ladies and gentlemen, you might guess based on the
10 long list of prospective witnesses whose names I've called
11 out, this case may well be a long case. It may take the
12 entire week. If there is anything going on with you
13 personally that would prevent you from sitting as a fair and
14 impartial juror and serving this week here in Lexington
15 County on jury duty, given the nature of the offense, the
16 length of the -- possibly the length of the case, or
17 anything that I have questioned you concerning that would
18 cause you to believe that you should not be selected to
19 serve on this jury, please let me know at this time by
20 standing.

21 (No one stands)

22 All right. No one's standing.

23 Anything else from the State or the Defense?

24 MR. HUBBARD: Not from the State, Your Honor.

25 MR. FLOYD: Nothing from the Defense, Your Honor.

1 THE COURT: All right.

2 THE CLERK: May I approach, Your Honor?

3 THE COURT: Yes, ma'am.

4 (Off the record bench conference with counsel, clerk of
5 court and the Court.)

6 THE COURT: All right. Madam Clerk?

7 THE CLERK: Ladies and gentlemen, when I call your
8 name, bring all of your personal items. You see where the
9 bailiff is standing right now? Right here. Right up front
10 here. Where this gentleman is standing in the red coat,
11 that's where you need to come to and stand just like he is
12 until I give you instructions on whether to have a seat in
13 the jury box or to return to your seat out in the audience.
14 Make sure you bring all of your personal effects with you,
15 please?

16 Proceed, Your Honor.

17 THE COURT: Yes, ma'am.

18 THE CLERK: No. 123, Hope Lee.

19 THE COURT: Come on, Ms. Lee. Come on.

20 THE CLERK: Come on, Ms. Lee. Right on through
21 here.

22 Mr. Dan go show her where to go, please?

23 (Bailiff complied)

24 What say you for the State?

25 MR. HUBBARD: Please present Ms. Lee?

1 THE CLERK: What say you for the Defense?

2 MR. FLOYD: Excuse Ms. Lee, please.

3 THE CLERK: Return to your seat, Ms. Lee.

4 No. 224, Tambra Young. Perfect.

5 What say you for the State?

6 MR. HUBBARD: Please present Ms. Young.

7 THE CLERK: What say you for the Defense?

8 MR. FLOYD: Present Ms. Young.

9 THE CLERK: Have a seat in the jury box, please,
10 ma'am.

11 Number 53, Kevin Day.

12 MR. FLOYD: What was that number again?

13 THE CLERK: Number 53, 5-3.

14 What say you for the State?

15 MR. HUBBARD: Please present Mr. Day.

16 THE CLERK: What say you for the Defense?

17 MR. FLOYD: Excuse Mr. Day, please.

18 THE CLERK: Return to your seat, please, sir.

19 152, Craig Otto.

20 What say you for the State?

21 MR. HUBBARD: Please present Mr. Otto.

22 THE CLERK: What say you for the Defense?

23 MR. FLOYD: Present Mr. Otto.

24 THE CLERK: Have a seat in the jury box, please,
25 sir.

1 No. 96, Horace Hoff, Jr.

2 What say you for the State?

3 MR. HUBBARD: Please excuse the juror from the
4 trial of this case.

5 THE CLERK: Return to your seat, please, sir.

6 39, Victoria Cheu.

7 What say you for the State?

8 MR. HUBBARD: Please present Ms. Cheu.

9 THE CLERK: What say you for the Defense?

10 MR. FLOYD: Present Ms. Cheu.

11 THE CLERK: Have a seat in the jury box, ma'am.
12 223, Ashley Wright.

13 What say you for the State?

14 MR. HUBBARD: Please present Ms. Wright.

15 THE CLERK: What say you for the Defense?

16 MR. FLOYD: Present Ms. Wright.

17 THE CLERK: Have seat in the jury box, ma'am.
18 154, Tabitha Perkins.

19 What say you for the State?

20 MR. HUBBARD: Please present Ms. Perkins.

21 THE CLERK: What say you for the Defense?

22 MR. FLOYD: Present Ms. Perkins.

23 THE CLERK: Have a seat in the jury box, ma'am.
24 69, Andreson Everett.

25 What say you for the State?

1 MR. HUBBARD: Please excuse the juror from the
2 trial of this case.

3 THE CLERK: Return to your seat, please ma'am.

4 201, Anne Thompson Back up just a little bit, please
5 ma'am?

6 (Juror No. 201 complied)

7 There you go.

8 What say you for the State?

9 MR. HUBBARD: Please present Ms. Thompson.

10 THE CLERK: What say you for the Defense?

11 MR. FLOYD: Present Ms. Thompson.

12 THE CLERK: Have a seat in the jury box, ma'am.

13 192, Tammy Steverson.

14 What say you for the State?

15 MR. HUBBARD: Please present Ms. Steverson.

16 THE CLERK: What say you for the Defense?

17 MR. FLOYD: Present Ms. Steverson.

18 THE CLERK: Have a seat in the jury box, ma'am.

19 No. 9, Jimmie Beasley.

20 What say you for the State?

21 MR. HUBBARD: Please present Mr. Beasley.

22 THE CLERK: What say you for the Defense?

23 MR. FLOYD: Excuse Mr. Beasley, please?

24 THE CLERK: Return to your seat, please, sir.

25 No. 134, Amanda Mcmillan.

1 What say you for the State?

2 MR. HUBBARD: Please present Ms. Mcmillan.

3 THE CLERK: What say you for the Defense?

4 MR. FLOYD: Present Ms. Mcmillan.

5 THE CLERK: Have a seat in the jury box, ma'am.

6 No. 127, Cody Lybrand.

7 What say you for the State?

8 MR. HUBBARD: Please present Mr. Lybrand.

9 THE CLERK: What say you for the Defense?

10 MR. FLOYD: Excuse Mr. Lybrand, please?

11 THE CLERK: Return to your seat, sir.

12 32, Christin Cadieu.

13 What say you for the State?

14 MR. HUBBARD: Please present Ms. Cadieu.

15 THE CLERK: What say you for the Defense?

16 MR. FLOYD: Excuse Ms. Cadieu, please.

17 THE CLERK: Return to your seat, please, ma'am.

18 156, Brandon Phillips.

19 What say you for the State?

20 MR. HUBBARD: Please excuse the juror from the
21 trial of this case.

22 THE CLERK: Return to your seat, please, sir.

23 No. 84, Michael Grabowski.

24 MR. HUBBARD: Did you say 84?

25 THE CLERK: Yes, sir. What say you for the State?

1 MR. HUBBARD: Please present Mr. Grabowski.
2 THE CLERK: What say you for the Defense?
3 MR. FLOYD: Present Mr. Grabowski.
4 THE CLERK: Have a seat in the jury box, sir.
5 91, William Haskin.
6 What say you for the State?
7 MR. HUBBARD: Please present Mr. Haskin.
8 THE CLERK: What say you for the Defense?
9 MR. FLOYD: Present Mr. Haskin.
10 THE CLERK: Have a seat in the jury box, sir.
11 78, Betty Garner.
12 What say you for the State?
13 MR. HUBBARD: Please present Ms. Garner.
14 THE CLERK: What say you for the Defense?
15 MR. FLOYD: Present Ms. Garner.
16 THE CLERK: Have a seat in the jury box, ma'am.
17 76, Donna Fuller.
18 What say you for the State?
19 MR. HUBBARD: Please present Ms. Fuller.
20 THE CLERK: What say you for the Defense?
21 MR. FLOYD: Present Ms. Fuller.
22 THE CLERK: Have a seat in the jury box, ma'am.
23 Alternates, Your Honor.
24 THE COURT: Yes, two alternates.
25 THE CLERK: No. 7, Thomas Baker.

1 What say you for the State?

2 MR. HUBBARD: Please present Mr. Baker.

3 THE CLERK: What say you for the Defense?

4 MR. FLOYD: Excuse Mr. Baker, please.

5 THE CLERK: Return to your seat, please, sir.

6 75, George Friday.

7 What say you for the State?

8 MR. HUBBARD: Please present Mr. Friday.

9 THE CLERK: What say you for the Defense?

10 MR. FLOYD: Excuse Mr. Friday, please.

11 THE CLERK: Return to your seat, please, sir.

12 130, Donna Markl.

13 What say you for the State?

14 MR. HUBBARD: Please present Ms. Markl.

15 THE CLERK: What say you for the Defense?

16 MR. FLOYD: Present Ms. Markl.

17 THE CLERK: Have a seat in the jury box, ma'am.

18 That's alternate number 1, Your Honor.

19 No. 216, Thomas Whitehead.

20 What say you for the State?

21 MR. HUBBARD: Please excuse the juror from the
22 trial of this case.

23 THE CLERK: Return to your seat, please, sir.

24 No. 197, Mary Sumter.

25 What say you for the State?

1 MR. HUBBARD: Please present Ms. Sumter.

2 THE CLERK: What say you for the Defense?

3 MR. FLOYD: Present Ms. Sumter.

4 THE CLERK: Have a seat in the jury box, ma'am.

5 That's alternate number 2, Your Honor.

6 THE COURT: Are there any matters of law regarding
7 the jury selection?

8 MR. HUBBARD: Not from the State, Your Honor.

9 MR. FLOYD: None from the Defense, Your Honor.

10 THE COURT: All right. Ladies and gentlemen, you
11 have been selected to be the jury in the trial of this case.
12 We're going to have you to go to the jury room while we
13 speak with the other jurors for a moment or two. Once you
14 have been selected on a jury, you're not to discuss the case
15 in any form or fashion or speculate as to what the case is
16 about or have any discussions about the case until you're
17 authorized to do so. And that will be after you've heard
18 the entire case, as well as the jury instructions. So
19 please go the jury room. Do not discuss this matter. And
20 we'll have you come back real soon.

21 THE BAILIFF: Okay. Follow me, please.

22 (Jury out at 11:22 a.m.)

23 THE COURT: All right. Ladies and gentlemen,
24 those of you who were not selected, we are through with you
25 all for this day. We do not know what the future will hold

1 as far as this case. There are other cases that are subject
2 to being called for trial this week if we're able to reach
3 those cases. So we need you all to call back, when do we
4 say --

5 THE CLERK: After 6:00 this evening.

6 THE CLERK: After 6:00 today. All right.

7 So we need you to call back after 6:00 p.m. There will
8 be a message there for you. The message may be for you to
9 call back tomorrow after 6:00 p.m. And then tomorrow's
10 message may be for you to call back on Wednesday after 6:00
11 p.m. That's necessary because we do not know how long any
12 particular case will take. This case may well take the
13 entire week, we don't know. But you are certainly free to
14 return to work, to go on about your business. You just need
15 to call back after 6:00 p.m. to find out when or if we need
16 you to come back. Certainly, if the message is for you to
17 return, you'll need to respond to that message. But thank
18 you very much, and we'll see you later.

19 (Remaining jury panel out at 11:24
20 a.m.)

21 THE COURT: I'm looking at this list of
22 prospective witnesses and just wondering -- of course, I
23 know you said that we have a speedy trial, suppression, I'm
24 wondering whether there's any portion of this case we can do
25 later, later this afternoon?

1 MR. HUBBARD: Your Honor, what we did is obviously
2 tried to put everybody on there we could. I think it's
3 probably going to be more in the twenty-five witness range.
4 I do believe we can get it in this week. We went ahead,
5 just in case there's somebody that touched something or saw
6 something that we need, we went ahead -- that was our
7 philosophy on putting all those names on there.

8 THE COURT: Right.

9 MR. HUBBARD: We probably could have put a few
10 more, but Judge, I think when we really melt this case down,
11 you're probably going to have twenty-fiveish witnesses, many
12 of which should be fairly quick. You're going to have chain
13 witnesses, people like that. I think there's probably about
14 three or four that will be a little bit more time consuming,
15 either for us or for the Defense.

16 THE COURT: I was just wondering if we could get
17 through with all of these preliminary motions and all of the
18 -- by 4:00 today, do y'all want to do some witnesses or
19 opening and start it or ---

20 MR. HUBBARD: Whatever Your Honor wants to do.

21 THE COURT: Yeah. I'd prefer to jump, you know,
22 jump in on the front end rather than worry about it on the
23 back end, since we're already 11:30 and we've got the jury.
24 If we even let them go to 3:30 or 4:00, we would still have
25 time for opening and one or two witnesses maybe today.

1 How does that sound, Mr. Floyd?

2 MR. FLOYD: That's okay with us, Judge.

3 THE COURT: And, of course, we end up not being
4 able to start because the witnesses go beyond, then that'll
5 be okay as well. I'm thinking that I will just have them
6 leave and come back at 3:30, and then we'll see how it goes
7 from there. Okay? So let's bring them in and then turn
8 them loose.

9 (Jury in at 11:28 a.m.)

10 THE COURT: All right. Ladies and gentlemen,
11 welcome back. We've discussed some scheduling and we've
12 released the other jurors. We have to deal with some
13 preliminary matters prior to having you come in to hear the
14 case, and this is going to take a number of hours. So we're
15 going to cut you all loose. We're going to let you all
16 leave and return at 3:30. So you all are free to go.
17 Please be back in the jury room at 3:30. Now, during your
18 entire service on jury duty when you are released to go, you
19 need to leave and not be around in the area where people who
20 might have some connection with this case, might be having
21 conversations or put you in a position of overhearing
22 something that you should not hear. At no time should you
23 come into the courtroom. So when you leave, you need to
24 leave. When you come back, you need to come back into the
25 jury room. We're going to do all we can to minimize any

1 inconvenience to you, keep the case moving as best we can.
2 And look forward to working with you on this case. But you
3 all are free to go. Please be back at 3:30. 3:30.

4 THE BAILIFF: Come with me, please?

5 (Jury out at 11:30 a.m.)

6 THE COURT: Well, all right.

7 MR. HUBBARD: Your Honor, may I step out real
8 quickly?

9 THE COURT: Sure. We'll be at ease for a few
10 minutes.

11 MR. HUBBARD: Thank you, Your Honor.

12 (Court in recess for short break.)

13 (Court in session after short
14 break.)

15 THE COURT: All right. Mr. Floyd, what do you
16 have?

17 MR. FLOYD: Thank you, Your Honor. Your Honor, at
18 this time, the Defendant would move for a dismissal of the
19 charges on the grounds that the delay in prosecution of
20 these charges has denied the Defendant his right to a speedy
21 trial.

22 Your Honor, for your information, the incident for
23 which he is charged occurred on April 22, of 2005. And, of
24 course, now it's November 26, 2012. We initially filed our
25 speedy trial motion back on January 13th of 2006. The case

1 did go to trial in October, on October 26 of 2009. The jury
2 deadlocked. It ended as a mistrial. So it's now been three
3 years and one month since it was first put to trial. And it
4 was about four and a half years between incident and first
5 trial. It's been a delay of seven and a half years and it's
6 our position that that delay is of such a length of time
7 that it is prejudicial on its face. And I think the cases
8 are replete with rulings, Your Honor, that we do not have to
9 show any particularized prejudice. The prejudice is
10 presumed when you have as lengthy delay as we have in this
11 case. The four factors you have to consider, length of
12 delay. And, of course, this one is extravagant, Your Honor,
13 over seven years. Two, the reason for delay. There's never
14 been any efforts by the Defendant to delay this trial. The
15 Defendant's never asked for a continuance. It's never been
16 continued because of any actions of the Defendant. Three,
17 the assertion of the right. Well, the assertion of the
18 right was asserted back in '06, Your Honor, shortly after
19 this arrest. So we've been asserting this right for over
20 six years. And prejudice to the Defendant, Your Honor, he's
21 been living with a murder charge hanging over his head now
22 for over seven years. The way that that's interfered with
23 his life, just can't be adequately described. He can't find
24 employment of any significance. He's constantly worried
25 about what's going to happen to him. It's been a major

1 disruption in his life. So he has suffered significant
2 prejudice as a result of this delay. For all these reasons,
3 we would move for a dismissal. And, of course, in Barker v.
4 Wingo, I'm sure Your Honor's familiar with that case and
5 with the ---

6 THE COURT: Say the name of it again?

7 MR. FLOYD: Barker v. Wingo, 92 Supreme Court
8 2182. It's kind of one that provisionally everybody cites.
9 And it was, of course, cited in State v. Pittman, that's a
10 South Carolina case, Your Honor, 373 SC 527. It's a 2007
11 case. The Doggett v. US, 112 Supreme Court 2686, basically
12 says if a delay is for more than one year, then it's
13 presumptively prejudicial and the State must prove why it's
14 not and give reasons for the delay that satisfies the Court.
15 We don't know of any reason for a seven-year delay in
16 justice, Your Honor, and we would move for a dismissal.

17 THE COURT: All right. So, Mr. Hubbard?

18 MR. HUBBARD: Yes, sir, Your Honor. We agree that
19 Barker v. Wingo is the case that sets out the factors for
20 analyzing a speedy trial motion. The Court takes pain in
21 that case to explain that there is no set rule, that this is
22 something that's going to hinge on facts. It's going to
23 hinge on the type of case, circumstances. There is no per
24 se rule. But of those factors they talk about length of
25 delay and when there is a delay, they consider that a

1 triggering mechanism, that you go on to the other factors,
2 which are reason for the delay. They look at the
3 defendant's assertion of his right to a speedy trial. And
4 then finally prejudice to the defendant.

5 Your Honor, this has been seven and a half years, and
6 it has been a long time. And obviously, we concede an
7 analysis has to be done. Mr. Prather was arrested April 22,
8 of 2005. He did file a speedy trial motion in 2006, January
9 of that year. Here's the relief he asked for in that
10 motion, that either the charge be dismissed or alternatively
11 that he be released from incarceration pending resolution of
12 this matter. He was released several months later. In May
13 of 2006 he was released. That motion was heard or handled.
14 The relief was given. One way or the other, that was
15 resolved. He was called for trial in 2009. Now, Your
16 Honor, there had been a previous attempt to call him for
17 trial in September of 2009. There was a mistrial motion due
18 to discovery issues. And Mr. Floyd agreed or actually moved
19 for a continuance in the alternative of dismissal. The
20 Court granted his motion for a continuance. The case was
21 retried in October of 2009. That trial took a week, ended
22 in a hung jury. What Your Honor needs to know too is Mr.
23 Prather wasn't the only one charged in this case. There's a
24 co-defendant, Joshua Phillips. They're both charged with
25 these same charges. Joshua Phillips was initially going to

1 be a cooperating, testifying co-defendant. He even got an
2 offer where he pled to armed robbery, received ten years.
3 Pled to manslaughter, voluntary manslaughter, and that
4 sentence was never given. It was held in abeyance. He made
5 multiple statements. And then, Your Honor, he turned around
6 and filed a PCR on his lawyer.

7 THE COURT: He hasn't been sentenced yet?

8 MR. HUBBARD: He has not. And, Your Honor, he's
9 been incarcerated, because he went off to the Department of
10 Corrections. So then after this mistrial -- I got involved
11 in this case, I think it was around 2010. And got with
12 Dayton Riddle, Deputy Solicitor Dayton Riddle, he's present,
13 who initially tried this case and said, I've got a different
14 strategy. Let's go after the co-defendant first, the
15 weakest link. Classic prosecutor stuff. That's what we
16 did. So at that point our focus was on a man who was
17 incarcerated facing these same charges. And I will note in
18 2009, this Defendant was gainfully employed. Mr. Floyd said
19 he's had a hard time finding a job. He was employed. And,
20 Your Honor, for years he was employed right here in the Town
21 of Lexington at a Walmart, with these charges pending. But
22 nonetheless, we went after the guy that was incarcerated.
23 What we ended up doing with him is agreed to his PCR and his
24 appeal and bring him back so we could try him, because he
25 never ended up cooperating with us. So that was a lengthy

1 delay because we had to negotiate with the Attorney
2 General's Office. They were very reluctant to consent to a
3 PCR. We had to get -- there was a new defense attorney
4 involved by that point, got all of that done. And, Your
5 Honor, we started getting ready for trial. Then I got
6 pulled out of the case because I was assigned to a capital
7 case, Kenneth Lynch that we just tried in April, finished it
8 in May. Your Honor, we tried to get to trial on that case
9 for over two years. We went through three judges, two sets
10 of attorneys. Mr. Riddle, during that time, if I recall,
11 also had two cold cases he had set for trial. There was a
12 lot of difficulties in those, in that same time period. So
13 Joshua Phillips waited. And his attorney Ari Bax was new to
14 the case so that was fine with him. We tried to try Mr.
15 Phillips -- actually we were trying to get it going this
16 summer. Finally, we set a date for September of this year.
17 Week before trial it was continued because the Circuit Judge
18 we had that week was going to have a short week, something
19 came up. And I think it was a personal matter so everybody
20 said, that's fine. We still wanted to try Mr. Phillips and
21 if we had our druthers, we'd be trying him this week. We
22 could not get him scheduled with his attorney because his
23 attorney's in Beaufort. That case is now scheduled two
24 weeks from now in December.

25 THE COURT: Who is his attorney?

1 MR. HUBBARD: Ari Bax.

2 THE COURT: Ari Bax.

3 MR. HUBBARD: Used to be a public defender here
4 and then a private lawyer. He moved to Beaufort. Your
5 Honor, so we finally -- I sat down with Judge Keesley, our
6 Chief Judge, and said, Judge, by the end of the year these
7 cases will be gone. Even if we have to throw out what we'd
8 like to do, we're just going to do it. And so we set this
9 one for trial. And that explains a large portion of this
10 delay.

11 What Barker looks is was the delay intentional in order
12 to hurt the defendant? It wasn't. They look for neutral
13 reasons, which are more strategy or delay in getting someone
14 to trial because of witnesses and stuff. That's more where
15 this falls.

16 Your Honor, something else Mr. Floyd didn't bring out
17 is the motion for a speedy trial, he re-filed it just last
18 week. Really, we're operating on a motion that was filed
19 last week. The first term that we could get it to trial is
20 this week. Now, that goes into the third prong of this
21 case Barker, which is the defendant's assertion of the
22 right. And what Barker looks at -- and, Your Honor, there
23 are several South Carolina cases that have adopted it. One
24 is State v. Waites at 240 S.E.2d 651. That's 1978. I
25 believe that may be the first time we actually addressed the

1 Barker case. It was just addressed, I want to say last
2 week, the State versus Langford, the case that just
3 basically turned our dockets over to the clerks. Of course,
4 that was decided November 21st and that is Opinion No.
5 27195. So Barker's what we look at. Look at the
6 defendant's assertion of his right, the Court says the more
7 serious depravation a defendant is suffering while he's
8 waiting for trial, the more likely he is to pursue the right
9 of a speedy trial. This motion, again, was just filed last
10 week. The failure to assert that right makes it difficult
11 for a defendant to prove he was denied a speedy trial.
12 Those are factors for Your Honor. During this time, we have
13 never received complaints that, guys, you've got try this
14 case because, you know, I've got other scheduling issues.
15 My client's got issues. We've not had this motion
16 addressed. No motions were filed following that first
17 mistrial reasserting that right. The first time we're able
18 to address a motion that was filed is today. The final, and
19 probably most serious problem, is prejudice to the
20 defendant. The Court's looking to avoid oppressive pre-
21 trial incarceration. That hasn't been the case. Two, they
22 want to look at minimizing anxiety and concern of the
23 accused, very much so because sometimes cases have
24 notoriety. Your Honor, this case got very little public
25 attention. There was no public outcry. This man has not

1 been going door to door saying, can I work here? And people
2 going, oh, you're involved in the case involving Gerald
3 Stewart. No, sir. That's not happened in this case. This
4 has just been, frankly, a sleeper case as far as the media's
5 concerned. The final thing they really look for when they
6 look at prejudice to the defendant is the possibility the
7 defense will be impaired, that somehow the delay has
8 hindered the defense's ability to move forward. Your Honor,
9 again, we've not received any complaints from the defense,
10 that witnesses were going to be unavailable or that
11 witnesses are gone. We've not received any complaints of
12 lost jobs or guys can y'all somehow move this or I need to
13 file a motion because my guy can't work. He needs to eat.
14 Your Honor, in fact, I'd say the delay quite frankly has
15 caused the State -- and it's been a self-inflicted wound --
16 but we've had tremendous difficulty in pulling this case
17 together because of the age. Key witnesses for the State
18 have died. West Columbia, when they operated during that
19 time, they didn't assign a particular investigator to a
20 case. The captain of investigations basically oversaw
21 homicide investigations. That was Tony Owens, and Tony
22 Owens died a few years ago, Your Honor. Bruce Gantt with
23 SLED was the head CSI guy collecting evidence. Bruce Gantt
24 has died. I know we have at least one lay witness that has
25 died that we were hoping to call. We've had witnesses that

1 have retired from law enforcement, some have moved out of
2 the county. Your Honor, we've had some that have moved out
3 of the state. I've got an officer present here today from
4 Greenville County. We've got an officer coming in Wednesday
5 from Florida. We were thinking about bringing someone from,
6 I believe it was Montana. It's been difficult. And, Your
7 Honor, we admit this is a self-inflicted wound. This is
8 what we have to deal with to get this case off this docket.
9 And, Your Honor, I know of no directed impact on this
10 Defendant, nothing that he's lost a job. And just saying
11 that it's been tough for him is not sufficient. If it was
12 truly tough for him, where was the motion? Why wasn't it
13 filed. That one back in 2006, Your Honor, the relief sought
14 was given. And it was just last week he seeks new relief.
15 Your Honor, we'd say under Barker and the subsequent cases,
16 that's just not sufficient for this drastic remedy. And
17 Barker talks about how the remedy is extremely drastic and
18 that's why it's a case-by-case analysis.

19 Thank you, Your Honor.

20 THE COURT: All right. Yes, sir, Mr. Floyd?

21 MR. FLOYD: Thank you, Your Honor. Your Honor,
22 there's no question he has worked some, but he only can take
23 menial jobs because everybody does background checks on him
24 and sees a pending murder charge on him. There's no need to
25 show particularized prejudice when the case is over seven

1 years old. The people he's talking about died and it hurt
2 the State's the case, they were dead before the first trial.
3 Mr. Gantt was dead before the first trial, didn't appear at
4 the first trial. I believe Mr. Owens was too. He didn't
5 appear at the first trial. The question is can they just
6 sit on the case for seven years without any kind of --
7 anything happening against them for it. Seven years is a --
8 it's seven and a half years these charges have been hanging
9 over Mr. Prather's head. Seven and a half years he's had to
10 live with them everyday of his life. It's time for them to
11 be over, Your Honor, and we would -- there's no reason.
12 They haven't given any good reason for taking seven and a
13 half years. There's been nothing here to justify a seven
14 and a half year delay. And for that reason, the charges
15 should be dismissed.

16 Thank you.

17 THE COURT: All right.

18 MR. HUBBARD: Your Honor, if I may?

19 THE COURT: Yes, sir.

20 MR. HUBBARD: Just real quick. Langford, that was
21 just decided, talking about a case out of Edgefield, and
22 they talked about the testifying co-defendant, the
23 difficulties getting that co-defendant to court. They found
24 that -- in their holding in that case, that it was not a
25 case that merited dismissal because of that. Your Honor, as

1 far as the dead witnesses that I've mentioned, we did
2 proceed in that first trial with witnesses that, you know,
3 we had to make do without those who had passed away. The
4 defense suffered no prejudice from that. The fact that
5 Barker points out delay can often work to the advantage of
6 the defense. So it's a balancing process. I don't offer
7 that as any excuse, Your Honor, for why this case is so old.
8 It is old. And that's why I told Judge Keesley, it's
9 getting moved, one way -- whether it's Your Honor or a jury.
10 I told Judge Keesley, we will be ready. We will go forward
11 and, Your Honor, we are prepared today.

12 THE COURT: What's the prejudice the Defendant has
13 argued here today?

14 MR. FLOYD: Your Honor, the prejudice is the
15 impact it's had upon his life, the fact that he's had to
16 live with these charges hanging over his head for over seven
17 and a half years. It's interfering with his employment and
18 it's interfering with his freedom of movement.

19 THE COURT: In what way? In what particulars?

20 MR. FLOYD: Well, he can only -- every time he
21 applies for employment, they do a background check on him.
22 So there's no way he can get any type of employment that he
23 could be working ---

24 THE COURT: I mean, do you have particular
25 incidents that he -- like, he applied to work at Chick-fil-A

1 and they told him he had pending murder charges so they
2 weren't going to hire.

3 MR. FLOYD: Right. I could certainly put him on,
4 Your Honor, and he could tell you every ---

5 THE COURT: Well, I'm just asking you. You're
6 telling me that there's prejudice. I'm asking you
7 specifically what.

8 MR. FLOYD: I can tell you for sure if you'll give
9 me just a second. I'll ask him every question. I know
10 about Sears.

11 (Counsel confers with defendant)

12 Off-the-top-of-his-head, Your Honor, Sears let him go,
13 Walmart, Burger King, McDonald's once they did the
14 background checks on him. His mother also informs me they
15 also have other letters of rejection.

16 THE COURT: And what would a background check
17 show?

18 MR. FLOYD: An arrest and pending charge for
19 murder, armed robbery ---

20 THE COURT: Background checks shows arrests or
21 convictions?

22 MR. FLOYD: Arrests. Because it goes into SLED
23 once you're arrested, fingerprinted, it goes into SLED and
24 shows a pending charge on you.

25 THE COURT: All right.

1 MR. FLOYD: And so he's had to live with this for
2 seven and a half years, Your Honor. That's a major portion
3 of a person's life. So I think that's presumptively
4 prejudicial as the cases allow. Thank you.

5 THE COURT: All right. Mr. Hubbard?

6 MR. HUBBARD: Yes, sir, Your Honor. Your Honor, I
7 haven't heard if he's employed right now. I know the last
8 time these same charges were pending and he was tried, he
9 was gainfully employed and testified about that employment.
10 I also know that -- I don't know what this is, but there's
11 something called explore talent dot com that he's a part of.
12 I don't know if it's acting or if it's modeling. But, Your
13 Honor, background checks are far less necessary in that area
14 as well. But be that as it may, I haven't heard anything
15 about where he's -- right now, that he's working now or not
16 working now.

17 THE COURT: Well, the case that has gotten
18 everyone's attention in the criminal court arena is this
19 State versus Langford case, which came out on Friday of last
20 week. The pending file roll number -- the 21st. That would
21 be Wednesday, wouldn't it.

22 THE CLERK: Yes, sir.

23 THE COURT: Thanksgiving was the 22nd?

24 THE CLERK: Yes, sir.

25 THE COURT: State versus K.C. Langford III, an

1 appeal from Judge Keesley in Lexington County. I'm sorry,
2 Edgefield County. Of course, the most significant part of
3 the case was the Supreme Court's determination that control
4 of the criminal docket by the solicitor is a violation of
5 the separation of powers. But the basis under which the
6 case came before the court was Langford's conviction. And
7 in his case the incident occurred in August of 2008, where a
8 Chinese Restaurant owner in Johnston, they closed shop and
9 went home, taking the daily earnings, and they were robbed
10 outside and the money taken in a black bag. And Mr.
11 Langford was charged, along with a co-defendant, whose name
12 also is Phillips. His name was Alvin Phillips. Phillips
13 confessed to the crime and identified Langford as being the
14 person who was with him. Langford filed a pro se motion for
15 speedy trial and he was in jail from the time of his arrest
16 until the time of his trial, I think nineteen months later.
17 And the State attributed the delay to getting, finding
18 Chinese interpreters as well as the fact that the co-
19 defendant who gave the statement that alleged Langford's
20 arrest started to back up on them. And they had some
21 trouble pinning him down or at least taking it to trial with
22 the co-defendant's testimony, going back and forth. So
23 Langford filed a speedy trial motion. Nine months after he
24 was taken into custody they had a hearing. And the State
25 had planned for the trial, backed out because of the

1 Phillips invoking his privilege against self-incrimination,
2 allegedly due to pressure from Langford or his cousins or
3 someone's cousins. But the State had the trial and he was
4 found guilty. And he raises his violation of his right to
5 speedy trial. And the question before the court was whether
6 he suffered any prejudice as a result of the solicitor
7 controlling when the case would be called for trial. In the
8 portion of the opinion that talks about the defendant's
9 right to a speedy trial, the court cites the Wingo case and
10 State v. Waites, which counsel have cited here today. The
11 court says the Sixth Amendment to the U.S. Constitution
12 provides in all criminal prosecution the accused shall enjoy
13 the right to a speedy trial. And that same right is in the
14 South Carolina Constitution Article I, Section 14. The
15 Court states that the main goals of this right are to
16 prevent undue pre-trial incarceration, minimize the anxiety
17 stemming from public accusation of a crime, and to limit the
18 possibility in long delays in preparing accused defense.
19 Those three goals, undue pre-trial incarceration, minimize
20 anxiety from public accusation, and limitation on the
21 possibility of long delays impairing an accused's defense.
22 The only one -- and that's cited in State v. Waites. The
23 only one mentioned here today seems to be the number two,
24 that is minimizing the anxiety stemming from public
25 accusation of a crime. And the court sort of addressed the

1 issue in some part about where Langford did not renew his
2 motion when his case was called for trial. Of course, it
3 would help with an appeal. In this case, we have the
4 distinction that the Defendant, after filing his motion for
5 a speedy trial was granted relief and actually a trial. And
6 it appears that no motion for speedy trial was filed
7 subsequent to that, except for what was filed last week,
8 according to Mr. Hubbard. The Court, in a long list of
9 cases cited in the Langford Opinion, states that a speedy
10 trial does not mean an immediate one. It does not imply
11 undue haste for the State is entitled to a reasonable time
12 to prepare it's case. And it means a trial without
13 unreasonable and unnecessary delays. And the Court, in
14 citing the Wingo case, talks about the struggle the Court
15 has in trying to pinpoint -- Barker v. Wingo, pinpoint how
16 to deal with this issue in balancing, how the Court should
17 analyze and evaluate dealing with issues involving a speedy
18 trial. They said the analysis begins with a triggering
19 mechanism of a speedy trial, which is the length of the
20 delay. We should not examine the remaining factors until
21 there is some delay, which is presumptively prejudicial.
22 The clock starts to run on the Defendant's right when he's
23 indicted, arrested, or otherwise officially accused. The
24 Supreme Court was quick to remind in Barker, however, that
25 even the length of delay necessary to trigger a full inquiry

1 is dependent upon the particular circumstances of the case.
2 An ordinary street crime has a lower threshold than a more
3 complex case. The Court says that any deliberate attempt by
4 the State to delay the trial as a means of impairing the
5 accused ability to defend himself, should be weighted
6 heavily against the state. Neutral reasons, which could
7 include overcrowded dockets are weighted less heavily but
8 still counts to some extent against the state. Delays
9 caused by the defendant, however, weighs against the
10 defendant. This is not only in accord with the reality that
11 delay may be a defense tactic, but that also is a
12 recognition that the defendant should not be able to procure
13 a dismissal of the charges against him due to delays that he
14 caused. So in the Langford case the state had two reasons.
15 One, the problem with this interpreter. The Court didn't
16 seem to be that convinced that the state shouldn't be able
17 to find a Chinese interpreter in South Carolina. But next
18 regarding the delay caused by the co-defendant being
19 unavailable to testify, the Court seemed to place strong
20 emphasis on that as being somewhat of a legitimate basis.
21 And a third factor, the assertion of the right to speedy
22 trial. And in this Langford case he first filed a pro se
23 speedy trial motion in June '09, and he never sought a
24 ruling until May 2010. And while Langford did file a pro se
25 motion for speedy trial after the court issues its May 2010

1 ruling, it was never ruled upon and he never renewed that
2 motion when the case was called to trial. Although it may
3 have been futile for him to raise the issue again, from an
4 error preservation standpoint, the failure to assert the
5 right would make it difficult for defendant to prove he was
6 denied a speedy trial. And that's again citing Barker. And
7 then finally the court talks about prejudice suffered. And
8 the prejudice suffered by the, the three types, being
9 oppressive pre-trial incarceration, anxiety stemming from
10 being accused and the defense being impaired due to death or
11 disappearance of witnesses. And, of course, of the these
12 the most serious is the last because it might prevent the
13 defendant from adequately preparing a defense. In the
14 Langford case he was in jail for two years pending trial.
15 And the court talks about that. While -- stated that while
16 we are cognizant of not minimizing deleterious effects of
17 lengthy pre-trial incarceration, the two-year delay in
18 bringing this case to trial does not amount to a
19 Constitutional violation in the absence of actual prejudice
20 in Mr. Langford's case. And the court says that to that end
21 Langford has not demonstrated now his defense was prejudiced
22 by the delay. Although he argues that the delay helped the
23 state to secure Phillips' testimony and bolster the case
24 against him, he failed to recognize that the state only had
25 to do so because it was interference. Moreover, he cannot

1 point to any evidence of anxiety caused by the stigma of
2 being accused of these crimes. In looking at all of this as
3 a whole, and taking into account the balance of the state's
4 interests and Langford's, we do not believe Circuit Court
5 abused its discretion in finding Langford was denied a
6 speedy trial in the Constitutional sense.

7 It seems to me that the Langford -- and, of course,
8 that's the most recent announcement on this issue. The case
9 just came out last week in which the Court delved pretty
10 deeply into this issue and cited almost every case that
11 everyone has cited here today, including the -- case where
12 the court says extreme delays may warrant relief based
13 solely on pre-trial incarceration. This case is relative in
14 that it has the same components of co-defendants and trials
15 and all. I think that the -- that my analysis should not
16 begin in 2005 but should begin in 2009 because the relief
17 was granted and a trial was had in 2009. It seems to be
18 undisputed that at some point around October or leading up
19 to that, the defense was granted the continuance. And so
20 we're dealing with a three-year delay in trying the case.
21 And within that period of time, we do not have any pre-trial
22 incarceration and we do not have any evidence presented by
23 the defense of the defendant's being hampered in presenting
24 a defense. So on balance, I find that the defense has not
25 shown any prejudice from the delay. Particularly considering

1 that he's not incarcerated, and that it appears that aside
2 from the stress and strain of being accused of committing a
3 crime, that there is no other evidence that would warrant
4 the extreme measure of dismissing such an important case.
5 It can easily be interpreted that the -- rather than
6 asserting this right to a speedy trial, as the court
7 addressed in Langford and trying to do something to make the
8 Court aware, that after October '09 the Defendant felt that
9 he was being prejudiced by the case not being called, it
10 could easily be argued that the Defense decided well, we'll
11 just wait and whenever it comes up, then we'll -- the more
12 time passes, the greater possibility we might have of having
13 the motion granted based on speedy trial. I think it would
14 be incumbent upon the Defense to show prejudice. Whereas
15 prejudice it would be presumed that there's pre-trial
16 incarceration, the court has to balance all factors in this
17 case. I think given what was presented to the Court
18 regarding the involvement of Joshua Phillips as a co-
19 defendant, the history of his pleading and filing a PCR, all
20 of those things obviously worked against the State being
21 able to present this case for trial, including other issues
22 involving the docket and all. But based on everything I've
23 heard, I do not believe that it raises to the level of a
24 violation of the Defendant's right. As the court said in
25 Langford, the defendant was denied a speedy trial from the

1 Constitutional sense that would merit dismissal of the
2 charges. And I, therefore, deny the motion.

3 MR. HUBBARD: Thank you, Your Honor.

4 MR. FLOYD: Your Honor, may I clear up something
5 for the record?

6 THE COURT: Sure.

7 MR. FLOYD: In any event if it entered into your
8 decision, you made mention in your analysis the Defense at
9 one time moved for a continuance. And that really should
10 not come into play. Because let me explain to you and put
11 on the record how.

12 THE COURT: Okay.

13 MR. FLOYD: The matter was called for trial in
14 September of 2009. We came to trial. We were ready for
15 trial. During the pre-trial hearings, it was discovered
16 that the State had committed discovery violations because
17 they had not provided us all the records that the West
18 Columbia Police Department had. And I don't think the
19 Solicitor's Office knew about them until we had the hearing.

20 THE COURT: Yes, sir.

21 MR. FLOYD: So I moved to dismiss it because of
22 the discovery violation. When it was not granted, then I
23 moved for a continuance to study the material that had not
24 been provided to us.

25 THE COURT: Yes, sir.

1 MR. FLOYD: And, therefore, it came to trial then
2 in October, was our next --

3 THE COURT: All right. Well, I appreciate that
4 and that clarifies that point on the record. And I'll cite
5 here, it's not to suggest that the defense is to blame for
6 any delay in the case being called, but it was called and
7 was tried the next month in October of 2009. And my point
8 is that the -- whereas certainly some consideration should
9 be given to the fact that there's a case that's now seven
10 years old, I think if the Defense had evidence that this
11 seven-year-old case hampers his right to present a defense,
12 then that would be the length of the time would be much more
13 significant. As far as my analysis is concerned, that's why
14 I've indicated that I think my analysis really should start
15 in October '09. That's when he was given the trial and what
16 has occurred from that time until now, including asserting
17 the right and, also, efforts by the State to deal with this
18 Defendant as well as a co-defendant. It's just interesting
19 that you had some of the same type things in the Langford
20 case and it comes from the same territory. And Judge
21 Keesley's mentioned in both of them. And I think that
22 applying Langford to this case, the motion should be denied.
23 And I deny your motion.

24 All right. What else do you have for me?

25 MR. HUBBARD: Your Honor, I know there's a couple

1 of other motions. One's a Denno hearing. We've got three
2 separate witnesses I think we're prepared to call about
3 statements the Defendant made and whether those are
4 admissible.

5 THE COURT: All right. Let's see what we can do
6 before 1:00.

7 MR. HUBBARD: Yes, sir.

8 THE COURT: And then we'll break for lunch.

9 MR. HUBBARD: May it please the Court? I'll call
10 Ronald Suber.

11 (WHEREUPON, Ronald Suber was sworn
12 to tell the truth.)

13 THE CLERK: Have a seat, please, sir. Once you're
14 seated, state your full name spelling your last on the
15 record.

16 MR. SUBER: Ronald Dwayne Suber, Jr. S-U-B-E-R.

17 RONALD SUBER - DIRECT EXAMINATION

18 BY MR. HUBBARD:

19 Q Deputy Suber, will you please let the Court know where
20 you work?

21 A I'm a deputy sheriff with the Greenville County
22 Sheriff's Office.

23 Q How long have you been up there?

24 A Just a touch over two years.

25 Q And how long have you been in law enforcement?

1 A I'm in my ninth year now.

2 Q What other agencies have you worked with?

3 A I've worked with the City of West Columbia Police
4 Department as well as the City of Orlando Police Department
5 in Orlando, Florida.

6 Q In April 2005, where were you working?

7 A I was working with the City of West Columbia Police
8 Department.

9 Q If you will, on April 22, 2005, were you working at
10 that time?

11 A Yes, sir, I was.

12 Q What shift were you working and what was the time
13 beginning and ending at that time period on a shift?

14 A I was working what would have been our A shift. It was
15 a 7:00 p.m. to 7:00 a.m. night shift.

16 Q Do you recall at some point during the shift, that
17 shift, April 22 of 2005, being directed by dispatch to go to
18 the Lexington Medical Center?

19 A I do.

20 Q And what was the purpose of going there?

21 A I had received a call to meet with a possible victim of
22 a criminal sexual conduct, male victim, at Lexington Medical
23 Center ER.

24 Q When you got there, did you meet with hospital staff?

25 A I did.

1 Q Now many individuals were presenting at the hospital
2 concerning this sexual assault?

3 A I was advised by the nurse ---

4 Q Let's not get into hearsay. But let's just -- I know
5 it's still a hearing ---

6 A Okay.

7 Q But how many people were there?

8 A Two.

9 Q Two. Was one a purported victim?

10 A Yes, sir.

11 Q What was the capacity of the other person?

12 A This victim's friend, possible witness.

13 Q And in talking to hospital personnel did they kind of
14 give you the background?

15 A They did.

16 Q Now, did you get the names of the individuals you were
17 up there to see?

18 A I did, sir.

19 Q What were their names?

20 A A Joshua Phillips and a Jared Prather.

21 Q Do you see Jared Prather in the courtroom today?

22 A I do, sir.

23 Q Okay. Can you point him out for the Judge?

24 A Sitting there in the Defendant's chair.

25 Q Did you have an opportunity to talk to these

1 individuals, Mr. Phillips and Mr. Prather?

2 A I did.

3 Q In talking to them, who -- did both of them talk to
4 you, one of them talk to you? Can you explain to the Judge?

5 A Your Honor, I was directed to a conference room area.
6 I spoke with -- my intentions at that time were to speak
7 with my victim, and whatever information he had as well as
8 the witness.

9 Q Is the victim Joshua Phillips?

10 A The victim was Joshua Phillips, yes, sir.

11 Q Who, if anybody, approached you to talk to you?

12 A I was approached by the Defendant, Mr. Prather, prior
13 to going into this conference, at which time he identified
14 himself.

15 Q And did he indicate he wanted to talk to you?

16 A He did, sir.

17 Q What did he tell you?

18 A He told me that he and Mr. Phillips, or his victim, had
19 been at a friends house or another individuals house that
20 night. There had been some drinking. Mr. Phillips had
21 gotten intoxicated to a point to where he had passed out.
22 And Mr. Prather stated that he put him on the couch at the
23 house and then left, left that residence for a period of
24 time. It was never stated exactly how long.

25 Q What did he say happened after that?

1 A He said that he returned a while later, knocked on the
2 door, and was met by the owner of the residence, who was Mr.
3 Stewart.

4 Q Okay. Is that Gerald Stewart?

5 A Gerald Stewart, yes, sir.

6 Q He was met at the front door?

7 A At the front door, yes, sir.

8 Q And what was Mr. Stewart's appearance when he came to
9 the front door and greeted Mr. Prather?

10 A According to Mr. Prather, Mr. Stewart was completely
11 nude when he met him at the front door.

12 Q And did Mr. Prather relay an exchange of comments
13 between he and Mr. Stewart?

14 A He did. I believe -- let me check my notes here. Mr.
15 Prather asked Mr. Stewart what was going on. Mr. Prather
16 advised me that Mr. Stewart then asked him a question if he
17 and Josh, referring to Mr. Phillips, had ever had sex. Mr.
18 Prather stated to me that he replied at that time, and this
19 is a direct quote, what the fuck is going on? Mr. Prather
20 then said that Mr. Stewart asked him if he was aware that
21 Mr. Phillips enjoyed oral sex.

22 Q Just since we're out of the presence of the jury will
23 you give the direct quote as you have it in your notes?

24 A Yeah. In my notes I have a direct quote as Mr. Prather
25 stated to me that night. I quote, did you know that Josh

1 likes to have his dick sucked. Mr. Prather continued that
2 he, at this point in time, he pushed his way past Mr.
3 Stewart into the house in order to find Mr. Phillips. He
4 told me Mr. Phillips was no longer on the couch so he
5 proceeded to a bedroom in the house, kicked that bedroom
6 door open and found Mr. Phillips laying on the bed with
7 nothing but his boxer shorts on, asleep. Mr. Prather then
8 continued that he attempted to wake up Mr. Phillips, shaking
9 him, pulling his hair, yelling at him. He stated that he
10 eventually woke up and pretty much said, let's get out of
11 here.

12 Q Who said let's get out of here?

13 A Mr. Prather told Mr. Phillips that.

14 Q At this point in the conversation, what, if anything,
15 did Mr. Prather tell you?

16 A He told me, and the direct quote was, I beat the shit
17 out of him. I asked him if he was referring to Mr. Stewart.
18 He replied, yes. I then asked him what else happened, asked
19 him to continue with his story. Mr. Prather stopped me,
20 made eye contact and said, no, I beat the shit out of him
21 and those were devastating blows.

22 Q Okay. So basically you asked him a question, he
23 stopped you and made that comment, no, I beat the shit out
24 of him and those were devastating blows?

25 A Yes, sir.

1 Q Do you recall any other conversation you had with Mr.
2 Prather at that time?

3 A Mr. Prather just -- he stated several more times that
4 he continued to hit Mr. Stewart. That he made a statement
5 one time that it was because Mr. Stewart came at him.

6 Q Okay.

7 A He never elaborated on that one.

8 Q Okay. Never told you what that was about?

9 A No, sir.

10 Q Now, at this time, did you place him under arrest?

11 A No, sir.

12 Q Okay. At this time did you know the condition of
13 Gerald Stewart?

14 A No, sir.

15 Q And did you know whether this rape had actually
16 occurred or not?

17 A No, sir.

18 Q Did Mr. Prather then ask you a question if he could
19 step outside?

20 A He did. I believe he ---

21 Q What was the purpose of that?

22 A He asked if he could smoke a cigarette.

23 Q And what was your response?

24 A That was completely fine. He wasn't in any form of
25 detention.

1 Q At some point did Officer, now Sergeant, Wayne Kleckley
2 show up to the hospital?

3 A He did.

4 Q Is he your direct supervisor at that time for that
5 shift?

6 A He was. He was my Sergeant.

7 Q And at some point did y'all hear, by way of radio
8 traffic, the condition of Mr. Stewart?

9 A Yes, sir, we did.

10 Q What was the condition as you heard it?

11 A As best I recall, I remember hearing that he was
12 unresponsive, appeared to be unconscious. They had
13 requested EMS personnel.

14 Q What were you directed to do at that time?

15 A At that time, we, Sergeant Kleckley and myself decided
16 to place Mr. Prather into investigative detention.

17 Q Okay. And that's at the hospital?

18 A That's at the hospital, yes, sir.

19 Q And this is after he's already talked to you?

20 A Yes, sir. After he's talked to us.

21 Q And at some point does he get transported to West
22 Columbia Police Department?

23 A He does.

24 Q Who transports him?

25 A I do.

1 Q Did you have any conversation with him? Anything you
2 remember? Anything you recall?

3 A No, sir. Once we placed him into investigative
4 detention, I had no further contact with him or
5 conversation.

6 Q When you got to West Columbia, where did you place Mr.
7 Prather?

8 A I believe we placed him in a holding cell.

9 MR. HUBBARD: I beg the Court's indulgence.

10 Q Please answer any questions Mr. Floyd has. Thank you,
11 Mr. Suber.

12 THE COURT: Mr. Floyd.

13 RONALD SUBER - CROSS-EXAMINATION

14 BY MR. FLOYD:

15 Q When you were approached by Mr. Prather, did you
16 suspect him of his involvement in criminal activity?

17 A No, sir.

18 Q And did you ever question him after he was placed in
19 investigative detention?

20 A No, sir.

21 Q Thank you.

22 MR. FLOYD: I have no further questions, Your
23 Honor.

24 MR. HUBBARD: No more questions for this witness.

25 THE COURT: All right. Thank you, sir.

1 MR. SUBER: Thank you, Your Honor.

2 MR. HUBBARD: The State calls Wayne Kleckley.

3 Your Honor would like us to proceed with each witness?

4 THE COURT: Sure.

5 MR. HUBBARD: The State would call Sergeant Wayne
6 Kleckley.

7 (WHEREUPON, Wayne Kleckley was
8 sworn to tell the truth.)

9 THE CLERK: Have a seat, please, sir. Once you're
10 seated, speak up loud and clear. State your full name,
11 spelling your last.

12 MR. KLECKLEY: My name is Wayne Albert Kleckley,
13 K-L-E-C-K-L-E-Y.

14 WAYNE ALBERT KLECKLEY - DIRECT EXAMINATION

15 BY MR. HUBBARD:

16 Q Sergeant Kleckley, where do you work?

17 A I work at the West Columbia Police Department.

18 Q Sergeant Kleckley, were you working with West Columbia
19 April 22, 2005?

20 A Yes, sir, I was.

21 Q What were your duties at that time?

22 A I was a shift sergeant for A shift. And we working the
23 night shift, which was from 7:00 p.m to 7:00 a.m.

24 Q And do you remember getting a call by dispatch about an
25 alleged sexual assault?

1 A Yes, sir, I do.

2 Q Are you the one that directed Officer Suber to the
3 hospital?

4 A Yes, sir. Well, I told the dispatcher to send him to
5 the hospital. Yes, sir.

6 Q In relation to the assault?

7 A Yes, sir, that's correct.

8 Q At some point did you end up going to the hospital as
9 well?

10 A I did.

11 Q Did you have an opportunity to meet Mr. Prather?

12 A Yes, sir, I did.

13 Q And do you see him in the courtroom today?

14 A Yes, sir, I do.

15 Q He's seated with his attorney?

16 A He's seated over there next to Mr. Floyd, yes, sir.

17 Q Now, when you first saw Mr. Prather at the hospital,
18 did you know the status of Gerald Stewart?

19 A No, sir, I did not.

20 Q Was Mr. Prather in custody at that time?

21 A No, he was not.

22 Q So he was free?

23 A Yes, sir.

24 Q Did you have a conversation with Mr. Prather?

25 A Yes, sir, I did.

1 Q What did he tell you?

2 A He stated basically that he had beat up the guy that
3 had sexually assaulted his friend.

4 Q All right. Did he relay the story to you or part of
5 the story about what happened?

6 A Parts of the story, yes, sir.

7 Q What parts do you recall of him telling you about what
8 happened hours earlier on April 22?

9 A That he had left his friend who had passed out on the
10 couch at the house of Mr. Stewart. He left for a while.
11 When he returned Mr. Stewart answered the door nude. He
12 pushed past him, didn't see his buddy on the couch. And
13 went and forced open a bedroom door and found him there in
14 his underwear.

15 Q What, if anything, did Mr. Prather tell you his
16 response was to this?

17 A He stated that he beat the shit out of Mr. Stewart. He
18 didn't name Mr. Stewart, but he said I beat the shit out of
19 him.

20 Q Those were his words?

21 A Yes, sir.

22 Q What else did he say about that beating?

23 A He stated that he'd been in the military. He knew how
24 to fight. And that they were devastating blows.

25 Q Do you recall if he showed you what he meant by

1 punching or how he did his hands?

2 A Yes, sir. We were actually standing out in the
3 ambulance bay and he had made gestures from pushing his fist
4 down into his palm, kind of appeared to be twisting his hand
5 just a little bit.

6 Q Did he tell you this before or after you knew the
7 status of Gerald Stewart?

8 A This was before.

9 Q At some point while you were in the ambulance bay, did
10 you get radio traffic about Mr. Stewart's condition?

11 A Yes, sir, I did.

12 Q Now, prior to that, was Mr. Prather free?

13 A Yes, sir.

14 Q Did he even go and smoke a cigarette?

15 A Yes, sir, he did.

16 Q After you got the report that Gerald Stewart was
17 unresponsive or even dead, what did you do?

18 A Myself and Officer Suber placed him into detention.

19 Q Investigative detention?

20 A Investigative detention. And took him to the hospital
21 security office and requested that they watch him.

22 Q Was that the end of your involvement with Mr. Prather?

23 A Yes, sir.

24 Q Thank you. Please answer any questions Mr. Floyd has.

25 WAYNE KLECKLEY - CROSS-EXAMINATION

1 BY MR. FLOYD:

2 Q Officer Kleckley, did you do a written statement about
3 this incident?

4 A Yes, sir, I did.

5 Q You don't include any of those quotes in there as
6 yours, do you?

7 A No, sir. I believe they're in the incident but not in
8 my statement.

9 Q And in the written statement you don't say a thing that
10 he said to you?

11 A No, sir.

12 Q And there's nothing in your statement about him
13 learning how to fight in the military?

14 A No, sir, not in my statement.

15 Q Okay.

16 MR. FLOYD: No further questions.

17 WAYNE KLECKLEY - REDIRECT EXAMINATION

18 BY MR. HUBBARD:

19 Q But you did put this information in your report?

20 A That's correct.

21 Q Thank you.

22 MR. HUBBARD: No further questions.

23 THE COURT: Thank you, sir.

24 MR. HUBBARD: Matt Edwards.

25 (WHEREUPON, Matt Edwards was sworn

1 to tell the truth.)

2 THE CLERK: Have a seat, please, sir. Once you're
3 seated state your full name spelling your last for the
4 record, please?

5 MR. EDWARDS: My name is Matt Edwards, E-D-W-A-R-
6 D-S.

7 MATT EDWARDS - DIRECT EXAMINATION

8 BY MR. HUBBARD:

9 Q Where are you currently employed?

10 A The West Columbia Police Department.

11 Q And in what capacity?

12 A I'm the Major and Assistant Chief.

13 Q So as a Major or Assistant Chief, what are your job
14 responsibilities today?

15 A I oversee the day-to-day operations of the police
16 department.

17 Q Back in April 22 of 2005, where were you employed?

18 A I was employed at the West Columbia Police Department.

19 Q And what did you do? Were you a major back then or did
20 you have another job back then?

21 A I was not. I was a criminal investigator in our
22 detective division.

23 Q So back then it was Detective Edwards?

24 A Right.

25 Q Did you become involved in this case as far as

1 interviewing Mr. Prather?

2 A I did.

3 Q And when I say Mr. Prather, do you see him in the
4 courtroom?

5 A He is, seated right beside Mr. Floyd.

6 Q The Defendant, the only person sitting next to Mr.
7 Floyd?

8 A Yes, sir.

9 Q Where did you first encounter Mr. Prather?

10 A I first encountered him at our police department.

11 Q When you first met him, was he -- what was his status?
12 Was he in custody?

13 A He was in custody, yes. He was in an interview room at
14 the police department.

15 Q In investigative detention?

16 A Right.

17 Q He hadn't been arrested yet?

18 A Right.

19 Q You didn't have a warrant yet?

20 A Right.

21 Q But he had cuffs on?

22 A When I made contact with him, he did not have cuffs on,
23 no.

24 Q Describe the interview room to me if you would?

25 A It's approximately six feet wide by eight feet wide.

1 There's a desk with nothing on it. As you enter the
2 interview room, it's a windowed door. Where Mr. Prather was
3 seated was right beside the door. And there is a desk. And
4 to the back corner of the room is another seat across the
5 desk. That's where I came in and sat down.

6 Q Was he there before you came in or were you there
7 first?

8 A No, he was there before I came in.

9 Q When you came into the interview room, did he have
10 cuffs on or not?

11 A No, he did not.

12 Q How were you dressed?

13 A I was dressed -- I came out early in the morning so I
14 was dressed, what we would call, like a dress-down uniform.
15 It would be tactical khakis and polo shirt.

16 Q Did you have -- do you remember whether you were -- did
17 you have your badge on?

18 A Yes, I would have had my badge on. And then we don't
19 go into an interview room without taking our gun off. I
20 would have had, you know, a badge on my shirt, which it
21 would have been embroidered and then my badge on my belt.

22 Q But you didn't take a gun or any type of ---

23 A No.

24 Q --- baton or any kind of weapon in there with you?

25 A Right. That's right. No weapons.

1 Q When you first met him, do you remember what time it
2 was?

3 A Yes, sir. I'm going to refer to my notes. But I met
4 him on April 22, 2005 and that was at 10:50 in the morning.

5 Q When you first came in and met him, tell the Judge
6 about how you introduced yourself and what happened next?

7 A Again, I'm going to refer to my notes.

8 MR. EDWARDS: Your Honor, it's kind of lengthy.

9 A But I introduced myself by name. We were the only ones
10 present in the room. I sat down and started talking to him
11 and if I could proceed. He was awake and alert. He didn't
12 show any signs of being intoxicated. So I started our
13 conversation by asking him who had been at the house that
14 the police had been sent to earlier that night.

15 BY MR. HUBBARD:

16 Q And what did he say?

17 A He said that he and his friend, Josh, had been at Mr.
18 Stewart's house since the day before.

19 Q Did he describe to you at that point how he knew Gerald
20 Stewart?

21 A Yeah. He said they had met -- again, referring to my
22 notes -- about five months ago while playing pool at
23 Calloway's Bar, which is in West Columbia.

24 Q Did he describe who else was in the house at that time?

25 A Yeah. He said that Mr. Stewart had a roommate. He

1 only knew him as Ron or Rob.

2 Q Did he tell you how many times he had been to Gerald
3 Stewart's house?

4 A Again, you know, he stated that he had been there three
5 or four times over the past five months, since they had met.
6 Then I started asking him a few more questions to build a
7 bit of a rapport with him.

8 Q Did you also ask him any questions regarding Mr.
9 Stewart and his sexual orientation?

10 A I did. I asked him if he knew that Mr. Stewart was
11 homosexual and he stated that the didn't. He told me, after
12 I asked him that, you know, due to the series of events that
13 had happened the night before, it kind of made him think Mr.
14 Stewart was homosexual.

15 Q At some point after that, did you ask him a question
16 about his sexual orientation?

17 A I did.

18 Q And what did he tell you?

19 A And he said, no. And he, you know, acted offended by
20 he question.

21 Q Did you ask him about Josh Phillips' sexual
22 orientation?

23 A I did. And he said that he wasn't either. And, you
24 know, at that point I asked him how old he was and he told
25 me he was twenty-two.

1 Q Any of those questions -- what were you aware of at the
2 time when you were interviewing him? Did you know -- what
3 did you know?

4 A We knew that they had gone to the hospital. We knew
5 that they had called the police from the hospital. I knew
6 these things. I knew that they had stated they had been at
7 the house and they had, there was an altercation between the
8 Defendant and Mr. Stewart. I knew that the police had gone
9 to the house and found Mr. Stewart -- you know, gone --
10 climbed through the window and found Mr. Stewart deceased
11 and, you know, were several, three or four hours into the
12 investigation. So everything we knew at the time was ---

13 Q You were present in the courtroom when Officer or
14 Deputy, now Deputy Suber and Sergeant Kleckley from West
15 Columbia had testified as to their conversations with Mr.
16 Prather?

17 A Yes.

18 Q What they testified to, you were aware of that prior to
19 your going into to interview Mr. Prather?

20 A Right. We had all been briefed on that before going
21 into the interviews.

22 Q And at this point, you also knew that Mr. Stewart was
23 dead; isn't that correct?

24 A Right.

25 Q At this point, did you decide that you needed to

1 Mirandize Mr. Prather?

2 A I did. Before we got into any of the specifics or the
3 meat of the crime, my practice and by law Mirandize him.
4 We'd had a discussion beforehand, which is just commonplace
5 amongst investigators trying to build a rapport with, you
6 know, people we're talking to.

7 Q What time did you -- do you have any records reflect
8 what time you read Miranda?

9 A I do. Referring back to my notes it was at 11:03. I
10 stopped and I told Mr. Prather I wanted to hear his side of
11 the story before -- so I would have to advise him or he
12 would have to be advised of his Miranda Rights. As I always
13 do, I had him read his written Miranda Rights aloud. Beside
14 each right he initiated that he understood them. He then
15 signed the waiver and agreed to talk to me without having an
16 attorney present.

17 Q You had testified earlier -- what were your
18 observations as to him being under the influence of alcohol?

19 A He did not appear to be at the time. He was awake and,
20 I mean, to me appeared to be sober.

21 Q Well what about the influence of drugs?

22 A Did not appear to be under the influence of any type of
23 stimulant.

24 Q Was there anything that seemed to interfere with his
25 understanding what you were saying?

1 A No, sir.

2 Q Did he appear to be able to -- did he read out loud to
3 you?

4 A Yes, sir, he did.

5 Q He did read out loud to you? Did he have any problems
6 reading to you?

7 A He did not.

8 Q And that would have been off the form?

9 A It was off our form that we use in eery ---

10 Q And do you have the Miranda form with you that you went
11 over with him and that he initialed and that you did too?

12 A I do. I have it with me right here.

13 MR. HUBBARD: Your Honor, The State would mark
14 this for ID at this time.

15 THE COURT: All right.

16 (State's Exhibit No. 1 was marked
17 for ID.)

18 Q Major, looking at the form that I handed back to you,
19 which is marked as State's Exhibit No, 1 for identification,
20 what is that form?

21 A That's our Miranda Rights Warning Form that we provide
22 to anybody we're interviewing, interrogating.

23 Q And how do you recognize those relating to your
24 interview with Mr. Prather?

25 A My signature's at the bottom of it.

1 Q Do you recognize the handwriting on there?

2 A Yes. It's his handwriting all the way down it and the
3 top part of it is the part he wouldn't know so that's one
4 thing I filled out for him. That reflects the date, the
5 time and the case number.

6 Q Just going through it then, looking at States No. 1 for
7 ID, at the top right corner it says date and time and the
8 case number. Whose handwriting is that?

9 A That's my handwriting.

10 Q And what is the date and time indicated on this?

11 A That reflects April 22, 2005 at 11:03. And then
12 there's the case number below there.

13 Q Down below that, there's some blank lines that are
14 filled in. Whose handwriting is that?

15 A That's all Mr. Prather's handwriting.

16 Q So you put -- you gave this to Mr. Prather and gave him
17 a pen and he filled that out?

18 A Right. I asked him to fill out the top. And then we
19 went down line by line.

20 Q All right. Would you read the top for me saying what
21 he wrote?

22 A It says, I, Jared Prather, live at 3205 Woodson Circle,
23 West Columbia, South Carolina 29170. My phone number is
24 803-791-7112. My date of birth is 9/22/82 and my Social
25 Security Number is 247-71-0579. I have finished -- and it

1 has a blank, thirteen for -- the thirteenth grade in school.
2 And I -- he has circled, I can read. And he initialed that
3 where he circled.

4 Q For the thirteenth grade in school, what that would be?

5 A That would indicate he went through his first year in
6 college.

7 Q And he indicated you said, that I can read and circled
8 the word can?

9 A Can is circled and his initials are above that word,
10 indicating he circled it.

11 Q And he didn't appear to have any problems either
12 reading or writing?

13 A No, sir.

14 Q Moving on down, how specifically did you inform him of
15 his Miranda Rights?

16 A As I always do, I turned the form in front of him where
17 he could read it. He read it out loud. I asked him after
18 each one if he understood. He then initialed beside each
19 one.

20 Q So let's go through those. What's the first one that
21 he read out loud?

22 A There's a one with a space beside it. It says, you
23 have the right to remain silent. He initialed beside that.
24 Number two, anything you say can and will be used in court
25 as evidence against you. He initialed beside. Number

1 three, you are entitled to talk to lawyer now and to have
2 him present now or at anytime during questioning. He
3 initialed that. If you cannot afford a lawyer, one will be
4 appointed for you without cost. He initiated that.
5 Question number five is do you understand these rights? Yes
6 or no. He circled yes. Initialed the circling. And then.
7 initialed beside number five. Number six, if you decide to
8 answer questions now without a lawyer present, you will
9 still have the right to stop answering questions at any
10 time. You also have the right to stop answering questions
11 at any time until you talk to a lawyer. And then he
12 initialed that. Below that is a line. And below that it
13 says signature of the suspect, which he applied his
14 signature.

15 Q Below that, there is a part of the form that says
16 Waiver of Miranda Rights. Would you -- did he read that or
17 did he read it out loud or did you read it to him?

18 A He read it out loud, just like the rest of the form.

19 Q Would you read it out loud like he did that day?

20 A I will. He said, I am willing to make a statement and
21 answer questions. I understand and know what I am doing.

22 No promises or threats have been made to me. And no
23 pressure or coercion of any kind have been used against me.
24 There's a signature spot for him. And it says, signature of
25 suspect. He signed it. There's a date spot below that that

1 has the date of 4/22/05 affixed. And then there's two
2 witness lines. And I signed the top witness line.

3 Q So his rights -- he read his own rights out loud. He
4 initialed by them. He said that he understood them?

5 A Yes.

6 Q Is that correct?

7 A Yes.

8 Q And then he said that he would waive those rights and
9 speak with you?

10 A Yes.

11 Q. He did not appear to be under the influence of alcohol
12 or drugs?

13 A Correct.

14 Q Did you make him any promises that if he spoke to you
15 good things would happen?

16 A No.

17 Q Did you threaten him in any way that if he didn't speak
18 to you that something bad would happen?

19 A No.

20 Q Did he appear to understand all of his rights?

21 A Yes.

22 Q Did he appear to make his waiver freely?

23 A Yes.

24 Q Did it appear to be voluntary on his part to speak with
25 you?

1 A Yes.

2 Q Did he seem to understand what he's doing, to know what
3 he was doing and to be intelligent about what he was doing?

4 A Yes.

5 Q Knowing all that, did he decide to speak with you?

6 A He did.

7 Q Tell me about your conversation with him once Miranda
8 was read?

9 A All right.

10 MR. EDWARDS: I'm going to refer back to my notes
11 if it's all right, Your Honor.

12 A I asked him how long that he had known Josh. He stated
13 he'd known him four or five years and he knew him through
14 Brooklyn-Cayce High School. He said they graduated in 2000.
15 I asked him to recap the events of the prior day for me.
16 And he said that around 10:30 or 11:00 a.m., he and Josh
17 went over to Gerald Stewart's house. He said that they were
18 all playing cards and drinking all day. And that everything
19 was cool. He then told me that in the afternoon he and Josh
20 stopped by from Josh's brother's house, where his brother
21 also lives. While there, Josh and his brother got in an
22 argument and Josh took some of his clothes like he was going
23 to move out. He then went -- he said that they went -- that
24 they left. They went to the RaceTrac Gas Station to get
25 cigarettes and ended up back at Gerald Stewart's house. Mr.

1 Prather then told me that during the evening, Gerald and
2 Josh got very drunk on whiskey and that Josh fell asleep on
3 the couch in the den around midnight. He stated some time
4 after that he took a box of clothes back to Joshua's
5 apartment and stayed there talking to Josh's brother. He
6 mentioned that Gerald had told him when he came back, just
7 to come back in and that he would leave the door unlocked.
8 He then said that before he left, he and Gerald had gone to
9 a bar in Columbia called Uncle Louie's and later on is when
10 he took the box back, which he now thought was about 2:00 or
11 3:00 a.m. He came back into Gerald's house and walked
12 straight in the front door. And as he was walking in, he
13 said that Gerald came into the bedroom door and was
14 completely naked. And Gerald said to him ---

15 MR. EDWARDS: Forgive me, Your Honor.

16 A --- I quote. Did you know that Josh likes to get his
17 dick sucked? He said that he pushed Gerald aside and went
18 back to the bedroom to get Josh out of his bed, out of the
19 bed. He said that Josh was laying across the bed in his
20 boxer shorts and he said that he could not wake him up. So
21 he pulled him out of the bed by his hair and grabbed his
22 clothes. And then he started to leave. And Gerald grabbed
23 him from behind, grabbed Mr. Prather from behind by the arm.
24 He said that because of this, he pushed Gerald and that made
25 him fall, made Gerald fall over the footrest. He said that

1 as Gerald was falling, he hit him in the face a couple of
2 times with his fist. He said that he and Josh immediately
3 left the house. I mean, left the house in their car. I
4 asked him if they went straight to the hospital from there.
5 And he initially said yes. After that, he said that they
6 had stopped at Calloway's to play pool first before they
7 went to the hospital. I asked him if he'd changed clothes
8 or if those were the clothes that he was wearing during the
9 interview were the same ones that he had on last night or
10 that night before. He said he had not changed clothes at
11 any time during the night. I observed that he was wearing a
12 white short-sleeved undershirt, to me which seemed very
13 clean. I started to ask him some questions about his T-
14 shirt at the time.

15 BY MR. HUBBARD:

16 Q Tell me about the questions that you asked him at that
17 time?

18 A Again, knowing what I knew about the scene, I'd been
19 there for the search warrant and observed the, what I would
20 refer to as a very violent scene. I would, in my opinion,
21 would have thought that I would have seen some evidence on
22 the clothes that he was wearing of him being involved in a
23 fight there. So I asked him, I confronted him by saying I
24 cannot understand a shirt had managed to stay so clean when
25 he had gotten into a fist fight. I also told him that there

1 seemed to be a lot of blood at Gerald's house and it would
2 be impossible for him to have kept clean. I told him that I
3 knew he had changed clothes and I that I needed those
4 clothes back. He denied this repeatedly. At that time, I
5 told him if he was lying -- and that seemed to make him, you
6 know, very defensive. After that, he started crying and
7 said he wanted to stop and talk to a lawyer.

8 Q So how would you describe -- you said you asked for his
9 clothes. He said, these are the ones I had. And you
10 accused him of lying. How would you describe the
11 accusations that you made?

12 A I would say they were normal for the course of accusing
13 somebody of lying but not aggressive.

14 Q Any pounding on the table?

15 A No. No, no. Just normal, normal conversation. Again,
16 there was a desk between us and I stayed seated and he had
17 kind of a funny reaction, when I ---

18 Q When you say funny reaction, what do you mean?

19 A He, he -- when I say he got defensive, he kind of
20 curled up into a ball, started crying. I mean, just
21 literally backed into the corner, put his hands over his
22 face. Just not a reaction I would expect to have when
23 you're just -- confront somebody about a shirt. I mean,
24 that was...

25 Q At that point, when he started crying after you accused

1 him of lying, is that when he requested a lawyer?

2 A It is.

3 Q And did you interview him anymore after that?

4 A No. It stopped right then.

5 Q Thank you, Major. Please answer any questions Mr.
6 Floyd has.

7 A Yes, sir.

8 MATT EDWARDS - CROSS-EXAMINATION

9 BY MR. FLOYD:

10 Q Major Edwards was this interview recorded?

11 A It was not.

12 Q Was there any videotape of the interview?

13 A No, sir.

14 Q And basically everything was fine until you accused him
15 of lying?

16 A Correct.

17 Q And you accused him of lying because you thought his
18 clothes were too clean?

19 A That's right.

20 Q And when you accused him of lying, did you tell him
21 that you had enough to put him away for life?

22 A No. I didn't say anything like that.

23 Q You just accused him of lying and he stopped the
24 interview at that point?

25 A That's right.

1 Q And you never did threaten him in any way, what might
2 happen to him?

3 A No, I did not.

4 Q But did you give him a statement to sign? Did he do
5 anything in writing?

6 A He did not.

7 Q Did you offer him to write his statement out?

8 A I couldn't. He'd stopped the interview.

9 Q Pardon?

10 A I couldn't. He stopped the interview.

11 Q I mean before that point?

12 A No.

13 Q Thank you.

14 MR. FLOYD: No further questions.

15 MR. HUBBARD: Nothing else, Your Honor.

16 THE COURT: Yes, sir. You may step down.

17 MR. EDWARDS: Thank you.

18 THE COURT: Your next witness.

19 MR. HUBBARD: Your Honor, there are no other
20 witnesses from the from the State.

21 THE COURT: All right. By the Defense?

22 MR. FLOYD: No witnesses, Your Honor.

23 THE COURT: Any argument by the Defense?

24 MR. FLOYD: No argument, Your Honor.

25 THE COURT: All right. I find by the

1 preponderance of the evidence that the statements given
2 pursuant to Miranda were freely and voluntarily given after
3 the Defendant had been apprised of his Miranda Rights. The
4 statements that were not given subject to Miranda were
5 voluntary statements made by the Defendant when he was not
6 being questioned subject to a custodial interrogation, just
7 simply voluntary statements. But when the Defendant
8 asserted his Miranda Rights, the questioning stopped. So
9 all the statements that I've heard thus far are admissible.

10 All right. What other kind of preliminary matters do
11 we have?

12 MR. HUBBARD: Your Honor, the only thing that I
13 know that's left is we gave Your Honor a copy of mainly
14 photographs, some exhibits we're going to introduce.

15 THE COURT: Right.

16 MR. HUBBARD: And then we also have -- I believe
17 there's a search -- there was a search warrant obtained the
18 search of the Defendant's car. And I believe that Mr. Floyd
19 will have a suppression motion on that. That's my
20 understanding, Your Honor.

21 THE COURT: All right.

22 MR. FLOYD: And that's correct, Your Honor.

23 THE COURT: And when do you want to do that
24 suppression motion? Is that something that comes during the
25 course of the trial or do you want to do it as a pretrial or

1 what?

2 MR. FLOYD: We did it pretrial last time.

3 MR. HUBBARD: We're prepared to do that after
4 lunch, Your Honor. There's approximately five witnesses
5 that would deal with the search warrant issue.

6 THE COURT: All right. Okay. We'll take lunch
7 now then and come back about 2:15 or so?

8 MR. HUBBARD: Yes, sir.

9 MR. FLOYD: Thank you, Judge.

10 THE COURT: All right.

11 (Court in recess for lunch at 1:07
12 p.m.)

13 (Court in session after lunch at
14 2:15 p.m.)

15 MR. HUBBARD: Judge, I'm just pre-marking these
16 two search warrants.

17 THE COURT: All right.

18 (Court's Exhibit No. 1 was marked.)

19 (Court's Exhibit No. 2 was marked.)

20 MR. HUBBARD: Thank you, Your Honor.

21 THE COURT: Sure. All right. Ready for the next
22 matter?

23 MR. HUBBARD: Yes, Your Honor. The State's ready
24 to address Mr. Floyd's motion, the suppression motion
25 regarding the search of the Defendant's vehicle.

1 THE COURT: All right. What is the motion, Mr.
2 Floyd?

3 MR. FLOYD: Your Honor, the motion is to suppress
4 any evidence seized as a result of the Defendant's vehicle
5 as it was based upon a search warrant that was defective in
6 its form and its issuance.

7 THE COURT: All right. Any opening comments
8 regarding that before witnesses?

9 MR. HUBBARD: Yes, sir, Your Honor. Just briefly.
10 What we'll intend on offering, Your Honor, is, I believe,
11 five witnesses. Several of them are going to be witnesses
12 offered about the search warrant on the vehicle. There's
13 also going to be talk about a search warrant prior to that
14 vehicle, of a residence belonging to the victim. So Your
15 Honor knows where we're going with that, all of that's going
16 to relate to this search warrant on the car. But the
17 State's going to make two other alternative arguments in
18 addition to this search warrant. Is whether or not concede
19 that the search warrant of the car on the face of the search
20 warrant affidavit is invalid. So you're going to hear about
21 a search warrant at the house issued by the same issuing
22 magistrate. We have that magistrate present as well to talk
23 about the probable cause that he had received earlier in
24 this same case. And then we'll get to the search warrant on
25 the house. The alternative arguments will also be -- the

1 item in dispute was in plain view in the vehicle. So we'll
2 have an officer talking about that. And then finally an
3 inventory search because the car's getting seized regardless
4 because the Defendant was in custody. So that's what we're
5 going to end up talking about, Your Honor. That there were
6 two items that were actually seized out of the car, that are
7 of evidentiary value. One is a Coca-Cola Collectible Set.
8 The other is a small knife that was underneath that box,
9 that Coca-Cola Collector set. Those are going to be the two
10 tested items that were seized.

11 THE COURT: Okay. And you say that you're -- the
12 State's conceding the search warrant on the vehicle was
13 defective?

14 MR. HUBBARD: Yes, sir. On its face, yes, sir.

15 THE COURT: On its face.

16 MR. HUBBARD: The written warrant.

17 THE COURT: The written warrant?

18 MR. HUBBARD: Yes, sir. There will be some
19 supplementation, not much but we're going to rely on some
20 case law talking about warrants being issued simultaneous or
21 in proximate, approximate time.

22 THE COURT: All right. Call your first witness.

23 MR. HUBBARD: Right. And, Your Honor, just so I'm
24 clear, make it clear to Your Honor, we're not saying these's
25 no probable cause. We're just saying that the affidavit is

1 deficient.

2 THE COURT: All right.

3 MR. HUBBARD: Thank you, Your Honor.

4 THE COURT: Okay. Very good. And your first
5 witness.

6 MR. HUBBARD: The State calls Matt Edwards to the
7 stand.

8 THE CLERK: For this I re-swear, Your Honor?

9 THE COURT: I don't think it's necessary, he's
10 already under oath.

11 THE CLERK: All right, sir.

12 Just state your full name and spell your last for the
13 record again, please?

14 MR. EDWARDS: Matt Edwards, E-D-W-A-R-D-S.

15 MATT EDWARDS - DIRECT EXAMINATION

16 BY MR. HUBBARD:

17 Q Major Edwards, you had testified earlier that you were
18 a detective involved with the investigation of this case
19 back on April 22 of 2005; is that correct?

20 A Yes, sir.

21 Q Tell the Court how you initially became involved in the
22 case that morning?

23 A I got called out by Captain Owens who had been
24 mentioned previously, who was directing this investigation
25 that morning on the 22nd at 6:17. I got out to the 1737

1 Decree Avenue, the site of this crime at 6:53. And I met
2 with investigator Neely who brought me up to speed. I was
3 asked to do the search warrant at the time for the house or
4 asked to type the search warrant and get it signed.

5 Q Going back to 6:17 a.m., that's the first time you
6 heard about this case. What were you told at that time?

7 A I was told that we had a person beaten to death and
8 that I needed to come out and help them on the crime scene.

9 Q The next time that you have is you said you met with
10 Investigator Neely. Who is that?

11 A Investigator Neely was the lead investigator at the
12 time. And he would have been the investigator that was on
13 call the night of the crime.

14 Q Okay. And what time did you say that he requested you
15 to prepare a search warrant?

16 A He asked me at 6:53 during our conversation, when I got
17 there.

18 Q Okay. Did you go over to 1737 Decree Street?

19 A Yes, sir. That's where we met was at 1737 Decree
20 Street. And then that's where I took the pictures and got
21 the information I needed to do the search warrant.

22 Q When you say the pictures, you were inside or outside?

23 A Outside.

24 Q You were just taking a picture of the house ---

25 A Right. So I can describe it for the body of the

1 premises to be searched.

2 Q And did you in fact prepare a search warrant?

3 A I did.

4 Q Let me show you what's already been pre-marked as
5 Court's Exhibit No. 2. I ask if you recognize that
6 document?

7 A I do.

8 Q And what is that document?

9 A That's the search warrant for 1737 Decree Avenue.

10 Q And the search warrant's comprised of a cover sheet
11 that says search warrant; is that correct?

12 A That's right.

13 Q The next page is the search warrant itself that would
14 have been signed by the magistrate?

15 A That's right.

16 Q The next page here is an affidavit, which is your sworn
17 statement as to your understanding of the probable cause and
18 what you were looking for?

19 A That's right.

20 Q And then the last page of this Court's Exhibit is the
21 return, being the items that were taken pursuant to the
22 search warrant; is that correct?

23 A Correct.

24 Q In the process of preparing the search warrant, you
25 prepared the first three documents. The return gets done

1 later; correct?

2 A Right.

3 Q The first thing you would do would be to prepare the
4 search warrant is that -- I mean, excuse me, the affidavit;
5 is that correct?

6 A Correct.

7 Q And this is a document that has several components.
8 You typed this up or printed it out on a computer yourself?

9 A I did.

10 Q As far as a description of the property you sought,
11 what did you put in there?

12 A I'll read it verbatim. Any and all materials related
13 to a possible homicide and sexual assault, including any
14 objects that could have been used as a weapon to inflict
15 injury and/or death upon the victim. This also includes but
16 is not limited to any and all items that could have been
17 used before, during and after a sexual assault, including
18 all clothing, beddings and bodily fluids.

19 Q So at the time this affidavit was prepared, what did
20 you know about Gerald Stewart? Was he alive or was he dead?

21 A He was dead.

22 Q Did you know about the position his body was found?

23 A I did.

24 Q And EMS had already been on scene when the body was
25 discovered; correct?

1 A Correct.

2 Q So you had an idea of the injuries?

3 A Yes.

4 Q In addition, you were aware that Mr. Phillips and Mr.
5 Prather had reported to Lexington Medical Center requesting
6 a rape kit; is that correct?

7 A That's correct.

8 Q And that's in fact when they talked about that is how
9 the officers were sent to go check on 1737 Decree Street?

10 A That's right.

11 Q The description of the premises, the next section in
12 here, what did you type in as to what was being search?

13 A I'll read it verbatim again, but the residence at 1737
14 Decree Avenue in the City of West Columbia, to include but
15 not limited to any and all out buildings and vehicles
16 located on the property. The residence is described as a
17 red, in color, brick house with no shutters. The numbers
18 1737 are above the door and a patio with a black wrought
19 iron railing in front of that door. There is another white
20 entry door on the left front of the house. It also has an
21 attached carport, with three open sides on the left.

22 Q And, finally, the third body of the affidavit says,
23 reasons for affiant's belief that the property sought was on
24 the subject premises. What did you type in there?

25 A Again, verbatim. West Columbia Police Officers

1 responded to the Lexington County Hospital in reference to a
2 male requesting a rape protocol kit, because he was unsure
3 if he'd been raped. He was in the company of another male
4 and they stated that there was an injured man at 1737 Decree
5 Avenue. West Columbia officers went to the residence at
6 1737 Decree Avenue and knocked on the door but got no
7 response. An officer then climbed through the kitchen
8 window and found the victim lying on the couch. EMS units
9 arrived on the scene and pronounced the victim dead.
10 Officers secured the scene and called for investigators.
11 Investigators are looking for any and all evidence to help
12 officers determine the cause and manner of death of Gerald
13 Michael Stewart.

14 Q There's a blank line where the signature is on top of
15 the word affiant in the bottom right corner. Whose
16 signature is that?

17 A That's my signature.

18 Q Over on the left bottom side, it says sworn to and
19 subscribed before, and it has a date. What was the date?

20 A April 22, 2005.

21 Q And there's a Judge's signature. What Judge signed
22 that?

23 A Judge Scott Whittle.

24 Q Scott Whittle. The other part as far as this hearing
25 is concerned, is the search warrant itself. What's the

1 purpose of this page?

2 A It's repetitive on the first page of the search
3 warrant, but it gives the description of the premises and
4 the description of the property.

5 Q And there's a -- it says that an inventory will be made
6 to which Judge?

7 A Whittle.

8 Q And whose handwriting is that in?

9 A That's Whittle's signature.

10 Q At the bottom left, it has a place for the city and a
11 date. What city is written in there?

12 A It says Cayce. And the date ---

13 Q The date?

14 A The date is April 22, 2005.

15 Q And the handwriting on there belongs to?

16 A Judge Whittle.

17 Q On the bottom right it says signature of Judge. Whose
18 signature is that?

19 A Judge Whittle's.

20 Q So once you prepared the search, it would have been
21 absent the Judge's signatures. You would have done that at
22 headquarters?

23 A Correct.

24 Q Once you typed it up, it was reviewed; is that correct?

25 A Right.

1 Q Once it was typed up and reviewed, you went over to
2 Judge Whittle's office; is that correct?

3 A That's right.

4 Q Tell me what happened or tell Your Honor what happens
5 once you get over and see Judge Whittle.

6 MR. EDWARDS: Your Honor, I met over at Judge
7 Whittle's Office at 8:53 that same morning. This was the
8 Cayce West Magistrate's Office. I presented the search
9 warrant to him and described the probable cause to him. He
10 signed it and I took it back to 1737 Decree Avenue.

11 BY MR. HUBBARD:

12 Q Once you show up with a warrant in your hand and you
13 say, Judge, I've got a warrant, do you have a conversation
14 with him? Are you put under oath or how does the process
15 work?

16 A Put under oath and then just tell him what we're
17 working on, what we've got, what our probable cause is.
18 And, of course, you're sworn to it and then he signed off on
19 it.

20 Q In addition to what's written down in your affidavit,
21 once you were placed under oath, did you inform the Judge of
22 anything else that's not in the warrant?

23 A I informed him that the Defendant and co-defendant had
24 the victim, Mr. Stewart's wallet at the hospital. I also
25 told him that the Defendant had given information to the

1 hospital staff that they had beat the man and didn't know if
2 he was dead or alive.

3 Q Anything else?

4 A No.

5 Q What time was it when you met with Judge Whittle?

6 A That was at 8:53 in the morning.

7 Q On April ---

8 A On April 22, 2005.

9 Q Thank you, Major. Please answer any questions Mr.
10 Floyd has.

11 A Yes, sir.

12 MATT EDWARDS - CROSS-EXAMINATION

13 BY MR. FLOYD:

14 Q Major Edwards, what time was the search warrant issued,
15 the one for the house?

16 A The search warrant was 8:53.

17 Q 8:53?

18 A Yes, sir.

19 Q That was just for the house on Decree Street; is that
20 correct?

21 A Yes, sir.

22 Q And the only information the magistrate had in that
23 warrant is whatever was in your typed affidavit, and then
24 what you just said about the hospital where the information
25 had been passed on about them beating?

1 A That's correct.

2 Q And that they had the wallet?

3 A I'm sorry, sir?

4 Q And that they had the wallet?

5 A Yes, sir.

6 Q That's all. Now, did you have anything to do with the
7 issuance of the later search warrant on the vehicle?

8 A I did not. I briefed the officer that obtained the
9 search warrant, but I didn't get it myself or serve it.

10 Q Yeah. As to the affidavit, did you type the affidavit
11 for the search warrant or did the Judge type it out? How
12 was that handled?

13 A This search warrant, I typed it.

14 Q You typed it. Before you went over there, I guess?

15 A Yes, sir.

16 Q Okay. Thank you.

17 A Yes, sir.

18 MR. FLOYD: I have no questions.

19 MR. HUBBARD: Nothing further from ---

20 THE COURT: Thank you, sir.

21 MR. EDWARDS: Yes, sir.

22 MR. HUBBARD: I beg the Court's indulgence. The
23 State calls Chris Bailey to the stand.

24 (WHEREUPON, Christopher Bailey was
25 sworn to tell the truth.)

1 THE CLERK: Have a seat, please, sir. Once you're
2 seated state your full name, spelling your last.

3 MR. BAILEY: Christopher Lowell Bailey, B-A-I-L-E-
4 Y.

5 CHRIS BAILEY - DIRECT EXAMINATION

6 BY MR. HUBBARD:

7 Q Deputy Bailey, where do you work?

8 A Richland County Sheriff's Office.

9 Q And how long have you been working there?

10 A A little under a year.

11 Q Back in April of 2005, where were you working?

12 A West Columbia.

13 Q What was your responsibility in West Columbia at that
14 time?

15 A I was a narcotics investigator.

16 Q Do you recall April 22, 2005 being tasked with doing
17 some work on the case involving the murder of Stewart,
18 Gerald Stewart?

19 A Yes, sir.

20 Q Now, I asked you about Gerald Stewart, did you know him
21 by another name?

22 A Yes, sir. His street moniker was Radar.

23 Q So you'd had dealings with him or your office had had
24 dealings with him?

25 A Yes, sir, through narcotics investigations.

1 Q Okay. Was he someone that would help?

2 A I'm sorry?

3 Q Was he someone that would help in those investigations?

4 A Yes, sir.

5 Q Okay. Now, did you hear -- on that date, were you
6 aware of the circumstances of what had occurred at the house
7 and the events that occurred at the hospital?

8 A Yes, sir. I was briefed by Investigator Matt Edwards,
9 Frankie Neely and Mark Jones.

10 Q Okay. What did you know about this case after being
11 briefed?

12 A That a homicide had taken place at Decree and a
13 possible suspect they were looking at used a vehicle to go
14 to the hospital. And he was currently being detained.

15 Q Okay. You said, at the hospital. You mean Lexington
16 County Hospital?

17 A Yes, sir.

18 Q Were you aware of the facts at the house about how
19 Gerald Stewart or Radar, as you know him, how he was found?

20 A Yes, sir. He'd been beaten really bad and was found
21 face down and he had something carved in his back.

22 Q Okay. Were you aware of how your officers or officers
23 from your office had made entry into the house?

24 A Yes, sir. I believe it was two road officers entered
25 through the window.

1 Q Okay. And they're the ones that located Gerald
2 Stewart?

3 A Yes, sir.

4 Q And you were aware he was deceased?

5 A Yes, sir.

6 Q Now, as far as the suspects at the hospital, the people
7 at the hospital, were you aware there was one or two people
8 there?

9 A There was two. One was a possible victim of CSC and
10 the other one was the possible suspect we were looking at.
11 I believe he was detained at headquarters at the time that I
12 came into the investigation.

13 Q So by the time you got in the picture, Mr. Prather, the
14 other person, was already detained?

15 A Yes, sir.

16 Q He was already at headquarters?

17 A Yes, sir.

18 Q What were you asked to do in relation to this case at
19 that time?

20 A I think it was Frankie Neely, who typed up the search
21 warrant. And I was asked to take it to Judge Whittle -- he
22 had already previously signed a warrant in reference to this
23 case -- and get it signed for the vehicle that was at the
24 hospital.

25 Q So you were aware Judge Whittle had already signed a

1 search warrant on the house?

2 A Correct.

3 Q And I want to show you this search warrant, Court's
4 Exhibit No. 1. You just hang onto that while I ask you some
5 questions about it. That's the search warrant you took to
6 Judge Whittle?

7 A Yes, sir.

8 Q What is the description of the property you're looking
9 to search? What's the thing you're searching?

10 A A 1987, blue in color, Toyota four-door automobile
11 bearing South Carolina Registration 11SND, and then VIN
12 Number JT2SV21E2H123222.

13 Q Okay. And then the description of the property you
14 were looking for inside that vehicle, what is that listed
15 as?

16 A Any and all clothing, weapons, fingerprints, blood,
17 written or typed papers, fibers, photos, and any paperwork
18 showing ownership to the vehicle or anything else that could
19 be used in the commission of the crime of murder.

20 Q Now, the crime of murder, at that point Deputy Bailey,
21 are y'all aware of any other crimes that may have been
22 committed in relation to Gerald Stewart?

23 A (No response).

24 Q Let me ask you, were you aware of an armed robbery or a
25 burglary at that point in time?

1 A No, sir.

2 Q The only crime you knew was the murder?

3 A Correct.

4 Q Now, on the affidavit page, the description of the
5 premises or the property to be located. How do you have
6 that?

7 A I'm sorry. Affidavit page?

8 Q Yeah. Let me start at the top. Property sought again.
9 Do you repeat ---

10 A Yes.

11 Q --- the property you're seeking from the vehicle?

12 A Yes. Correct.

13 Q Description of the premises are really the car, you
14 repeat the vehicle and the VIN Number?

15 A Correct.

16 Q Now, the affidavit, will you read the actual affidavit
17 portion or the reason for the search?

18 A Yes, sir. The above vehicle transported a victim from
19 the crime scene to Lexington Hospital for treatment.

20 Q Okay. And that's all the affidavit says?

21 A Yes, sir.

22 Q Now, when you walked in and presented this to Judge
23 Whittle, did you have a conversation with Judge Whittle?

24 A Yes, sir.

25 Q And did he place you under oath?

1 A Yes, sir.

2 Q Did you have a conversation with him when you were
3 under oath?

4 A Yes, sir, in reference to the case, Decree Street, the
5 1700 block.

6 Q Could you tell whether he was aware of what the search
7 warrant was -- what it was about?

8 A Yes, sir. It was my impression he'd already signed a
9 search warrant earlier and he was just asking additional
10 details as far as in reference to the vehicle.

11 Q Specifically, what did he ask about this vehicle?

12 A Was it the vehicle involved on Decree Street? And was
13 it the vehicle that the person we were looking at, Mr.
14 Prather, is that the vehicle that he used to go to the
15 hospital.

16 Q So the Judge related the car back to the house address?

17 A Correct.

18 Q And asked you is this the same case?

19 A Correct.

20 Q He relates it back to the same suspect?

21 A Correct.

22 Q Or to the suspect that drove the vehicle?

23 A Correct.

24 Q And he signed that search warrant?

25 A Yes, sir.

1 Q If you look at the return, you see the time up there?
2 April 22, 2005 at what time does that say?

3 A 2:15 p.m.

4 Q Okay. And then the items listed there that were found
5 -- let me ask you this. Who actually executed the search
6 warrant?

7 A It would be the agents from SLED.

8 Q Okay.

9 A Mr. Gantt or Stuckey.

10 Q Okay. So SLED's the one that actually executed it?

11 A Yes, sir.

12 Q Once you got hold of this search warrant, what, if
13 anything, did you do?

14 A I notified over the radio that I had the search
15 warrant. And then I handed it off to the SLED Agents who
16 processed the car.

17 Q Okay. And let me ask you, since you've got it in front
18 of you and it's a Court's Exhibit, will you just read for
19 the Court -- looks like seven items are found there. Can
20 you read those on the return?

21 A Yes, sir. Number one, one small black-handled knife.
22 Number two, one Jiffy Lube receipt. Number three, one
23 paycheck stub payable to Robert Jared Prather. Number four,
24 one Coca-Cola 75th Commemorative Box with contents. Number
25 five, one light undershirt. Number six, one light tee

1 shirt. Number seven, one tan coat.

2 Q And SLED executed that search warrant?

3 A Yes, sir.

4 MR. HUBBARD: I beg the Court's indulgence.

5 No further questions of this witness, Your Honor.

6 THE COURT: Mr. Floyd.

7 CHRIS BAILEY - CROSS-EXAMINATION

8 BY MR. FLOYD:

9 Q Officer Bailey, when did you last work in West
10 Columbia?

11 A The end of 2007 beginning of 2008, if memory serves.

12 Q And you had this trial -- this first trial was in 2009?

13 A Yes, sir.

14 Q You weren't here, were you?

15 A No, sir. I was overseas.

16 Q And how long were you overseas?

17 A Two years. From 2008 to 2010.

18 Q And we're talking about events that occurred seven
19 years ago, are we not?

20 A Yes, sir.

21 Q Did you make any notes?

22 A No, sir.

23 Q In fact, you didn't make any kind of statement in
24 connection with this matter, did you?

25 A No, sir.

1 Q Are you just remembering all of this from your memory?

2 A Yes, sir.

3 Q Okay. And you never wrote it down?

4 A Not that I recall.

5 Q And you're testifying to a conversation you had with
6 Judge Whittle back in 2007?

7 A Yes, sir.

8 Q But you made no notes of it?

9 A No, sir.

10 Q All you had was a warrant?

11 A (No response).

12 Q You've got it up there with you?

13 A Yes, sir.

14 Q All you have is a warrant and it talks about a victim
15 being transported to the hospital; is that correct?

16 A Yes, sir.

17 Q That doesn't say anything about who the victim is, does
18 it?

19 A No, sir.

20 Q It doesn't say what the person's a victim of?

21 A No, sir.

22 Q In fact, it doesn't say anything about Decree Street at
23 all, does it?

24 A No, sir.

25 Q Doesn't say anything about Gerald Stewart?

1 A No, sir.

2 Q You're testifying that the magistrate put you under
3 oath?

4 A The magistrate, yes, sir.

5 Q And what did he ask you?

6 A He asked me was the vehicle related to the Decree
7 incident? And he asked me a couple other questions I don't
8 remember the detail of.

9 Q So you don't remember everything about that
10 conversation?

11 A No, sir. Definitely not.

12 Q And how were you placed under oath?

13 A Raising my hand, swearing to tell the truth. In fact,
14 I think he asked me was this the Jesus truth if I remember
15 correctly.

16 Q You also made no notes; right?

17 A No, sir, not that I recall.

18 Q You made no written statement?

19 A Excuse me?

20 Q You made no written statement?

21 A No, sir.

22 Q And you had no involvement in this case until when?
23 When were you contacted about this trial?

24 A I believe I came in on a late shift to work narcotics
25 and was asked to assist with this case?

1 Q I mean since the time of the incident? When were you
2 called, when did you have contact about testifying today?

3 A Several times, maybe a week before today.

4 Q So within the last couple weeks?

5 A Yes, sir.

6 Q And up to that point in time, you'd had no involvement
7 in this case for seven years?

8 A Yes, sir. That's correct.

9 Q Nothing?

10 A Well, no, I'll take that back. I think it was set to
11 go to trial one time before in September of this year and I
12 came up for that.

13 Q So that would still be seven years, wouldn't it?

14 A Yes, sir.

15 Q And not talk to anybody about it in seven years?

16 A I don't recall. I wouldn't have any reason to talk to
17 anybody about it.

18 Q Thank you.

19 MR. FLOYD: No further questions, Your Honor.

20 MR. HUBBARD: One quick follow-up.

21 CHRIS BAILEY - REDIRECT EXAMINATION

22 BY MR. HUBBARD:

23 Q Deputy Bailey, you remember last year coming and
24 sitting in my office? I believe you might have been at
25 school at the time?

1 A Correct.

2 Q Okay. Does that refresh your memory?

3 A Yes, sir.

4 Q So we have met before?

5 A Yes, sir.

6 Q And it was on this case?

7 A Yes, sir.

8 Q Okay. Thank you.

9 MR. HUBBARD: I have no further questions.

10 THE COURT: Anything else?

11 CHRIS BAILEY - RECROSS-EXAMINATION

12 BY MR. FLOYD:

13 Q So it might have been six and a half years?

14 A Yes, sir.

15 MR. FLOYD: Thank you.

16 THE COURT: All right. Thank you, sir.

17 MR. HUBBARD: The State calls Scott Whittle.

18 (WHEREUPON, Scott Whittle was sworn

19 to tell the truth.)

20 THE CLERK: If you'll have seat. State your name,
21 spelling your last for the record, please?

22 MR. WHITTLE: Scott Whittle, W-H-I-T-T-L-E.

23 SCOTT WHITTLE - DIRECT EXAMINATION

24 BY MR. HUBBARD:

25 Q Judge Whittle, where are you employed, sir?

1 A I work for Lexington County. I'm a Magistrate assigned
2 to the Swansea Office at this time.

3 Q How long have you been a magistrate?

4 A February will be seventeen years.

5 Q As a Magistrate in Lexington County, what were and are
6 your job responsibilities?

7 A We have civil and criminal jurisdiction in matters,
8 criminal jurisdiction's up to thirty days and five hundred
9 dollars. And then civil jurisdiction up to seventy-five
10 hundred dollars. We do claim and deliveries, evictions,
11 sign arrest warrants, search warrants.

12 Q Search warrants. Part of your job has to do with
13 dealing with the police and signing off on search warrants?

14 A That's correct, yeah.

15 Q Back in the April, in fact, on the 22nd of 2005, you
16 were a magistrate?

17 A Yes.

18 Q Did part of your area include the West Columbia area at
19 that time?

20 A At that time, I was assigned to the Cayce/West Columbia
21 Office, yes.

22 Q And do you remember West Columbia coming to you
23 regarding search warrants, regarding a murder on 1737 Decree
24 Avenue in West Columbia?

25 A I do, yes.

1 Q Let me show you what's already been marked as State's
2 Exhibit No. 2 and ask if you recognize this -- excuse me --
3 Court's Exhibit No. 2 and ask if you recognize that?

4 A Yeah. This is a search warrant that was issued by me
5 on April the 22nd for a residence at 1737 Decree Avenue in
6 the City of West Columbia.

7 Q On the affidavit, do you recognize your signature on
8 the affidavit page?

9 A Yes, sir, sure do.

10 Q And do you remember the officer who came to you and was
11 put under oath with that affidavit?

12 A Yes, I do.

13 Q And who was that?

14 A Matt Edwards.

15 Q And, in fact, you ended up issuing the search warrant
16 on that case; is that correct?

17 A I did, yes.

18 Q On the second page of that, I believe is the actual
19 search warrant and that's your signature?

20 A Yes, sir. Yeah.

21 Q In addition to what's typed in the affidavit -- well,
22 prior to the affidavit being sworn, what, if anything, did
23 you do as far as putting Detective Edwards under oath?

24 A I ask to them to raise their right hand, you swear the
25 information that's give here is the truth, so help you God?

1 And we discuss what's contained in the search warrant and
2 any other questions or information we may have.

3 Q In addition to what's in the affidavit and their
4 request for the search warrant, do you remember having any
5 other conversations with Detective Edwards at that time?

6 A Not in particular. I remember bits and pieces of
7 things that came to light. Now, whether they came to light
8 during this conversation, you know, I'm not -- I remember
9 that they had a homicide that they were investigating, a
10 sexual assault, and just various tidbits, I guess, how I'd
11 have to classify it. But I don't -- I remember him coming
12 and getting the warrant, yes.

13 Q So he had ---

14 A He would have ---

15 Q I know you may not remember the exact comments he said
16 today. There was some conversation had ---

17 A Absolutely. Over and above, yes. Always over and
18 above the ---

19 Q Is that a normal practice for you to have conversations
20 with officers?

21 A I like to be very clear.

22 Q Let me show you what's been marked as Court's Exhibit
23 No. 1 and ask if you recognize that search warrant?

24 A This is the search warrant that I issued for the
25 vehicle that was -- it was located at the hospital as I

1 understood it, when they were getting the search warrant.

2 Q So this Court's Exhibit No. 1 that you're looking at is
3 the second search warrant that came to you?

4 A For the vehicle.

5 Q Do you remember the officer who came?

6 A Yeah.

7 Q And who is that?

8 A Chris Bailey.

9 Q Chris Bailey. That was the officer who testified just
10 a few minutes ago?

11 A Sure. Sure.

12 Q In looking at the warrant itself, Court's Exhibit No.
13 1, you're again seeing your signature on there?

14 A Yes, sir. Sure.

15 Q You issued the warrant finding that there was probable
16 cause; is that correct?

17 A Correct, yeah.

18 Q Looking at the affidavit page, what did Officer Bailey
19 write down as the affidavit for the, for what he was looking
20 for and why?

21 A It says the above vehicle transported a victim from the
22 crime scene to Lexington Hospital for treatment. And that,
23 along with the information that I was already privy to at
24 the search warrant and the other conversations that we had
25 during that time, I issued the search warrant.

1 Q Well, what, if any, information did you have regarding
2 this car being related to the Decree Street alleged sexual
3 assault and murder that was being investigated?

4 A In particular, what I do remember is that there was a
5 item, a Coca-Cola item that was in plain view in the
6 vehicle. And they were standing with it at the hospital and
7 saw that item in plain view of the vehicle. For some
8 reason, that stands out. I do remember that part of it.

9 Q But do you know who told you that?

10 A I don't recall at this time. It would have occurred
11 some time between Edwards and Bailey.

12 Q Are you saying -- do you know whether Officer Bailey
13 told you that when he was under oath?

14 A I do not know. I can't tell you. One or the other
15 informed me of that. Who it was, I can't tell you which one
16 it was, but I was aware of that.

17 Q Do you remember having a conversation with Officer
18 Bailey after he was placed under oath?

19 A Sure.

20 Q Do you remember specifically anything that he said or
21 that you asked him?

22 A Not in particular, no, I do not. Not at this point. I
23 mean, like I said I do remember -- it would have occurred
24 during this conversation because the vehicle was being --
25 somebody was standing by with the vehicle. They were

1 looking in the vehicle and saw in plain view a Coca-Cola
2 memorabilia type thing that they were aware that came from
3 the victim's residence.

4 Q There's no question that this vehicle, the search
5 warrant for what was issued was related to ---

6 A No, I absolutely -- I absolutely knew that these were
7 related, yeah. Sure.

8 Q Do you remember speaking to anybody else, either on the
9 phone or were sworn, officers sworn in front of you, other
10 than Matt Edwards and Chris Bailey?

11 A Do not. I don't remember that, no. I don't know
12 whether I did or not.

13 MR. HUBBARD: Thank you, Judge. Please answer any
14 questions Mr. Floyd has?

15 A Thank you.

16 SCOTT WHITTLE - CROSS-EXAMINATION

17 BY MR. FLOYD:

18 Q Judge Whittle.

19 A Mr. Floyd.

20 Q You don't remember any details of your conversation
21 with Officer Bailey, do you?

22 A Not in particular. I can tell you that I -- the
23 information that I gleaned from those. As far as the
24 particular conversation, no, I can't tell you what
25 particularly we talked about, other than the memorabilia and

1 things in the vehicle that they were standing by with.

2 Q Now, there's no mention of the memorabilia in there, in
3 the warrant is there?

4 A No, sir.

5 Q There's no mention of a robbery in the warrant, is
6 there?

7 A No, sir.

8 Q In fact, all the warrant talks about is murder; is that
9 correct?

10 A Yes, sir. From the crime scene and the murder, yeah.

11 Q And it doesn't mention anything about any type of Coca-
12 Cola items, does it?

13 A No, sir, it does not.

14 Q And the only people that you would have spoken to would
15 be Officer Bailey and Officer Edwards?

16 A To the best of my recollection, yes, sir.

17 Q And your conversation you had with Officer Edwards
18 would have been one about a little before 9:00 that morning?

19 A That's correct, yeah.

20 Q And then you would have seen Officer Bailey, I guess
21 around the time the second warrant was issued, around 2:00?

22 A I'm not sure what time it was. You know, it was after
23 that I know. And it being a homicide case, it certainly
24 stuck with me throughout the day.

25 Q Thank you.

1 A Yes, sir.

2 MR. FLOYD: No further questions, Your Honor.

3 THE COURT: All right.

4 MR. HUBBARD: Nothing else, Your Honor.

5 THE COURT: Thank you, sir.

6 MR. WHITTLE: Thank you, Your Honor.

7 MR. HUBBARD: The State calls Glenn Frick.

8 (WHEREUPON, Glenn Frick was sworn
9 to tell the truth.)

10 THE CLERK: If you'll have a seat and state your
11 name, please, for the record.

12 MR. FRICK: Glenn Frick, F-R-I-C-K.

13 GLENN FRICK - DIRECT EXAMINATION

14 BY MR. HUBBARD:

15 Q I want to say Officer Frick, but where do you work now?

16 A I work for the South Carolina Athletic Commission.

17 Q Where did you work back in 2005?

18 A West Columbia Police Department.

19 Q How many years were you with West Columbia?

20 A Seventeen.

21 Q And did you retire from there?

22 A Yes, sir, I did.

23 Q Back in April 22, 2005, do you remember being tasked
24 with the responsibility of going to the Lexington Medical
25 Center?

1 A Yes, sir, I was.

2 Q What was the purpose of that?

3 A Captain Tommy Owens sent me up there to hold
4 surveillance, I guess you would say, on a blue Toyota.

5 Q Okay. And were you aware of them having suspects up
6 there that they were bring back to question and aware of
7 anything that might have happened on Decree Street?

8 A The only thing I knew on Decree, that there had been a
9 beating and the subject was deceased.

10 Q Is that Gerald Stewart?

11 A That would be Gerald Stewart, yes, sir. I would know
12 him as Radar.

13 Q In fact, you and Gerald Stewart knew each other for a
14 while?

15 A Yes, sir, we did.

16 Q Okay. But your job that day was to go up and basically
17 sit on this blue Toyota, make sure nobody tampered with it
18 or messed with it?

19 A Right. Yes, sir.

20 Q And how long were you supposed to be waiting or sitting
21 on this vehicle? What was supposed to be going on?

22 A At the time, it was an investigation going on and then
23 I learned later by a telephone call from Captain Owens that
24 a search warrant was being obtained for the vehicle.

25 Q Okay. Once you learned that there was a search warrant

1 that was being obtained for the vehicle, what did you do?

2 A I went ahead and got my camera out and took some
3 pictures of the vehicle, as to where it was sitting. Make
4 sure that people would know that it was in the parking lot
5 of the emergency room there at the hospital.

6 Q Okay. What's the purpose of doing that?

7 A For identification. I was an accident
8 reconstructionist. I knew pretty much about cars and I just
9 wanted to make sure that it was parked where it was parked.

10 Q Did it also show that no one had tampered with the
11 vehicle while you're there?

12 A Right, sir. Uh-huh (affirmative).

13 Q I'm going to show you, one, two, three, four
14 photographs.

15 MR. HUBBARD: And, Your Honor, I believe those are
16 in that notebook we gave you under Glenn Frick's tab.

17 Q Who took those photographs?

18 A These are photos that I had taken at the hospital.

19 Q Okay. And that's the vehicle that you were sitting on?

20 A Yes, sir. That was the vehicle I was told to go up and
21 make sure no one tampered with it.

22 Q Okay. And I notice you took a photo of the tag?

23 A Yes, sir.

24 Q And this last photo, this photo --

25 MR. HUBBARD: And I tell you what, let me go ahead

1 and mark these for the court reporter and for the Court.

2 COURT REPORTER: You want them separately or
3 together?

4 MR. HUBBARD: Let's do them separately.

5 COURT REPORT: Okay.

6 MR. HUBBARD: And, Your Honor, if I may just have
7 these as Court's ID.

8 THE COURT: Or as State's ID.

9 (State's Exhibit No. 2, photo
10 vehicle tag, was marked for ID.)

11 (State's Exhibit No. 3, photo
12 vehicle, was marked for ID.)

13 (State's Exhibit No. 4, photo LMC
14 Emergency Room entrance, was marked for ID.)

15 (State's Exhibit No. 5, photo
16 vehicle interior, was marked for ID.)

17 Q Now, Mr. Glenn, State's ID No. 2, does that show the
18 tag on the vehicle?

19 A Yes, sir, it does.

20 Q State's ID 3, is that just a side view of where it was
21 parked?

22 A Yes, sir. That's the passenger's side.

23 Q State's ID 4, does that show a little bit more distance
24 shot showing the emergency room exit as well or the
25 entrance?

1 A That's the emergency room and also my vehicle parked
2 there in front of the Toyota.

3 Q Okay. Which vehicle was yours?

4 A The white Ford.

5 Q Okay. Now, this last photo, I'm going to show you
6 photo, State's ID 5. Can you explain that shot? It's kind
7 of an unusual looking shot?

8 A Yes, sir. As I walked around the vehicle I noticed
9 laying on the floorboard a commemorative Coke box. And I
10 thought I should take a picture of that because it was
11 sitting out. I didn't want it to be moved during transport,
12 to where it would be under the seat or anything like that.

13 Q Now, Mr. Glenn, I know this shot might not do it
14 justice because of the light. And you see the refraction on
15 the window, the reflection of other vehicles ---

16 A Yes, sir.

17 Q --- but were you able to tell just by looking in there
18 that that was a commemorative Coke set?

19 A Yes, sir. You could see it, but unfortunately I'm not
20 a great guy with a camera. I couldn't figure out how to get
21 the shadow off the front of the box.

22 Q That's fine. But the box is the item you see here, the
23 brown box with the white writing on it?

24 A Yes, sir.

25 Q And your purpose was to just make sure you memorialized

1 where it was?

2 A Make sure that was documented, yes, sir.

3 Q Okay. At some point, was that vehicle towed?

4 A Yes, sir, it was.

5 Q Where was it towed to?

6 A 900 Williams Street, Corley's.

7 Q What's Corley's?

8 A They're a towing company that had contracted with the
9 city to do our city pulls.

10 Q So it wasn't unusual to use this private company to do
11 your towing?

12 A No, sir, it wasn't.

13 Q Were you present when the search warrant was served?

14 A Yes, sir. Once Corley picked the vehicle up, I
15 followed it all the way to Williams Street from the hospital
16 and stood by while the search warrant was served.

17 Q And who executed the search warrant? What agency?

18 A SLED.

19 Q SLED. Okay. I believe that's all the questions I
20 have. Please answer any questions Mr. Floyd has?

21 A Yes, sir.

22 GLENN FRICK - CROSS-EXAMINATION

23 BY MR. FLOYD:

24 Q Mr. Frick?

25 A Yes, sir.

1 Q According to your notes and correct me if I'm wrong,
2 that the Corley's Wrecker Service arrived and towed the
3 vehicle to their shop at 14:00 hours?

4 A I think it's 14:05, sir. I mean, I could be wrong.

5 MR. FRICK: Your Honor, may I look at my notes.

6 Q Did you make notes?

7 MR. FRICK: Your Honor, may I use my notes?

8 THE COURT: Sure.

9 A I'm sorry. You're correct, sir. 14:00.

10 BY MR. FLOYD:

11 Q And it was at 14:05 that they got it back over to, that
12 you arrived back at 900 Williams Street; is that correct?
13 That's where it was towed to?

14 A 900 Williams, yes, sir.

15 Q So at 14:00 hours Corley had possession of it. At
16 14:05 it had been carried over to Williams Street for
17 processing?

18 A Yes, sir.

19 Q That would be correct?

20 A That's what my notes say, yes, sir.

21 Q Thank you.

22 MR. FLOYD: I have no further question.

23 MR. HUBBARD: No further questions.

24 THE COURT: Thank you, sir.

25 MR. FRICK: Thank you, Your Honor.

1 MR. HUBBARD: The State calls Shane Phillips to
2 the stand.

3 (WHEREUPON, Shane Phillips was
4 sworn to tell the truth.)

5 THE CLERK: If you'll have a seat over here.
6 State your name please, and spell your last for the record.

7 MR. PHILLIPS: Shane Phillips, P-H-I-L-L-I-P-S.

8 SHANE PHILLIPS - DIRECT EXAMINATION

9 BY MR. HUBBARD:

10 Q Captain Phillips, where do you work?

11 A Presently, I work at the West Columbia Police
12 Department and also at Crossroads Baptist Church.

13 Q So you have two jobs?

14 A Yes, sir, I do. Two full-time jobs.

15 Q Back in April of 2005, were you employed with West
16 Columbia Police Department?

17 A Yes, sir, I was.

18 Q What were your duties back then?

19 A At that time, I believe I was on a community action
20 team. I believe at the rank of corporal. It may have been
21 sergeant, but I'm pretty sure it was corporal at that time.

22 Q Okay. How many years in total were you at West
23 Columbia?

24 A I served with the City of West Columbia from 2000 until
25 mid-2009, almost ten years. Worked in the ministry for

1 approximately three years and returned to the police
2 department in July of this year.

3 Q What are your current duties with the West Columbia
4 Police Department?

5 A I am the patrol captain. I'm responsible for all those
6 officers that wear uniforms, mostly serving now in an
7 administrative capacity. I'm responsible to make sure all
8 patrol functions are done and done properly. I am also
9 responsible for policies and procedures. A lot of times I
10 handle complaints and things of that nature. And
11 occasionally, I get the good privilege of commending an
12 officer for a job well done.

13 Q Very good. Let me ask you this. Being in charge of
14 policies and being in charge of the administration of these
15 policies, does that include the policies your agency has on
16 conducting searches and seizures?

17 A Yes, sir. All officers are aware of our policies and
18 procedures. I am responsible for make sure that our patrol
19 functions, our officers that are out there, are aware of the
20 policies. And anytime we have infractions, of course, we
21 bring that to their attention, but I'm to make sure that
22 they're aware. Yes, sir, I am.

23 Q Are these written procedures?

24 A Yes, sir, they are.

25 Q And I'm going to show you some of these if you don't

1 mind. I'm going to hand you a document that's not marked
2 right now, but what is that document?

3 A This is our search and seizure policy.

4 Q Okay. And let me hand you another document. What is
5 this document?

6 A That is going to be our impounding and towing policy.

7 Q And these policies ---

8 MR. HUBBARD: Let me go ahead and have these
9 marked as Court's Exhibits if Your Honor permits?

10 THE COURT: Yes, sir.

11 (Court's Exhibit No. 3 was marked.)

12 (Court's Exhibit No. 4 was marked.)

13 Q Captain, I want to show you Court's Exhibit No. 3,
14 which is the search and seizure policy?

15 A Yes, sir.

16 Q Does that policy detail the procedures your officers
17 are supposed to use when conducting a search and how to
18 seize property, how to secure property and what they've got
19 to do for your agency?

20 A Yes, sir. Yes, sir.

21 Q Turning to that last page on Court's Exhibit 3 --
22 actually, it's not quite the last page, page five of six
23 pages. It has automobile inventories?

24 A Yes, sir.

25 Q Can you please read for the Court what that policy is

1 on automobile inventories?

2 A Yes, sir. It says, number five, automobile inventories
3 (a) an officer may, pursuant to the department's care taking
4 policy conduct a routine, warrantless inventory of the
5 entire vehicle, reasonable to care taking function including
6 glove compartment and containers of any lawfully impounded
7 automobile. Warrantless inventories are justifiable means
8 of protecting the owner's property, protecting the
9 department against claims of lost or stolen property, and
10 making sure that no weapons or other dangerous instruments
11 fall into the hands of vandals or thieves. Caution: it is
12 important that all vehicle inventories be conducted in a
13 routine procedure. No inventory will be used as an excuse
14 to make an otherwise illegal search.

15 Q Okay. This policy, when was it enacted?

16 A In 2003, sir.

17 Q Okay. So this policy was in effect in April of 2005?

18 A Yes, sir.

19 Q All right. And this entire document, which is Court's
20 Exhibit 3, deals with searches and seizures?

21 A Yes, sir.

22 Q Now, Court's Exhibit No. 4, that's -- what is that
23 document again?

24 A That was the impounding and towing.

25 Q Okay. If you read -- what does the policy state under

1 where it says, policy?

2 A Yes, sir. Policy: It shall be the policy of the
3 department to tow vehicles only when legally necessary. The
4 department will taken reasonable precautions to safeguard
5 property when it directs vehicles to be towed.

6 Q Okay. And under specific procedures, would you please
7 read D and E?

8 A Yes, sir. D, in the possession of a physically
9 arrested person and the vehicle cannot be reasonable be
10 released to the owner. E, held as evidence in a criminal
11 case by police for evidence processing or as evidence to be
12 presented in a court of law.

13 Q Okay. And so officers may tow vehicles in those
14 situations?

15 A In those cases, yes, sir.

16 Q Okay. Now, Captain, let me ask you. As someone who's
17 in charge of officers in uniform and I guess out of uniform
18 when it comes to these procedures, if you have a person who
19 is detained or arrested at, say, the Lexington Medical
20 Hospital. He's taken to West Columbia and his vehicle is
21 left up at the hospital, even if that vehicle is not subject
22 of a search warrant, what's your policy?

23 A It has been our practice to tow that vehicle.

24 Q Why would you do that?

25 A Well, there can be a couple of different reasons

1 whenever it comes to towing vehicles. The two being: one,
2 we want to protect the property of the individual. There
3 can be claims that things are missing from there so we're
4 trying to safeguard that property. The other one can be the
5 preservation of evidence.

6 Q Okay. That's the next question. If you have somebody
7 who is arrested and you know there's going to be a search
8 warrant, but even if that search warrant is not -- or if you
9 think there might be searchable items, are you still going
10 to end up having to tow that vehicle and inventory it?

11 A Yes, sir. It has been our operating procedure that in
12 those situations we do tow those vehicles.

13 Q Now, when there is a search warrant, does the return
14 act as the list of property found inside a vehicle?

15 A Our inventory tow sheet?

16 Q Yes, sir?

17 A Yes, sir. I'm just making sure that I understood your
18 question. Sometimes the terms get mixed up and I don't want
19 to mis-testify here. Whenever we do an inventory of the
20 vehicle, we are required on the tow sheet, to indicate the
21 date, the time. It describes, of course, the vehicle, VIN
22 Number, all that information. And then we go through it
23 systematically, looking at the outside of the vehicle for
24 damages, things of that nature. And then we go through the
25 vehicle inventorying, according to policy, thoroughly

1 everything that is with that vehicle.

2 Q Okay. And that way you protect your agency from any
3 liability issues?

4 A Yes, sir.

5 Q Okay. And just one final question. The man's at the
6 hospital, he's been cuffed, taken to your agency. His
7 vehicle is up at the hospital. Are you going to direct your
8 officers to take that car, sir?

9 A Based on the information given to today -- now, I was
10 not affiliated with this case ---

11 Q Correct. Correct?

12 A --- in any way shape or form. But based on the
13 information that has been presented here today, yes, we
14 would seize that vehicle.

15 Q Okay. And the policy that's in existence today was
16 also in existence April 22, 2005?

17 A Yes, sir.

18 Q Thank you, Captain.

19 THE COURT: Mr. Floyd?

20 SHANE PHILLIPS - CROSS-EXAMINATION

21 BY MR. FLOYD:

22 Q Were you working in West Columbia in 2005?

23 A Yes, sir, I was.

24 Q What was your position at that time?

25 A I was on the community action team. And as I said, I

1 believe that I was at the rank of corporal at that time,
2 sir.

3 Q What did the community action team do?

4 A We are those officers that work within the community,
5 actually with the people. Rather than being just responding
6 to calls, we are kind of like resident officers. We are
7 assigned a area in the city where we meet with those
8 individual, address specific claims. And we are kind of
9 with the public in their crime-fighting efforts.

10 Q So you would have nothing to do with this murder
11 investigation?

12 A No, sir. I had no involvement whatsoever with this.

13 Q And you had nothing to do with the policies and
14 procedures of towing vehicles at that time, did you?

15 A At that time, no, sir. I was not responsible for
16 those.

17 Q And are you telling us that there have been no changes
18 in the policies and procedures in seven years?

19 A There have been -- let me answer that question
20 directly. Are you specifically speaking of these policies
21 or policies and procedures as a whole? Because there have
22 been multiple revisions of our policies and procedures
23 manual. To my knowledge, as far as our search and seizures
24 policy, there have been no changes since 2003 if I'm not
25 mistaken.

1 Q And what controls, the policy of the town or what the
2 court says?

3 A I'm sorry, sir?

4 Q What controls what's right? What the policy says or
5 what a court says?

6 A Well, I guess to respond to that question, I would say
7 that we must be in obedience to the law of the land. It is
8 our dictate. And I would hope that our policies and
9 procedures always comply with what our state says.
10 Therefore, we can be in compliance with both.

11 Q And you don't think there's been any cases in the last
12 seven years dealing with search and seizures of vehicles?

13 A My opinion on things, I will say this. That as police
14 officers, sir, officers are fallible people just like
15 everybody else. They do the best job that they know how to
16 do. And sometimes do officers occasionally in various
17 situations make minor mistakes, sometimes they do, sir. But
18 overall, they strive to do the best job that they can.

19 Q Is that responsive to my questions?

20 A Yes, sir.

21 Q I mean, the question was do you think there's been no
22 cases decided by the courts in the last seven years
23 concerning search and seizures of vehicles?

24 MR. HUBBARD: Objection to relevance. On this
25 matter, this case, this is an in limine matter, pertaining

1 to this search and this vehicle.

2 THE COURT: I sustain the objection.

3 BY MR. FLOYD:

4 Q Was this vehicle searched before it was seized?

5 A I don't know, sir. I was brought up here on the
6 policies. As I said before, sir, I really had no
7 involvement with this case.

8 Q Does your policy allow search before seizure?

9 A Yes, sir.

10 Q In what circumstance?

11 A Depending upon what had taken place at the time. That
12 would -- let's say there was an emergency situation that
13 required us to search that vehicle at the time before there
14 could be the destruction of evidence. If there is time and
15 there would not be the destruction of evidence, per policy,
16 you are supposed to wait for a search warrant. Yes, sir.
17 You are correct.

18 Q And, in fact, there was an officer watching the car,
19 wasn't there?

20 A Yes, sir, there was.

21 Q So there was no emergency?

22 A I would not think so, but that's my opinion. I was not
23 there at the time.

24 Q So there would be no authority to search that without
25 first having a search warrant issued; is that correct?

1 A Once again, sir, sincerely -- and I promise you I'm
2 trying to answer your question. I'm not evading. I was not
3 there at the time. I don't know all the circumstances that
4 were surrounding this. And what you're asking me to do is
5 armchair quarterback when I don't know all the facts. And I
6 could tell you, based on what you say, if you constructed
7 something for me, maybe I could answer it that way. But I
8 don't know. I was not there.

9 Q Well, didn't you just testify on direct examination
10 that all policies and procedures were followed?

11 A I testified to the policy, yes, sir, I did.

12 Q Didn't you testify when you were asked by the Solicitor

13 --

14 A He asked me --

15 Q -- that they were all followed.

16 A He asked me given that situation, would I have ordered
17 the vehicle towed. And I said, yes, sir.

18 Q So you would tow it without a search warrant?

19 A I'm sorry, sir?

20 Q You would tow it without a search warrant?

21 A We would have seized that vehicle anyway.

22 Q And that would be based upon what?

23 A Based on the evidence that was presented at the time,
24 that there was a crime that was committed. What I'm saying,
25 and I'm trying to be forthcoming. If you have something

1 that you need to correct me on, feel free to do so. But
2 what I'm saying is if we had a vehicle and somebody was
3 arrested and taken from that vehicle, I'm not testifying to
4 a search warrant. I'm saying we would have seized the
5 vehicle. And based on seizing that vehicle, we have to
6 inventory that vehicle. At some point we would have to.

7 Q And that's assuming that the arrested person's in the
8 vehicle; isn't it?

9 A Not necessarily.

10 Q Oh, you think a person can be arrested, you can go
11 anywhere their vehicle is and seize it?

12 A What I'm saying, sir, is based on what we've been
13 discussing here today and what he shared with me a moment
14 ago, if we had that crime that was committed, then, yes, I
15 probably would have seized that vehicle. But I don't know
16 the circumstances surrounding that.

17 Q You don't know the circumstances. Thank you.

18 A Yes, sir.

19 MR. FLOYD: No further questions.

20 MR. FLOYD: Nothing else, Your Honor.

21 THE COURT: Thank you, sir.

22 MR. PHILLIPS: Than you, Your Honor.

23 MR. HUBBARD: Your Honor, that's all the witnesses
24 that we have.

25 THE COURT: All right. From the Defense, do you

1 have any witnesses you're going to offer?

2 MR. FLOYD: No, Your Honor. We just have
3 argument.

4 THE COURT: All right. Yes, sir.

5 MR. FLOYD: Thank you, Your Honor. Your Honor, at
6 this time we would, of course, renew our objection and our
7 motion to suppress any evidence seized as a result of the
8 search of this vehicle. Your Honor, the basis for the
9 motion is -- there's several grounds, Your Honor. First of
10 all, it's our position that the warrant itself is defective.
11 And I assume Robert has a copy of it up there.

12 THE COURT: No, sir. It's defective in what way?

13 MR. FLOYD: Your Honor, if you go to the
14 affidavit. I'm trying to find it. Your Honor, if you
15 notice where it says, the affidavit, giving the reason for
16 the search. And that was my last copy, but I believe it
17 says something to the effect of ---

18 THE COURT: The above vehicle transported a victim
19 from the crime scene to Lexington Hospital for treatment.

20 MR. FLOYD: That's correct, Your Honor. And it's
21 our position that's defective on its face. And I think
22 they've admitted that.

23 THE COURT: I'm just asking, what ---

24 MR. FLOYD: I'm going to explain why.

25 THE COURT: All right. Go ahead.

1 MR. FLOYD: Your Honor, there are three different,
2 I guess, guidances governing search warrants. You've got
3 your South Carolina Constitution, and you've got your United
4 States Constitution. And, of course, in South Carolina we
5 got a statute 17-32-140. Now, one of the best cases and
6 illustrations of the way these things interact is State v.
7 Duncan, Your Honor. In fact, Duncan is three different
8 places. In Duncan, what happened was the officer had had a
9 telephone conversation with the magistrate and the
10 magistrate typed up what was said. And he did not have --
11 and then another officer took the warrant over, to get the
12 warrant and sign the affidavit. The individual that signed
13 the affidavit had no personal knowledge of what information
14 had been given to the magistrate. At trial court, the court
15 allowed the search of a motel room to come into evidence.
16 Drugs were found in a motel room. The Appeals Court
17 reversed it, saying that it was defective because the
18 affiant did not have personal knowledge of it. They also
19 found that there was a violation of 17-13-140 because it
20 does require a sworn affidavit of an individual setting
21 forth the reasons establishing probable cause for the
22 property to be searched. The Supreme Court reversed that
23 and remanded it because the lawyer representing Mr. Duncan
24 in the trial court had not raised the 17-13-140 issue. When
25 it comes back -- it came back down. When it came back down

1 to the Appeals Court they still -- results of finding it
2 violated the Constitutions because there was no, there was
3 no affiant on the warrant who had personal knowledge. What
4 it basically comes down to, Your Honor, is that under 17-13-
5 140 South Carolina actually had more protection against
6 unreasonable search warrants than provided by the
7 Constitutions of both the State and the Federal government.
8 And under 17-13-140, a search warrant may be issued only
9 upon an affidavit, sworn to before the magistrate,
10 establishing the grounds for the warrant. And that's where
11 it becomes defective, Your Honor, because the statute lists
12 several reasons why you have a search warrant. The only
13 ones that could reasonably apply here would be subsection 3,
14 property which is being used or has been used in the
15 commission of a criminal offense. Or 4, property
16 constituting evidence of a crime or tending to show that a
17 particular has been committed. And, Your Honor, there's
18 nothing like that in this warrant. You can see right on its
19 face it doesn't even talk about that this property is
20 subject to any type of a criminal offense. All it says is
21 that the vehicle was used to transport a victim to the
22 hospital. So on its face it's defective. Your Honor,
23 furthermore, in addition, and as a separate ground -- and
24 Your Honor, I don't have the law right in front of me, but
25 it lists like five different things that they could look for

1 when they conducted the search. And if my memory is
2 correct, only to talk about clothing, weapons,

3 THE COURT: You can use this if you want to.

4 MR. FLOYD: There should be another one that's
5 been up here, Your Honor. I'd like you to be able to refer
6 to it also.

7 THE COURT: I don't need this -- going into this
8 we need to find a warrant.

9 MR. HUBBARD: Here it is, right here.

10 MR. FLOYD: Oh, okay.

11 MR. HUBBARD: That's the car. This is the house.

12 MR. FLOYD: All right. Well, Judge, there's the
13 exhibits.

14 THE COURT: Why don't you use both of them.

15 MR. FLOYD: Well, this is a Court's Exhibit. It's
16 the same thing. So, Your Honor, in addition to our argument
17 that the entire search warrant is defective and that all off
18 the evidence should be suppressed that was seized as a
19 result of it, I think another thing needs to be looked at.
20 Number one, according to Officer Frick, the wrecker serviced
21 arrived at 14:00 towed the car. 14:05, the vehicle was
22 already over at the wrecker service to be searched. The
23 SLED Agents were there to begin the search. However, the
24 search wasn't issued until 14:15. So the vehicle was
25 actually seized prior to the authority of the search warrant

1 being issued. That likewise, in our opinion, would make it
2 an illegal search. Thirdly, Your Honor, the only things
3 they were allowed to take, according to this search warrant,
4 clothing, weapons, fingerprints, blood, written or typed
5 papers, fibers, photos, any paperwork showing ownership of
6 the vehicle or anything else that could be used in the
7 commission of the crime of murder. However, as the result
8 of the search they seized, one Coca-Cola 75th commemorative
9 box with contents. That is not the type of item that is
10 authorized by the search warrant, Your Honor. Nor is it
11 evidence that could be used in the commission of the crime
12 of murder. So even if the search is valid, the search
13 warrant is ruled valid, which we argue it should not be,
14 then this portion of the evidence seized should not be
15 admitted, because it would not have been authorized by the
16 search warrant, even if it were valid.

17 THE COURT: And the reason you want this evidence
18 out is that this is the property that supposedly was stolen
19 or taken during an armed robbery?

20 MR. FLOYD: That's correct, Your Honor. We first
21 deny our client had anything to do with it. But, yes,
22 that's why we would be ---

23 THE COURT: All right. Yes, sir. By the State?

24 MR. HUBBARD: Yes, sir, Your Honor. Your Honor,
25 I'm going to try to remember to address some of the issues

1 brought up by Mr. Floyd, but there's actually a case very
2 close to what we have here. And that is the case of the
3 State versus Bernard Mikell White. Mikell, for that case is
4 spelled M-I-K-E-L-L. And that is 272 S.E.2d at page 800.
5 And Your Honor, I have an extra copy.

6 THE COURT: All right.

7 MR. HUBBARD: It's just a two or three-page
8 opinion. What you have in this case, warrants were issued
9 simultaneously. A search warrant and an arrest warrant.
10 And the search warrant was defective. But the officer that
11 took those warrants to the magistrate, the magistrate signed
12 them at the same time, based on the same probable cause.
13 But the body of the affidavit of the search warrant was
14 defective. Well, the court began in that case by saying
15 affidavits or search warrants must be tested and interpreted
16 by magistrates and courts in a commonsense and realistic
17 fashion, since they are normally drafted by non-lawyers in
18 the haste of a criminal investigation. They go on to say
19 the probable cause used in that arrest warrant to be used
20 was sufficient for that arrest warrant as well. In fact, if
21 Your Honor, looks at keynote number three, the facts
22 supplied by two affidavits simultaneously filed and
23 considered by the magistrate could be taken into account by
24 him in determining the existence of probable cause. Keynote
25 four and five, I believe it's the second to the last

1 sentence. The court says, we now hold it is permissible to
2 construe separate affidavits obtained simultaneously in
3 order to determine the existence of probable cause. There
4 is no inherent defect utilizing multiple affidavits. Your
5 Honor, in this case they're not simultaneous, but what we
6 have presented is there's approximately about a five-hour
7 window from the search warrant on the house to the search
8 warrant on the car. They were before the same Magistrate,
9 Judge Whittle. Officer Bailey says he remembers some
10 conversations. Office Whittle [sic] also remembered some of
11 those conversations. They both clearly link these two
12 warrants together. And Judge Whittle made it clear that he
13 was comfortable signing this search warrant, this car search
14 warrant, because he knew -- sworn testimony had already been
15 provided to him about this investigation. So he already
16 knew information he needed to understand why that car was
17 important. What was the purpose of even trying to go into
18 that car. And, Your Honor, Mr. Floyd brings up that the
19 vehicle improperly seized and towed to Corley's. Actually,
20 the car was seized at the hospital when an officer's sitting
21 on it. At that point, the car's not going anywhere. They
22 have authority to do that. They had authority under search
23 warrant law. They had authority to do that under their
24 impound rules. And when Officer Frick got word that the
25 search warrant was en route, he did what any good officer

1 would do. He took photos to document where the car was. It
2 was clearly at the hospital. He also documented something
3 else. He documented the Coca-Cola set that was in the
4 floorboard. Your Honor, that was important because as
5 Officer Bailey said, or related to the Judge, and as the
6 Judge testified, that had significance to the house search
7 warrant. You've got another tie between those two items.
8 Now, Mr. Floyd says the search should only be limited to the
9 items that are sought in that search warrant. That's not
10 actually correct under search warrant law, Your Honor. If
11 you go into a house because there's a drug violation and you
12 have a search warrant that says you're able to go into this
13 house to search for drugs. And you go in there and you find
14 a dead body or you find weapons or explosives, the law
15 clearly says you can seize those things if it's in the
16 course of executing a valid search warrant. So to say that
17 once they get in that car validly that they can't search the
18 car, that they're limited by what they thought might be in
19 the car before they really got in the car, I don't know any
20 case in the State that says that's the case. But the second
21 way they could have gotten in that car, Your Honor, was
22 plain view. There was clearly probable cause to get into
23 that car. That Coca-Cola set, Your Honor, was directly
24 linked to the homicide at 1737 Decree Street. Now, plain
25 view, as Your Honor knows, was established by the Supreme

1 Court in the case Coolidge versus New Hampshire. It's 1971.
2 And the case is 403 US 443. Back at that time when the
3 Supreme Court ruled on plain view, the whole notion was you
4 can only search something or seize something in a plain view
5 if it was inadvertent. If you didn't know you were looking
6 for something and it was just, and it was a plurality
7 opinion. The court never settled on that until 1990, the
8 case of Horton versus California, and that is 496 US 128.
9 Again that's in 1990. The court says it no longer has to be
10 inadvertent. You could have a search warrant and be looking
11 for something and stumble upon something in plain view,
12 outside the scope of your search warrant, you can still get
13 it. In fact, the search warrant in that case ended up being
14 defective. I want to make sure I'm telling you and not
15 getting my facts mixed up. But they clearly said it doesn't
16 have to be inadvertent. It doesn't matter what your initial
17 purpose was. If you're trying to get a search warrant and
18 the search warrant ends up bad, but that's why you're going
19 to on the car, to get the item you're looking at, they said,
20 that's fine. As long as it's plain view. And there's no
21 question the item, the key item that directed them to the
22 interior of that car, was that Coca-Cola set. Finally, Your
23 Honor, there's the inventory search exception, which is
24 often dovetailed with inevitable discovery. If the agency
25 has a policy, and most agencies do for liability reasons --

1 in fact, I don't know of any agency that operates, any
2 agency of this size, that doesn't have some type of written
3 policy to protect themselves. And, Your Honor, probably one
4 of the bigger cases on inventory search exceptions, is Nix
5 versus Williams, a 1984 case at 467 US 431. Our court has
6 discussed this policy before, has accepted it. State versus
7 Danny Cortez Brown, Your Honor that's an opinion that was
8 filed in 2010. I just have an Opinion Number. I haven't
9 updated my SC sites. It's Opinion Number 4697 from 2010.
10 Your Honor, basically, no matter what, if a subject is
11 arrested, like at a Kmart and he is taken downtown, law
12 enforcement cannot leave that vehicle without being subject
13 to liability to vandalism, theft, a stolen automobile.
14 They're liable for all of those things. So every agency has
15 a policy. If you're going to arrest somebody, you're going
16 to take them away in cuffs and separate the owner from the
17 vehicle or the driver from the vehicle, we've got to tow the
18 vehicle. And when we seize a vehicle, we've got to search
19 it. Not for finding incriminating stuff, but we've got to
20 document what's in it so that this guy gets out of the jail
21 or when a family member comes to pick up this car, that we
22 didn't steal anything. We verify we didn't steal anything.
23 But it dovetails with most policies on search warrants.
24 Even when executing a search warrant most agencies like West
25 Columbia has a policy, that says when you conduct a search

1 warrant, when you seize a vehicle, when you inventory it,
2 there's a policy for that. We've introduced both of those
3 policies that were in play at the time. The Captain that
4 spoke today, he wasn't there at the time, but it's the same
5 policy. He says he would have authorized the seizure under
6 that policy and it makes sense. It's commonsense. And,
7 Your Honor, we have court cases support that policy. I --
8 all of this Your Honor to say the search warrant, even
9 though the affidavit was defective in the auto search
10 warrant, when Your Honor considers what was supplemented
11 orally and the affidavit from the house search warrant and
12 the supplementation that was involved in that, all sworn,
13 you've got a valid search warrant. And under South Carolina
14 law, you can validly conduct the search. You also have a
15 valid entry in a plain view and under an inventory search.
16 Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 MR. FLOYD: Your Honor, if I may briefly reply.
19 Your Honor, were familiar with the White case the State is
20 trying to rely upon, and the key to the White case was its
21 use of the words simultaneously. And it's a very limited
22 holding. And it said in the White case, we hold that they
23 can use sign the affidavits and simultaneously issue the
24 warrants, not warrants issued at different times during the
25 day, not warrants issued on different days. They're only in

1 that one specific incident, a very specific holding, that
2 since the warrants were issued simultaneous, the judge could
3 consider the affidavits in each one. And that was a very
4 limited ruling on that case. And, Your Honor, we do take
5 issue -- Mr. Prather was not around his car when he was
6 arrested. Mr. Prather was in the hospital. Now, I don't
7 care what kind of policy they have, just because they arrest
8 somebody in the hospital, they can't go search in the
9 parking lot to find their car and seize their car. There's
10 got to be some basis for that. There's got to be a legal
11 search warrant, and which we don't have in this case. That
12 doesn't give them the right to go out in the parking lot and
13 tow somebody's vehicle. There's no law that would allow
14 that. Surely, if he's in the vehicle when he's arrested,
15 it's seized subject to the arrest, everybody knows that.
16 And then it's inventoried, but not when he's not even in the
17 parking lot with his car, he's inside the hospital. So
18 there's no exception that would allow them to get past the
19 requirement of a valid search warrant, which they admit in
20 their argument that it is not valid. For all the reasons,
21 the evidence seized as a result of the warrant on the
22 vehicle should be suppressed. Thank you.

23 THE COURT: All right.

24 MR. HUBBARD: Your Honor, there is one final case
25 of inventory searches. It is South Dakota versus Donald

1 Opperman, O-P-P-E-R-M-A-N. That, too, is a US Supreme Court
2 case. 428 US 364 and that's a 1976 case. It specifically
3 deals with automobiles and their inherent mobility just
4 being another factor for these inventory searches as well
5 and for less rigorous requirements. But, Your Honor, it
6 ends up being an inventory case as well, talking about that
7 that is a proper method. And for the policy in place shows
8 why law enforcement can do it. They've got a proper policy
9 and it's got a reasonable foundation for that policy.
10 That's not just law enforcement making up the law. That's
11 them complying with the law. And as far as the items
12 searched, Your Honor, we focused on that Coca-Cola box, is
13 what drew their eyes to the floorboard of that car. There
14 were other items in the car. There was a knife under that
15 box, once they conducted the search. And, Your Honor, there
16 were receipts showing the ownership of that vehicle, one of
17 which Your Honor heard, with Mr. Prather's name on it. Your
18 Honor, we offer all of that up and believe that the search
19 was valid and that there were multiple ways for law
20 enforcement to have gotten in that car.

21 THE COURT: All right. I'm going to take about
22 five or ten minutes and let me look at some of these case.

23 MR. FLOYD: Thank you. Your Honor, did you need
24 the Dunbar cite on the case we talked about. Do you need
25 those cites?

1 THE COURT: Yes, sir.

2 MR. FLOYD: Actually, Your Honor, I can just pass
3 them up to you.

4 (Court in recess at 3:52 p.m.)

5 (Court in session at 4:09 p.m.)

6 THE COURT: All right. Thank you. Be seated.
7 Let me ask you, on the time sequence of, from the initial
8 conversation with Mr. Prather at the hospital to the time
9 that he was arrested, what kind of time line was that?

10 MR. HUBBARD: I'm trying to remember, Your Honor.

11 MR. FLOYD: I don't have a record but I want to
12 say he was at the hospital 4:00-something in the morning.
13 He got arrested about 10:00 in the morning.

14 THE COURT: All right. And he never leaves the
15 hospital?

16 MR. FLOYD: That's correct.

17 THE COURT: When he leaves the hospital, he goes
18 to jail?

19 MR. FLOYD: That's correct.

20 MR. HUBBARD: He was in the West Columbia jail,
21 not to the county facility.

22 THE COURT: Yeah.

23 MR. HUBBARD: And then I believe Captain Edwards
24 doesn't do an interview until about 10:50 or so, 10:30 or
25 so, when he actually interviews him. But I think it's 6:00-

1 something, that I think he actually was transported over.

2 THE COURT: 6:00-something?

3 MR. HUBBARD: Yes, sir.

4 THE COURT: And the body was discovered -- the
5 deceased was discovered?

6 MR. HUBBARD: That's what I'm getting here to,
7 Judge. The first responder is at 5:41. They have him as
8 unconscious, looks like he's dead at the scene. Shortly,
9 thereafter that's radioed up to the hospital and that's when
10 he's taken into custody and transported to the West Columbia
11 Police Department by Officer Suber.

12 THE COURT: All right.

13 MR. HUBBARD: And it's 6:05 when he's transported,
14 Your Honor.

15 THE COURT: That's a.m. at the hospital, isn't it?
16 You said 4:00 a.m. 4:00 a.m.?

17 MR. HUBBARD: Yes, sir. Yes, sir. And then later
18 during the day, I don't know if this came up, but he goes
19 back to the hospital for potential complications, but after
20 being interviewed by Captain Edwards -- Major Edwards, I'm
21 sorry.

22 THE COURT: All right. I'm going to take the
23 issue of the suppression under advisement and rule on that a
24 little later on.

25 MR. FLOYD: Yes, sir.

1 THE COURT: Because that primarily relates to the
2 armed robbery defense, doesn't it?

3 MR. HUBBARD: Yes, sir, Your Honor.

4 THE COURT: All right.

5 MR. HUBBARD: And the burglary as well, Your
6 Honor.

7 THE COURT: All right. As far as the introduction
8 of whatever was seized from the car, that's the subject of
9 this suppression motion. I want to study that a little bit
10 or prod it a little bit and then we'll press on.

11 MR. HUBBARD: Yes, sir. Your Honor, may I ask
12 something in order to give Your Honor to do that.

13 THE COURT: Yeah.

14 MR. HUBBARD: I think it would be beneficial to us
15 in doing an opening to kind of know what land mines to
16 avoid. Would it be possible to use the remainder of the day
17 working with Mr. Floyd on exhibits? I think he's seen
18 everything, but actually showing him what we're actually
19 going to try to offer and making sure that all of our ducks
20 are in a row. I'm just concerned about doing an opening and
21 then not really knowing where to tread.

22 THE COURT: Well ---

23 MR. HUBBARD: But I think Your Honor needs all the
24 time -- we certainly don't have any problem with Your Honor
25 taking whatever time you need. I understand that. I mean,

1 we hit you -- you roll in here and we hit you with this all
2 at one time. But we'll do whatever Your Honor wants. I
3 mean, that was just a thought, Judge.

4 THE COURT: Well, I'll rule on this issue now.

5 With regard to the search warrants, the State
6 acknowledges that the warrant issued for the car is
7 defective in its description of the reasons for the
8 affiant's belief that property sought was on the subject
9 premises. Since the -- simply stated, the above vehicle
10 transported a victim from the crime scene to Lexington
11 Hospital for treatment. Of course, the law is that oral
12 statements can be given to a magistrate to supplement what's
13 contained in an affidavit. The primary basis for the review
14 of whether or not there's probable cause for a magistrate to
15 issue a warrant. And the primary concern as expressed by
16 the court is whether the magistrate is sufficiently informed
17 to make an independent determination of the probable cause.
18 So these two warrants, I believe, must be construed
19 together. They may not necessarily fall squarely within the
20 case that addressed the issue of simultaneously warrants,
21 such as the specific facts in State v. Bernard Mikell White,
22 where the court talked about facts supplied by two
23 affidavits simultaneously filed and considered by a
24 magistrate, could be taken into account in determining the
25 existence of probable cause. But I think the spirit and

1 principal of that law applies to this case where the court
2 indicates that there is no inherent defect in utilizing
3 multiple affidavits, here we have a continuous investigation
4 going on over the span of, it appears, about four, five,
5 six, seven, eight hours, in which there was a claim of CSC
6 that brings the Defendant to the hospital. The statement's
7 then given that he beat the perpetrator of the CSC. Then
8 the perpetrator of the CSC is then discovered beaten and
9 dead at his residence, which was supposedly the location of
10 the CSC attack.

11 So all of this information is being provided to the law
12 enforcement officers investigating what's in effect two
13 different crime scenes or maybe one crime scene with a
14 separate location being the hospital and the scene at 1737
15 Decree Avenue. And reading through the two search warrants,
16 they seem to interchangeably speak of both offenses. The
17 first search warrant issued on the house says any and all
18 materials that would aid investigators in the continuing
19 investigation of a possible homicide and sexual assault. I
20 think the second affidavit in the second search warrant, the
21 top portion of which, on the affidavit seeks things that
22 could be used in the commission of murder. But then the
23 affidavit portion talks about the victim from the crime
24 scene being transported in the vehicle.

25 So, I can see where the things got skewed and the

1 language was inartfully drafted and defectively drafted on
2 the search warrant of the vehicle. And based on the fact
3 that these two things being investigated simultaneous, so I
4 find that there was probable cause for the magistrate to
5 issue the warrants. The question then becomes, what
6 limitations, if any, should be placed on these warrants
7 based on the description of the property being sought, which
8 speaks to clothing, weapons, fingerprints, blood, papers,
9 photos, things that could be used in the commission of
10 murder, but nothing, however, is mentioned as it relates to
11 the possible armed robbery. That, however, doesn't seem to
12 be the end of the story, since we have the additional
13 questions involving plain view and also inventory. So with
14 regard to plain view, the plain view is an exception to the
15 warrant requirement and requires the initial intrusion to be
16 lawful, which would be the case here. And secondly, the
17 discovery of the evidence was inadvertent. And thirdly, the
18 incriminating nature of the evidence was immediately
19 apparent to the seasoned authorities.

20 I don't that I'm completely satisfied as to the third
21 prong about the incriminating evidence being immediately
22 apparent to the seasoned authorities, since the evidence
23 involved the possible armed robbery, but not necessarily
24 pertaining to the murder or not pertaining to the murder.
25 But in regard to the inventory search portion, which permits

1 the police to thoroughly search vehicles that have been
2 lawfully impounded for any reason, the rationale being to
3 protect the owner from misappropriation, to protect the
4 police from false claims of theft, and to prevent dangerous
5 items from being stored on police property, provided police
6 follow standardized procedures and not acting in bad faith.
7 Given the nature of this offense where a crime's supposedly
8 occurring on Decree involving the victim who ends up at the
9 hospital, and the Defendant who contends he transported him
10 there. He said he beat the deceased. He never leaves the
11 hospital or he's always under -- he wasn't always under
12 arrest, but he was part of a continuous sequence of events
13 that resulted in arrest, that it's conceivable [sic] that
14 the police would not have impounded this car and inventoried
15 this car, and through the course of that inventory then all
16 items recovered, including this memorial anniversary Coca-
17 Cola box set and other items within that vehicle would have
18 been inevitably uncovered.

19 And I find that the State has satisfied its burden of
20 showing that the police followed the standardized procedures.
21 There's no evidence of any acting in bad faith. And I,
22 therefore, find that the search meets all Constitutional
23 requirements, stringing together all of these different
24 strands of law applicable to this particular situation. And
25 I deny the motion to suppress. So that's not under

1 contemplation anymore.

2 Now, we're going to bring the jury in and then take
3 whatever time beyond that to worry about exhibits. We can
4 stay late if we need to.

5 MR. HUBBARD: Yes, sir.

6 THE COURT: All right. Let's bring them.

7 I might have used the word inadvertently so I think I
8 meant to say inevitably, would be inevitably discovered, not
9 inadvertently discovered, since inadvertence is no longer a
10 requirement.

11 (Jury in at 4:34 p.m.)

12 THE COURT: All right. Ladies and gentlemen,
13 welcome back. We've been sitting here all day. And you all
14 have been sitting for a while waiting on us and we've been
15 sitting here working. If y'all will stand at this time to
16 be sworn.

17 (Jury sworn)

18 THE COURT: Well, ladies and gentlemen, I imagine
19 that some weeks ago you received a summons in the mail
20 telling you that you needed to report here for jury duty
21 today. And you responded to that summons by appearing this
22 morning and participating in juror qualifications. After
23 being qualified to serve on jury duty, you went through a
24 voir dire process in which a jury was selected. You all
25 have been selected to serve as the jury in this case and you

1 all have just taken an oath to well and duly (sic) try this
2 case and render a true verdict according to the law and
3 according to the evidence, so help you God. And out of all
4 the folks who are summoned for jury duty, out all of the
5 people who live here in Lexington County, out of all of the
6 people who live here in the State of South Carolina, out of
7 all of the people who live here in the United States, only
8 the twelve of you who will deliberate can decide this case.
9 And that's why you were selected because only the twelve of
10 you who will deliberate can decide whether the Defendant is
11 guilty or not guilty of the offenses for which he was
12 indicted.

13 The Defendant was indicted by the Grand Jury and
14 charged with the offenses of murder, burglary first degree,
15 and armed robbery. He has pled not guilty to those charges
16 and that plea puts the burden on the State to prove the
17 Defendant guilty. Any person charged with committing a
18 criminal offense in South Carolina is always presumed to be
19 not guilty of the crime for which the indictment was issued,
20 and cannot be found guilty unless the State presents
21 evidence which convinces each and every one of you of his
22 guilt beyond a reasonable doubt.

23 As the presiding judge, it's my role to preside over
24 the case and to instruct you as to the law that you are to
25 apply to this matter. But as to the facts of this case,

1 only those of you who will deliberate can decide the facts
2 of this case. And you are the sole judge of the facts of
3 this case.

4 Now, just as only you are the sole judge of the facts
5 of this case, as the presiding judge, I am the sole judge of
6 the law of this case and you must accept as correct the law
7 as I state it to you at this time, at various points in time
8 during the course of the trial, and in much greater detail
9 at the end of the trial. And you are to decide the facts of
10 this case from the testimony that is presented from this
11 witness stand, along with any other evidence that's offered
12 during the course of the trial. From the evidence
13 presented, you are to determine the facts of this case.
14 After hearing all of the facts and the testimony, then I
15 will instruct you as to the law that you are to apply.

16 Now, some particular rules that we use and utilize
17 while in jury trials is that under our system, the jury is
18 to listen to the entire case, to listen to all of the
19 evidence and the arguments of the lawyers, and the
20 instructions of the law by the judge. Before you discuss
21 the case, you listen to the entire matter before discussing
22 it, before discussing with each other and before discussing
23 it with someone who is not on the jury, because those of you
24 who deliberate and decide this case must have listened to
25 the same exact thing, deliberate, and decide the case among

1 each other as to what the verdict should be. It would be a
2 violation of your oath as jurors for you to listen to
3 evidence here and then go home and discuss it with someone
4 else, in effect, deliberate with someone else. That would
5 be a violation of your oath and would be totally improper.
6 Likewise, it would be improper for you to consider anything,
7 other than what you have heard here in this courtroom. For
8 example, if you were to decide, well, I think it's a good
9 idea for me to send a text, a Tweet, a Facebook message or
10 do an internet search about this case to see what else I can
11 find out about it. Now, that would be a violation of your
12 oath as jurors, because you have taken an oath to well and
13 duly [sic] try this case and render a true verdict according
14 to the evidence and according to the law. And that evidence
15 is presented here in the courtroom with all of you all
16 listening to the same thing, and not outside of the
17 courtroom with anyone else. And I'm sure that you all will
18 comply with that oath. And I make specific emphasis to this
19 because it may be a long trial and you may be inclined to
20 want to just talk about what you have just heard inside the
21 courtroom and what one witness said versus the other.
22 You're not to do that. You're to listen. There are many
23 things I'm sure that you can talk about, but do not talk
24 about the case with anyone, including your fellow jurors,
25 until you have heard the entire case as well as the

1 instructions, as well as the arguments of the attorneys.

2 Now, at some point during the process, I will appoint
3 of you to serve as the foreperson of the jury. And the
4 foreperson will act as a spokesperson for the jury, will
5 have the responsibility of presiding over the jury
6 deliberations and completing the verdict form representing
7 the unanimous verdict of the jury. In just a moment you'll
8 hear opening statements by the lawyers, followed by the
9 testimony in the case. I'll do all that I can to keep this
10 case moving, to not wear you out by having you sit and
11 having to listen for unduly long periods of time. And to
12 try to give this case to you as quickly as we can.

13 MR. GRAHAM: Thank you, Your Honor.

14 THE COURT: Just a moment, Mr. Graham. We have
15 another person who's appeared here. And I'm sure the jurors
16 may be curious who is now seated next to me. This is my law
17 clerk. Ms. Satanya Gravling. She was out of town for
18 Thanksgiving Holidays and she has returned here today. She
19 assists me with my duties as a Judge. She was recently
20 sworn in as a new member of the South Carolina Bar, having
21 graduated from USC Law School last year. And she'll be here
22 assisting me in case you're curious. I'm sure you are.

23 Mr. Graham.

24 MR. GRAHAM: Thank you, Your Honor.

25 STATE'S OPENING STATEMENT

1 BY MR. GRAHAM:

2 What happens in your home is your business. It's your
3 privacy. It's your right to be left alone. Gerald Stewart
4 would not want you to know that he was a homosexual. He
5 was, but he didn't want to share that with the world. But
6 unfortunately, because of this man sitting in that chair,
7 Mr. Prather and his co-defendant, Mr. Phillips, Mr. Stewart
8 is dead and he has no choice but to have his life exposed
9 for you to look at.

10 Gerald Stewart two men, two individuals. He had the
11 life that his friends saw and then he had a secret life.
12 People knew them, they think they knew him, they'd tell you
13 if they were here, he was a big teddy bear. He had a huge
14 heart, would share everything he had with anybody. He was
15 the life of a party, always telling jokes, a big
16 personality. He wanted people to think he was important.
17 He wanted them to think that he knew people, could get
18 things done, and that he had money. That's how he wanted
19 people to see him. But who he really was was a very
20 different person. He was a big man. You'll hear how tall
21 he was and how big he was, but he was a sick man. He drank.
22 He was an alcoholic. He struggled with demons, maybe the
23 demons were of being a homosexual. You'll hear that he was
24 adopted. He was an only child. He had a mom and dad who
25 loved him and he worshiped his mom and dad. He was an Eagle

1 Scout. He played football. He got the name Radar, and
2 that's how everybody knew him, because although he couldn't
3 see very well without his glasses, he could always find a
4 football. Everybody knew him as Radar, and that's the name
5 that stuck.

6 His dad passed away and his alcoholism kicked in. His
7 mom knew that she was passing and she set up provisions for
8 her son to be taken care of. There was a house and a little
9 bit of money, not much. Not wealthy people. This is over
10 on Decree Avenue in West Columbia. That's where Radar grew
11 up. That's where he lived after his parents died and that's
12 where he was murdered. And Robert Prather was there and he
13 killed him.

14 After his mom passed away, Radar got the house and he
15 moved in. He had problems with alcohol so his mom didn't
16 give him everything. She set up a trust, and she didn't
17 have a family member administer it because everybody liked
18 Radar and she was afraid that everything would be given to
19 him. So he was allowed to live in the house and a neighbor
20 administered what little money was left over and gave him an
21 allowance. But he wasn't a rich man, but he acted like one.

22 You're going to find out that he had an EBT card in his
23 wallet. You're going to find out from witnesses that at
24 times he needed groceries to be brought to him, because he
25 didn't want to go in and buy his own groceries, but that's

1 not how he presented himself. He presented himself to the
2 same people who brought him groceries, there were other
3 times he would drop hundred or thousands of dollars at a
4 strip club, so that people would think he was important.
5 Two lives.

6 He was sick from alcohol. He had cirrhosis of the
7 live. You'll hear about it at his autopsy. You'll also
8 hear that he had an enlarged heart. He had a private life
9 of being a homosexual and you may disagree, you may think
10 that's okay, but that's not why you're here is to rule
11 whether that's right or that's right. Or to sit here and
12 say because you're homosexual, you deserve to be robbed.
13 You deserve to have the sanctity of your own house violated
14 and you deserve to be beat and murdered. No one deserves
15 that. Gerald Stewart didn't deserve that.

16 Somehow, someway, this man and his co-defendant came
17 into Radar's life. Why? He's a young man, look at him.
18 He's in his twenties. Twenty-plus years difference in age
19 between them. Someone who doesn't have a lot of money, but
20 acts like it. Doesn't drive a car. Doesn't have a car.
21 Has a house. Not a good looking man. He's out of shape.
22 He's overweight? Why was Robert Prather there? Why is his
23 friend Josh Phillips there? Why are they spending the
24 night.

25 April 22, 2005, you'll hear testimony that that man,

1 Mr. Prather and Radar went over to a bar in the Vista. The
2 bar owner/manager, bartender will be here to testify in this
3 courtroom. And he'll tell you that Radar came in drunk,
4 that he drank while he was there. He had beer. He had
5 shots. Had a twenty-something dollar tab. He didn't drink
6 anything. Radar goes across the street. There's a gay bar
7 across the street. He goes over to see if there's some
8 friends. We're at midnight, between midnight and 2:00. The
9 bar owner's going to tell you that he told Radar that there
10 was a tab over twenty-five dollars. He walks off. Radar
11 leaves. The bartender turns to Mr. Prather and say, hey,
12 man, there's a twenty-five dollar tab. And what he's going
13 to tell you is that Mr. Prather said, I told him I didn't
14 have any money. I'm going to kick his ass. Those are his
15 words, not mine. Was he mad? Was he not mad? The
16 bartender's going to tell you he thought he was kidding. He
17 hears talk like that all the time. He didn't know. But the
18 one thing we do know is that Mr. Prather later told several
19 people -- he told the nurses at the hospital and police
20 officers that he did just that. That he was back at the
21 house and that he'd beat Radar, that he'd delivered
22 devastating blows, and described punches by turning fists,
23 saying that he'd been in the military. He did exactly what
24 he said he was going to do. He went back into the house
25 knowing that he was going to commit a crime, the crime of

1 assault, and he did it, plus burglary.

2 Gerald Stewart was found in his house. Mr. Prather and
3 his co-defendant Mr. Phillips go to the hospital and they
4 report a rape. They say that Mr. Phillips was raped.
5 That's when Mr. Prather says he delivered the devastating
6 blows, that he beat him.

7 The police now have a suspect, they think, in a rape
8 case. And they have somebody who might be injured. So they
9 go back to Decree Avenue. Well, how did they know to get
10 there? Mr. Prather and Mr. Phillips have Radar's wallet.
11 You have a theft. They stole his wallet. Why did they
12 steal his wallet? They steal his wallet. They tell the
13 police, hey, we got the wallet. Here it is. The police go
14 to Decree Avenue. They find an open window, they go inside.
15 When they go inside, they find Radar dead. He's on his
16 knees. His face is leaning onto a couch. His chest and
17 upper body is on the couch. The head is in the back of the
18 couch where your back would sit. His chest is on the seat.
19 He's covered by a blanket and he's covered by a pillow.
20 Police and EMS arrive. They pull off the blanket. They
21 pull off the pillow. They see Radar there with his face
22 down. EMS checks, the paramedic checks, he's dead. No
23 pulse. They look at his face. He's got blood all over his
24 face. Propped up against arm when he is face down on the
25 sofa is a dildo, placed there. It had to be placed there

1 after he was murdered. There's no way it could happen and
2 be there the way that he was beat and left. Somebody placed
3 it there on purpose. Why? On his back, carved with a sharp
4 instrument, is what people will tell you is the word rapist.
5 Someone has carved into a dying man the word rapist. Ask
6 yourself why?

7 An autopsy reveals that he was beaten and that he died
8 from an irregular heartbeat, arrhythmia is, I believe, what
9 the doctor will tell you. She's going to tell you that in
10 her opinion as an expert, that was because of the pain and
11 the beating. And he had an enlarged heart. All those
12 things are the causes, but without the beating, he wouldn't
13 be dead. The pain from the beating made his heart beat
14 irregularly and made him die.

15 Gerald [sic] Prather told you, and you'll hear that he
16 told three or four people that he beat him. In fact he did
17 what the bar owner, what he said he was going to do.

18 Murder is the killing of another with malice
19 aforethought. That doesn't mean you have to think it over
20 for days. It doesn't mean you have to have a list, thinking
21 about what you're going to do and how you're going to plan
22 it out. At the moment he was beating him, he did it with
23 malice and he died as a result of that beating, the
24 Defendant is guilty of murder.

25 Malice is an evil heart, a heart bent on mischief.

1 Those are things that the Judge will tell you in the jury
2 charge at the end. So you listen throughout the course of
3 this trial and see if you hear malice. See if he described
4 in his own words malice.

5 Armed robbery is stealing something from the presence
6 or person of another with a deadly weapon. It could have
7 happened while he was alive or after he was dead. Something
8 with a sharp edge cut into his back. You'll hear testimony
9 that a knife was found in Mr. Prather's vehicle, the vehicle
10 that he drove his friend, Josh Phillips, up to the hospital
11 with. Some bladed instrument was used to carve into Radar's
12 back. If the carving isn't malice, I don't know what is.
13 Burglary, you have to have something and that's something
14 stolen. Burglary is being in possession of stolen articles.
15 That night, fits the burglary first. So you can either go
16 in with the intent to steal or you can go in with the intent
17 to assault, but I believe the evidence will show both.

18 He went there to kick his ass, because he already told
19 the bartender he did, and he said he did it, and he died as
20 a result of that. And you're also going to hear that things
21 were stolen. You have the wallet that was at the hospital.
22 And in Mr. Prather's car you're also going to hear that a
23 Coca-Cola memorabilia box collection, that is going to be
24 identified as coming from Radar's house was also in there,
25 in his car at the hospital.

1 I want to thank you all for your public service for
2 being here. I know y'all have better places to be, but it's
3 important. And as I told you at the beginning, Gerald
4 Stewart would not want you to have to hear what you're going
5 to hear. If he could choose, he would say, no. But justice
6 requires that you go into his personal life, to hear things
7 that may make you feel uncomfortable. Gerald Stewart
8 deserves justice. And at the end of this trial, you will
9 have the opportunity to give justice to Mr. Prather.

10 Thank you.

11 THE COURT: Yes, sir, Mr. Floyd.

12 MR. FLOYD: Thank you, Your Honor.

13 DEFENSE OPENING STATEMENT

14 BY MR. FLOYD

15 Ladies and gentlemen of the jury, this young man is
16 Robert Jared Prather. Most of his friends call him Jared.
17 Jared is the man about whom you'll make one of the most
18 important decisions you'll ever make about anybody, because
19 you're going to decide, based upon the evidence you'll hear
20 in this room this week, whether or not Jared Prather should
21 be branded a murderer. Murderer, robber, burglar, some of
22 the most horrible crimes we have in our society.

23 If you've never set on a criminal jury before you
24 almost have to set aside human nature. Because see you may
25 think because he's sitting in that chair to be judged by

1 you, because he was arrested by West Columbia Police,
2 because he was charged by the West Columbia police with
3 these crimes, because all that stuff the Solicitor just said
4 about it, you may say, you may think, wow, well, he must be
5 guilty,

6 If we got that kind of thought, you've got to stop.
7 Because you see, Jared's got the same rights we all have.
8 One of those most important rights is what we call the
9 presumption of innocence. So you must look at Jared Prather
10 right now and you must say in your mind and in your heart,
11 Jared Prather is innocent. That's right. And Jared Prather
12 remains innocent unless the State proves he's guilty to each
13 one of your satisfactions beyond a reasonable doubt.

14 Now, I'm not going to go into all what this evidence
15 shows here because we're going to listen to it. But there
16 is a couple of things that the Solicitor brought up that I
17 think I must address at this point. Because I suggest to
18 you it is a gross exaggeration, a stretch. Ladies and
19 gentlemen, they go to have drinks at Uncle Louie's, and he
20 admitted to. What is he going to say? It was a joking
21 comment. It meant nothing. Nobody was mad at anybody.
22 They're going to try to use that comment made to say, hey,
23 he had it in his mind to come back to Gerald Stewart's house
24 and kill him because of some flippant remark made in a bar.

25 What they don't tell you is this, is that after he

1 dropped George Stewart off and went to run some kind of
2 errand and he comes back to the house and he knocks on the
3 door, well, Gerald Stewart comes to the door naked. He
4 doesn't tell you this, that before he left his friend,
5 Joshua Phillips, he laid him on the couch because he passed
6 out. He doesn't tell you this that then Gerald Stewart says
7 to him some stuff that makes him think something funny's
8 going on, of a sexual nature. And he says, what's going on?
9 He goes into the house. And sure enough, he's no longer on
10 the couch. Where is he? Well, he's laying in Gerald
11 Stewart's bed with just his boxer shorts on. And he has to
12 shake him and yell at him to get him awake, to arouse him.
13 Then as he goes to leave, trying to get this guy dressed.
14 Gerald Stewart runs down and grabs him. Gerald Stewart
15 comes at him. And he hits him a few times. He says he
16 does.

17 Now, wait, I'm going to tell you this, too. None of
18 the injuries suffered by Gerald Stewart on that night was
19 fatal. None of the injuries, either together or alone, was
20 fatal. I'm suggesting to you, there's not any evidence
21 about who committed all of the injuries on him, but all of
22 them together are not fatal injuries.

23 Gerald Stewart was six-four, two eighty-five. A heart
24 twice the size of normal person. Cirrhosis of the liver,
25 swollen spleen, blood alcohol point eight-five. He dropped

1 dead on his own. One thing's for sure, none of those
2 injuries that he suffered in the fracas in his home were any
3 physical contact. None of those injuries were fatal.

4 Now, all that we ask is that you keep an open mind.
5 Because you see the way this system works, the State puts on
6 all their evidence before we can even put a single piece of
7 evidence on. Of course, the Defense never has to even put
8 on any evidence because the State must prove guilt beyond a
9 reasonable doubt. These are serious charges, the decision
10 that you make will effect Jared Prather for a long time.
11 All we ask is that you realize that. Listen carefully to
12 what is said. Pay close attention. We think if you do
13 that, keep your mind open, until you hear everything you're
14 going to hear in this case, and conclude at the end, make
15 the only just verdict, is one of not guilty.

16 We thank you for your presence here.

17 The police can arrest you. They can charge you with a
18 crime and the State can prosecute you and take you to trial,
19 but the only way you can be convicted is if twelve members
20 of the jury, twelve members of the community, unanimously
21 agree the evidence proves the guilt beyond a reasonable
22 doubt. So you're the last hope and the only hope of Robert
23 Jared Prather and we appreciate your presence here and we
24 look forward to speaking with you again in what we call the
25 closing argument of the case.

1 THE COURT: All right. Do you have witnesses
2 available?

3 MR. HUBBARD: May we proceed, Your Honor?

4 THE COURT: Yes, sir.

5 MR. HUBBARD: The State calls Sergeant Dwayne
6 Kleckley.

7 (WHEREUPON, Wayne Kleckley was
8 sworn to tell the truth.)

9 THE CLERK: Have a seat, please, sir. Once you're
10 seated, stated your full name spelling your last on the
11 record.

12 MR. KLECKLEY: Wayne Albert Kleckley, K-L-E-C-K-L-
13 E-Y.

14 WAYNE KLECKLEY - DIRECT EXAMINATION

15 BY MR. HUBBARD:

16 Q Sergeant Kleckley, where do you work?

17 A I work at the West Columbia Police Department.

18 Q How long have you been working for West Columbia?

19 A Just a little over twenty-six years.

20 Q Were you in law enforcement prior to West Columbia?

21 A No, sir, I wasn't.

22 Q Now, obviously, if you've been working that long you
23 were employed back November 22nd -- or April 22, 2005. Were
24 you on duty on that day?

25 A Yes, sir. I was the sergeant over the night shift.

1 Q Did you have a chance to become involved in a case
2 involving Gerald Stewart and Robert Jared Prather?

3 A Yes, sir, I did.

4 Q Can you tell us, tell this jury, how you got involved
5 in this case?

6 A Yes, sir. I was the night shift supervisor. I was on
7 patrol. I received a call from my dispatcher. Normally,
8 all the dispatcher calls come over the police radio.
9 However, we had Nextel Radios are push-to-talk telephones at
10 the time. And he called me over the push-to-talk telephone
11 and said, I've got a tricky situation. Let me tell you
12 what's going on and then you tell me how we need to proceed.
13 He then informed me over the Nextel Phone that we had a male
14 at the hospital and his buddy was at the hospital with him
15 requesting a rape protocol kit be done. And we possibly had
16 another victim of an assault over on Decree Avenue. At that
17 time, I told him to send Officer Suber to the hospital and
18 see what he could find out there. And I would go over to
19 Decree Street and see if I could make contact with any type
20 of victim.

21 Q When you got to Decree Street, did you have a good
22 address?

23 A No, sir, I didn't. I was actually sent the first time
24 to 1707 Decree Street. That address did not exist. I
25 called my dispatcher back over the radio and he looked in

1 his notes or either called back to the hospital and he came
2 up with the address of 1737 Decree Street.

3 Q And were you able to locate that address?

4 A Yes, sir, I was.

5 Q Now, once you got to that address, what did you do?

6 A I knocked on the door. I knocked on the windows. I
7 went around -- the backyard was fenced so I went as far as I
8 could on one side and to the other side. And underneath the
9 carport there was a window, to the kitchen, I believe. It
10 was up two or three inches. I hollered in through there,
11 trying to get some response from anybody in the house, but
12 there wasn't a response.

13 Q Now, what time of day was this Sergeant?

14 A It was right around 5:00 in the morning.

15 Q That's pretty early?

16 A It was.

17 Q Dark outside?

18 A Yes, sir.

19 Q Had you ever been to that residence before?

20 A Yes, sir, I had.

21 Q Did you know who lived at that residence?

22 A I do or I did.

23 Q You knew Gerald Stewart?

24 A I knew him as Radar, yes, sir.

25 Q How did you know Radar?

1 A I knew him from cookouts down at Shealy and Son's
2 Electric in West Columbia. He often cooked for the Shealys.
3 And my supervisor, when I first met him down there, knew the
4 Shealys rather well, and that's how I got to start going
5 down there to their cookouts.

6 Q He was a big guy?

7 A He was a big buy, yes, sir.

8 Q Big-hearted man?

9 A Yes, sir.

10 Q Did you also know that this friendly man had some
11 issues?

12 MR. FLOYD: Your Honor, may we approach the bench
13 for a moment.

14 THE COURT: Yes, sir.

15 (Off the record bench conference with counsel and the
16 Court.)

17 BY MR. HUBBARD:

18 Q Did you know Radar to be an alcoholic as well?

19 A Yes, sir, I did.

20 Q You say you'd been in that home before?

21 A Yes, sir.

22 Q Had you ever been to that home to help him because of
23 his alcoholism?

24 A Yes, sir.

25 Q At whose request?

1 A At Radar's request.

2 Q He would summon you?

3 A He would call the police department and ask me to come
4 over there, yes, sir.

5 Q To help him?

6 A Because he wanted to go to detox, yes, sir.

7 Q Let me show you a couple of photographs and see if you
8 can identify this residence I'm showing you?

9 A Yes, sir. That is the residence of Gerald Stewart,
10 also know as Radar.

11 Q The second photograph, does that show that window you
12 were talking about?

13 MR. HUBBARD: Your Honor, I offer these into
14 evidence at this time?

15 THE COURT: Any objection.

16 MR. FLOYD: Rick, I'm sorry. What was that you
17 just handed him?

18 MR. HUBBARD: Photos of the house.

19 MR. FLOYD: Okay. No objection, Your Honor.

20 THE COURT: They're admitted.

21 (State's Exhibit No. 6, photo
22 house, was marked and entered.)

23 (State's Exhibit No. 7, photo
24 window, was marked and entered.)

25 BY MR. HUBBARD:

1 Q Now, Sergeant, this house on Decree Avenue, when you
2 pulled up, you knew who lived there?

3 A Yes, sir, I did.

4 Q And you say you saw an open window?

5 A Yes, sir.

6 Q Is that right off the carport?

7 A That's correct.

8 Q Now, do you recall if any lights were on in that house?

9 A I seem to recall a light maybe over that window, like
10 over a kitchen sink or something of that nature.

11 Q All the other lights were out?

12 A I don't remember seeing any other lights, no, sir.

13 Q And Sergeant when you got there and you got no
14 response, what did you do?

15 A Well, I had no reason to go in at that time. I didn't
16 know whether anybody was there or not. And about the time
17 that I had beat on the door and beat on the windows and
18 yelled inside the window, I received a call from Officer
19 Suber to come to the hospital so I left and went to the
20 Lexington Medical Center.

21 Q Officer Suber, you mentioned him earlier. He's the guy
22 you sent to the hospital?

23 A That's correct.

24 Q And the hospital we're talking about, which hospital is
25 that?

1 A Lexington Medical Center.

2 Q When you got to the hospital, what did you do?

3 A I met with Officer Suber out in the ambulance bay and
4 he explained to me the situation and what had been told to
5 him by Mr. Prather.

6 Q By Mr. Prather?

7 A That's correct, sir.

8 Q Did he convey to you anything told to him by Mr.
9 Phillips?

10 A No, sir, he did not.

11 Q Okay. So the only one that conveyed anything about a
12 story about what happened was Mr. Prather?

13 A That's correct.

14 Q Did you have a chance to talk to Mr. Prather?

15 A Yes, sir, I did.

16 Q Where did that conversation take place?

17 A In the ambulance bay at the hospital. Like I say,
18 Officer Suber and I were outside in the ambulance bay and
19 Mr. Prather approached us.

20 Q Now, at that point in time, Mr. Prather's not under
21 arrest; is that correct?

22 A No, sir.

23 Q Where is Joshua Phillips to your knowledge?

24 A Inside the hospital, but I didn't know where. I never
25 had any contact with him.

1 Q When you spoke to Mr. Prather, what, if anything, do
2 you recall him saying to you?

3 A He stated that he beat up the guy that sexually
4 assaulted his friend.

5 Q Okay. His friend being Joshua Phillips?

6 A Yes, sir.

7 Q Did he say anything about having left that resident and
8 Joshua Phillips staying at the residence?

9 A Yes, sir, he did. He said Mr. Phillips had been passed
10 out on the couch. He left for a while and then he returned
11 later.

12 Q Did he explain why he left?

13 A No, sir.

14 Q When he returned, what did he say?

15 A He stated that the front door was locked. He beat on
16 the door. And Mr. Stewart came to the door and he was in
17 the nude.

18 Q Okay. And then what did Mr. Prather say he did?

19 A He pushed past him, pushed past Mr. Stewart, went into
20 the house, saw that Mr. Phillips wasn't on the couch. And
21 forcibly entered a bedroom and found him in the bed with his
22 underwear on.

23 Q What else did he tell you?

24 A He stated and I quote, he said, I beat the shit out of
25 him. Meaning that he beat Gerald Stewart up.

1 Q What else did he say?

2 A He said he laid some devastating blows on him. And he
3 made a gesture with his fist, hitting into the palm of the
4 other hand.

5 Q So he not only said that but he more or less
6 demonstrated what he was talking about with his own fists?

7 A Yes, sir.

8 Q Was he arrested at that time?

9 A No, sir.

10 Q While you're in the ambulance bay, is Mr. Prather free?

11 A Yes, sir, he is.

12 Q What is he allowed to do or what does he do while
13 you're in the ambulance bay?

14 A He walked off to smoke a cigarette, I believe.

15 Q And while you're in the bay, what, if anything -- what,
16 if any information do you receive?

17 A Well, once I had spoken with Mr. Prather and Officer
18 Suber had filled me in on what he knew, I got a hold of the
19 on-call investigator, who was Frank Neely at the time, and
20 we made a decision that somebody needed to go in that house
21 and make sure that we didn't have a victim. And we need to
22 check to see if we actually had a victim. I called Corporal
23 Hendrix, who was my corporal at the time, and he had Officer
24 Field riding with him. He was fairly new at the time, so
25 they were a two-man unit. I told them to get over to the

1 house. I said there was an open window by the carport. I
2 said go in through the window or kick the door in, but make
3 forcible entry into that house somehow. Get in there and
4 find out whether we've got a victim.

5 Q After you made that radio call, did you receive
6 information about what those officers found?

7 A Yes, sir, I did.

8 Q And what was that?

9 A I was advised that they did have a victim and he did
10 not look good. EMS and first responders were called. And
11 Corporal Hendrix actually said I think I'm going to have to
12 do -- or I'm going to do CPR.

13 Q At that time, having that information, what did you do?

14 A At that time, we got a hold of Mr. Prather. We placed
15 him in investigative detention. We walked him over to the
16 hospital security. He was placed in cuffs and we asked
17 hospital security to watch him.

18 Q Okay. Now, Sergeant, I want to ask you if you can
19 identify this chart, this map, tell me what area this is?

20 A It is a partial map of the City of West Columbia.

21 Q I'm going to point several specific places. Do you see
22 1737 Decree Avenue on this map?

23 A Yes, sir, I do. It's point out by a red dot in between
24 C Avenue and D Avenue.

25 Q Do you see the hospital, Lexington Medical Center on

1 this map?

2 A Yes, sir. Another red dot indicated on 378, just past
3 the I-26 bridge.

4 Q And do you see the West Columbia Police Department?

5 A Yes, sir. It's indicated by a red dot at the 200 Block
6 of North Twelfth Street, at the corner of Twelfth and
7 Klapman.

8 Q And these dots accurately represent the location of
9 these places?

10 A Yes, sir, they do.

11 MR. HUBBARD: Your Honor, I move this chart into
12 evidence at this time?

13 THE COURT: Any objection.

14 MR. FLOYD: No objection, Your Honor.

15 THE COURT: It's in.

16 COURT REPORTER: State's 8.

17 (State's Exhibit No. 8, chart, was
18 marked and entered.)

19 BY MR. HUBBARD:

20 Q Sergeant Kleckley, the West Columbia Police Department,
21 this is the new police department?

22 A Yes, sir.

23 Q So Decree Street's fairly close to the police
24 department; is that correct?

25 A Yes, sir, it is.

1 Q How far would you say it is?

2 A Half a mile or less.

3 Q And then, of course, Lexington Medical Center is where
4 it's always been?

5 A Yes, sir.

6 MR. HUBBARD: I beg the Court's indulgence.

7 BY MR. HUBBARD:

8 Q Now, Sergeant, when you first arrived at the hospital,
9 do you remember talking to one of the nurses?

10 A Yes, sir, I do.

11 Q Were you given anything by a nurse? 128

12 A Yes, sir, I was. I was given a wallet that belonged to
13 Gerald Stewart, given to me by the nurse.

14 Q And did she convey who she got that from?

15 MR. FLOYD: I object. That would be hearsay.

16 MR. HUBBARD: That's fine.

17 THE COURT: Objection sustained.

18 BY MR. HUBBARD:

19 Q See if you can identify this. The wallet and the
20 contents.

21 A Yes, sir, this is the wallet of Gerald Stewart. It has
22 his Social Security Card in it and some other cards with his
23 name on it. It looks like a membership to Friends. It's
24 got a picture of an elderly couple, who I do not recognize.

25 Q So all these cards are his cards?

1 A I would assume they are, yes, sir. Some have his name
2 on them, others do not.

3 Q And this is what was given to you when you went to the
4 hospital?

5 A Yes, sir, it was.

6 MR. HUBBARD: Your Honor, I move this into
7 evidence at this time.

8 THE COURT: Any objection?

9 MR. FLOYD: Yes, Your Honor, they haven't laid
10 proper foundation.

11 THE COURT: What says the State?

12 MR. HUBBARD: It's something that he was given to
13 at the hospital by somebody.

14 THE COURT: Mr. Hubbard?

15 MR. HUBBARD: Your Honor, I think we've identified
16 a victim. He's at one location. His wallet's at another.

17 THE COURT: I don't think chain of custody is an
18 on item such as a wallet with identification in it is a
19 matter that has to be thoroughly introduced. Admitted over
20 objection.

21 MR. HUBBARD: Thank you, Your Honor.

22 COURT REPORTER: State's 9.

23 (State's Exhibit No. 9, wallet, was
24 marked and entered.)

25 BY MR. HUBBARD:

1 Q And Sergeant, you say the elderly couple that's in this
2 photograph inside this wallet, you didn't know who they
3 were?

4 A No, sir, I do not. Did not.

5 Q But you'd agree it's front and center in this wallet?

6 A Yes, sir, it is.

7 Q Sergeant, if you would, please answer any questions Mr.
8 Floyd might have?

9 A Yes, sir.

10 WAYNE KLECKLEY - CROSS-EXAMINATION

11 BY MR. FLOYD:

12 Q Sergeant Kleckley, when you went over to the house, did
13 you try to wake somebody up?

14 A Yes, sir, I did.

15 Q And you say you knew who lived there?

16 A Yes, sir.

17 Q So it wouldn't be any problem if you wake him up, would
18 it?

19 A No, sir.

20 Q And did you beat on the front and the back?

21 A I did not beat on the back door. I beat on the front
22 door, one of the windows and then I yelled, hollered names
23 through the window that was open or cracked open.

24 Q And, in fact, that was a window at the back of the
25 house where the kitchen was, or to the side?

1 A Yes, sir. Toward the side ---

2 Q Was that ---

3 A Yes, sir. Right off of the carport I believe is where
4 the kitchen was, yes, sir.

5 Q And you actually yelled inside that open window?

6 A Yes, sir, I did. Several times.

7 Q Did you beat on that window also?

8 A Yes, sir.

9 Q And you never could get a response?

10 A No, sir.

11 Q Now, you wrote a statement, did you not?

12 A Yes, sir, I did.

13 Q On the same night or the same day?

14 A That morning, yes, sir.

15 Q And in this three-page statement, you don't really say
16 anything in that statement about anything Mr. Prather said
17 to you, do you?

18 A No, sir. That statement was mostly things that were
19 relayed to me by Officer Suber.

20 Q Thank you.

21 MR. FLOYD: I have no further questions.

22 WAYNE KLECKLEY - REDIRECT EXAMINATION

23 BY MR. HUBBARD:

24 Q One quick follow-up.

25 A Yes, sir.

1 Q Did you also do a written report?

2 A I did, sir.

3 Q The statements you've testified to today, were they in
4 that report?

5 A Yes, sir.

6 Q Thank you.

7 MR. HUBBARD: No further questions.

8 THE COURT: All right. You may step down.

9 MR. KLECKLEY: Thank you, Your Honor.

10 MR. HUBBARD: The State calls Ronald Suber.

11 (WHEREUPON, Ronald Suber was sworn
12 to tell the truth.)

13 THE CLERK: Have a seat please, sir. Once you're
14 seated state your full name, spelling your last on the
15 record.

16 MR. SUBER: Ronald Dwayne Suber, Jr., S-U-B-E-R.

17 RONALD SUBER - DIRECT EXAMINATION

18 BY MR. HUBBARD:

19 Q Deputy Suber, where do you work?

20 A I'm a Deputy Sheriff with Greenville County Sheriff's
21 Office.

22 Q A long ways from home?

23 A A bit, yes, sir.

24 Q How long have you been with Greenville?

25 A A little over two years.

1 Q How long have you been in law enforcement?

2 A About nine years.

3 Q Where else have you worked as a law enforcement
4 officer?

5 A I've worked with the City of West Columbia Police
6 Department. And I also worked with the City of Orlando in
7 Orlando, Florida.

8 Q Back in April of 2005, where were you working?

9 A I was a police officer with the City of West Columbia
10 Police Department.

11 Q April 22, 2005, were you on duty?

12 A Yes, sir.

13 Q Were you working A shift or B shift or what shift was
14 that?

15 A I was on our A shift and we were working a 7:00 p.m. to
16 a 7:00 a.m. shift.

17 Q So you were working basically the night shift into the
18 early morning?

19 A Yes, sir.

20 Q Do you recall getting dispatched at some point on your
21 shift to the Lexington Medical Center?

22 A Yes, sir, I do.

23 Q What was the nature of the dispatch?

24 A It was in reference to an alleged criminal sexual
25 conduct case involving a male victim.

1 Q Do you remember about what time you got to the
2 hospital? And if you need to look -- I don't know if you
3 have your report or your statement up there?

4 A Yeah, I have one. It was around 5:00 in the morning.
5 I'm showing 5:05 in my notes.

6 Q 5:05?

7 A A.M., yes, sir.

8 Q Who did you first meet when you got to the hospital?

9 A I first met with a, I believe it was a nurse manager.
10 Ms. Leaphart was her name.

11 Q And once you were at the hospital did you learn about
12 the two individuals who were at the hospital?

13 A I did.

14 Q Did you learn their identities?

15 A I did. I learned that their names were a Joshua
16 Phillips and a Jared Prather.

17 Q Now, the Joshua Phillips, was he the alleged victim of
18 the CSC, the rape ---

19 A Correct.

20 Q --- or was he the friend?

21 A Mr. Phillips would have been the alleged victim at that
22 time. Mr. Prather would have been a friend accompanying Mr.
23 Phillips.

24 Q Now, when you met with this nurse, did you say -- what
25 was her name?

1 A Ann Leaphart.

2 Q When you met with her, did she convey to you the story
3 she had gotten from these two individuals?

4 A Yes, sir, in a generalized manner.

5 Q Okay. Having gotten that information, what did you do?

6 A At that time, my intentions were to speak with Mr.
7 Phillips, an alleged victim of rape, and see what
8 information he could provide.

9 Q Let me ask you this. Do you remember looking at the
10 wallet, a wallet?

11 A Yes.

12 Q See if you can identify it. It's already in evidence,
13 State's Exhibit No. 9. You can handle it if you wish. Does
14 that look like the wallet?

15 A Yes, sir.

16 Q For what purpose did you look at that wallet?

17 A It was the -- it was handed to me by Ms. Leaphart, and
18 I looked in it for an identification card to identify who
19 the owner of the wallet was.

20 Q Okay. And did you get an address as well?

21 A I did, yes, sir.

22 Q Would that be the 1737 Decree Avenue address?

23 A That's correct.

24 Q And did you also get the name of the owner of that
25 wallet?

1 A I did. It was Mr. Gerald Stewart.

2 Q Now, did you know Gerald Stewart?

3 A No, sir, I did not.

4 Q Once you got that information, what did you do with
5 that information?

6 A From the South Carolina Driver's License and the Social
7 Security Card, I jotted that information down.

8 Q Okay. And after you got that information, what did you
9 do?

10 A I handed the wallet back to Ms. Leaphart and went to
11 speak with Mr. Phillips.

12 Q Now, when you're at the hospital at this point, are
13 there any other police officers with you?

14 A No, sir. I'm there by myself.

15 Q Sergeant Kleckley's not there?

16 A No, sir.

17 Q Did you have an opportunity to go and talk to these two
18 individuals, Mr. Phillips and Mr. Prather?

19 A I did.

20 Q En route, what happened?

21 A I was being directed to a conference room, a family
22 conference room in the hospital there, the emergency room.
23 And I was approached by Mr. Prather.

24 Q So he came to you?

25 A He came to me, yes, sir.

1 Q What did he say?

2 A He told me that he and Mr. Phillips had been drinking
3 that night with a friend, that Mr. Phillips had gotten drunk
4 and passed out, that he had put Mr. Phillips on a couch,
5 left, returned to this house a little bit later. And when
6 he returned to the house, he was met at the door by Mr.
7 Stewart, who was completely nude.

8 MR. SUBER: Excuse me for one minute, Your Honor,
9 while I check my notes.

10 A Mr. Prather, he told me that he asked Mr. Stewart what,
11 what was going on. And Mr. Stewart inquired if Mr. Prather
12 knew that Mr. Phillips, and I quote, liked to have sex. Mr.
13 Prather inquired as to what was going on. And Mr. Prather
14 told me that Mr. Stewart then again asked if Mr. Prather was
15 aware that Mr. Phillips enjoyed oral sex.

16 Q What exactly did he say? Since we're in a court of
17 law, let's just go ahead and get that quote out?

18 A Understood. And this is a direct quote. Mr. Prather
19 told me that Mr. Stewart asked him, and I quote, do you know
20 that Josh likes to have his dick sucked.

21 Q Having heard that, what did Mr. Prather say he did?

22 A Mr. Prather told me that he pushed his way past Mr.
23 Stewart into the house. He noticed that Mr. Phillips was
24 not on the couch anymore. At which time he located him in
25 bedroom of the house, wearing nothing but his boxer shorts

1 and asleep on the bed. Mr. Prather continued that he tried
2 to wake Mr. Phillips up, which he initially would not do.
3 That he shook him, yelled at him, grabbed his hair.
4 Finally, was able to wake him up and said, let's get out of
5 here.

6 Q Now, and I probably should have done this earlier. All
7 of this is coming from Mr. Prather?

8 A Yes, sir.

9 Q Do you see Mr. Prather in the courtroom today?

10 A I do, sir.

11 Q Will you please point him out for the court?

12 A Sitting right over here next to Mr. Floyd.

13 Q The young man in a suit, green-colored shirt?

14 A Yes, sir.

15 MR. HUBBARD: Your Honor, please let the record
16 reflect he has identified the Defendant.

17 THE COURT: It does.

18 BY MR. HUBBARD:

19 Q Now, when he gets to the point of saying he gets Joshua
20 Phillips and says, let's get out of here, what does he say
21 next?

22 A The next thing that Mr. Prather tells me -- and, again,
23 I'm going to directly quote here -- I beat the shit out of
24 him. I specifically asked Mr. Prather if he was referring
25 to Mr. Stewart, and he replied, yes. I made note of that.

1 Asked him to continue with his story. Mr. Prather actually
2 stopped me there. And I specifically remember him making
3 eye contact with me and stating -- and, again, this is going
4 to be a direct quote -- no, I beat the shit out of him and
5 those were devastating blows. Furthermore, after that, he
6 stated he had -- he continued to state that he hit Mr.
7 Stewart and he did make a statement Mr. Stewart came at him;
8 however, he never elaborated on that.

9 Q He didn't tell you what he meant by he came at me?

10 A No, sir.

11 Q He never said he hit him, that Gerald Stewart hit him?

12 A No, sir. He never said that to me. He did also
13 specifically tell me that he had taken Mr. Stewart's wallet.
14 Mr. Prather told me that that was so that they would have
15 evidence of who had this to his friend.

16 Q All of this takes place in that conference room at the
17 hospital?

18 A Yes, sir.

19 Q Who else was present when that was going on?

20 A Mr. Phillips was in the room as well.

21 Q Was Mr. Phillips chiming in and joining this version of
22 events?

23 A No, sir. Mr. Phillips was withdrawn, quiet, wouldn't
24 say anything, wouldn't even make eye contact with me.

25 Q How would you describe Mr. Prather's demeanor as far as

1 whether he wished to talk or not?

2 A My opinion at the time was that Mr. Prather wanted to
3 talk to me. He was talkative. He was active. He had
4 information. He wanted to relay that information to me.

5 Q So you had two people in the room, one not even making
6 eye contact and the other was wanting to talk to you?

7 A Yes, sir.

8 Q At this time, nobody's under arrest?

9 A No, sir.

10 Q And at this time you don't have any information, do
11 you, about the condition of Mr. Stewart at Decree Avenue?

12 A No, sir.

13 Q Now, when Mr. Prather's telling you about what happened
14 at Decree Avenue, did he ever say that Joshua Phillips hit
15 or beat Gerald Stewart?

16 A He never specifically said that information to me.

17 Q Did he indicate any way that Joshua Phillips
18 participated in the hitting and beating of Gerald Stewart?

19 A No, sir.

20 Q Did he ever elaborate on why he hit Gerald Stewart?

21 A No, sir, other than making that comment, he came at me,
22 never anything further.

23 Q Did he say anything about Gerald Stewart trying to stop
24 him from getting to Joshua Phillips?

25 A Not to me, no, sir.

1 Q Did he say anything about Gerald Stewart keeping he and
2 Joshua Phillips from leaving the residence?

3 A No, sir.

4 Q What, if anything, did Joshua Phillips say or do while
5 Mr. Prather was talking?

6 A While Mr. Prather was talking, Joshua Phillips was just
7 sitting there. He never interjected once during the story.

8 Q Having heard the story, did you arrest Mr. Prather?

9 A No, sir. In fact, did he ask you if he could do
10 something?

11 A He did. He asked if he could go outside and smoke a
12 cigarette.

13 Q And did you let him?

14 A Yes, sir.

15 Q Where did you go?

16 A I left the conference room. And I don't remember if I
17 stayed immediately in the ER or walked out into the
18 ambulance bay, but I contacted Sergeant Kleckley and
19 requested that he come meet me at the hospital.

20 Q And Sergeant Kleckley, what was his relationship to you
21 at the West Columbia Police Department?

22 A He would have been my sergeant, my immediate
23 supervisor.

24 Q So you relayed all the information you got from Mr.
25 Prather?

1 A Yes, sir.

2 Q Do you remember Sergeant Kleckley arriving at some
3 point?

4 A I do.

5 Q Do you know if he had a chance to speak to Mr. Prather
6 as well?

7 A I believe he did.

8 Q After you gave Sergeant Kleckley all of this
9 information, what, if anything happened? Were any other
10 officers asked to be involved at that point?

11 A They were. To the best of my recollection, Sergeant
12 Kleckley had Corporal John Hendrix, who was training Officer
13 Brandon Field at the time, as a two-man unit they responded
14 to 1737 Decree Street/Avenue. I can't remember. They were
15 directed by Sergeant Kleckley to make entry into the
16 residence, go inside. And we started to get radio traffic
17 or overhear radio traffic that Mr. Stewart was located in
18 the residence, was unconscious and unresponsive.

19 Q Did at some point come over that he was dead?

20 A Yes, sir.

21 Q About how long did it take for conveying, to get those
22 guys house to getting back information that Gerald Stewart
23 was dead, if you remember?

24 A I couldn't specifically say. I would say no more than
25 fifteen, twenty minutes maybe.

1 Q Okay. Once you and Sergeant Kleckley got information
2 that Gerald Stewart was dead, what did you do?

3 A At that time, we made the decision to place Mr. Prather
4 into an investigative detention.

5 Q What does that mean?

6 A He was placed into handcuffs. He was advised that he
7 was not under arrest; however, he was being detained for
8 investigative purposes, due to us finding a victim at the
9 location where he had been.

10 Q Once that was done, did he just stay at the hospital,
11 or what happened to Mr. Prather?

12 A Just shortly after that, he was placed in my patrol
13 vehicle and I transported him back to the West Columbia
14 Police Department.

15 Q Did you have any conversations when you transported him
16 back?

17 A No, sir. At that point in time, I did not.

18 Q And where did you place him West Columbia when you got
19 to headquarters?

20 A He was placed in a holding cell. In our holding cell
21 facility at the police department.

22 Q Was that the end of your involvement in this case?

23 A Yes, sir, it was.

24 Q Please answer any questions the Defense has.

25 A Yes, sir.

1 THE COURT: Mr. Floyd.

2 RONALD SUBER - CROSS-EXAMINATION

3 BY MR. FLOYD:

4 Q Officer Suber, did you note that Mr. Prather was upset
5 and shaking?

6 A Yes, sir. I notated that in my statement that he was.

7 Q Okay. So when he was telling you these things, he was
8 visibly upset and shaking?

9 A Yes, sir.

10 Q Now, he also told you, at the time -- that actually Mr.
11 Stewart came at him, did he not?

12 A Those were his words to me.

13 Q And you didn't make an arrest of him at that point, did
14 you?

15 A No, sir.

16 Q That's because if somebody comes at you, you have the
17 right to defend yourself, don't you?

18 MR. HUBBARD: Your Honor, I object. I haven't
19 heard anything, other than he came at him.

20 THE COURT: All right. Mr. Floyd.

21 MR. FLOYD: It's a straightforward question, Your
22 Honor. If somebody comes at you, you have a right to defend
23 yourself.

24 THE COURT: I overrule the objection.

25 A Generally speaking, yes, sir.

1 BY MR. HUBBARD:

2 Q And did you know how big Mr. Stewart was?

3 A Other than the demographics on his South Carolina
4 Driver's License, no, sir.

5 A Thank you. No further questions, officer.

6 MR. HUBBARD: No further questions, Your Honor.

7 THE COURT: All right. Thank you. You may step
8 down.

9 MR. SUBER: Thank you, Your Honor.

10 THE COURT: I think we're going to call it a day.

11 MR. HUBBARD: Yes, sir, Your Honor. We've got
12 some other witnesses we need to make arrangements with, so
13 that would be great if we can.

14 THE COURT: All right. Very good. Ladies and
15 gentlemen, thank you very much. We're going to break for
16 the day. We need you back at 9:15 tomorrow morning. 9:15
17 tomorrow morning. Please remember not to discuss the case
18 with anyone. We'll see you tomorrow.

19 THE BAILIFF: All right. Come go with me.

20 (Jury out at 5:45 p.m.)

21 MR. HUBBARD: Your Honor, I apologize. I forgot
22 about the four word objection rule. We'll try to speak to
23 that.

24 THE COURT: That's all right.

25 MR. HUBBARD: I'm wordy. I apologize.

1 THE COURT: All right. Anything else before we
2 break?

3 MR. HUBBARD: No, sir, Your Honor. No, sir.

4 THE COURT: The Defendant is out on bond. Who is
5 the bonding company?

6 MR. FLOYD: He's out on --

7 THE COURT: Are you going to stay on the bond
8 during the course of the trial, ma'am?

9 THE BAIL BOND AGENT: Yes, sir.

10 THE COURT: He'll remain out on bond.

11 MR. FLOYD: Thank you, Your Honor. I just want to
12 put one thing on the record. We may even have an agreement
13 on it. I just want to formally make a Motion in Limine,
14 that there be no testimony about the fact that there was a
15 trial in this matter some years ago. Also, in Limine of any
16 statements made by the co-defendant, Your Honor, Phillips,
17 to come out.

18 THE COURT: All right.

19 MR. HUBBARD: Your Honor, we agree with that. We
20 were not going to try to bring up anything about a prior
21 trial. If Mr. Prather testifies, we were just going to say
22 a prior sworn statement if it comes to impeachment purposes.
23 I don't know of any statements that we're going to try to
24 get in through some other outlet that Joshua Phillips made.
25 So I don't think there's any problem with that.

1 THE COURT: All right. Regarding these exhibits,
2 have you all -- you know the exhibits the State's going to
3 offer?

4 MR. FLOYD: Not all of them, Your Honor. I can
5 get with them and see what --

6 MR. HUBBARD: We can meet in our office, if Your
7 Honor's okay with that and just walk through it. And if
8 there's something that needs to be red-flagged, maybe we can
9 get with you first thing in the morning and see how you want
10 to want to approach it.

11 THE COURT: Okay. Sounds good.

12 MR. HUBBARD: All right.

13 THE COURT: Okay. So we'll break until tomorrow
14 morning 9:15.

15 (Court in recess November 26, 2012
16 at 5:49 p.m.)

17 (Court in session November 27, 2012
18 at 9:15 a.m.)

19 THE COURT: All right. Good morning. Are you
20 ready for the jury?

21 MR. HUBBARD: The State's ready, Your Honor.

22 MR. FLOYD: The Defense is ready, Your Honor.

23 THE COURT: All right. Well, bring them in.

24 (Jury in at 9:15 a.m.)

25 THE COURT: All right. Good morning.

1 THE JURY: Good morning.

2 THE COURT: Day two, State v. Prather.

3 Your next witness, please?

4 MR. GRAHAM: The State calls James Jeffcoat to the
5 stand, Your Honor.

6 (WHEREUPON, James Jeffcoat was
7 sworn to tell the truth.)

8 THE CLERK: Have a seat, please, sir. Once you're
9 seated, speak up loud and clear stating your full name,
10 spelling your last name for the record, please?

11 MR. JEFFCOAT: Okay. James W. Jeffcoat, J-E-F-F-
12 C-O-A-T.

13 JAMES JEFFCOAT - DIRECT EXAMINATION

14 BY MR. GRAHAM:

15 Q Mr. Jeffcoat, where are you employed, sir?

16 A Lexington Medical Center.

17 Q And what do you do there currently?

18 A I'm an outcomes coordinator in our center for best
19 practice.

20 Q And what does that mean?

21 A We look at quality for the hospital on many levels. So
22 I'm actually over the emergency department and our chest
23 pain center accreditation. And I'm also what we call, a
24 stemi (sp) coordinator, which is when we're dealing with
25 heart attacks.

1 Q What's your educational background?

2 A In '97 I graduated from a Carolina with a B.S. in
3 Exercise Physiology. Then in 2001, I graduated from
4 Midlands Tech with an Associate Degree in Nursing. And in
5 2008, I graduated from the University of Phoenix with a
6 Master's in Nursing.

7 Q Back on April 22 of 2005, were you working at Lexington
8 Medical Center then?

9 A Yes, sir.

10 Q And what were you doing there then?

11 A I was an emergency department nurse, staff nurse.

12 Q Did you have an opportunity in that morning to meet an
13 individual named Joshua Phillips?

14 A Yes, sir.

15 Q Now, did you come in contact with the Defendant in this
16 case, Jared Prather?

17 A No, sir.

18 Q What was your understanding, why were you meeting with
19 Joshua Phillips?

20 A That morning when we came in, it was related to me that
21 there was a male that had been raped. So the complaint was
22 that a rape kit was to be done. And so I was assigned to
23 this particular room to conduct the rape kit.

24 Q When you say a rape kit, what's a rape kit?

25 A A rape kit is collection kit, developed by SLED, that

1 emergency department at the nurses at the time were using to
2 conduct an investigation of rape.

3 Q Did you have an opportunity to meet and talk with Mr.
4 Phillips?

5 A Yes.

6 Q How would you describe -- when you first met him, what
7 kind of a room was it? Was it an exam room or where?

8 A It was an exam room. Room number twenty-one in the
9 emergency department.

10 Q When you first laid eyes on him, what did he look like?
11 How did he appear?

12 A When I walked in the room to meet him, I remember he
13 was sitting in the bed. It was quiet and he appeared quite
14 calm, flat was almost what I would have termed him at the
15 time.

16 Q You said flat. What does that mean?

17 A Flat affect. Simply meaning that the patient is not
18 going to be either -- very emotional. In other words, just
19 sitting looking. And when I went in to actually introduce
20 myself, there was not a whole lot of dialogue. So it was
21 more just a, quiet in other words.

22 Q What, if anything, did you notice about him as far as
23 him being intoxicated or having been drinking?

24 A At the time, my initial thought was that there was no
25 signs of any kind of intoxication. And, of course, as the

1 record would bear out, he had noted that he had been
2 drinking that night.

3 Q What did he tell you about that?

4 A I documented that he in quotes, from what he told me,
5 that they had about twelve beers that night.

6 Q That he had twelve beers that night?

7 A Yes, sir.

8 Q Did he give you a time frame for that?

9 A Not specifically.

10 Q Did he tell you anything else about the drinking?

11 A He said that twelve beers had never phased him in that
12 kind physical demeanor before.

13 Q What, if anything, did he tell you about being passed
14 out?

15 A Just that he had passed out at a moment in time, and
16 there wasn't really much description behind that, other than
17 he'd passed out. And when he awoke, he noticed that this
18 individual, this male was there and his friend was there.

19 Q What, if any, memory did he have regarding any actual
20 alleged assault?

21 A He wasn't able to recall any events around an assault.

22 Q So did he tell you that he was raped?

23 A He did not say he was raped, although he was requesting
24 a rape kit.

25 Q Do you have a specific set of notes that you took

1 during this and also a, actually form that's a rape protocol
2 kit?

3 A Correct. We document on the nurse's notes as well as
4 the rape protocol, that is within the kit itself.

5 Q Turning to your nursing notes, prior to you actually
6 meeting with Mr. Phillips, did Mr. Phillips see a doctor?

7 A Yes. Generally, a physician will go in and see a
8 patient before my assessment. And that's apparently what
9 had happened that particular morning.

10 Q Do you know what time the doctor saw Mr. Phillips?

11 A I want to say that the document time that I had noted
12 was 7:05.

13 Q And what time did you first meet Mr. Phillips?

14 A I have a documented vital sign time which is my initial
15 assessment of 7:22.

16 Q At 7:35, did you begin actually administering the rape
17 protocol kit?

18 A Yes, sir.

19 Q Explain that process in general, would you please?

20 A Sure. Of course, as I noted, SLED puts together the
21 kit. It's sealed. And so when we initiate a rape protocol,
22 that kit is then opened. The seal is broken. And within
23 there is documentation on how the rape protocol is to
24 unfold. So we would start with a brief assessment of the
25 patient, the situation behind that, and then we would start

1 obtaining samples. So it lays out everything in there for
2 the nurse to conduct the rape protocol.

3 Q As far as -- does it include a description of the
4 assault?

5 A Yes, sir.

6 Q Or alleged assault?

7 A Yes, sir.

8 Q And where did you get that information from?

9 A From the patient, Mr. Phillips.

10 Q And what did Mr. Phillips tell you regarding the
11 assault?

12 A Again, he had noted that he couldn't recall many of the
13 events surrounding an assault, as noted on this first page
14 of the information and examination form, of the rape
15 protocol.

16 Q Specifically, what did you write down that he told you?

17 A Okay. Patient relates a night out with friends,
18 consuming approximately twelve beers at a bar. Met alleged
19 assailant at bar, then went to his house with one friend.
20 Friend later had to leave while patient, Mr. Phillips, went
21 to sleep on couch, while alleged assailant remained in the
22 residence with the patient. Upon friend's arrival back to
23 the aforementioned residence, he was met by alleged
24 assailant, disrobed. Friend then discovered patient in
25 alleged assailant's bedroom clothed with only boxers.

1 Patient unable to recall events surrounding episode.

2 Q So what he told you -- you said, patient unable to
3 recall events surrounding episode?

4 A Yes, sir.

5 Q Are you able to form an opinion, as to the way he told
6 you this, whether what you just related to us, the summary
7 of the assault, whose opinion that was?

8 MR. FLOYD: Your Honor, I object. That would be
9 outside the scope of this witnesses expertise.

10 THE COURT: All right.

11 Mr. Graham.

12 MR. GRAHAM: Your Honor, all I did was ask him an
13 opinion. He's already related what the summary of the
14 assault was that was told to him by Mr. Phillips. And I'm
15 asking him from that conversation was he able to tell
16 whether he was remembering those events or was repeating
17 what somebody told him.

18 THE COURT: Restate the question, please?

19 BY MR. GRAHAM:

20 Q Mr. Jeffcoat, you had previously testified to the
21 summary of the assault that Mr. Jeffcoat [sic] told you.
22 Based on what he said to you, were you able to relate or do
23 you have an opinion or do you know as to whether he was
24 telling you what he knew or what somebody else had told him?

25 MR. FLOYD: Your Honor, renew the objection.

1 That's asking for speculation.

2 THE COURT: I sustain the objection.

3 BY MR. GRAHAM:

4 Q After you have talked to him about the assault, what is
5 the next part of the procedure?

6 A Then we'll begin a specimen collection. And that
7 begins with -- as the rape kit would guide us to do, was to
8 -- and after informing the patient of how the process was
9 going to unfold, then we start collecting clothing, and then
10 from there, specimens, such as any kind of fluids any
11 orifices and pubic hairs. Anything that would lead to an
12 investigation of this sort.

13 Q Let me show you a box. And ask if you recognize this
14 box.

15 A Yes, this is the actual same kit, sexual assault nurse
16 evidence collection kit provided by SLED with my
17 documentation on it.

18 Q What's the purpose of that kit?

19 A To assist medical staff in obtaining samples for ruling
20 out a particular rape. And then assisting with law
21 enforcement in that process as well.

22 Q When you receive that box, is it sealed in any way?

23 A Correct. It is. There are seals that are noted around
24 the side. And, let's see, this is -- on each side they're
25 sealed up.

1 Q Do you know what the purpose of those seals are?

2 A To protect the integrity of the kit itself.

3 Q And do you remember whether when you got that kit,
4 whether it was properly sealed?

5 A It was.

6 Q Once you break the seal, what do you find inside? What
7 are some of the things you find inside?

8 A There were paper drapes that we would lay on the floor
9 so that the patient could stand on, in this so that any kind
10 of evidence that would fall on that drape would then be
11 sealed up and placed in the kit. There are envelopes for
12 obtain other specimens such as clothing, any kind of body
13 fluids, hair samples, Q-tip swabs, blood specimens and that
14 nature.

15 Q That kit itself, there's handwriting on there. Do you
16 recognize it?

17 A That's my handwriting, yes, sir.

18 Q And do you recognize that as the box that you used to
19 collect information in the alleged assault where Joshua
20 Phillips was the alleged victim?

21 A Yes, sir.

22 MR. GRAHAM: Your Honor, the State would offer the
23 box into evidence at this time.

24 THE COURT: Any objection?

25 MR. FLOYD: No objection, Your Honor.

1 THE COURT: It's admitted.

2 (State's Exhibit No. 10, rape kit
3 box, was marked and entered.)

4 BY MR. GRAHAM:

5 Q Mr. Jeffcoat, looking inside that box now, what do you
6 find?

7 A In here is a debris collectible drape, which is what
8 the patient would stand on while they're disrobing.

9 Q And what's the purpose of that?

10 A This lays out flat. And so when a patient disrobes and
11 anything that would fall on that drape would then be
12 collected in this, folded just like it is, and then placed
13 back in the box.

14 Q There's writing on that. Do you recognize the writing?

15 A Yes, sir. That's my handwriting. It says the victim's
16 name is Joshua B. Phillips, collected by myself and the date
17 and the time of collection.

18 Q What else, in addition to that, do you see in the box?

19 A There is an assessment form here as well, which would
20 have indicated -- there's a lot of information on here as
21 far as the information when it was collected, the brief
22 summary of the assault, any kind of background information
23 that a patient will be able to give us regarding the assault
24 itself. And then any of the treatment that we would have
25 provided to the particular patient. Disposition and

1 followup for any kind of assault services, the evidence
2 collection and disposition, and then an annotated drawing of
3 an anatomical figure so that we can document any kind of
4 scrapes, abrasions or the like.

5 Q How many pages is that document?

6 A That's going to be four pages total.

7 Q And do you recognize the handwriting on there?

8 A That's my handwriting.

9 Q Is it all your handwriting?

10 A Yes, sir.

11 Q Is that the form that you have, that was provided in
12 this box by SLED that you filled out?

13 A Yes, sir.

14 Q In addition to that, what else is in there?

15 A This is a envelope with my handwriting on there. I
16 would -- I'm not sure what would have been in this
17 particular envelope. It says rape kit. It has my
18 handwriting on there.

19 Q There's nothing in there now?

20 A It's empty, yeah.

21 Q Is there anything else?

22 A There is a chain of custody, which would have noted
23 where it began, and those folks who were involved with this
24 particular kit, handling it.

25 Q And is that something you filled out or something that

1 somebody else filled out?

2 A This is not my handwriting here. Somebody else would
3 have filled that out.

4 Q But everything else you recognize as being part of the
5 box and what you filled out with it?

6 A Yes, sir.

7 Q On the back of the box it talks about a chain of
8 custody?

9 A Yes, sir.

10 Q What is that?

11 A A chain of custody is who touches the box. So when the
12 chain of custody -- of course, it begins with me as the
13 collector, and then who I handed it off to after the
14 collection.

15 Q Who does it say that you handed it off to?

16 A April Bayne, the West Columbia Police Department.

17 Q So one of the first things you would do is to collect
18 clothes; is that fair to say?

19 A Yes, sir.

20 Q Do you remember specifically from your notes what
21 clothes you collected from Mr. Phillips?

22 A I documented it in my nurses notes. And at 7:35 I
23 noted that his outer clothing was removed. The clothing
24 removed included a black Slipknot sleeveless tee shirt,
25 Wrangler blue jeans, a brown leather belt with a silver

1 clip, miscellaneous change, an Altoid cannister, a black
2 leather wallet. Two intact bullets with markings, R-
3 P325NWL. A black and blue pair of plaid boxers, and leather
4 sandals that were not worn at the scene.

5 Q Let me show you an item here at the time and ask if you
6 recognize that? The first one, do you recognize that?

7 A This is a bag provided for outer clothing.

8 Q Do you recognize the handwriting on the bag?

9 A Yes, sir. That's mine. It states the victim's name is
10 Joshua Phillips. And then the clothing enclosed included
11 black sleeveless Slipknot tee shirt and Wrangler blue jeans.

12 Q Do you know what the purpose is for collecting clothes?

13 A Yes, sir.

14 Q What is it?

15 A For any kind of specimens that could have been dropped
16 onto the clothing itself.

17 Q And do you recognize that as being the bag that you
18 used to collect Mr. Phillips clothes on the morning of April
19 22, 2005?

20 A Yes, sir.

21 Q Let me show you a bag and I'll get you some gloves.

22 A Okay.

23 Q Looking inside that bag and let me ask if you recognize
24 any of the contents of that bag?

25 A This would have been the drape that was on the floor,

1 I'm going to say.. Yes, that would have been that. And
2 there is a pair of jeans, with a black leather belt, silver
3 clasp, and a black sleeveless Slipknot tee shirt.

4 Q Do you know the brand of the jeans? Do you recognize
5 those?

6 A Those are Wranglers.

7 Q Do you recognize those as being the jeans, the belt,
8 and the Slipknot tee shirt that you took from Mr. Phillips
9 that morning?

10 A I do, because I had noted in the nurse's notes
11 particulars of the jean appearance in my nurse's notes, both
12 anterior and posterial.

13 MR. GRAHAM: Your Honor, the State would offer the
14 shirt, the Wrangler jeans and the belt into evidence at this
15 time.

16 THE COURT: What says the Defense?

17 MR. FLOYD: No objection, Your Honor.

18 THE COURT: They're admitted.

19 (State's Exhibit No. 11, clothing,
20 was marked and entered.)

21 BY MR. GRAHAM:

22 Q Once you got these, you took the clothes from him --
23 and I'm referring to State's 11 now, and then going back to
24 State's -- wait a minute. I haven't introduced this -- the
25 bag that we discussed earlier, what is that bag I'm handing

1 you now?

2 A This is the outer clothing bag with which these
3 particular items would have been in. So once they fall onto
4 the drape, then they're sealed up and go in here.

5 Q Okay. And you recognize the handwriting there as being
6 yours?

7 A Yes, sir, that's mine.

8 Q And that's the bag that was used to contain ---

9 A Yes, sir.

10 Q --- the clothes with State's 11?

11 A Yes, sir.

12 MR. GRAHAM: Your Honor, the State would offer
13 this outer clothing bag into evidence.

14 THE COURT: Any objection?

15 MR. FLOYD: No objection, Your Honor.

16 THE COURT: So admitted.

17 (State's Exhibit No. 12, outer
18 clothing bag, was marked and entered.)

19 Q Mr. Jeffcoat, looking at State's No. 12, which is the
20 outer clothing bag, there's some red tape on there. Do you
21 recognize that?

22 A Yes, sir. Those are the evidence seals that were
23 placed on the bag after I sealed them shut.

24 Q There are initials on those evidence, do you recognize
25 those initials?

1 A Yes, sir, that's JJ.

2 Q And who is that?

3 A That's me.

4 Q Is that your handwriting?

5 A Yes, sir.

6 Q So the clothes were placed in this bag and the bag was
7 sealed. What's the purpose of it being sealed?

8 A So that it protects the integrity of the evidence.

9 Q Once the outer clothes were taken from Mr. Phillips,
10 what did you do next?

11 A Then we begin the process of specimen collection, more
12 of the organic material, I guess you could say. Any kind of
13 hair, any kind of fluid collection that would have been in
14 the particular orifices that the collection kit guides the
15 nurse through.

16 Q So what was the next thing. I guess that's on -- is
17 that on page three, the checklist on page three that you're
18 talking about, of the SLED form?

19 A Yes, sir.

20 Q So after you do the outer clothing, what do you do
21 next?

22 A Then we would examine again the body to determine if
23 there's any kind of signs of trauma that would lead us to
24 believe that there was a rape that occurred. That includes
25 oral swabs and a smearing with a Q-tip, fingernail scraping

1 that were collected, public hair combings. The kit
2 obviously will look at vaginal swabs. Of course, that was
3 not done in this particular case. Any Buccal swabs and a
4 smear, and then miscellaneous body fluid that would have
5 been obtained during that exam.

6 Q You had noted, you had mentioned just a few minutes ago
7 a physical examination?

8 A Yes, sir.

9 Q Did you conduct a physical examination on Mr. Phillips?

10 A Ye, sir.

11 Q What did you find?

12 A The findings are noted on page four with the anatomical
13 drawings. And on that particular form, I had noted that
14 there were several abrasions that were superficial in
15 nature, both anterior and posteriorly. And any kind of
16 known, old scaring on the particular patient. So for Mr.
17 Phillips, I had noted on his back, his sides, his hands,
18 anywhere where there was a superficial abrasion, it was
19 noted.

20 Q Could you briefly describe where you noted abrasion on
21 Mr. Phillips?

22 A Okay. Anteriorly, I see lines that would indicate
23 abrasions just above the clavicle.

24 Q When you say anteriorly, what does that mean?

25 A I mean the front of the body, of which the face is.

1 Q All right. Okay.

2 A Yes, sir.

3 Q When you clavicle, where were you referring to?

4 A Right above the collar bone, base of the neck, and
5 looks like around the front of the neck itself. I also see
6 on the right shoulder some abrasions. I see on the left
7 bicep, which is the upper part of the arm, two abrasions
8 there. I see on the dorsal surface of the right hand two
9 abrasions. And on the back ---

10 Q Let me stop you there just for a second?

11 A Sure.

12 Q The dorsal side of the right hand. Can you show the
13 jury on your hand where those abrasions were?

14 A The dorsal surface is the side with the knuckles, the
15 side opposite of the palm. So it's going to be this
16 particular surface of the hand.

17 Q If someone were to make a fist and strike somebody,
18 would that be -- the part you're showing, is that the part
19 that would make contact with something?

20 A In my experience, those folks who have provided a blow
21 with their hand are going to have scarring or some kind of,
22 some kind of skin tears around the knuckle area itself. So
23 this particular side of the hand itself.

24 Q Okay. So when you're describing the wounds on Mr.
25 Phillips, was that consistent of inconsistent when somebody

1 has been striking blows with a closed fist?

2 A It was inconsistent.

3 Q In addition to the abrasions on the right top of Mr.
4 Phillips hand, where else did you see -- were there any
5 other anterior or the front of his body abrasions that you
6 saw?

7 A I see on the anterior side, it looks around the left
8 front of the leg, the lower leg, there's an abrasion there.
9 And then if we look laterally, to the left, I see some
10 scarring or some superficial abrasions on the right deltoid
11 -- I'm sorry -- the left deltoid, which is the area around
12 the shoulder here. And then around the left forearm.

13 Q How about moving to the back of Mr. Phillips body?

14 A Uh-huh (affirmative). There were multiple on the back.
15 And it looks like they were scattered across the top of the
16 back itself, above the scapula, which is the shoulder blade,
17 just below the neckline, across the back. There was some
18 noted, looks like on the left shoulder blade, and then some
19 had trickled -- well, not trickled down -- but they were
20 noted on the lower, left lower back, around the -- it looks
21 like around the kidney area.

22 Q When you describe them as superficial abrasions, what
23 does that mean?

24 A That simply means that by description, a superficial
25 abrasion would be something like a, just a minor cut that

1 someone incur. There's no bleeding. It's not deep. It
2 doesn't require anything, other than cleaning and maybe a
3 band-aid.

4 Q If you had to describe what those abrasions looked
5 like, how would you do that?

6 A Based on what I wrote here, document or just ---

7 Q What you remember?

8 A Oh, yeah. They were -- I had remembered, recalling
9 that -- I remember saying, wow, it looks like he was drug
10 through some briars. That's what I had thought on his back,
11 because they were more on the back than they were on the
12 front.

13 Q Did you know whether there was any active bleeding or
14 not?

15 A There was no active bleeding.

16 Q Was there scabbing?

17 A No scabbing at all. These were very fresh.

18 Q Did you see any bruising on Mr. Phillips body?

19 A No, sir.

20 Q Not anywhere on his entire body?

21 A No, sir.

22 Q Did you see any contusions upon his body?

23 A No contusions were noted.

24 Q What's a contusion?

25 A A contusion is an area of deep bruising. It may be, it

1 may have evidence of bruising later on, but it would be
2 something that would be a blunt force to a specific soft
3 tissue area, and then -- it would hurt and then later on
4 would bruise.

5 Q How about bite marks, isn't that something you look for
6 in a sexual assault?

7 A Indeed. There were no bite marks that I have noted.

8 Q In addition to the outward physical exam of the skin,
9 which is basically what we just discussed, what else did you
10 do as part of the alleged sexual assault kit?

11 A We also look at the perineum as well, to determine if
12 there's any sexual trauma that occurred?

13 Q What's a perineum?

14 A A perineum is the area between the legs, and in a
15 female anatomy, it would be the area between the vagina and
16 the anus. In the male, it would be the area between the
17 scrotal sack and then to the anus itself.

18 Q What, if anything, did you notice on Mr. Phillips about
19 his perineum?

20 A Other than a skin tag that was noted, there would
21 nothing that would have lead me to believe that there was
22 any kind of sexual trauma that occurred.

23 Q When you say a skin tag, what is that?

24 A A skin tag is like a mole that comes off of the skin.

25 Q Did you see any bruising in that area?

1 A No, sir.

2 Q Did you see any contusions?

3 A No, sir.

4 Q Any bite marks?

5 A No, sir.

6 Q Any abrasions?

7 A No, sir.

8 Q Any laceration?

9 A No, sir.

10 Q As part of your job, did you perform an examination on
11 Mr. Phillips anus?

12 A Yes, sir.

13 Q What is that? When we say anus, what are we
14 specifically talking about?

15 A That is the area where fecal material comes out in
16 other words.

17 Q Okay.

18 A And that would involve a Wood's lamp examination. And
19 a Wood's lamp is a ultraviolet light that is cast onto the
20 area to determine if there's any seminal fluid that would
21 then be fluorescent under the Wood's lamp.

22 Q So you take a fluorescent like and you're looking for
23 what?

24 A Seminal fluid, semen, yes, sir.

25 Q And did you perform that examination on Mr. Phillips?

1 A Yes, sir.

2 Q And did you find anything?

3 A No, sir.

4 Q Specifically regarding Mr. Phillips anus, what did you
5 find upon examination?

6 A There were no evidences of any kind of penetration,
7 which would have included any kind tearing of the anal
8 cavity, nor were there any signs such as bruising,
9 contusions, or bite marks to the area.

10 Q Did it appear normal to you?

11 A Yes, sir.

12 Q Going back to -- I guess one of the next things you
13 would do would be actually collecting samples; is that
14 correct?

15 A Correct.

16 Q Let me show you a bag inside of a bag and ask if you
17 recognize the bag that's inside?

18 A Yeah. This is my handwriting on a specimen bag?

19 Q And do you recognize that?

20 A Yes, sir, that's my handwriting. Patient ---

21 Q And is it related to this case?

22 A Correct. Joshua B. Phillips.

23 Q It's contained in a SLED bag that's sealed and I'm
24 cutting into that right now. Handing you what's inside,
25 what is that?

1 A This would be miscellaneous materials envelope, pubic
2 hair combings envelope, known pubic hairs envelope, and a
3 known head hairs envelope.

4 Q And those are items that you would have collected from
5 Mr. Phillips?

6 A Yes, sir.

7 Q There's a red seal on there. What's the purpose of the
8 seal? And I see initials.

9 A That's to protect the integrity of this sample. And
10 that's my initials, JJ.

11 Q So you collected miscellaneous materials, public hair,
12 known pubic hair, and known head hairs?

13 A Yes, sir.

14 Q And I guess the combings -- what's a pubic hair
15 combing?

16 A A pubic hair would be hair that's in that particular
17 perineal area. If it's around the genitals and around the
18 rectum as well.

19 MR. GRAHAM: Your Honor, the State would offer
20 this into evidence at this time.

21 MR. FLOYD: No objection, Your Honor.

22 THE COURT: So admitted.

23 (State's Exhibit No. 13, hair,
24 pubic hair combings, pubic hair, was marked and entered.)

25 Q Once you collected these items and sealed this bag, Mr..

1 Jeffcoat, is that one of the items that you would have put
2 back into the box, which is State's No. 10?

3 A Yes, sir.

4 Q There are other items that are collected as well; isn't
5 that true?

6 A Yes, sir.

7 Q Let me show you another bag within bag and ask if you
8 recognize the white bag?

9 A Yes. This is my handwriting, Joshua B. Phillips,
10 along with an evidence seal that's burgundy with my initials
11 on it.

12 Q Okay. What was the purpose of that envelope?

13 A This is used for DNA, which would include known blood,
14 which I collected at the time of the exam, miscellaneous
15 body fluid, bite marks, vaginal or oral, rectal slides,
16 which is where we would perform a swab and then put it on a
17 slide for examination. Vaginal swabs, of course, that's not
18 applicable in this particular case. Oral swabs, rectal
19 swabs, and then fingernail scrapings.

20 Q A lot of stuff inside that bag, isn't there?

21 A Yes, sir.

22 Q Looking inside that bag, there is a vial and several
23 envelopes.

24 A Yes, sir.

25 Q I'm going to ask you to look through those and ask if

1 you recognize those?

2 A Okay. Yes, sir. The known blood sample has, again,
3 Joshua B. Phillips and my name on it as being collected on
4 4/22 at 8:55 a.m. That's a blood sample.

5 Q So you would have collected -- at the time you
6 collected it -- this is an outer plastic bag that you were
7 just reading off of?

8 A Yes, sir.

9 Q That's your handwriting?

10 A Yes, sir.

11 Q What would have been in this bag at the time you
12 collected it?

13 A That would have been the vial of blood that I drew.

14 Q So you put a needle in Mr. Phillips arm and took blood?

15 A Yes, sir.

16 Q Put it inside this bag?

17 A Uh-huh (affirmative).

18 Q Wrote on the outside of it, closed the bag, and then
19 put it inside this envelope?

20 A Yes, sir.

21 Q Okay. What else do you have?

22 A Okay. This is a smear. These are slides with the
23 smear specimens on them. This is both oral and rectal.
24 This is on Joshua B. Phillips again with my name on it, 4/22
25 at 8:25 a.m. So these are the slides with those particular

1 smears on them.

2 Q And once you would have collected those smears, they're
3 on the glass plates?

4 A Correct.

5 Q Is that for looking under a microscope?

6 A Uh-huh (affirmative).

7 Q You would have put it in this plastic container, sealed
8 it, and, again, put it in the envelope?

9 A Yes, sir.

10 Q With the blood?

11 A Yes, sir.

12 Q Okay. What else is in there?

13 A This is vaginal swabs. And just by virtue of
14 conducting the kit thoroughly, I put this in here. It was
15 Joshua B. Phillips, again with my name on it. I did not put
16 a time on here because this was not applicable because it is
17 a male. So that is my protocol placed in there for that
18 collection.

19 Q Okay. So the swabs are in there but you didn't collect
20 them, but you did label it ---

21 A Yes, sir.

22 Q --- and say that you didn't collect it?

23 A Correct.

24 Q Once you do that, that also goes into that wider outer
25 enveloped that we're referring, that contains the other

1 items as well?

2 A Yes, sir.

3 Q What else is in there?

4 A Oral swabs. These are Q-tip swabs on a Joshua B.
5 Phillips, collected by myself. The date is 4/22/2005 at
6 8:25. And so that, again, is sealed and then placed in that
7 particular bag there.

8 Q And, again, you recognize your handwriting on there?

9 A Yes, sir.

10 Q And you placed it in the same white envelope with the
11 other items we're discussing?

12 A Yes, sir. This is the rectal swab. And, again,
13 another Q-tip, Joshua B. Phillips, collected by myself James
14 O. Jeffcoat, 4/22/05 at 9:04. And, again, that is placed in
15 that bag as well.

16 Q And what else?

17 A This is miscellaneous body fluid. This was on Joshua
18 B. Phillips, by myself, James O. Jeffcoat, 4/22/05 and at
19 11:00 a.m. And this was a sample of questionably a dried
20 yellow sample, unsure of origin. So that was again sealed
21 and that's my handwriting and placed in that bag.

22 Q And what else?

23 A Fingernail scrapings. This is both left and right
24 hand. Joshua B. Phillips, James O. Jeffcoat, 4/22/05, at
25 8:32 a.m. And this involves a plastic scraping of the

1 fingernails and it goes onto a paper sheet and that sheet is
2 then folded, placed in here, sealed and then placed in that
3 bag.

4 Q And finally, I think you have one more in there?

5 A Yes, sir. This is a bite mark envelope. And what
6 we're looking for here is that there's a swab that's in
7 here. If there was a bite mark that was identified, it was
8 swabbed for DNA, placed in this bag and then put in that
9 bag. But this has Joshua B. Phillips,, my name on it,
10 4/22/05, 09:18 a.m. But I note that it was not collected
11 because there were no bite marks identified.

12 Q All the items that you collected from Mr. Phillips that
13 we've discussed right then, all of those items were put in
14 the bag that I'm showing you now and sealed with tape.
15 Again, to protect the integrity and you initialed; is that
16 correct?

17 A Yes, sir.

18 MR. GRAHAM: Your Honor, the State would offer
19 this bag and contents into evidence.

20 MR. FLOYD: No objection, Your Honor.

21 THE COURT: It's admitted.

22 (State's Exhibit No. 14, swabs, was
23 marked and entered.)

24 Q Now, we had previously talked about State's No. 13
25 being placed in the box, No. 10. Item 14 and all of its

1 contents, would that also have been placed in that cardboard
2 box?

3 A Yes, sir.

4 Q State's 10?

5 A Yes, sir.

6 Q I'm going to show you one last item and ask if you
7 recognize that?

8 A Okay. This is labeled underwear and this is on Joshua
9 B. Phillips, again, collected by myself, James O. Jeffcoat,
10 4/22/05 at 07:50 a.m. And this is placed in this bag,
11 sealed again with the evidence collection tape and initialed
12 by myself.

13 Q The bag itself, do you recognize that bag?

14 A Yes, sir. That's my handwriting.

15 Q Again, your handwriting?

16 A Uh-huh (affirmative).

17 Q So that bag and its contents -- are you able to tell
18 whether that bag was ever -- you put security tape on it
19 like everything else?

20 A Yes, sir. Yes, sir, evidence tape is on there,
21 initialed by myself.

22 Q Can you tell whether that bag was ever broken into?

23 A This does not appear to be broken.

24 MR. GRAHAM: Your Honor, the State would offer the
25 bag contain Mr. Phillips underwear, collected by Mr.

1 Jeffcoat, into evidence as well.

2 MR. FLOYD: No objection, Your Honor.

3 THE COURT: So admitted.

4 (State's Exhibit No. 15, underwear,
5 was marked and entered.)

6 Q So Mr. Jeffcoat, item 15, which is Mr. Phillips'
7 underwear that you collected from him, State's Exhibit No.
8 14, which were all of the envelopes and smears and swabs
9 that we discussed earlier, and State's 13, which was the
10 head hair, pubic hair, pubic hair combings and miscellaneous
11 materials, all of these items would have been placed in
12 State's 10; is that correct?

13 A Yes, sir.

14 Q And then there is a red seal that goes over the top of
15 State's 10. What was the purpose of that?

16 A The seal, again, protects the integrity of the samples
17 and made sure that is not tampered with during the chain of
18 custody.

19 Q Once you put everything in here and you seal this box,
20 what did you do with this box?

21 A That was then handed off to April Bayne.

22 Q And do you, April Bayne, do you know where she was
23 employed back on April of '05?

24 A Yes, sir. She was employed with West Columbia Police
25 Department.

1 Q The clothes that we had discussed earlier, the clothes
2 that you took off Mr. Phillips, the Wrangler jeans, the
3 belt, and the Slipknot tee shirt, you put in the bag, which
4 is State's No. 12; is that correct?

5 A Yes, sir.

6 Q And once you sealed that with evidence tape, what did
7 you do with those items?

8 A Those were handed off in bags to April Bayne.

9 Q In addition to the samples that you took and the
10 clothes that you'd collected, were there other items that
11 you took possession of?

12 A There was noted in my nurse's notes those miscellaneous
13 items, such as the miscellaneous change, the Altoid
14 cannister, the black leather wallet with two intact bullets,
15 and then the leather sandals were also present with the
16 patient.

17 Q So is it fair to say that those are personal items,
18 things that he had in his pocket?

19 A Yes, sir.

20 Q What did you do with those items?

21 A Those items, I conferred with April on how to proceed
22 with that, and those were placed in what appears to be a
23 hospital bag, which is a ---

24 Q Let me show you another item and ask if you recognize
25 this bag and its contents?

1 A Yes, this is our hospital bag used at the time for
2 patients to put their personal belongings in.

3 Q Do you recognize the belongings inside there?

4 A It's a black letter wallet, Altoid can, a cap, and
5 miscellaneous change. This looks -- that was what I
6 collected at the time. And the two intact bullets as well.

7 MR. GRAHAM: Your Honor, the State would offer the
8 bag and its contents into evidence at this time.

9 MR. FLOYD: Your Honor, may I see the bag? I have
10 no objection, Your Honor.

11 THE COURT: Admitted without objection.

12 MR. GRAHAM: It'll be State's 16, Your Honor.

13 (State's Exhibit No. 16, Joshua
14 Phillips personal items, was marked and entered.)

15 Q Mr. Jeffcoat, referring to State's 16, these are the
16 items that you collected from ---

17 A Yes, sir.

18 Q Mr. Jeffcoat -- I mean, excuse me -- from Mr. Phillips?

19 A Yes, sir.

20 Q Once you got these, what did you do with these items?

21 A Those were then again delivered to April to see how we
22 should proceed with those particular items, and then
23 disposition per her guidance there.

24 Q How long did this process take?

25 A I started the case at 7:35 and I noted at 9:35 that

1 examination was complete. So approximately two hours.

2 Q What was the mood or demeanor of Mr. Phillips during
3 the exam?

4 A He was very cooperative. I noted that he just didn't
5 have a whole lot to say. Much of the information I got was
6 just based on what I asked him in particular. But very
7 pleasant, very cooperative, calm, not anything that I would
8 have presumed was outstanding.

9 Q When you describe him as pleasant, what does that mean?

10 A That means he was very cooperative. You know, in an
11 emergency department environment, folks are a little bit
12 high strung, and rightfully so because of many situations
13 that could occur, but he was very calm, cooperative and
14 pleasant.

15 Q After the exam, did you have an opportunity to observe
16 what Mr. Philips was doing after you finished your
17 paperwork?

18 A Just nothing in particular, just discharge information.
19 We medicated him with two antibiotics, one by IM injection
20 and then one by mouth. And then he was discharged from
21 there.

22 Q Looking back at your nursing notes, at line thirty-
23 five, do you recognize the handwriting on the nursing notes?

24 A Yes, sir. Yes, sir.

25 Q Is that your handwriting?

1 A Yes, sir.

2 Q What does it say that Mr. Phillips is doing at 9:35?

3 A It said examination complete. Patient now sleeping in
4 bed and no distress. Side rails up times two. Officer
5 April Bayne, badge number 151, and was at bedside. Patient
6 arousable with tactile stimulation, answering questions.

7 Q Based on your physical observations that you observed
8 during your time with Mr. Phillips, did you observe anything
9 that is consistent with non-consensual sexual assault?

10 A No, sir.

11 Q Thank you, Mr. Jeffcoat. Please answer any questions
12 Mr. Floyd has of you?

13 JAMES JEFFCOAT - CROSS-EXAMINATION

14 BY MR. FLOYD:

15 Q Just a couple of questions, Mr. Jeffcoat. Now, weren't
16 there thirty-three abrasions on Mr. Phillips?

17 A Yes, sir.

18 Q How many were to the front and how many were to the
19 back?

20 A Based on my documentation to the anterior side, nine on
21 the anterior side.

22 Q Twenty-four on the posterior?

23 A Yes, sir. Eighteen on the back. And then the rest
24 were distributed around the arms.

25 Q Thirty-three in all?

1 A Correct.

2 Q And many to the arms and the hand. And I believe those
3 can be produced in fighting, can they not?

4 A Yes, sir.

5 Q Hitting someone, getting hit by someone, that can
6 produce abrasions, can that not?

7 A Yes, sir.

8 Q And there were thirty-three of them on Mr. Phillips
9 body; is that correct?

10 A Yes, sir.

11 Q Now, is there a test that can be performed to determine
12 whether or not someone has had oral sex committed among
13 them?

14 A I'm not sure. That's out of the scope of my practice,
15 I guess.

16 Q Well, you didn't find any evidence of oral sex?

17 A No, sir.

18 Q You wouldn't expect to find evidence of oral sex, would
19 you?

20 A No, sir.

21 Q Thirty-three abrasions; right?

22 A Yes, sir.

23 Q Thank you.

24 MR. FLOYD: No further questions?

25 THE COURT: Anything further?

JAMES JEFFCOAT - REDIRECT EXAMINATION

BY MR. GRAHAM:

Q Mr. Jeffcoat, you have previously testified that you, in your opinion, there was no evidence of forced alleged sexual assault; is that correct?

A Correct.

Q So how are you able to say -- what's your opinion as to those abrasions being related to an alleged sexual assault?

A These abrasions are superficial. They were -- in that there were no contusions or abrasions noted. So, therefore, the deep tissues of those areas were unaffected. These are superficial in nature.

Q As far as the -- Mr. Floyd had asked you what you would expect to find if there was oral sex; correct?

A Yes, sir.

Q If it was forced oral sex, what would you expect to find?

A There would be some trauma to the back of the throat is the only thing I can think of.

Q What about if somebody had performed oral sex on Mr. Phillips and it was forced?

A The same. There would be some form of trauma note, some lacerations to the mucus membranes, maybe even some bruising around those lacerations.

Q Now, did you find any evidence of those?

1 A No, sir.

2 Q Now, if it was consensual oral sex, what would you
3 expect to find?

4 A Depending on the nature of that particular act, I would
5 say nothing that my experience would lead me to believe.

6 Q Thank you, Mr. Jeffcoat.

7 A Yes, sir.

8 THE COURT: Anything further, Mr. Floyd?

9 JAMES JEFFCOAT - RE-CROSS-EXAMINATION

10 BY MR. FLOYD:

11 Q What if the person was passed out?

12 A And?

13 Q Would they resist? Could they resist if they were
14 passed out?

15 A If they were passed out, obviously they wouldn't be
16 able to resist.

17 Q Thank you.

18 A Yes, sir.

19 MR. FLOYD: No further questions.

20 THE COURT: Thank you, sir. You may step down.

21 MR. JEFFCOAT: Yes, sir.

22 MR. GRAHAM: The State calls Dr. Maxey Nowell.

23 THE COURT: Let's stand for a moment, everyone, as
24 the next witness comes.

25 (WHEREUPON, Maxey Nowell, was sworn

1 to tell the truth.)

2 THE CLERK: Have a seat, Doctor. Once you're
3 seated, state your full name, spelling your last on the
4 record, please?

5 DR. NOWELL: Maxey Nowell, N-O-W-E-L-L

6 MAXEY NOWELL - DIRECT EXAMINATION

7 BY MR. GRAHAM:

8 Q Dr. Nowell, where are you employed?

9 A Lexington Medical Center.

10 Q And what do you do there?

11 A I'm a physician in the emergency department.

12 Q Could you tell the jury your background in either jobs
13 held or education regarding the medical field?

14 A I got my undergraduate degree from USC-Columbia. I
15 worked as a paramedic in between my undergrad and attending
16 medical school. I attended medical school here as well and
17 did my residence training at Richland Memorial Hospital in
18 emergency medicine.

19 Q So you got a degree as a doctor for USC?

20 A Correct.

21 Q Your residency, you said it was at Richland Memorial;
22 is that correct?

23 A Yes, sir.

24 Q Residencies, a doctor coming out of school and do a
25 residency, there are a different type of fields that you

1 can pick; isn't that correct?

2 A Correct.

3 Q What field, what specialty was your residence in?

4 A Emergency medicine.

5 Q Emergency. Could you pull the mic a little bit further
6 to you, please?

7 A Yeah. Sorry. Emergency medicine.

8 Q What is Emergency medicine. It's training in the care
9 and treatment of sick or acutely injured folks.

10 Q When you say acute, what is acute?

11 A Usually, you know, recent, emergent.

12 Q Versus chronic?

13 A Correct.

14 Q So you see people who are currently having problems or
15 recently had a problem?

16 A Correct.

17 Q Are you Board Certified?

18 A I am.

19 Q And what are you Board Certified in?

20 A Emergency medicine.

21 Q Does Emergency medicine include the evaluation and
22 treatment of alleged victims of sexual assault?

23 A It does.

24 MR. GRAHAM: Your Honor, at this time, the State
25 would offer Dr. Nowell as an expert in emergency medicine?

1 THE COURT: What says the defense?

2 MR. FLOYD: No objection, Your Honor.

3 THE COURT: All right.. Ladies and gentlemen, this
4 witness is qualified as an expert in the field of emergency
5 medicine. Typically, witnesses cannot offer opinions as to
6 matters, except in certain limited circumstances. A
7 different rule applies as to expert witnesses, who are
8 people who by virtue of their education, training and
9 experience have some specialized knowledge and a
10 professional calling, they can offer opinions in certain
11 areas where others cannot.

12 You may proceed.

13 MR. GRAHAM: Thank you, Doctor. I mean, thank
14 you, Judge.

15 THE COURT: Okay.

16 BY MR. GRAHAM:

17 Q Doctor Nowell, did you have an opportunity to see an
18 individual named Joshua Phillips?

19 A I did.

20 Q And that was back on the early morning hours of April
21 22, of 2005?

22 A Yes.

23 Q What was your purpose of seeing him that morning?

24 A He presented to our emergency department with a
25 complaint of a possible sexual assault.

1 Q Is it fair to say then that you were meeting with him
2 to both examine him and offer treatment, if necessary, for
3 an alleged sexual assault?

4 A Yes.

5 Q And part of that, did you have a conversation with Mr.
6 Phillips about why he was there?

7 A I did.

8 Q And what did he tell you?

9 A Do you have a copy of my notes that I can use for ---

10 Q Let me show you a two-paged document; do you recognize
11 that?

12 A I do. This is the dictated emergency department note
13 from his visit to the emergency department.

14 Q Let me switch copies with you, Doctor?

15 A Okay.

16 Q What I'm handing you now, is that still what you were
17 just looking at, your emergency ---

18 A Yes, sir. Same copy.

19 Q You dictated that?

20 A Yes, sir.

21 Q What did he describe to you as a present illness or why
22 he was there?

23 A He said he was there for evaluation for possible sexual
24 assault.

25 Q And what did he tell you happened?

1 A He said that he consumed a total of twelve beers. He
2 was drinking at an individuals house, and he fell asleep on
3 the sofa.

4 Q Let me stop you for a second. You've got fell asleep.
5 Is that what he said to you?

6 A I don't really remember whether he said that to me or
7 not. I'm pretty much going from the written report and I
8 was just kind of -- the first part of that report has the
9 subjective elements. I don't remember whether he told me
10 that or whether -- I don't remember.

11 Q Go ahead and continue.

12 A But essentially, he was in the emergency department to
13 be evaluated for sexual assault.

14 Q In your evaluation of him for sexual, what do you look
15 for?

16 A So we have, as Mr. Jeffcoat mentioned, we have a sexual
17 assault nurse exam. That's a SLED Evidence Kit that is
18 completed either by the nurse -- now we've contracted. We
19 have nurses that only do that. The physician's
20 responsibility is to evaluate the patient for a life-
21 threatening illness and to conduct a physical exam. So
22 we're really there to evaluate and treat for any acute life-
23 threatening event.

24 Q You stated that you would have done a physical exam.
25 Did you do a physical exam on Mr. Phillips?

1 A I did.

2 Q And tell me how that exam was conducted and let's talk
3 about your findings?

4 A Okay. So part of the exam involves the gathering of
5 vital signs, temperature, heart rate, respirations, blood
6 pressure. And then we go through, you know, head to toe
7 examination.

8 Q Let's start -- generally, what did you find about his
9 appearance?

10 A He was alert and I noted on my records non-toxic, which
11 essentially means does not appear to be dying.

12 Q How about his head, ears, nose, throat area. What did
13 you see on Mr. Phillips?

14 A It was normal.

15 Q And when you say normal -- so you're looking at Mr.
16 Phillips' head, does that include his mouth?

17 A Yes, sir. So we look at the scalp for any sign of
18 trauma. We look at his eyes. We look at his face, mouth,
19 lips, teeth, and it appeared to be normal.

20 Q Did you see any sign of trauma either inside his mouth
21 or outside his mouth?

22 A No, sir.

23 Q Moving down to his abdomen area and his back. What, if
24 anything, did you note there?

25 A Multiple abrasions were noted on his back and I

1 referred to the nursing notes for detailed diagrams.

2 Q How about musculoskeletal, what is that?

3 A Arms and legs.

4 Q Musculo -- arms and legs?

5 A Yes, sir.

6 Q Did you notice anything unusual about his arms or legs?

7 A I noted that he had full range movement, which means,
8 you know, he didn't appear to have an injury to either his
9 arms or legs that kept him from moving them. That's what I
10 noted.

11 Q GU, what does that term mean?

12 A Genital urinary.

13 Q Okay. What, if anything, did you notice about MR.
14 Phillips regarding his genital and urinary?

15 A It was normal. He had two testicles that were
16 descended, both were non tender to palpation. And I did not
17 see any trauma to the genital region.

18 Q Now, did you perform an examination with a Wood's lamp?

19 A I did.

20 Q And what is that?

21 A It's just a ultraviolet light. Oftentimes body fluids
22 will fluoresce and it kind of helps us when we do the rape
23 kit or gather any type of evidence, kind of helps identify
24 where possible fluids may be.

25 Q Did you see any areas light up?

1 A I did not.

2 Q How about, did you perform an exam on Mr. Phillips'
3 rectum?

4 A Yes, sir.

5 Q And what did you find there?

6 A It was normal.

7 Q Any sign of trauma?

8 A No.

9 Q Now, did you prescribe any treatment to him?

10 A I did.

11 Q And what was that?

12 A He was given Rocephin, an antibiotic as a shot. And
13 Doxycycline, an antibiotic by mouth.

14 Q And what was the purpose of that?

15 A Anyone that comes into the emergency department
16 alleging a sexual assault is covered for Gonorrhea,
17 Chlamydia.

18 Q Preventive?

19 A Correct.

20 Q In your opinion as an expert in the field of emergency
21 medicine, what, if any, evidence did you find that showed
22 forced sexual assault?

23 A I didn't see anything that suggested that.

24 Q Thank you, Doctor. Please answer any questions Mr.
25 Floyd has.

1 MR. FLOYD: Thank you.

2 MAXEY NOWELL - CROSS-EXAMINATION

3 BY MR. FLOYD:

4 Q Doctor, may I see your notes you're reading from?

5 A Yes, sir.

6 Q Thank you. (Reviews notes) Thank you.

7 A Yes, sir.

8 Q Now, you didn't note the number of abrasions or
9 anything?

10 A No, sir.

11 Q You noted multiple abrasions?

12 A Yes, sir.

13 Q Now, would your examination reveal evidence of sexual
14 assault, a sexual assault if it were oral sex performed upon
15 the patient?

16 A It may or may not have.

17 Q So a person could have been the victim of a sexual
18 assault by oral sex and there be no signs of it?

19 A I guess it's within the realm, yes, sir.

20 Q Thank you.

21 MR. FLOYD: No further questions.

22 MR. GRAHAM: Nothing else, Your Honor.

23 THE COURT: All right. Thank you, sir.

24 MR. GRAHAM: The State calls April Bayne.

25 (WHEREUPON, April Bayne, was sworn

1 to tell the truth.)

2 THE CLERK: Have a seat, please, ma'am. Once
3 you're seated, state your full name, spelling your last on
4 the record, please?

5 MS. BAYNE: April Bayne, B, as in boy, -A-Y-N-E

6 APRIL BAYNE - DIRECT EXAMINATION

7 BY MR. GRAHAM:

8 Q Ms. Bayne, where are you currently employed, ma'am?

9 A At the Lexington County Solicitor's Office.

10 Q And what do you do?

11 A I'm an investigator and a victim advocate.

12 Q How long have you been with Solicitor Myers?

13 A Three years.

14 Q Prior to that, what did you do?

15 A I worked at the West Columbia Police Department.

16 Q And what did you do there?

17 A I started off as a patrol officer and then I was moved
18 into investigations. I did general investigations for about
19 six months. And then after that, we got a grant to start --
20 it's called a family violence unit, but essentially, it's an
21 SVU unit, special victims. And I became the investigator
22 handling child abuse, elder abuse, sexual assaults and
23 domestic violence. And then we got another grant to enhance
24 our victim services and moved over there and worked as a
25 victim advocate. So a little bit of everything.

1 Q How many years did you work as an officer or
2 investigator with West Columbia?

3 A About eight years.

4 Q April 22 of 2005, were you employed at the West
5 Columbia Police Department at that time?

6 A I was.

7 Q And what were you doing there?

8 A I was the family violence investigator.

9 Q Did you have an opportunity to report or to respond to
10 the Lexington Medical Center that morning?

11 A I did.

12 Q And what was your purpose in responding there?

13 A At the time, as a family violence investigator, I
14 typically got all of the sexual assaults. And Investigator
15 Mark Jones called me and asked me to respond, that they had
16 had an alleged sexual assault at Lexington Medical Center.

17 Q When you responded to the medical center, did you have
18 an opportunity to meet with Mr. Jeffcoat?

19 A I did.

20 Q And what was your purpose in seeing him?

21 A I was told once I arrived that the rape exam was
22 already underway. And so typically, the first thing I do is
23 meet with the nurse, and the doctor. I'll be the side of
24 law enforcement and generally ask a few questions, you know,
25 is the victim conscious? Are they okay? May I speak with

1 them? Do they have any major injuries? That kind of thing.

2 Q In addition to speaking with them, did you actually
3 collect some items from Mr. Jeffcoat.

4 A I did.

5 Q Do you remember what you got from him?

6 A I do.

7 Q What did you get from him?

8 A AS typical practice, I got the sexual assault exam.
9 What I'll do is seal that. I'll place it in a refrigerator
10 and give it to our evidence technician, who will then take
11 it to SLED for additional testing.

12 Q Let me show you State's Exhibit No. 10 and ask if you
13 recognize that?

14 A I do.

15 Q And how do you recognize that?

16 A My signature is on the top. Generally, we always, once
17 we accept a sexual assault kit, somebody from law
18 enforcement has to sign saying that they're taking custody
19 and control of that kit.

20 Q So looking at State's Exhibit No. 10, in the upper
21 right-hand corner, there's the name, an agency's name and a
22 date. Whose handwriting is that?

23 A I believe that's mine. That's my name on it.

24 Q So you received this package, State's No. 10 and its
25 contents from Mr. Jeffcoat?

1 A Correct.

2 Q When you got it was it sealed?

3 A Yes.

4 Q Once you got this, what did you do with it?

5 A I then get with our evidence technician, who -- we have
6 a locked refrigerator. Because the samples inside may
7 contain blood or semen, those have to be refrigerated until
8 they're taken for later testing. Our refrigerator's lock,
9 the only belonging to the evidence technician. I called
10 him, get the key, unlock the refrigerator, put the kit in
11 there, lock it back up, sign a sheet. And then later, he
12 will take it to SLED.

13 Q How about the clothes, did you take the clothes from
14 Mr. Jeffcoat as well?

15 A I did.

16 Q Do you recognize this bag, which is State's No. 12?

17 A I do.

18 Q And is that the bag that you received from Mr.
19 Jeffcoat? It was sealed when you got it?

20 A Correct. With tape.

21 Q Is that the bag that you got?

22 A Yes.

23 Q And it was your understand that what was in this bag?

24 A The clothing that Mr. Phillips, who was alleging sexual
25 assault, was wearing.

1 Q And that bag was properly sealed when you received it?

2 A It was.

3 Q And what did you do with that bag?

4 A I also turned that into evidence.

5 Q That would be to Chuck Bramlett up at West Columbia?

6 A Correct.

7 Q Let me show you State's No. 16 and ask if you recognize
8 that and its contents?

9 A I do.

10 Q And what is that?

11 A That was additional items that I got from the nurse
12 that day, that I turned over to Investigator Mark Jones for
13 evidence.

14 Q And what was your understanding of those items?

15 A Those items were on possession of Mr. Phillips as well
16 when he reported to Lexington Medical Center.

17 Q Did you have an opportunity to examine those?

18 A Yes.

19 Q Did you see -- what was your purpose in examining them?

20 A Well, typically, with a sexual assault, if a victim's
21 wearing underwear, bra, pants, shirt, if there's any
22 possibility that there might semen or fluid or blood or
23 anything on it, we want to have that tested. So I got a bag
24 for that to be tested. These were additional items that we
25 did not at the time believe would have any kind of fluid or

1 anything on it. But we wanted to collect those at evidence
2 just in case we needed to test them down the road. So these
3 will be additional items that, at the time I didn't suspect
4 would have any kind of blood or fluids on it.

5 Q Let me show you a photograph and ask if you recognize a
6 photograph?

7 A I do.

8 Q And who took that photograph?

9 A I did.

10 Q And what is the photograph of?

11 A It's at Lexington Medical Center. I spread out the
12 items that I was going to take into evidence and
13 photographed it before I placed it in a bag.

14 Q And are those the items that you received attributed to
15 being the personal property of Mr. Phillips?

16 A Yes.

17 Q And does that photograph fairly and accurately depict
18 what you saw that day when you took the photo?

19 A It does.

20 MR. GRAHAM: Your Honor, the State would offer the
21 photo into evidence at this time.

22 MR. FLOYD: I'd like to look at it. The only
23 problem I got with it, is a lot of it's covered up.

24 THE COURT: Pardon?

25 MR. FLOYD: A lot of it's covered up. That would

1 be my objection to the photograph.

2 THE COURT: All right. Mr. Graham?

3 MR. GRAHAM: My response would be, Your Honor,
4 this is what she took the photograph of. The actual
5 contents are in that bag. So if somebody wanted to spread
6 it out and see exactly what was in there, they can do that
7 as well.

8 THE COURT: All right. It's admitted over
9 objection.

10 (State's Exhibit No. 17, photo of
11 personal items of Joshua Phillips, was marked and entered.)

12 BY MR. GRAHAM:

13 Q Investigator Bayne, did you have an opportunity to meet
14 with Mr. Phillips, Joshua Phillips at the hospital?

15 A I did.

16 Q Did you speak with him?

17 A I did.

18 Q Do you remember approximately what time that would have
19 been?

20 A I would have to refer back to my notes.

21 Q It was around 9:19 in the morning that I arrived at
22 Lexington Medical Center. So it would have been soon
23 thereafter.

24 Q Did you observe anything about Mr. Phillips that would
25 make you think that he had, that he was or had recently been

1 under the influence of alcohol?

2 A No.

3 Q Let me show you another photograph and ask if your
4 recognize this photograph?

5 A I do.

6 Q And is that a photograph of Mr. Phillips?

7 A It is.

8 Q And when did you take that photograph?

9 A I took that at the hospital. It's typical protocol
10 with a sexual assault, that you photograph the victim, head
11 to toe, front to back, to document any possible injuries.

12 Q And is that how he looked that morning?

13 A That is.

14 MR. GRAHAM: Your Honor, the State would offer
15 that photograph into evidence.

16 MR. FLOYD: No objection, Your Honor.

17 THE COURT: It's admitted.

18 (State's Exhibit No. 18, photo
19 Joshua Phillips, was marked and entered.)

20 Q Thank you, Ms. Bayne. Please answer any questions Mr.
21 Floyd has.

22 APRIL BAYNE - CROSS-EXAMINATION

23 BY MR. FLOYD:

24 Q Ms. Bayne, you saw Mr. Phillips at what time?

25 A I arrived at Lexington Medical Center at 9:19 in the

1 morning. I spoke briefly with James Jeffcoat, the nurse.

2 And then after speaking with him, I went, along with

3 Investigator Mark Jones and met with Mr. Phillips.

4 Q Now, you don't have no idea what he looked like at 2:00
5 that morning, do you?

6 A No, I do not.

7 Q Or 3:00 that morning?

8 A No, I do not.

9 Q But at 9:00 that morning, he didn't have evidence of
10 alcohol intoxication?

11 A Correct.

12 Q Of course, you didn't see him at midnight, 1:00, 2:00,
13 3:00, or 4:00, did you?

14 A No, sir, I did not.

15 Q Thank you.

16 MR. FLOYD: No further questions.

17 MR. GRAHAM: Nothing, Your Honor.

18 THE COURT: All right. Thank you.

19 MR. HUBBARD: The State calls Brandon Field.

20 (WHEREUPON, Brandon Field was sworn
21 to tell the truth.)

22 THE CLERK: Have a please, sir. Once you're
23 seated, state your full name, spelling your last on the
24 record, please.

25 MR. FIELD: My name is Brandon Field, F-I-E-L-D.

1 BRANDON FIELD - DIRECT EXAMINATION

2 BY MR. HUBBARD:

3 Q Officer Field, where do you work?

4 A The West Columbia Police Department.

5 Q What's your rank there.

6 A I'm a sergeant.

7 Q Sergeant over what?

8 A The patrol division on day-to-day operations.

9 Q And how long have you been with West Columbia?

10 A I've been there almost eight years now?

11 Q Prior to being in law enforcement, what did you do?

12 A I was in the United States Coast Guard for four years.

13 Q Were you ever with any other law enforcement agency?

14 A No, sir.

15 Q Back in April, April 22 of 2005, were you with West
16 Columbia?

17 A Yes, sir.

18 Q What was your position at that time?

19 A I was a patrolman at the time.

20 Q Were you fairly new at the job?

21 A Very new.

22 Q Did you have a training partner?

23 A Yes, sir, I did. The corporal from the shift.

24 Q And what was his name?

25 A Corporal John Hendrix.

1 Q Is he still with the department?

2 A No, sir.

3 Q On April 22, 2005, were you and your partner, Officer
4 Hendrix tasked with a particular job?

5 A Yes, sir.

6 Q What was that?

7 A We were to go to 1737 Decree Avenue to check on a
8 possible assault victim.

9 Q What time of day did you get this call? What time
10 approximately did you get there?

11 A It was early. It was approximately 5:30 when we got
12 there. I mean, the same time. We weren't far away.

13 Q 5:30 in the morning?

14 A Yes, sir.

15 Q Was it light or dark outside?

16 A It was dark.

17 Q Now, who was your immediate supervisor that directed
18 you to go check the house?

19 A Sergeant Kleckley.

20 Q When you got to the house, did y'all try to knock on
21 the door or see if anybody was home?

22 A Yes, sir. We knocked on the door to see if somebody
23 would come open the door.

24 Q Did you get any kind of response?

25 A No, sir.

1 Q And what did you do when you didn't get a response?

2 A Sergeant Kleckley advised that there was an open window
3 on the -- if you're looking at the front of the house on the
4 left side, behind the carport area. So we went around there
5 and found the window open.

6 Q Now, when you usually go to a house, do you just make
7 entry?

8 A No. No, sir, I don't.

9 Q Did Sergeant Kleckley tell you go ahead and try to make
10 entry?

11 A Yes, sir. He told us that we needed to make entry into
12 the house to check on the welfare of the person inside, that
13 possibly could be inside.

14 Q Let me show you two photographs, State's Exhibit 6?

15 A Yes, sir, that's the front of the house.

16 Q Okay. And that's 1737 Decree Avenue?

17 A Yes, sir.

18 Q And in State's Exhibit 7, do you see the open window?

19 A Yes, sir, it's the small one just past the grill.

20 Q Okay. With the white curtains?

21 A Yes, sir.

22 Q So this little tiny window with the white curtains,
23 what, if any, use did you make of this window?

24 A I climbed through the window to make entry into the
25 house.

1 Q Now, let me ask you. How did you draw the short straw
2 and going through that window?

3 A Because I was the smaller officer of the two of us.

4 Q That was probably a bad question to say short straw?

5 A Yes, sir.

6 Q But you were the one who made entry?

7 A Yes, sir.

8 Q And when you went inside what, if anything, did you
9 see?

10 A As I climbed through the window, that window is over
11 the kitchen sink.

12 Q Yes, sir?

13 A So I climbed over and onto the kitchen floor. And then
14 immediately went to the right, towards the front door. On
15 the way to the front door, I had to pass through the living
16 room, which would be on my left side as I was walking toward
17 the front door. And I observed that there was someone
18 underneath a blanket, kind of on their knees, knelt down,
19 like face-down on the couch. And I could tell this because
20 the feet were sticking out from underneath the blanket, with
21 toes pointing down.

22 Q Was that individual living?

23 A No, sir.

24 Q Was that individual making any kind of sounds?

25 A No, sir.

1 Q Did you go to that individual or what did you do?

2 A No, sir. I continued to the front door to let my
3 partner in, Corporal Hendrix.

4 Q When you let your partner in, Corporal Hendrix, was the
5 door dead-bolted?

6 A No, sir.

7 Q Outside, that door had been locked; is that correct?

8 A Yes, sir.

9 Q That's why you didn't come through that door?

10 A Yes, sir.

11 Q But there's no deadbolt on the inside locking that door
12 from the inside?

13 A No, sir..

14 Q Now, I want to show you a diagram and see if you
15 recognize this and if it would assist you in describing what
16 you did to the jury?

17 A Yes, sir.

18 Q Does this diagram fairly and accurately depict the
19 layout of the house?

20 A Yes, sir.

21 Q And does it show the front door, living room area,
22 kitchen area, and the den?

23 A Yes, sir.

24 Q As well as the other rooms?

25 A Yes, sir.

1 MR. HUBBARD: Your Honor, I offer this diagram
2 into evidence.

3 MR. FLOYD: No objection, Your Honor.

4 THE COURT: It's admitted.

5 (State's Exhibit No. 19, diagram of
6 house, was marked and entered.)

7 BY MR. HUBBARD:

8 Q Now, Sergeant, I may -- I'm going to see if I can get
9 you to testify by staying where you are. Can you see that
10 board from where you are?

11 A Yes, sir.

12 Q I'm going to give you a pointer.

13 A Okay.

14 Q Now, let me start with the front of the house. Which
15 is the front of the house?

16 A This is the front of the house. Right here, sir.

17 Q That doorway we see, is that the front door?

18 A Yes, sir.

19 Q And this house faces what road?

20 A Decree Avenue.

21 Q Now, the window you went through, can you point where
22 that is?

23 A It was in this general area right here.

24 Q Okay. Just for the record, it's on the left-hand side
25 of the chart?

1 A Yes, sir, on the left-hand side,, to the left, where it
2 says kitchen, the line going straight down.

3 Q On Exhibit 19, the left-hand side of the chart, just
4 beyond the storage area?

5 A Yes, sir.

6 Q And so you came into the kitchen area. Will you show
7 the jury using that light, the path you took when you came
8 in?

9 A Yes, sir. Like I said, the window is in this general
10 area. As I made entry over the kitchen sink, I began
11 walking towards the front door, clearing as I went to make
12 sure that there was nothing dangerous inside the house. As
13 I made it to this point here, heading towards the front,
14 that's when I could see -- there's a couch right here in
15 this room marked as the den. And that's where the
16 individual was laying.

17 Q Let me ask you this. The couch, looking at the den,
18 which is pretty much dead center in this chart, what wall
19 was that sofa against?

20 A The very top wall, right here. Right below where it
21 says 1737 Decree.

22 Q So that would be the very back side of the house?

23 A Yes, sir, very back.

24 Q Complete opposite side of the front door?

25 A Yes, sir.

1 Q All right. As you're walking from the kitchen, which
2 direction were you headed?

3 A I continued in the same direction, going to the front
4 of the house, towards Decree Avenue, directly to the front
5 door.

6 Q So you would have passed through the dining room and
7 into the living room?

8 A Yes, sir.

9 Q And the living room is where the front door's located?

10 A Yes, sir.

11 Q Now, and I know this is a basic chart. Do you remember
12 any lights being on?

13 A I do not remember, sir.

14 Q Okay. It's been a while?

15 A It's been a while.

16 Q When you got Corporal Hendrix in, what did y'all do?

17 A I advised him that I'd seen an individual in the den.
18 So we proceeded back, the same exact steps that I took to
19 get there, because I'd already cleared that area coming
20 through. So we went straight back, made entry right through
21 the doorway here into the den.

22 Q All right. And did y'all go in through to the den?

23 A Yes, sir, we did.

24 Q Now, when you're talking about clearing an area, what
25 do you do to clear an area?

1 A (No response)

2 Q Well, what do you have in your hand?

3 A I have my gun in my hand and I'm putting my eyes on
4 every aspect of each room, one at a time.

5 Q Okay. I just wanted to clear that up?

6 A Yes, sir.

7 Q And Corporal Hendrix is also with you, clearing the
8 area going back?

9 A Yes, sir.

10 Q No, when y'all get back to that kitchen area, y'all go
11 into the den?

12 A Yes, sir.

13 Q What do y'all do then?

14 A As we go into the den, -- straight across to this other
15 doorway, which goes down a hallway.

16 Q Yes, sir.

17 A Corporal Hendrix turned and went towards the individual
18 that was laying on the couch.

19 Q And you indicated that individual was -- what could you
20 see on that individual as you're walking through and in?

21 A I could see feet sticking out from underneath -- I
22 believe it was like a blue in color blanket, dark blue,
23 light blue blanket, laying on the couch.

24 Q Okay. So he was covered up?

25 A Yes, sir.

1 Q Except for his feet?

2 A Yes, sir, with the exception of his feet.

3 Q And he's basically -- if I'm looking at you and there's
4 a sofa in front of me, he'd be on his knees, face down into
5 that sofa?

6 A Yes, sir.

7 Q Feet sticking out?

8 A Yes, sir.

9 Q As y'all walk through that room, did he make any
10 movements or sounds?

11 A No, sir.

12 Q When you mentioned, you said you went down a hallway,
13 what was your purpose for doing that?

14 A We still had the rest of the house to clear, to make
15 sure that there was nobody else in there.

16 Q And did Corporal Hendrix, do you know if he did
17 anything with the individual you saw covered in the blanket?

18 A I do not know because I didn't stay with him. I
19 continued on down the hallway.

20 Q Now, when you get down the hallway, what, if anything,
21 do you find?

22 A As I went all the way down the hallway clearing the
23 remainder of the house, as I entered the back left bedroom,
24 there's a bed on the same wall as the couch was in the den.
25 Again, it appeared to me there was somebody laying

1 underneath the sheets. You could see the -- no body parts
2 or anything sticking out, but I could see that somebody was
3 laying underneath the sheets, so I began to call out to
4 them?

5 Q Was there any movement after you call out to them?

6 A After about the third time, I finally got movement from
7 the person that was laying in the bed.

8 Q Okay. And you were an officer there on the scene, when
9 this person comes out from under these sheets, does this
10 person appear to be hiding from you or what was your
11 impression? Your immediate impression?

12 A They were sleep was my impression.

13 Q How loud did you call out?

14 A Loud. I'm clearing a house with a gun in my hand. I
15 wanted whoever it was to know I meant business. I didn't
16 want to have to fight with anybody in the house.

17 Q And I ask you to basically use the voice tone you used
18 that day, that early morning?

19 A Yes, sir. Please, show me your hands.

20 Q And you did that three times?

21 A Yes, sir.

22 Q The third time is when the guy or this person actually
23 was aroused?

24 A Yes, sir.

25 Q And came out from the sheets?

1 A Yes, sir.

2 Q And was this a male or female?

3 A Male.

4 Q What did you do with this person?

5 A Immediately placed him in investigative detention.

6 Escorted him directly out of the house to the patrol car
7 that was sitting in the driveway.

8 Q The patrol car's out in the front?

9 A Yes, sir.

10 Q You placed him in that car?

11 A Yes, sir.

12 Q And then what did you do?

13 A At that time, I put up crime scene tape, across the
14 front yard of the house, at the roadway.

15 Q Is this the crime scene tape or some of it that we see
16 in State's Exhibit 6?

17 A Yes, sir.

18 Q Is that standard procedure?

19 A Yes, sir.

20 Q Then what else did you do?

21 A I also started a crime scene log.

22 Q What is a crime scene log?

23 A That's anybody that comes on scene, whether it be
24 police, be it detectives, EMS, fire, put their names down on
25 a log, what time they came on scene and what time they left

1 the scene.

2 Q And let me ask you this. You've got a person in there
3 who's not moving. Was EMS called?

4 A Yes, sir.

5 Q You remember if it was you or your partner who made the
6 call?

7 A I do not -- I do not remember.

8 Q And let me ask you this. Do you remember the identity
9 of the person you found in that back bedroom?

10 A I do not.

11 Q It's been a while?

12 A Yes, sir.

13 MR. HUBBARD: That's all I have at this time.

14 Q Let me ask you one more question before Mr. Floyd gets
15 up if, that's all right, because I don't know if I've
16 clarified this. This house on Decree Avenue, is that in
17 West Columbia?

18 A Yes, sir.

19 Q What county is that in?

20 A Lexington County.

21 Q I just wanted to make clear. Thank you.

22 BRANDON FIELD - CROSS-EXAMINATION

23 BY MR. FLOYD:

24 Q Officer Field, when you went to the house, did you go
25 around to the back to try to get into too, or just the front

1 door?

2 A I just went to the front door.

3 Q And knocked and got no response?

4 A Yes, sir.

5 Q Then you go to the window. And I couldn't see from my
6 angle. Would you point for me where that window is?

7 A It's right in this general area right here.

8 Q Right in that area?

9 A Yes, sir.

10 Q Okay. And it's kind of in line with the door to the
11 den?

12 A This is not exactly to scale. But, yes, sir, it's
13 right in that area.

14 Q Now you come in. You got to the front door. Because
15 the front door was locked. You hadn't tried the back door,
16 had you?

17 A I had not. Corporal Hendrix was around the back side
18 of the house and that would be on the other side.

19 Q You couldn't get in the back door either?

20 A No, sir.

21 Q Okay. All right. So you let him and then you go to
22 clear the house while he goes into the den to see what's
23 there; is that correct?

24 A Yes, sir.

25 Q And you find a man laying in the bed covered completely

1 up; is that correct?

2 A Yes, sir.

3 Q The blanket was over his entire body, was it not?

4 A The sheet, yes, sir.

5 Q I mean, the sheet was over his head and everything?

6 A Yes, sir.

7 Q You yelled at him the first time you got no response?

8 A Yes, sir.

9 Q What happened when you yelled the second time?

10 A At that time, Corporal Hendrix heard me so he came to
11 back me up. And then about the third time, that's when we
12 finally got movement.

13 Q And that gentleman you put in investigative detention
14 and put him in a patrol car?

15 A Yes, sir.

16 Q Was that an unoccupied patrol car?

17 A Yes, sir.

18 Q Did that patrol car have a camera in it or anything,
19 that you could put a camera --

20 A Yes, sir.

21 Q Did you put a camera on him at that time?

22 A The camera was on. I don't believe we turned it
23 around.

24 Q And did you have any more dealings with that gentleman?

25 A Nothing, other than going back to check on him every

1 once in a while to make sure he was okay.

2 Q Okay. All right. Thank you.

3 MR. FLOYD: No more questions.

4 MR. HUBBARD: No more questions, Your Honor.

5 THE COURT: All right. Thank you, sir.

6 MR. HUBBARD: The State calls Virginia Youmans.

7 (WHEREUPON, Virginia Youmans was
8 sworn to tell the truth.)

9 THE CLERK: Have a seat, please, ma'am. Once
10 you're seated, state your full name, spelling your last on
11 the record for me, please?

12 MS. YOUMANS: My name is Virginia M. Youmans, Y-O-
13 U-M-A-N-S.

14 VIRGINIA YOUMANS - DIRECT EXAMINATION

15 BY MR. HUBBARD:

16 Q Ms. Youman's, where do you work?

17 A Lexington County EMS.

18 Q How long?

19 A Eight and a half years.

20 Q And what is your current position at EMS?

21 A Sergeant, paramedic crew chief.

22 Q Back in April 22, 2005, what was your title?

23 A EMT basic.

24 Q What's the difference between an EMT and a paramedic?

25 A An EMT does basic care on an individual not needing any

1 kind of advanced skills, such as vital signs, in general
2 patient care.

3 Q All right. Now, let me ask you this. April 22, 2005,
4 were you called to go to 1737 Decree Avenue?

5 A We were.

6 Q You remember about what time that was?

7 A According to our DHEC, we received the call at 5:38
8 that morning.

9 Q Okay. And you got there about what time?

10 A Arrived on scene as document as 05:42 that morning.

11 Q Who was there when you got there? What other people
12 were there?

13 A West Columbia PD.

14 Q What, if anything, did you find at that address?

15 A On arrival we got our equipment and West Columbia did
16 escort us into the residence. We found a patient, face down
17 on a couch. The face and upper torso were face down on the
18 couch, kind of kneeled forward with his knees touching the
19 ground. No movement. No response.

20 Q What did you do when you found this patient in that
21 condition?

22 A Our protocol, since the patient was already, not
23 moving, not responding, leave as much of the scene intact as
24 we can. And our protocol is to place the cardiac monitor on
25 the patient.

1 Q Let me ask you this. When you talk about your
2 protocol, if somebody, for lack of a better word, appears to
3 be dead, why don't you want to move them or lay them over
4 and, you know, start doing chest compressions?

5 A First of all, there was no active CPR or any kind of
6 life sustaining skills being performed on our patient.
7 Without that being done, we had no reason to move the
8 patient, to upset the integrity of the scene, the area.

9 Q For lack of a better word, do you treat the scene
10 you've walked into in those situations as a crime scene?

11 A We do.

12 Q And that's for law enforcement; is that correct?

13 A Correct.

14 Q But now you still check this patient. What do you do?

15 A Our cardiac monitor has wires and leads which are
16 stickers. And we place a sticker on the right upper arm,
17 left upper arm and left flank or side area. And that's how
18 the stickers are able to read any electrical activity of the
19 heart.

20 Q Okay. You put the stickers on there. Now, is there
21 something that connects to those stickers that you put on
22 the arms and the left flank?

23 A The wires.

24 Q Okay. And the wires go to?

25 A The cardiac monitor.

1 Q All right. And you did that in this case?

2 A Yes, sir.

3 Q And that was protocol as well?

4 A Yes, sir.

5 Q When you actually turn it on and try to get a read,
6 what, if anything did you find?

7 A Our cardiac monitor showed a systole or a flat line,
8 meaning that there was no electrical activity in this
9 patient's heart.

10 Q And when you got that response, or that indication from
11 your equipment, what did you do?

12 A Our protocol is we cut the monitor on. We get a
13 systole in one lead or line. We push a button on the
14 cardiac monitor to switch it to another line, if you will.
15 And per our documentation and our standing orders or
16 protocol for EMS, we have to print at least two lines just
17 to ensure that all of the leads are connected appropriately
18 and none of them are loose are not getting an accurate
19 reading. So we printed off two strips.

20 Q What did the second strip show?

21 A A systole, as well, or a flat line.

22 Q Now, is that second strip kind of like a back up?

23 A Yes, sir.

24 Q Your protocol has a back up just has in case. Let's
25 check and make sure he's truly flat-lined?

1 A Yes.

2 Q What time did you run those leads?

3 A Per our documentation, the first lead was at 05:45.
4 And a strip is printed out and attached to our paperwork and
5 kept with our paperwork. The second lead was at 05:46 and
6 also attached to our original paperwork.

7 Q Based on these flat lines what do y'all do at that
8 point?

9 A At that point, we get on the radio and identify it as a
10 signal nine.

11 Q What is that?

12 A Dead on arrival or dead at scene.

13 Q Okay. What do you do with the leads?

14 A The actual stickers stay on our patient. Because at
15 that time it becomes part of the crime scene. We remove the
16 wires to go back on our equipment.

17 Q Okay. As y'all were removing the wires what, if
18 anything did you see?

19 A Removed the two arm wires and the patient was okay,
20 still intact as far as what we found originally. On
21 removing the third wire from the left side or flank area, it
22 jostled his shirt. And at that time EMS and West Columbia
23 notice what appeared to be markings or carvings more or less
24 on the small of the patient's back or the lower back area
25 where you pants and shirt would meet.

1 Q Okay. When you saw those markings, what did y'all do?

2 A Everybody kind of paused for a minute. And then West
3 Columbia actually had gloves on and lifted the patient's
4 shirttail, and there was a word that appeared to be carved
5 into the patient's back.

6 Q You say a word, what did that word appear to be?

7 A The word appeared to be rapist.

8 Q I'm going to show you some photographs. See if these
9 photographs, there's four photographs, if they accurately
10 depict as you found this patient on April 22, 2005?

11 A They do.

12 Q That's as you found him and is it as you left him?

13 A Yes, sir.

14 MR. HUBBARD: Your Honor, I offer these four
15 photographs into evidence.

16 MR. FLOYD: If I could see them, Your Honor. No
17 objection, Your Honor.

18 THE COURT: They're admitted.

19 (State's Exhibit No. 20, photo, was
20 marked and entered.)

21 (State's Exhibit No. 21, photo, was
22 marked and entered.)

23 (State's Exhibit No. 22, photo, was
24 marked and entered.)

25 (State's Exhibit No. 23, photo, was

1 marked and entered.)

2 BY MR. HUBBARD:

3 Q And if I may, Ms. Youmans, State's Exhibit 20 and 21,
4 do they show the patient on the sofa?

5 A Yes.

6 Q And what item do you see next to him?

7 A I see a blanket already on the floor next to him.

8 Q And do you see a pillow also on the sofa?

9 A Yes.

10 Q Ms. Youmans, when you came into that room, this is the
11 position he was in?

12 A Yes.

13 Q And, again, according to your protocol, y'all didn't
14 move him?

15 A Correct.

16 Q Now, State's 23 and State's 22, this also shows the
17 condition you found him in, a little closer views?

18 A Yes.

19 Q And State's 22 shows the markings that you were talking
20 about?

21 A Yes.

22 Q What time did you leave that scene?

23 A I don't have it documented on here. I believe ---

24 Q Well, I'll tell you what, I'll make it a little more
25 simple. Was your involvement in this case, after you had

1 run these leads, got the flat lines, and y'all called in,
2 what is it, signal nine?

3 A A signal nine, yes.

4 Q Once you did that, are y'all basically done?

5 A We do remain on the scene. Back in 2005 everything was
6 still on a paper documented copy. And we filled out the
7 paperwork.

8 Q Is that the report you've been referring to?

9 A It is. A paper DHEC copy. And DHEC mandates all of
10 our paperwork. We have to stay on scene, fill that out.
11 And at the time, left a copy of that with the coroner.

12 Q And you did all of that?

13 A Yes, we did.

14 Q Thank you. Please answer any questions the Defense
15 has.

16 VIRGINIA YOUNG - CROSS EXAMINATION

17 BY MR. FLOYD:

18 Q Officer Young, did -- had anybody tried CPR on the
19 victim before you got there?

20 A Not that I'm aware of.

21 Q And this picture, this is the way he was when you got
22 there?

23 A Yes.

24 Q Okay. So he wasn't covered with a blanket, was he?

25 A No, sir.

1 Q Thank you.

2 MR. FLOYD: No further questions.

3 MR. HUBBARD: The State calls Glenn Frick.

4 THE COURT: Thank you. You may step down.

5 (WHEREUPON, Glenn Frick was sworn
6 to tell the truth.)

7 THE CLERK: Have a seat, please, sir. Once you're
8 seated, speak up loud and clear. State your full name,
9 spelling your last for the record, please?

10 MR. FRICK: Glenn Frick, F-R-I-C-K.

11 GLENN FRICK - DIRECT EXAMINATION

12 BY MR. HUBBARD:

13 Q Mr. Frick, where do you work?

14 A I work for the South Carolina Athletic Commission.

15 Q What do you do for them?

16 A I am an assistant administrator. And we handle all MMA
17 boxing, professional wrestling, and that type events.

18 Q Is this your second career?

19 A Yes, sir. Well, actually, my third. My second was
20 when I retired, I became my wife's house husband.

21 Q Prior to that, what did you do?

22 A I worked at West Columbia Police Department.

23 Q How long?

24 A Seventeen, I think it was seventeen years.

25 Q Back April 22, 2005, were you working that day?

1 A Yes, sir, I was.

2 Q Do you recall on that day being dispatched to the
3 hospital?

4 A Yes, sir, I was. Lexington County.

5 Q What was the purpose of that call?

6 A I was sent up there to keep surveillance on a vehicle
7 that was in the parking lot.

8 Q Okay. Were you apprised of all the events that had
9 transpired about two individuals reporting at the hospital,
10 and about stuff going on at Decree Street?

11 A Yes, sir, I was.

12 Q Decree Avenue?

13 A Decree Avenue.

14 Q All right. And the car, why was this car significant?

15 A It had transported an alleged victim from Decree
16 Avenue, that's what I was informed of, of a sexual assault.

17 Q All right. And when you got to the hospital did you
18 locate the car?

19 A Yes, sir, I did.

20 Q Did you go into the car?

21 A No, sir, I did not.

22 Q All right. I'm going to show you four photographs that
23 have been marked for ID, State's 2, 3, 4, and 5. And ask
24 you something about those photographs. Do you recognize
25 them?

1 A Yes, sir, I do.

2 Q Is that the car in the condition you found it at the
3 time?

4 A Yes, sir, it is.

5 MR. HUBBARD: Your Honor, I offer these into
6 evidence.

7 MR. FLOYD: I'm sorry. What was that again? No
8 objection, Your Honor.

9 THE COURT: They're admitted.

10 (State's Exhibit No. 2, photo, was
11 marked and entered.)

12 (State's Exhibit No. 3, photo, was
13 marked and entered.)

14 (State's Exhibit No. 4, photo, was
15 marked and entered.)

16 (State's Exhibit No. 5, photo, was
17 marked and entered.)

18 BY MR. HUBBARD:

19 Q Now, Mr. Frick, when you first got to the hospital and
20 were sitting on the car, at some point while you're there
21 surveilling the car and securing it, did you get word about
22 a search warrant?

23 A Yes, sir, I was informed that there were an officer en
24 route to get a search warrant for this vehicle.

25 Q When you got word of that, what did you do?

1 A I took out a digital camera that I carried in my
2 vehicle and took pictures of the car.

3 Q Okay. So these photos were taken by you?

4 A Yes, sir, they were.

5 Q State's 2 and 3, does that show the make and the tag of
6 the car and also a side view of the car?

7 A Yes, sir, it does.

8 Q And what parking lot was this in?

9 A This was in the Lexington County Hospital Emergency
10 Room, emergency area parking.

11 Q Is that that small parking lot right out in front of
12 the emergency room?

13 A Yes, sir.

14 Q State's 4, is that to include the emergency room in
15 that photo?

16 A Yes, sir, I did. And also my unit, which is the white
17 Ford, parked in front of it.

18 Q Okay. So the white car in front of the blue car is
19 yours?

20 A Yes, sir, it is.

21 Q Now, the last photograph, State's 5, what is that a
22 picture of?

23 A It's a 75-year, centennial, I guess some kind of ---

24 Q Let me ask you this, what angle are you taking that
25 photograph from?

1 A Standing on the passenger side, down through the
2 passenger's front seat, in the front floorboard.

3 Q So you're trying to take a photograph of something
4 inside the car?

5 A Yes, sir.

6 Q Okay. And what drew your attention to the floorboard
7 of that car?

8 A I walked around to make sure that there was nothing
9 that would be disturbed by us moving the vehicle. When you
10 have a search warrant, they're done by -- the tow driver
11 puts on gloves and different things to do it. Sometimes
12 they just are able to pull the vehicle up onto a rollback
13 without having to do that. Seeing this, I wanted to make
14 sure that it wasn't moved, it wasn't pushed back under the
15 seat or anything like that. It was just laying there in
16 plain view. And plus, it appeared to have some value to it
17 as far as monetary being a collectible 75-years of bottled
18 refreshment, a Coca-Cola collectible. And I wanted to make
19 to sure that that ended up where the car was going.

20 Q Now, in this photograph, there's a bit of a glare. So
21 can you only see a portion of that box?

22 A Yes, sir, in this photo you can.

23 Q Okay. And, again, this is State's 5; is that correct?

24 A (No response)

25 Q This photo showing the interior?

1 A Yes, sir.

2 Q Where was this car eventually taken?

3 A To Corley's towing on Williams Street.

4 Q Is that protocol for West Columbia at the time, to take
5 the cars to a towing company?

6 A Yes, sir, Corley's and there were several other wrecker
7 services, had a contract with the City to do our towing from
8 accidents or impounding.

9 Q When it was towed, what did you do?

10 A I followed the vehicle in my patrol car, kept it
11 secured until the search warrant could be served on it.

12 Q And where was that search warrant actually executed?

13 A 900 Williams Street at the Corley's.

14 Q And what agency did that?

15 A SLED.

16 Q Thank you, Mr. Frick. Please answer any questions the
17 Defense has.

18 MR. FLOYD: No questions, Your Honor.

19 THE COURT: Yes, sir. You may step down.

20 MR. FRICK: Thank you.

21 MR. HUBBARD: Your Honor, may we approach.

22 THE COURT: Ladies and gentlemen, we're going to
23 take a break for about fifteen minutes. Please go to your
24 jury room. Please do not discuss the case.

25 (Jury out at 11:06 a.m.)

1 THE COURT: Your Honor, we've got some scheduling
2 issues right now. If your Honor doesn't mind if we could
3 have a little bit of time just to figure out how to run the
4 next few witnesses. And we may have an issue that we need
5 to address with Your Honor on the next witness. But we're
6 trying to figure out what we've got. We're trying to
7 streamline everything.

8 THE COURT: All right.

9 MR. HUBBARD: But one thing, too, just so Your
10 Honor knows, since we're taking a break, we have a witness
11 from out-of-state. He's coming in. We're trying to bring
12 him in at mid-day. Apparently everything's booked up so
13 he's only going to be able to come in late. So we're
14 juggling that. Our pathologist who was supposed to be here
15 before lunch, right now is doing autopsies. So she's going
16 to be after lunch. So we've got some juggling to do. And I
17 just wanted to apprise Your Honor, that since we have that
18 information we wanted to pass it on to Your Honor.

19 THE COURT: All right. Okay. All right. Well,
20 we'll take a break.

21 MR. FLOYD: Fifteen minutes, Judge?

22 THE COURT: You'll have it figured out in that
23 time, Mr. Hubbard?

24 MR. HUBBARD: Yes, sir.

25 THE COURT: All right. We'll take a break.

1 (Court in recess for short break.)

2 (Court in session after short

3 break.)

4 THE COURT: Thank you very much. Be seated.

5 Yes, sir.

6 MR. HUBBARD: Your Honor, we've got two witnesses
7 that we're going to try to put up before lunch. The next
8 big witness after that will be Dr. Ross. She will take some
9 time. The very next witness there's an issue. I plan to
10 put up -- very short, but the purpose of putting him up is
11 this. He is the one who actually interviewed Joshua
12 Phillips. I'm not going to get into the interview. He got
13 a written statement from Joshua Phillips. I'm not getting
14 into that. But I want to show several things. One, Mr.
15 Phillips was under arrest. But, two, that Phillips written
16 statement, which, when he was just writing out what
17 happened, he wrote two words that were of independent
18 evidentiary value. And that is he wrote the word rapist.
19 He wrote it not once but twice. He wasn't told to write the
20 word. He wasn't told how to spell the word. But, Your
21 Honor, he misspelled that word. He spelled rapist, R-A-P-E-
22 I-S-T. He did that twice. That's important because as the
23 officer knows at this point, rapist is carved on the back of
24 our victim. Whoever did that spelled it correctly, R-A-P-I-
25 S-T. Our point obviously is Mr. Prather did the carving or

1 he directed the carving. Now, I can't say that Joshua
2 Phillips didn't intend to misspell this word. But I will
3 show you the statement. And I don't know if Your Honor has
4 it, but this is a complete statement. On page three of that
5 statement, I've highlighted in green the word rapist. And
6 he says it twice. As Your Honor can see from the statement,
7 and please feel free to read it, but the document is not
8 intended to say to Mr. Phillips, write this word. What I
9 would intend to do, Your Honor, is I want to take blowups of
10 those two words. I'm just going to ask the officer,
11 basically, have you seen this word? Yes. Who wrote these
12 two words? Joshua Phillips. When? And he'll say when.
13 Did you tell him to write these words? No. But you saw him
14 write them. I'm going to ask him what evidentiary value
15 they have. And Your Honor, I want to put these two words
16 into evidence.

17 THE COURT: All right.

18 MR. FLOYD: Your Honor, we strongly object to
19 that. That certainly deprives this Defendant of his right
20 to confront any witnesses against him. There's no way to
21 know, one, did he purposely, intentionally spell it wrong on
22 that statement? On other occasions, did he spell it another
23 way? We don't have him here to cross-examine him. And it's
24 being used to implicate the Defendant in a crime against the
25 right to confront the witness which is available. It's just

1 a way to get around it. And we strongly object to it the
2 use of that procedure.

3 MR. HUBBARD: Your Honor, my response is several
4 fold. One it's not testimonial and for that reason it's not
5 hearsay, but it's also not a confrontation clause issue.
6 This is just a written word. If I were putting in anything
7 testimonial about the statement itself, that it's an
8 assertion of something, that it's a statement of what Joshua
9 Phillips had to say that day. This isn't that at all. This
10 is almost like graffiti. But this officer actually
11 witnesses something, he's testifying to what he saw. Now,
12 it's not testimonial. And, Judge, it doesn't implicate any
13 other rights as well because Judge, as you know, we can take
14 exemplars for example, but what's better than an exemplar is
15 this. An exemplar, you tell a person to write a word. So
16 that person when he writes that word is, in fact, saying the
17 way I write it and the way I spell it is how I intend to
18 write it and spell it. That would be testimonial. This
19 isn't. This was a statement written by Joshua Phillips for
20 the purpose of saying here's my version of what happened. I
21 do not implicate that all by what I'm doing. There is
22 nothing pertaining to Joshua Phillips version of the events,
23 nothing pertaining to Joshua Phillips view of who did it.
24 And, as Your Honor notices, on that same page I highlighted
25 in pink on page three other words that Joshua misspelled.

1 The fact of the matter is, Your Honor, Joshua Phillips is
2 not the brightest bulb, at least not a good speller. So I
3 offer that to Your Honor pre-trial, pre -- outside of the
4 jury to let Your Honor know the context which I'm taking his
5 words. So Your Honor knows that I'm not trying to slide
6 something in, in front of the jury. I'm taking these -- I
7 have absolutely sanitized everything so there is no
8 testimonial aspect of what he's going to say. Now, Mr.
9 Floyd can get up and say, Mr. Jones, do you know if he
10 intended to mislead you? He can cross. It's more of a
11 balancing test under 403. It's extremely probative. It's a
12 know investigative technique. But here we didn't even use
13 the standard practice of, spell this word for me. This is
14 even better. This is on his own. He was never told to
15 write the word at all. It's probative. Any prejudice --
16 and sure, Mr. Floyd knows how we'll try to use it. Of
17 course, that's what I'm here for is to show all the evidence
18 against his client. But he's got the benefit of cross-
19 examination of the only witness who's testifying, only one
20 offering testimony will be Mark Jones, not Mr. Joshua
21 Phillips.

22 MR. FLOYD: That's where they're wrong, Your
23 Honor. Because that would be Joshua Phillips offering
24 testimony. And that's what deprives the Defendant of his
25 confrontational rights. Mark Jones didn't write that.

1 They're going to say Joshua Phillips wrote it. And they're
2 going to use what Joshua Phillips wrote to try to convict
3 this Defendant with this Defendant being deprived of his
4 right to cross-examine Joshua Phillips about the word that
5 they're going to try to use against this Defendant. So,
6 it's a clear violation of his right to confront witnesses.

7 THE COURT: So the essence of everything I've
8 heard is the question that the State wants to ask a witness
9 and that is, have you seen the co-defendant write the word
10 rapist? And the answer is, yes. And how did he spell it.
11 And that would be, the answer is the way that he spelled it.
12 And the Defense objects to that because it deprives the
13 Defense of cross-examining what the officer observed?

14 MR. FLOYD: No, Your Honor, of what the witness
15 allegedly wrote.

16 THE COURT: All right.

17 MR. FLOYD: Because we don't know, for example,
18 has he always spelled it that? Did he purposely spell it
19 that way to mislead the officer because he knew he didn't
20 spell it that way when he carved it on the victim's back?
21 We don't have a right to confront him at all, to, I guess,
22 question the value of this word as it is written. That's
23 what we're losing is our right to confront Josh Phillips
24 about how he wrote the word or why he wrote the word.
25 That's what we're losing, our right to confront. And

1 they're going to allowed -- if you allow them to use it,
2 they'll be allowed to use it and say well, this is the way
3 Josh Phillips spells rapist. So he obviously didn't write
4 the word rapist on the decedent's back so it had to be this
5 Defendant. So it would be highly prejudicial.

6 THE COURT: Why would that be highly prejudicial?
7 I mean, it's speculative. They don't know. You don't know.
8 I don't know. That's their theory. That's their though --

9 MR. FLOYD: What their theory would be, yes. But
10 you see Josh Phillips didn't write the word on his rear end
11 because he spells rapist different than he did in this
12 statement. I mean, that's going to be their argument.

13 THE COURT: Well, right. But you don't agree with
14 their argument.

15 MR. FLOYD: No, and that was the argument I was
16 making.

17 THE COURT: How is it highly prejudicial?

18 MR. FLOYD: It would be highly prejudicial against
19 this Defendant if they're allowed to make that argument,
20 yes.

21 THE COURT: All right.

22 MR. FLOYD: But the real big problem is we're
23 deprived our right to confront Josh Phillips, the person who
24 wrote the word. That's the right that we're being deprived
25 if you allow that statement in.

1 THE COURT: Go ahead, Mr. Hubbard.

2 MR. HUBBARD: One quick followup. Of course, Mr.
3 Phillips can only say, this is how I intended to spell it.
4 I don't always spell it that way. I always do. I mean,
5 that's about the end of it. Because the key is this is an
6 observation. The real testimony is being offered not by Mr.
7 Phillips. There's nothing at all testimonial about this.
8 The testimony is being offered by the person observing the
9 action. Just like if Joshua Phillips was seen coming out of
10 that house. Well, did he break into that house? Did he
11 have consent to go into that house? The officer's just to
12 testifying no, I saw him coming out of the house. I can't
13 tell you how he got in why he came out. This is not
14 testimony.

15 THE COURT: Well, you know, we have these issues
16 of confrontation and the right to confrontation to confront
17 witnesses under Crawford v. Washington. Then we have the
18 Brewton issues involving settlements. And then we have co-
19 defendant issues in that these Phillips and Prather are co-
20 defendants. One, I do not find the proposed testimony to
21 be, to invoke Crawford v. Washington as confrontational. I
22 think that any time you have issues of co-defendants and the
23 State's trying them separately, the State can be hamstrung
24 with its right to present a case. The State has a right to
25 present evidence, which seeks to convince the jury of the

1 Defendant's guilt. That's the nature of a trial. And I
2 believe the State has a right to pursue its theory. I do
3 not see where this violates any Constitutional Rights of the
4 Defendant and I'm going to allow the testimony.

5 MR. HUBBARD: Thank you, Your Honor. The State's
6 ready to proceed.

7 THE COURT: If you'll bring the jury.

8 (Jury in at 11:49 a.m.)

9 THE COURT: All right. Your next witness.

10 MR. HUBBARD: State calls Mark Jones.

11 (WHEREUPON, Mark Jones was sworn to
12 tell the truth.)

13 THE COURT: Have a seat, sir. Once you're seated,
14 state your full name, spelling your last on the record.

15 MR. JONES: Mark Jones.

16 MARK JONES - DIRECT EXAMINATION

17 BY MR. HUBBARD:

18 Q Capt. Jones, where do you work?

19 A Columbia Police Department.

20 Q How long have you been there?

21 A Approximately, 20 years.

22 Q Were you involved in this case back in April 2005?

23 A Yes, I was, sir.

24 Q I'll ask you if you recognize two words that I've got
25 up on these cut-outs. Do you recognize these words?

1 A Yes, I do.

2 Q Now, Captain, these two words; do you know who wrote
3 them?

4 A Yes, I do, sir.

5 Q Who wrote them?

6 A Joshua Phillips.

7 Q Joshua Phillips. Was Joshua Phillips under arrest at
8 the time?

9 A Yes, he was, sir.

10 Q Now, the words that I showed you; did you tell him how
11 to spell those words?

12 A No, I did not, sir.

13 Q Did you ask him to write these two words?

14 A No, I did not, sir.

15 MR. HUBBARD: Your Honor, I offer these into
16 evidence.

17 THE COURT: Any objection?

18 MR. FLOYD: Subject to our earlier objection.

19 THE COURT: They are admitted.

20 (State's 24, photo, was marked and
21 entered.)

22 (State's 25, photo, was marked and
23 entered.)

24 BY MR. HUBBARD:

25 Q The words in State's Exhibit No. 24 and No. 25, what

1 are these word? Are they the same words or different words?

2 A It's the same word.

3 Q What are these words?

4 A Rapist.

5 Q What investigative, if any, investigative need did you
6 see in these words?

7 A The word rapist was identified with a word on the scene
8 of the crime where the victim was located, the word rape was
9 carved into the victim.

10 Q Okay. Now, State's 24 and 25, what is unique about
11 rapist is written in these two exhibits; is it spelled
12 correctly?

13 A It's spelled correct.

14 Q The carving on Mr. Stewart, the word rapist, was it
15 spelled correctly?

16 A It was spelled correctly.

17 Q Do these two exhibits is there an E in the word rapist;
18 on the ones that I just showed you?

19 A (No response.)

20 Q Captain, these two exhibits, do they include an E?

21 A That's correct, sir.

22 Q And that would not be the proper spelling of the word
23 rapist, correct?

24 A That's correct.

25 Q The word found on the back of Mr. Gerald Stewart, did

1 it include an E?

2 A No, sir.

3 Q And the man who wrote these, you see him in State's
4 Exhibit No., 18?

5 A That's correct, sir.

6 Q That's Joshua Phillips?>

7 A That is Joshua Phillips.

8 Q And he's the one that wrote those words?

9 A That is correct, sir.

10 Q Did you tell him to even write the word rapist?

11 A No, sir.

12 Q So you didn't say, I need you to write the word, and
13 just -- I want to see you do it and how you spell it?

14 A No, I did not, sir.

15 Q Did you observe him write this word?

16 A Yes, I did, sir.

17 Q Not once, but twice?

18 A Yes, sir.

19 Q Thank you. Please answer any questions the defense
20 has.

21 MARK JONES - CROSS-EXAMINATION

22 BY MR. FLOYD:

23 Q So Officer Jones, you didn't tell him the word rapist
24 was significant at all, did you?

25 A No, sir.

1 Q Yet, he wrote it twice, did he not?

2 A I witnessed him write it twice.

3 Q Okay, but you hadn't told him the word was important at
4 all?

5 A No, sir.

6 Q But he wrote it twice; is that correct?

7 A Once again, I witnessed him write it twice, sir.

8 Q And you don't know whether or not he purposely
9 misspelled it do you?

10 A No, I do not, sir. I could not say that.

11 Q Now, I'm going to show you something. Can you identify
12 this?

13 MR. HUBBARD: What is that, again?

14 MR. FLOYD: Well, let me tell you what I brought it
15 out of.

16 MR. HUBBARD: I'll just take a look at it. You're
17 fine. Okay.

18 BY MR. FLOYD:

19 Q I'll show you a bag. I'll show you --

20 A These are coins that were entered into evidence on
21 4/22/2005.

22 Q Did you actually take a photograph of them? I'm going
23 to show you and see if you can identify this?

24 A That is correct, sir.

25 Q Did you take that photograph of the items?

1 A Yes, sir.

2 MR. FLOYD: Your Honor, I'd like to have this
3 marked as a defense exhibit just for ID purposes at this
4 point.

5 MR. HUBBARD: I have no objection. I have no
6 objection if he puts it in.

7 THE COURT: ID only?

8 MR. FLOYD: ID only at this time.

9 THE COURT: all right.

10 COURT REPORTER: Photo of the coins. Defendant's one
11 for ID.

12 (Defendant's Exhibit No. 1, photo
13 of coins, was marked for ID.)

14 BY MR. FLOYD:

15 Q And these coins -- are these bullets, also?

16 A That is correct, sir.

17 Q Now, these are not normal coins that people carry
18 around their pocket.

19 MR. FLOYD: Can I have the jurors pass them around,
20 Your Honor. It might be easier for them.

21 THE COURT: Anything in evidence can be published
22 to the jury.

23 (Evidence passed to jurors.)

24 BY MR. FLOYD:

25 Q Now, these coins, they were taken from Joshua Phillips

1 car, were they not?

2 A That is correct, sir?

3 Q And the bullets, too. The two bullets that we have,
4 the two bullets, also?

5 A The two bullets that you identified, yes, sir.

6 THE COURT: You can pass it to the jury but you
7 have to continue with the trial.

8 MR. FLOYD: Thank you, Judge. I didn't want them
9 to be distracted when I asked questions.

10 THE COURT: That's why they go to the jury room
11 during deliberations.

12 MR. FLOYD: Your Honor, I'd like to go ahead,
13 maybe, and introduce this into evidence and mark it for ID.
14 I'd like to go ahead and introduce it into evidence now.

15 THE COURT: Solicitor, without objection?

16 MR. HUBBARD: No objection, Your Honor.

17 COURT REPORTER: Defendant's one, in evidence.

18 (Defendant's Exhibit No. 1, photo
19 of coins, was marked and entered.)

20 MR. FLOYD: Thank you. No further questions.

21 MR. HUBBARD: No follow-up.

22 THE COURT: All right. Thank you, sir.

23 MR. HUBBARD: State calls Al Stuckey.

24 (WHEREUPON, Al Stuckey was sworn to
25 tell the truth.)

1 THE CLERK: Have a seat, please, sir. Once you're
2 seated, state your full name, spelling your last on the
3 record, please?

4 MR. STUCKEY: Al Stuckey, S-T-U-C-K-E-Y.

5 AL STUCKEY - DIRECT EXAMINATION

6 BY MR. HUBBARD:

7 Q Mr. Stuckey, where are you employed, sir?

8 A I'm employed with the South Carolina Law Enforcement
9 Division, more commonly referred to as SLED.

10 Q And how long have you been with SLED?

11 A Since October 2nd of 1997.

12 Q So how many years have been in law enforcement?

13 A A little over fifteen now.

14 Q What various jobs have you held in your fifteen years
15 in law enforcement?

16 A For ten years I was a agent signed to the latent print
17 crime scene department of the forensic services laboratory
18 at SLED. For two years, I was a fugitive apprehension agent
19 with the investigative support unit. And for the past three
20 years, I've been assigned to the South Carolina Information
21 Intelligence Center, more commonly referred to as a Fusion
22 Center.

23 Q Currently then what are you doing at the Fusion Center?

24 A I am a field agent assigned to the state surveillance
25 and intelligence unit, which is a plainclothes unit, which

1 locates and apprehends violent criminals throughout the
2 State of South Carolina.

3 Q Now, I think one of the first things you said was
4 latent prints and crime scenes?

5 A Yes, sir, for ten years.

6 Q And in your ten years with SLED, you were in latent
7 prints and crime scene. What does that mean?

8 A The latent print crime scene department is a unit
9 within the forensic services laboratory.

10 Q What do you do?

11 A The job function with the latent crime scene department
12 is two-fold. First, we have a field function in that we
13 respond to crime scenes throughout the State of South
14 Carolina at the request of local, state and federal
15 authorities, to process those crime scenes for the purposes
16 of developing and collecting forensic evidence. Secondly,
17 we have a lab function, in that we take evidence from other
18 agencies at the forensic laboratory and process that
19 evidence for latent fingerprints, footwear and tire tread,
20 blood spatter interpretation, and general crime scene
21 reconstruction.

22 Q On April 22, 2005, were you working in latent prints
23 and crime scene?

24 A Yes, sir, I was.

25 Q And did you have an opportunity to respond to 1737

1 Decree Avenue in reference to a homicide?

2 A Yes, sir, I did.

3 Q Did you go there alone or with somebody?

4 A I went there as part of a team with Senior Agent Bruce
5 Gantt and Agent Ken Kensey.

6 Q And when you say a team, would you describe to the jury
7 the team that was there that day and the purpose of having a
8 team?

9 A To give a sports analogy, I went with Bruce Gantt, who
10 was our coach. And Kenny Kensey and I were more like the
11 players. We did everything that Bruce Gantt directed us to
12 do. Bruce was the senior agent on scene. He was the
13 primary agent there.

14 Q Bruce was unable to be with us today; is that right?

15 A That is correct, yes, sir.

16 Q Why is that?

17 A Bruce Gantt passed away in July 2007.

18 Q In general terms, would you describe what you and Bruce
19 did in processing the crime scene at 1737 Decree Avenue?

20 A Upon arrival, we do a general walk-through of the scene
21 to make sure there's no hazards that we're going to
22 encounter, there's no evidence that we're going to disturb
23 in our normal documentation process. Upon doing our general
24 walk-through our primary walk-through, we will document the
25 scene with color photography and sketches. Once the scene

1 hahs documented with color photography, we will begin the
2 process of either processing for latent evidence or
3 collecting forensic evidence.

4 Q I'm going to show you some photographs and ask if you
5 recognize them. The first one is several that have already
6 been marked into evidence.

7 A (Reviews photographs)

8 Q Do you recognize those photographs that have already
9 been entered?

10 A Yes, sir, I do.

11 Q Did you, in fact, take those photographs?

12 A Some of those, yes, sir, I did.

13 Q Let me show you some other, a group of three
14 photographs that have not been put into evidence yet and ask
15 if you recognize those three?

16 A Yes, sir, I do.

17 Q And are those photographs that you took also at Decree
18 Avenue on that day?

19 A Yes, sir, they are.

20 MR. HUBBARD: Your Honor, the State would offer
21 these three additional photographs into evidence.

22 MR. FLOYD: No, objection, Your Honor.

23 THE COURT: They're without objection.

24 (State's Exhibit No. 26, photo, was
25 marked and entered.)

1 (State's Exhibit No. 27, photo, was
2 marked and entered.)

3 (State's Exhibit No. 28, photo was
4 marked and entered.)

5 Q I'm going to show you what's been marked as State's
6 Exhibit No. 6. Can you see that on the overhead?

7 A Yes, sir.

8 Q What are we looking at?

9 A That is a shot from the street showing the front of the
10 house at 1737 Decree Avenue.

11 Q And what's the purpose of that shot?

12 A It gives a reference point for the address, the actual
13 numerical address of the residence. And it also shows that
14 the scene has been secured with crime scene tape.

15 Q Continuing on the outside of the house, would that be
16 something you would prior to going inside?

17 A Yes, sir.

18 Q Looking at State's No. 7. Do you recognize that
19 photograph?

20 A Yes, sir.

21 Q And what are we looking at there?

22 A This is a photograph of the rear of the residence
23 showing an open window of the residence.

24 Q I'm going to hand you a laser pointer and ask you to
25 use that on the screen to show where the open window is.

1 A Open window.

2 Q As far as the outside of the residence, did you find
3 anything or did Agent Gantt find anything that was of
4 further evidentiary value in this case?

5 A There were numerous cans and other items throughout the
6 yard. They were collected but nothing of evidentiary value.

7 Q Were you aware when you were processing the scene of
8 the statements that Mr. Prather had made to other law
9 enforcement officers?

10 A No, sir.

11 Q Let me show you State's No. 21. What are we looking at
12 there?

13 A This is a photograph of the victim who is lying in the
14 den area, over a couch.

15 Q What clothing did you see on the victim?

16 A He appeared to be fully clothed with pants and a shirt
17 and shoes on.

18 Q You and Agent Gantt went through the entire house; is
19 that true?

20 A Yes, sir. We would have examined the entire house.

21 Q Let me show you what's been previously entered into
22 evidence as State's No. 19. Do you recognize that?

23 A Yes, sir, I do.

24 Q Does that fairly and accurately depict the layout of
25 1737 Decree Avenue?

1 A Yes, it does.

2 Q Referring to Exhibit 19, with your laser pointer, would
3 you describe the general layout of the house?

4 A As far as?

5 Q Just the layout of the house. What you found. How did
6 you all process the house?

7 A We start by documenting it was photograph in that we'll
8 take pictures of every room within the house. No matter how
9 much or little took place there, we want to go ahead and
10 document the entire scene as we found it. And as we
11 examined the scene, we determine where most of the criminal
12 activity took place. And we will focus on that, in those
13 areas, in order to try and determine, number one, what
14 happened and collect evidence to determine what happened.

15 Q When you said where most of the criminal activity
16 occurred, where did that focus in on Mr. Stewart's
17 residence?

18 A It was in the den area.

19 Q And that's where this was taken?

20 A Yes, sir.

21 Q Did you collect anything from any other rooms that
22 appeared to be important at the time or that turned out to
23 be important?

24 A We didn't collect anything that turned out to be
25 important later on down -- later in the investigation.

1 Q State's No. 20, what are we looking at there?

2 A This is a different angle, showing the same position of
3 the victim, laying face down on the couch with his knees on
4 the floor.

5 Q State's No. 26?

6 A This is standing in the same position as the previous
7 photograph, just taking a different angle of the room to
8 show the orientation of the other pieces of furniture within
9 that room, to the victim.

10 Q Using the State's 19, the diagram of the layout of the
11 house, where were you standing when you took this
12 photograph?

13 A Would have been standing approximately right here.

14 Q That would be at the doorway connected to the kitchen?

15 A That's correct.

16 Q And what does that appear to be? You can see where I'm
17 pointing on the photograph?

18 A (No response)

19 Q Let me show that to you. I guess I'll just show you
20 all three of those. Looking at State's 21, 20 and 26?
21 Looking at Mr. Stewart's right leg, do you observe something
22 around his leg?

23 A His right -- there appears to be a cord or a string
24 around his leg.

25 Q And is that evident in all three of those photographs

1 that I handed you?

2 A Yes, sir, it is.

3 Q So looking at State's No. 20, using your laser pointer,
4 would you show the jury what we were discussing?

5 A (Witness complies.)

6 Q Does that cord appear to be -- how would you describe
7 it?

8 A It's wrapped around his leg.

9 Q Now, above his leg going off, I believe, is an ashtray.
10 What does that appear to be in relation to the cord or to
11 whatever's wrapped around his leg?

12 A I'm sorry. I didn't understand the question.

13 Q This right here. Does that appear to be related to or
14 do you remember whether it was related to?

15 A. I can't recall if it was related or not.

16 Q Looking at State's 26, what is that?

17 A That's the cord we were referring to on his right leg.

18 Q State's No. 21. Again, referring to -- we've called it
19 a cord. And the cord wrapped there between this leg can you
20 tell the earlier item that I was asking about that was going
21 off into the carpet. Can you tell whether that's related to
22 that cord or not?

23 A I can't. Can you bring it up?

24 Q (Screen shot adjusted.)

25 A No, sir. I can't tell.

1 Q State's No. 27, do you recognize that?

2 A Yes, sir.

3 Q Where at in the room, using State's 19, was that
4 photograph taken?

5 A I would have been standing in approximately the same
6 area as the previous photographs and that's this area in
7 here.

8 Q The items on the floor, do you remember what those
9 were?

10 A No, sir. They just appeared to be miscellaneous paper
11 items.

12 Q State's No. 28, do you recognize that?

13 A Yes, sir.

14 Q Where was that item taken?

15 A I can't recall exactly which room it was in, but it was
16 in a corner of one of the rooms off of the den area where
17 the victim was found.

18 Q Were you able to tell what that is right there?

19 A It's a dining room table.

20 Q But that was taken in Mr. Stewart's house?

21 A Yes, sir, it was.

22 Q You see the various items and what appear to be glasses
23 in that cabinet?

24 A Yes, sir, I do.

25 Q What was the brand on those items?

1 A It was a cabinet containing Coca-Cola Collectibles.

2 Q State's No. 23, do you recognize that?

3 A Yes, sir.

4 Q What does that depict?

5 A That depicts an etching on the back of the victim, on
6 the back of the victim, the lower back of the victim.

7 Q Do you know whether the -- right here, what am I
8 looking at, where my finger is?

9 A That is the waistband of the victim's pants.

10 Q Do you know whether that waistband is, if there's
11 anything below that waistband?

12 A Yes, sir, there is something below it.

13 Q What's below there?

14 A The rest of the writing, the etching.

15 Q But this is how found -- when you came to process the
16 scene, that's how you found Mr. Stewart and that's how you
17 found his waistband?

18 A Yes, sir. His waistband was up and his shirt was down.

19 Q His shirt was down?

20 A Yes, sir. As the previous photographs depict.

21 Q So to get this picture, the shirt was flipped up?

22 A Yes, sir, the shirt was flipped up.

23 Q So when you came on, that etching was totally covered?

24 A Yes, sir, that's correct.

25 Q State's No. 23, do you recognize that?

1 A Yes, sir, I do.

2 Q What are we looking at there?

3 A That is a photograph of the victim's right arm on the
4 sofa.

5 Q There is an object there in between his right armpit,
6 what is that?

7 A Yes, sir. That appears to be a sexual implement of
8 some sort.

9 Q And that's the position that you found it?

10 A Yes, sir, that's the position. We located it whenever
11 we arrived on the scene.

12 Q In addition to processing the house, did you also
13 become involved with the processing of the vehicle?

14 A Yes, sir, we did.

15 Q And that was related to a search warrant of the
16 vehicle; is that correct?

17 A Yes, sir. It was related to a search warrant that was
18 obtained by the West Columbia Police Department.

19 Q Let me show you several photographs and ask if you
20 recognize these photographs.

21 A May I take the sticky off?

22 Q Please?

23 A Yes, sir.

24 Q Do you recognize those photographs?

25 A Yes, sir, I do.

1 Q And, in fact, did you take those photographs?

2 A Yes, sir, I did.

3 MR. HUBBARD: Your Honor, the State would offer
4 these into evidence at this time.

5 MR. FLOYD: Your Honor, may we approach?

6 THE COURT: Yes, sir.

7 (Off the record bench conference with counsel and the
8 Court.)

9 THE COURT: The exhibits are admitted over
10 objection.

11 (State's Exhibit No. 29, photo car,
12 was marked and entered.)

13 (State's Exhibit No. 30, photo car,
14 was marked and entered.)

15 (State's Exhibit No. 31, photo car,
16 was marked and entered.)

17 (State's Exhibit No. 32, photo car,
18 was marked and entered.)

19 (State's Exhibit No. 33, photo car,
20 was marked and entered.)

21 (State's Exhibit No. 34, photo car,
22 was marked and entered.)

23 (State's Exhibit No. 35, photo car,
24 was marked and entered.)

25 BY MR. HUBBARD:

1 Q Okay, looking at State's No. 29, what are we looking
2 at?

3 A State's Exhibit 29 is an overview, general shot of the
4 front of the vehicle.

5 Q State's No. 30?

6 A It's an overview, general shot of the rear of the
7 vehicle.

8 Q Were you able to -- once you did this, I guess you
9 photographed the outside of the car. Once you're executing
10 a search warrant, what do you do next?

11 A We follow the same basic principles we do on any
12 residence in that we take general photographs of the outside
13 of the vehicle. And once the search warrant has been
14 obtained, we start doing general photographs of the inside
15 of the vehicle.

16 Q Were you able, once you went into the vehicle, were you
17 able to determine who the owner of the vehicle was?

18 A Yes, sir.

19 Q And who was the owner of the vehicle?

20 A Robert Prather.

21 Q Looking at State's No. 31, what does that show?

22 A That is a Jiffy Lube receipt from the inside of the
23 vehicle.

24 Q And the name on the receipt, do you remember?

25 A The name on the receipt, it's under customer

1 information. It says Robert Prather.

2 Q State's No. 32, what are we looking at there?

3 A This is a photograph of the inside of the front
4 passenger side of the vehicle.

5 Q Specifically, what are we looking at right here?

6 A In the floorboard there's a wooden box containing some
7 writing, along with the words, 75 Years Of Refreshment.

8 Q Let me show you State's No. 33. Is that a close-up of
9 State's 32?

10 A Yes, sir, it is.

11 Q State's No. 35, do you recognize that?

12 A Yes, sir, that is the box that was in the front
13 passenger side floorboard of the vehicle. It's been opened
14 up to reveal what's inside of it.

15 Q Let me show you an item and ask if you recognize it?

16 A Yes, sir, I do.

17 Q And what is that item?

18 A This is the item that was collected from the front,
19 passenger side floorboard of the vehicle that we processed
20 related to this case.

21 Q Are you able to open that up?

22 A (Witness complies.)

23 Q Does that appear to be what you photographed there?

24 A Yes, sir, that's what the contents were.

25 Q The condition of this box is slightly different than it

1 was when you retrieved it that day; isn't that correct?

2 A That's correct.

3 MR. HUBBARD: Your Honor, the State would offer
4 the box and its contents into evidence.

5 THE COURT: What says the Defense?

6 MR. FLOYD: Your Honor, we renew our objection to
7 the box being moved into evidence per our previous motion.

8 THE COURT: Yes, sir. It's admitted over
9 objection.

10 (State's Exhibit No. 36, Coca-Cola
11 Memorabilia Box, was marked and entered.)

12 BY MR. HUBBARD:

13 Q And looking at State's 36, what are the differences
14 between the time you collected and what's on the outside of
15 this now?

16 A The white residue appears to be leftover fumes from a
17 process called cyanoacrylate (sp) fuming, which is Super
18 Glue heated up. And it adheres to the moisture of a
19 fingerprint. The white residue is the leftover residue from
20 that process.

21 Q So what the jury is looking is a result of trying to
22 lift off latent prints?

23 A That's correct, yes, sir.

24 Q Do you know whether prints were lifted off of that?

25 A As I recall, there was a latent developed on that item,

1 yes, sir.

2 Q Are you aware of what the results were?

3 A It was not identified with all individuals associated
4 with this case.

5 Q Looking back at State's No. 33, that's the box in
6 place; correct?

7 A Yes, sir, that's correct.

8 Q. Once that box was removed from the vehicle -- let me
9 show you State's 34. Do you recognize that photograph?

10 A Yes, sir, I do.

11 Q And what are we looking at there?

12 A We're looking at the floorboard after the box has been
13 removed. Of particular interest is a knife that was located
14 on the floorboard.

15 Q Why was that knife collected?

16 A Because of the injuries related to the victim, the
17 etching of the word on the rear of the victim.

18 Q Let me show you a bag and ask if you recognize that bag
19 and its contents?

20 A Yes, sir. It has the lab number associated with this
21 case, the item number and Bruce's initials.

22 Q Looking inside the bag, do you recognize the contents
23 of that bag?

24 A You just want me to pull it out?

25 Q Yes, sir?

1 A Yes, sir. It has the lab number associated with this
2 case, the item number, and Special Agent Gantt's initials.

3 Q And you were present when that item was collected from
4 the vehicle?

5 A Yes, sir, I was.

6 Q Is that knife the same knife that's in the photograph?

7 A Yes, sir, it is.

8 Q And that's the same knife that was found in Mr.
9 Prather's vehicle?

10 A Yes, sir, that's correct.

11 MR. HUBBARD: Your Honor, the State would offer
12 the knife into evidence in this time.

13 THE COURT: What says the Defense.

14 MR. FLOYD: Your Honor, subject to the same
15 objection.

16 THE COURT: It's admitted over objection.

17 (State's Exhibit No. 37, knife, was
18 marked and entered.)

19 MR. HUBBARD: Beg the Court's indulgence.

20 Q Agent Stuckey, please answer any questions the Court
21 has for you.

22 AL STUCKEY - CROSS-EXAMINATION

23 BY MR. FLOYD:

24 Q Agent Stuckey, the box that was put into evidence, that
25 was found in the passenger's side floorboard; is that

1 correct?

2 A Yes, sir, that's correct.

3 Q And that knife, that was on the passenger's side
4 floorboard; is that correct?

5 A Yes, sir, that is correct.

6 Q Now, the box was examined for fingerprints and no
7 prints belonging to Jared Prather were found, were they?

8 A On the box, no, sir.

9 Q No DNA or fingerprints of Jared Prather were found on
10 the knife either, were they?

11 A Not to my knowledge, no, sir.

12 Q I'm a little confused about Exhibit No. 21. So could I
13 pass it to you ---

14 A Absolutely.

15 Q --- and ask you questions?

16 A Yes, sir.

17 Q There does appear to be something going across the leg
18 there, but it continues, does it not?

19 A In which direction?

20 Q It just keeps going, doesn't it?

21 A Off to the right, in this direction, towards the chair?

22 Q Well, it goes across the leg on both sides?

23 A Yes, sir. It continues on both sides.

24 Q Okay. So it wasn't wrapped around the leg?

25 A No, sir, I'm sorry. Draped over his leg would probably

1 be a better characterization.

2 Q It was draped, just draped over his leg, wasn't it?

3 A It appears, yes, sir, draped over leg.

4 Q So let me -- I don't know if I can operate this thing.

5 So it's not something wrapped around his leg, it just runs
6 across the leg, doesn't it?

7 A Yes, sir. It appears to run over the top of his right
8 leg.

9 Q And you don't know what it's connected to on either
10 side?

11 A I can't tell from that photograph, no, sir.

12 Q Okay. Now, does that appear to be the same item?

13 A Yes, sir. That appears to be the same item.

14 Q And it's not at all wrapped around his leg, is it?

15 A No, sir. Like I said it appears to be more draped over
16 his leg.

17 Q Did you do any examination in the back bedroom?

18 A As far as?

19 Q Looking for evidence?

20 A Yes, sir. We would have examined the entire house.

21 Q And what can you tell me about the back bedroom then if
22 you examined the whole house?

23 A As far as -- specifically what we collected?

24 Q Yeah?

25 A I don't recall exactly what Bruce Gantt would have

1 collected from that particular bedroom.

2 Q Would he have any notes or anything that says anything
3 was collected from the back bedroom?

4 A You mean Bruce's notes, you mean Special Agent's notes?

5 Q Anybody's notes. Can you tell us if anything was
6 collected from the back bedroom?

7 A I can't recall if anything was collected from the back
8 bedroom.

9 Q Do you have any photographs of the back bedroom?

10 A Not with me, no, sir.

11 Q So you don't recall any examination of the back
12 bedrooms?

13 A We would have examined, but I can't recall if anything
14 was taken out of there. There was nothing of evidentiary
15 value that we determined came out of the house, other than
16 the victim and related items in the den area.

17 Q Because you saw that was the scene area? You
18 considered that the scene?

19 A Well, that was the primary area of activity, yes, sir,
20 as far as criminal activity goes.

21 Q So were you aware that someone was in the back bedroom?

22 A At what point?

23 Q When the police got there?

24 A I can't recall. There was no one there when we
25 arrived.

1 Q And you don't recall anybody telling you there was
2 somebody there?

3 A I can't recall, no, sir.

4 Q Well, if you had known there was somebody in the back
5 bedroom, would you have probably done a little more thorough
6 examination in the back bedroom?

7 A As far as -- you mean someone being there at the time
8 of the incident?

9 Q I mean at the time the police arrived?

10 A I can't -- I don't understand what you're asking.

11 Q Well, you're aware there was someone in the back
12 bedroom when the body was discovered?

13 A No, sir.

14 Q All right. So nobody ever told you that at the time of
15 the discovery of the body, there was a live person laying on
16 the bed, in the back bedroom, covered up?

17 A As I stated earlier, I was there to assist Agent Gantt.
18 Agent Gantt -- All communications took place through Agent
19 Gantt. So we did what Agent Gantt directed us to. I can't
20 recall any information about another person being in a back
21 bedroom.

22 Q Okay. Thank you.

23 MR. FLOYD: No further questions.

24 MR. HUBBARD: Nothing else, Your Honor.

25 THE COURT: All right. Thank you, sir.

1 MR. STUCKEY: Thank you.

2 THE COURT: Yes, sir.

3 MR. HUBBARD: Your Honor, we would ask to go ahead
4 and take our lunch break. We have a witness that's not able
5 to be here until a little bit after 2:00.

6 THE COURT: All right. Ladies and gentlemen, we
7 will take a break for lunch then and we will be back at
8 2:15. 2:15.

9 (Jury out at 12:38 p.m.)

10 (Court in recess for lunch at 12:38
11 p.m.)

12 (Court in session after lunch at
13 2:19 p.m.)

14 THE COURT: Thank you very much. Please be
15 seated.

16 Are we looking ready?

17 MR. HUBBARD: Yes, sir, Your Honor.

18 THE COURT: Let's bring that jury.

19 MR. FLOYD: Your Honor, one matter?

20 MR. HUBBARD: Yes, sir.

21 MR. FLOYD: The next witness ---

22 THE COURT: What's his name right here?

23 (The Court is referring to the bailiff.)

24 MR. HUBBARD: Dean.

25 THE COURT: Dean.

1 MR. HUBBARD: Dean Garrett.

2 THE COURT: Dean Garrett?

3 THE BAILIFF: Yes, Your Honor?

4 THE COURT: Hold them just for one moment. They
5 can stand right in the hallway out there.

6 MR. FLOYD: Just as a matter of precaution, Judge,
7 the last time we had this matter, there was a statement that
8 came out through this witness, allegedly given by the co-
9 defendant. And I want to make sure that doesn't happen this
10 time.

11 THE COURT: All right. What about that?

12 MR. HUBBARD: I'm not seeking to elicit statements
13 from the co-defendant, Your Honor. So I was not part of
14 that trial, but I'm not seeking to do that in this
15 testimony.

16 MR. FLOYD: I just hope it doesn't come out again.

17 THE COURT: All right.

18 MR. FLOYD: Basically it was something of the
19 alleged co-defendant told the police about an attempt to
20 smother the victim.

21 THE COURT: All right.

22 MR. FLOYD: I specifically move that that not be
23 brought out in this case.

24 MR. HUBBARD: I'm going to say this, Your Honor.
25 It is not listed as the cause of death, but it was listed as

1 something that could not be ruled out. Part of what she
2 does as a forensic pathologist, is she does get information
3 from law enforcement. What did you find at the scene? What
4 is your investigation showing? Then she matches it to the
5 physical findings. But I'm not going into specifically
6 where the information came from. They're using information
7 from law enforcement and within physical findings she can't
8 rule out suffocation. That's about as far as I'm going to
9 go.

10 MR. FLOYD: But, Your Honor, there are no physical
11 findings of suffocation. So the only we would -- the issue
12 would be mentioned was if she received some kind of
13 information concerning that possibility, Your Honor.

14 MR. HUBBARD: I think the doctor might differ on
15 whether there's any physical findings of that. That's just
16 a question that has to be asked.

17 THE COURT: Well, the Supreme Court had to address
18 it with the case involving -- I think it was Dr. Clay
19 Nichols on issues regarding testimony of forensic
20 pathologist and parameters of that testimony. And I'm going
21 to pull that up as I'm listening to this testimony.

22 All right. Let's bring the jury.

23 (Jury in at 2:20 p.m.)

24 THE COURT: All right. The jury's back.

25 Your next witness.

1 MR. HUBBARD: Thank you, Your Honor. The State
2 calls Dr. Janice Ross.

3 (WHEREUPON, Janice Ross was sworn
4 to tell the truth.)

5 THE CLERK: Once you're seated, Doctor, please
6 state your full name, spelling your last on the record.

7 DR. ROSS: Janice Edwards Ross, R-O-S-S.

8 JANICE ROSS - DIRECT EXAMINATION

9 BY MR. HUBBARD:

10 Q Dr. Ross, where do you work?

11 A With Newberry Pathology Associates in Newberry, South
12 Carolina.

13 Q How long have you been there?

14 A Since May of 2000.

15 Q Now, I called you Dr. Ross. Are you a medical doctor?

16 A Yes.

17 Q Where did you go to undergraduate school?

18 A At the University of South Carolina.

19 Q And what about medical school?

20 A I started in Charleston and then transferred to Upstate
21 Medical Center in Syracuse, New York and received my M.D.
22 there.

23 Q Where did you do your residency?

24 A At Upstate Medical Center in Syracuse, New York.

25 Q Are you board certified in a particular field?

1 A I am Board Certified in three areas of Pathology.

2 Q What are those?

3 A Anatomic Pathology. Pathology is the study of disease
4 and as pathologist, it's a specialty in medicine where we
5 are trained to diagnose diseases and do autopsies. Anatomic
6 Pathology has to do with looking at tissue that comes out of
7 you from surgery to identify tumors by use of a microscope.
8 And, also, how to do an autopsy. Clinical Pathology has to
9 do with use of blood work and laboratory work to identify
10 and help diagnose diseases. And then Forensic Pathology is
11 another specialty that I'm Board Certified in. The word
12 forensic means legal. So I use my pathology training on
13 legal matters such as homicide, suicides, rapes, accidents.
14 And we are trained in forensic pathology to do a specific
15 forensic autopsy and a more detailed autopsy, and to
16 identify patterns of injury, along with natural diseases.

17 Q Okay. Now, you mentioned autopsies. How long have you
18 been conducting autopsies?

19 A Thirty-six years.

20 Q And how long have you been doing autopsies in Newberry?

21 A Since May of 2000.

22 Q So the entire time you've been there?

23 A Yes.

24 Q Over your career, how many autopsies would you you've
25 performed?

1 A Over six thousand.

2 Q How many do you do in a year, approximately?

3 A The last couple of years, nine hundred.

4 Q Have you ever been qualified as an expert to testify in
5 a court of law?

6 A Yes.

7 Q And in South Carolina?

8 A Yes.

9 Q Approximately how many times?

10 A Over seventy times.

11 MR. HUBBARD: Your Honor, at this time, I would
12 offer Dr. Ross as an expert in the field of Pathology,
13 specifically in Forensic Pathology.

14 MR. FLOYD: No objection, Your Honor.

15 THE COURT: All right. She is so qualified.

16 BY MR. HUBBARD:

17 Q Dr. Ross, when you do an autopsy, is there a particular
18 process or protocol that you follow?

19 A Yes. First of all, we have authorization by the
20 coroner to do the autopsy. The body is brought to us at
21 Newberry County Memorial Hospital in the morgue in a body
22 bag. We open the body bag, examine the external, including
23 the clothing. We do an itemized list of clothing and
24 photographs of any patterns of injury on the clothing. Take
25 the clothing off and do an examination of the external body,

1 again to look for patterns of injury and to take photographs
2 for the purpose of court of law. Then we do a routine
3 internal examination and collect fluids for toxicology.

4 Q The internal examination, is that when you actually
5 enter into the body. You cut into the body?

6 A Yes.

7 Q And when you do an autopsy, do you typically issue a
8 report?

9 A Yes.

10 Q And does your report have findings of -- let me just
11 ask you this -- something called manner of death?

12 A Yes.

13 Q What is that?

14 A Well, the cause of death is like it states, what causes
15 a person to die. The manner of death is how that cause of
16 death came about. In other words, was it a natural process?
17 Was it accidental? Was it a suicide? Was it a homicide?
18 And, occasionally, we can't -- we don't know, and we put
19 undetermined. So there are five different manners of death.

20 Q And did you have an occasion to do an autopsy on a
21 Gerald Stewart?

22 A Yes.

23 Q And do you know what date that was?

24 A It was April 22, 2005.

25 Q Was that in Newberry?

1 A Correct.

2 Q And did you use the same procedures and methods that
3 you've described to this jury about how you conduct general
4 autopsies?

5 A Yes.

6 Q Did you conduct an external examination of his body?

7 A Yes.

8 Q What, if any, physical injuries did you see on him?

9 A We found that he had bruising around the left eye. He
10 had, you could feel a fracture of his nose. He had bruising
11 and laceration on the inside of the lips. He had scratch
12 abrasions, just scratch marks on his right thigh. And some
13 scratch marks on his buttocks and the lower back.

14 Q When you say scratch marks, more like cut marks or
15 scrape marks?

16 A Yes. Usually from a sharp instrument. It's very
17 superficial.

18 Q Okay. Now, that's the external examination. Did you
19 do an internal dissection and did you do an internal
20 examination?

21 A Yes.

22 Q What other injuries did you find when you actually
23 started doing the autopsy?

24 A We found some bruises underneath the skin, on the right
25 chest, and the upper abdomen, I believe it was. We found

1 two fractured ribs on the left.

2 Q Do you recall any bruising to the scalp as well?

3 A Bruising to the scalp, yes, on both side of the --
4 underneath the skin.

5 Q Now, I want to talk about Mr. Stewart's general health
6 aside from those injuries. What, if anything, can you tell
7 us about his physical condition, absent these injuries?

8 A He had an enlarged heart. It was -- he was a big
9 person. So the heart was almost twice normal size. He had
10 cirrhosis of the liver. He had a lot of fluid in the lungs,
11 but that could be -- that's a terminal event that occurs
12 during a lot of different situations. That's mostly it.

13 Q Okay. Now, cirrhosis of the liver, what is that?

14 A It's hardening of the liver. You relate that mostly to
15 alcohol abuse. It can be caused by other things, such as
16 hepatitis.

17 Q Did you request a toxicology examination on Mr.
18 Stewart?

19 A Yes.

20 Q And toxicology, we're talking about bodily fluids;
21 correct?

22 A Correct.

23 Q Did you have a tox run on his blood?

24 A Yes.

25 Q And do you know what the result was on his blood?

1 A On the blood, there was .279 percent alcohol. There
2 was .10 milligrams of Diazepam, which is Valium. A
3 byproduct of that, .06 milligrams per liter nordiazepam.

4 Q Was that just the drug breaking down?

5 A Yes.

6 Q Ocular fluid, the eye fluid?

7 A Yes.

8 Q Did you get a reading on that as well?

9 A Yes. The alcohol was higher in that. It was .342
10 percent.

11 Q Doctor, why would you get a blood reading and an ocular
12 fluid reading when it comes to alcohol?

13 A As alcohol, as you drink alcohol, it disperses into the
14 fluid around the eye as well. That's the vitreous. That's
15 what we call vitreous. And the level, as the level -- it'll
16 -- obviously, it'll go up and then it start coming down.
17 But the vitreous level lags behind the blood level about an
18 hour. So in some instances like this, you can say because
19 the vitreous level is higher than the blood, that at some
20 point, the blood level was that high.

21 Q Now, this is a lot of alcohol in this person; is that
22 correct?

23 A Yes.

24 Q Would that be consistent along with his cirrhosis of
25 the liver of someone who's got a chronic alcohol problem?

1 A Yes.

2 Q And the enlarged heart, what might be the cause of an
3 enlarged heart?

4 A Sometimes we don't know. Sometimes it's related to
5 high blood pressure, for instance. Sometimes it's related
6 to alcohol, especially beer.

7 Q Now, Mr. Stewart was a large man. You have in your
8 documents how big he was, how tall he was, how much he
9 weighed?

10 A We measured him at 6'4" tall. We don't have a scale in
11 the morgue, but we estimated him to be over 250 grams --
12 sorry. Over 250 pounds, maybe 285.

13 Q Okay. Now, beside Mr. Stewart's vast size, what was
14 his general health?

15 A It was poor.

16 Q So he was in poor health?

17 A Yes.

18 Q And I'm going to show you a couple of photographs, see
19 if you recognize these.

20 A Yes, I do.

21 Q Are these from the autopsy of Gerald Stewart?

22 A Yes.

23 MR. HUBBARD: And, Your Honor, I offer these at
24 this time.

25 MR. FLOYD: No objection, Your Honor.

1 THE COURT: They're admitted.

2 (State's Exhibit Number 38, autopsy
3 photo, was marked and entered.)

4 (State's Exhibit Number 39, autopsy
5 photo, was marked and entered.)

6 BY MR. HUBBARD:

7 Q Doctor, State's Exhibit 38 and 39, they're basically
8 showing the same thing?

9 A Yes.

10 Q What does this show?

11 A This shows the buttocks and the lower back of the
12 deceased at the time of autopsy. And it shows these very
13 superficial, and sharp wounds, scratch, abrasions we call
14 them, that appear to spell out a word. I can make out an R-
15 A-P, and the rest of it's ---

16 Q Kind of hard to make out?

17 A --- kind of hard to say.

18 Q Now, one photograph has -- it looks like the little
19 measuring stick with some letters and numbers. What is
20 that?

21 A That is our ledger at the morgue that we use to
22 identify what autopsy we're doing. It gives our autopsy
23 number FA05-267.

24 Q So that indicates that this is Gerald Stewart's
25 autopsy?

1 A Correct.

2 Q Okay. And, Doctor, when you say superficial, these
3 cuttings, does that mean they wouldn't be painful?

4 A No, they would be painful.

5 Q But superficial means it's not cutting deep into the
6 flesh?

7 A It doesn't go through the skin, correct.

8 Q And these cuttings as you see on State's 39 and 38,
9 they go from the low back all the way down to the buttocks?

10 A Yes.

11 Q Now, Doctor, were you able to form an opinion to a
12 reasonable degree of medical certainty whether the injuries
13 that we just saw in 38 and 39 were inflicted before or after
14 death?

15 A They are reddish in color and consistent with the
16 circulation and a heartbeat still occurring. So it is -- it
17 could be just before death, but it's before death.

18 Q So this is not after Mr. Stewart was dead, but while he
19 was alive or shortly before he died?

20 A Correct.

21 Q And you can tell that due to the coloration?

22 A Yes.

23 Q Doctor, we talked about some other injuries. What, if
24 anything, did you find with his rib cage?

25 A He had two fractured ribs on his left side.

1 Q Would those have been painful?

2 A Yes, especially trying to breathe air in and moving the
3 chest cavity.

4 Q Doctor, if I were to give you a hypothetical of an
5 individual on his knees, in front of, say, a chair or a
6 sofa, face down in the cushions, struggling to breathe, how
7 would those fractured ribs impact his ability to breathe?

8 A They would impair his ability to move his chest in
9 order to get air in.

10 Q You mentioned his nose. What was the injury with his
11 nose?

12 A You could feel that it was fractured.

13 Q So you could just actually feel it?

14 A Yes. And there was a lot dried blood within it, and
15 some blood on the front of his shirt that most likely came
16 from his nose.

17 Q What about the mouth area? What, if anything, did you
18 find?

19 A Right inside the lips were bruised and lacerated, and
20 that's from blunt force injury to the mouth.

21 Q So it bruised and lacerated?

22 A Correct.

23 Q Would these injuries have been painful?

24 A Yes.

25 Q Doctor, I noticed in your report something about an

1 injury on one of the fingers. What injury did you see?

2 What did you find on one of the fingers?

3 A It looked like a very superficial burn mark. It was
4 sort of circular. It could have been from a cigarette.

5 Q Which finger was that?

6 A Well, let me make sure.

7 Q It would be page two of your report.

8 A Middle finger of one hand, right hand.

9 Q Is it on the inside or outside?

10 A On the top.

11 Q So middle finger on the right hand appears to have been
12 a cigarette burn?

13 A It was round and circular.

14 Q It was consistent with a cigarette burn?

15 A Consistent with.

16 Q Doctor, having considered all the various injuries and
17 Mr. Stewart's general health, were you able to form an
18 opinion to a reasonable degree of medical certainty how Mr.
19 Stewart -- what his cause of death was?

20 A Yes.

21 Q What is your opinion?

22 A It was a cardiac arrhythmia, which means an irregular
23 heartbeat, due to the stress of beating and due to the
24 enlarged heart.

25 Q Doctor, I want to show you a chart. First, let me put

1 this stand up. There's some terminology here I want to ask
2 you about. You've already mentioned a little bit. But
3 cause of death, cardiac arrhythmia. What is that?

4 A An irregular heartbeat that can be a high heart rate,
5 or a heart rate going down, and even heart stopping is
6 arrhythmia.

7 Q Okay. And in your report you say that is due to what?

8 A To the stress of the beating.

9 Q And then that stress of beating, which combines with
10 that enlarge heart, which -- what's the terminology for
11 cardio ---

12 A Well, cardiomegaly. It's an enlarged heart.
13 Cardiomegaly.

14 Q That stress of beating basically caused that heart to
15 race, the heart racing is what shuts that heart down?

16 A Correct.

17 Q And that was what you found to a medical degree of
18 reasonable certainly was the cause of Gerald Stewart's
19 death?

20 A Yes.

21 Q Now, Doctor, do you have an opinion as to a reasonable
22 degree of medical certainty as to the manner of death?

23 A Yes.

24 Q And what is that?

25 A Homicide.

1 Q Homicide. Doctor, let me show you another chart. You
2 mentioned earlier that there are various types of categories
3 when you're doing an autopsy, when somebody dies, for
4 determining the cause of death or manner of death. Are
5 these the various categories?

6 A Yes.

7 Q Homicide, suicide, accident, natural causes and
8 undetermined?

9 A Correct.

10 Q When you do an autopsy are you open to all of those?

11 A Yes.

12 Q When you do an autopsy and you look at somebody's
13 physical condition, whether they're an athlete or someone in
14 very poor health, do you consider their general health?

15 A Yes.

16 Q Do you consider the impact it would have on your
17 findings?

18 A Yes.

19 Q Doctor, in this case, you have somebody who was beaten.
20 Some of those beatings may have -- or some of the things may
21 have been superficial, but it induced stress?

22 A Yes.

23 Q And pain?

24 A Yes.

25 Q Now, just looking at these injuries, one by one or

1 either collectively, could someone who's healthier have
2 survived?

3 A Yes.

4 Q When you combined it with his physical condition, is
5 that where the problem came with Gerald Stewart?

6 A Yes.

7 Q Now, to a reasonable degree of medical certainty, you
8 stated that the stress of the beating was the causing
9 factor?

10 A Yes. And I have to say that I can't rule out
11 smothering being additive because of the position he was in.

12 Q Okay. And if I give you that same scenario of an
13 individual being on their knees, face down in a sofa, the
14 physical findings you found on Gerald Stewart, would have
15 been consistent with smothering, just on the physical
16 findings?

17 A The bruises and lacerations of the lips has to do with
18 being hit in the lips or having pressure on the lips.

19 Q And, Doctor, even if that had happened immediately
20 before, looking at it, would you still say you'd have
21 trouble ruling out suffocation as well?

22 A Yes.

23 Q Suffocation, is that a natural cause of death?

24 A No.

25 Q Is it an accident?

1 A It can be an accident.

2 Q Not suicide?

3 A Well, you can be in some cases.

4 Q In some cases?

5 A In some case, yes.

6 Q And now let's look at Gerald Stewart, Gerald Stewart's
7 case. You've got all these injuries, you can't rule those
8 out, can you?

9 A No, I cannot.

10 Q And as a doctor, you've got to consider everything;
11 correct?

12 A Yes.

13 Q And based on all your consideration of all the pre-
14 existing issues that Mr. Stewart had, based on these
15 injuries whether they're superficial or not, you're opinion
16 as to a reasonable degree of medical certainty as to the
17 cause of death is what?

18 A It would be cardiac arrhythmia due to the stress of
19 beating with the enlarged heart.

20 Q And, Doctor, having considered everything, your opinion
21 to a reasonable degree of medical certainty as to the manner
22 of death would be what?

23 A Homicide.

24 Q Thank you, Doctor. Please answer any questions the
25 Defense has.

JANICE ROSS - CROSS-EXAMINATION

BY MR. FLOYD:

Q Good afternoon, Dr. Ross?

A Good afternoon.

Q Dr. Ross, I want to ask if you can identify this document?

A Sure. Yes, this is a document that we put out at the time of -- on the date of autopsy on our cause and manner of death. At that we pended it for toxicology and police investigation.

Q So on that day, when the media calls you said, pending toxicology and police investigation; is that correct?

A Correct.

MR. FLOYD: I'd like to have this marked as Defendant's Exhibit.

MR. HUBBARD: I didn't hear you?

MR. FLOYD: I'm going to have it marked as a Defendant's Exhibit.

MR. HUBBARD: I have no objection.

THE COURT: You're having it marked. You're offering it into evidence?

MR. FLOYD: Yes, Your Honor. We'd offer it into evidence.

THE COURT: Any objection?

MR. HUBBARD: No, sir.

1 THE COURT: Admitted without objection.
2 (Defendant's Exhibit 2, autopsy
3 report, was marked and entered.)
4 BY MR. FLOYD:
5 Q Now, you did what's called a final necropsy diagnosis;
6 did you not?
7 A Yes.
8 Q And if you need to refer it -- I'm going to ask you
9 some questions. If you need to refer to it, do you have it
10 with you?
11 A Yes, sir.
12 Q And would you agree with me that the first item listed
13 for a diagnosis was number one, history of alcohol abuse?
14 A Yes.
15 Q Second, cardiomegaly with bi-ventricular hypothecca and
16 dilation.
17 A Yes, enlarged heart.
18 Q And what's the bi-ventricular hypothecca?
19 A Both sides of the heart were enlarged.
20 Q Okay. And the dilation?
21 A It meant dilated.
22 Q So we have a severely enlarged heart?
23 A Yes.
24 Q Third finding, pulmonary edema and congestion?
25 A Yes.

1 Q Fourth finding, cirrhosis of the liver?

2 A Yes.

3 Q Fifth finding, multiple blunt force injuries including
4 fractured ribs, fractured, contusions and lacerations to the
5 head and chest area?

6 A Yes.

7 Q Manner of death?

8 A At that time, yes.

9 Q And that was at the autopsy, wasn't it?

10 A Yes.

11 Q Now, let's talk a little bit about the injuries that
12 you observed. Oh, let me ask you one more thing too. In
13 addition to those, didn't you also find, and I probably
14 won't pronounce it for you. Hepatosplenomegaly?

15 A Enlarged liver and spleen, yes.

16 Q So he had an enlarged spleen also?

17 A Yes.

18 Q And enlarged liver?

19 A Yes.

20 Q So he had an enlarged heart, enlarged liver, and
21 enlarged spleen?

22 A Yes.

23 Q Now, the injuries that you observed, the fractured
24 ribs; is that correct?

25 A Yes.

1 Q Two fractured ribs?

2 A Yes.

3 Q Were either one of those two fractured rib injuries
4 lethal?

5 A Not in themselves, no.

6 Q And what do I mean by lethal? What do you take I mean
7 when I say lethal?

8 A That it was the cause of death. But they would -- they
9 could very well contribute to someone in poor health. As I
10 said before, because of the pain of the expanding lungs and
11 moving those ribs.

12 Q Okay. Well, we'll get into that. You found a
13 fractured nose?

14 A Yes.

15 Q And is a fractured nose a lethal injury?

16 A If you had a bleeding problem. I didn't have the
17 history on this case, on this patient.

18 Q So you didn't have anything to indicate that was a
19 lethal injury in this case?

20 A I did not, no.

21 Q Contusions and lacerations of the head and chest. Were
22 any of those injuries of a lethal nature?

23 A No.

24 Q Superficial inside wounds above the buttocks. Were
25 those of a lethal nature?

1 A No.

2 Q In fact, that's the writing, what we say is the writing
3 we're talking about here, isn't it?

4 A Yes.

5 Q And you called that superficial, did you not?

6 A Yes.

7 Q Meaning not very deep?

8 A Correct.

9 Q Not below the skin?

10 A Correct?

11 Q Is that correct?

12 A Yes.

13 Q And were those lethal type injuries?

14 A No.

15 Q You mentioned that he had a blood alcohol reading of
16 ocular fluid .342; is that correct?

17 A Correct.

18 Q And that's a high reading; isn't it?

19 A Yes.

20 Q And isn't it true that one can die of alcohol
21 poisoning?

22 A I've seen people die with that level and I've seen
23 people walk with a .6, so it's all about experience in
24 drinking.

25 Q But you have seen people who died from just that level

1 of alcohol; is that correct?

2 A Yes.

3 Q Now, you say it was .342 at the time of your
4 examination. Could it have been higher earlier in the
5 evening?

6 A It was .342 in the vitreous, but .2-something in the
7 blood, so it was coming down. So to my knowledge it was not
8 higher than .34.

9 Q Well, it comes down ---

10 A At the time of the autopsy.

11 Q Well, I understand at the time of the autopsy. But I'm
12 talking about an hour earlier, an hour before death. Could
13 it have been higher?

14 A Possibly.

15 Q Is there a certain level of alcohol in your body that's
16 generally considered lethal?

17 A There's a range, yes. Usually it's .5 to .6.

18 Q It's not usually a .4?

19 A Above .4

20 Q .4 and above?

21 A Yes. But, again, it will vary because of experience.
22 As I say, I've seen people come into the emergency room with
23 close to a .6 and still be alive.

24 Q And you've seen them die from less than .34?

25 A Not less than .34.

1 Q Did you not testify to that a bit earlier?

2 A I said at .34, I have seen it.

3 Q At .34. You say you observed evidence of alcohol
4 damage to Mr. Stewart's body; is that correct?

5 A Yes.

6 Q And cirrhosis of the liver was one of those?

7 A Cirrhosis of the liver, yes.

8 Q Now, what type of damage -- doesn't that interfere with
9 the liver's abilities to remove waste products and so forth?

10 A Yes.

11 Q And can you describe to the jury the pathological
12 mechanism that that interferes with?

13 A Well, the liver breaks down alcohol, for instance. And
14 alcohol is also removed from the body through the
15 respiratory system and through the kidneys. But the liver
16 breaks down alcohol and a cirrhotic liver will be impeded
17 with that process.

18 Q I'm sorry. What was that last statement?

19 A It will be -- it will not be -- it will be impeded with
20 that process. It won't be able to process alcohol as well.

21 Q And what is the significance of the enlarge spleen?

22 A The spleen can be enlarged because of the cirrhosis of
23 the liver and/or because of the enlarged heart.

24 Q And is that a condition that creates some problems?

25 A Not necessarily.

1 Q You think it had anything to do with this situation?

2 A No.

3 Q Now, you found, did you not that Mr. Stewart had a
4 heart twice the normal size?

5 A Yes.

6 Q And you called that an enlarged heart; is that correct?

7 A Yes.

8 Q Now, isn't it true, that's a very dangerous condition,
9 isn't it?

10 A Yes.

11 Q Isn't it true someone with an enlarged could drop dead
12 at any time?

13 A Yes.

14 Q Now, you mentioned in making your findings that you
15 felt that the stress from the beating attributed to the
16 death?

17 A Correct.

18 Q But isn't it true that he could have died anyway from
19 an enlarged heart?

20 MR. HUBBARD: Objection to the form of the
21 question, Your Honor.

22 THE COURT: Restate the question, please?

23 BY MR. FLOYD:

24 Q Isn't it true that he could have died from an enlarged
25 heart at any minute?

1 A Yes.

2 Q Now, we had an ocular eye of .342 alcohol level; is
3 that correct?

4 A Yes.

5 Q He also had Valium in his system? Was it Valium or...

6 A Yes.

7 Q It was Valium. He had Valium in his system, also.
8 Now, what does Valium do to your body?

9 A It's kind of relaxing or an anti-anxiety medication.

10 Q And alcohol, what does that do to the body?

11 A It relaxes and it depresses reflexes.

12 Q And is there a synergistic effect between Valium and
13 alcohol?

14 A There can be somewhat, but I'm not a toxicologist, so I
15 can't go into detail with that.

16 Q Will you describe for the jury what the synergistic
17 effect would be?

18 A Just additive. The two drugs can go to the other and
19 add to a process in the body.

20 Q So isn't it true, Dr. Ross, when a man with a .342
21 alcohol level and a level of Valium in his system, he may
22 not have felt any stress at all?

23 MR. HUBBARD: Objection to the form of the
24 question, Your Honor.

25 THE COURT: What's your response?

1 DR. ROSS: I don't feel that I can answer that.

2 THE COURT: No, I'm sorry, Doctor.

3 DR. ROSS: Oh, I'm sorry.

4 MR. FLOYD: I thought that was a legitimate
5 question.

6 THE COURT: All right. Let me hear it again?

7 MR. FLOYD: If I can get it in the right form?

8 THE COURT: The question.

9 COURT REPORTER: So isn't it true, Dr. Ross, when
10 a man with a .342 alcohol level and a level of Valium in his
11 system, he may not have felt any stress at all?

12 THE COURT: Do you understand that question.

13 MR. HUBBARD: If we could ask it again, maybe and

14 --

15 THE COURT: All right.

16 BY MR. FLOYD:

17 Q Dr. Ross, in your opinion, isn't it true that an
18 individual with a blood alcohol level of .342, ocular eye
19 alcohol level of .342 and a the Valium in his system, he may
20 not feel any stress?

21 MR. HUBBARD: Your Honor. I renew my objection.
22 And I don't mind if we approach, if Your Honor would allow.

23 THE COURT: All right. Let's stand for a moment.

24 (Off the record bench conference with counsel and the
25 Court.)

1 THE COURT: The objection is overruled. Restate
2 the question for the doctor, however.

3 BY MR. FLOYD:

4 Q Dr. Ross, isn't it possible that a man with a ocular
5 alcohol level of .342, who also had Valium in his system,
6 may not feel any stress?

7 A I don't feel that I can answer that question. I'm not
8 a clinician.

9 Q Well, you indicate that the stress of the beating is
10 one of the causes of death; is that correct?

11 A Yes.

12 Q But you don't know how much, if any, stress Mr. Stewart
13 felt that night, do you?

14 A Stress goes beyond feeling. It's a reaction of
15 chemicals in the body as well, adrenalin, et cetera, that
16 occur naturally whether you're under the influence of
17 alcohol or not. So stress is not just a psychological
18 feeling. It's a physical process in the body.

19 Q Well, did you find any adrenalin in his blood?

20 A Adrenalin cannot be adequately tested for post-mortem.
21 It's not one of those chemicals that can be tested for. It
22 can be tested for, but it's not -- your levels would not be
23 correct because everybody in the process of dying puts out a
24 lot of adrenalin.

25 Q Does that mean you don't know whether there was any

1 adrenalin or not?

2 A No. I mean, his adrenal glands were normal so he
3 should have had plenty of adrenalin available.

4 Q But to your knowledge, was there any adrenalin in his
5 blood?

6 A We don't test that.

7 Q Does that mean you can't know that?

8 A Correct.

9 Q Did you also find some injuries to Mr. Stewart's hand?

10 A Yes. The one abrasion, circular abrasion on the
11 finger.

12 Q Wasn't there also something around a knuckle?

13 A There was an abrasion around the knuckle. I'm sorry,
14 yeah. And the thermal injury to the finger.

15 Q Well, tell us about the abrasions around the knuckles?

16 A There was no specific pattern to it. It was
17 superficial and it could be from him hitting something or
18 something hitting him.

19 Q It could be from him hitting someone?

20 A Yes.

21 Q And where was it located?

22 A On the second knuckle of the right hand.

23 Q Did you note the size of them or anything like that?

24 A I did not.

25 Q Just because I may not have asked you about this

1 injury, you found some injury to the lips; is that correct?

2 Bruising and split lips?

3 A Yes.

4 Q Were either one of those injuries lethal in nature?

5 A No.

6 Q The scratches on his right leg, was that in any way
7 lethal in nature?

8 A No.

9 Q And would it be safe to say that none of the injuries
10 that you observed were lethal in nature?

11 A Not by themselves, but they were contributory.

12 Q Well, and that's because of your opinion that stress is
13 a factor; is that correct?

14 A Yes. As I say, the rib fractures would impede, stop a
15 person from breathing in air correctly.

16 Q And when were the rib fractures suffered, if you know?

17 A When were they suffered? At the time of this beating.

18 Q And you could tell that?

19 A Well, it's difficult to put an exact time on it, but
20 they were recent. They were the same, appeared to be the
21 same age as the rest of the injuries.

22 Q Were you aware of an altercation earlier in the
23 evening?

24 A No.

25 Q And if you were to discover that there had been an

1 altercation between Mr. Stewart and someone else, some hours
2 before his death, could you differentiate between the timing
3 of the rib injury and any other injuries that he suffered?

4 A No, not within a few hours.

5 Q Now, I just want to make sure I've got your opinion
6 correct. Now you opine that he would have suffered stress
7 from these injuries that would have contributed to his
8 enlarged heart, cirrhosis of the liver, as the cause of
9 death?

10 A The stress would contribute to the heart going into an
11 arrhythmia, yes.

12 Q But, of course, on the other hand, with that enlarged
13 heart he had, he could have died at any time; is that
14 correct?

15 A Yes.

16 Q Just drop dead?

17 A Yes.

18 Q Now, but if we can isolate what you call the stress
19 from the injuries, just in the injuries themselves, would
20 you agree with me that none of the injuries that you
21 observed, either singly or combined would have been lethal?

22 A In an otherwise healthy person, no.

23 Q Thank you.

24 MR. FLOYD: No further questions.

25 MR. HUBBARD: Just a few quick follow-ups, Your

1 Honor.

2 THE COURT: Yes, sir.

3 JANICE ROSS - REDIRECT EXAMINATION

4 BY MR. HUBBARD:

5 Q Defendant's Exhibit No. 2, we have your results are
6 pending toxicology and police investigation?

7 A That was immediately after the autopsy. I wanted to
8 wait and get more information and see with the vitreous
9 alcohol was.

10 Q Okay. And when you got that information -- so
11 basically, you were looking more for toxicology reports?

12 A Well, both. Yes.

13 Q And you wanted all of that information before you
14 formed an opinion?

15 A Yes.

16 Q Now, Doctor -- and did you initially issue an amended
17 report with your final conclusions?

18 A Correct.

19 Q And that's what you've testified about here today?

20 A Yes.

21 Q Doctor, I've been asking you, throughout my
22 questioning, questions using the phrase to a medical degree
23 of -- to a reasonable degree of medical certainty. As a
24 forensic pathologist, is that how you state your opinions?

25 A Yes.

1 Q On cross we heard questions such, isn't it possible or
2 could something happen. As a forensic pathologist, before
3 you do a report, do you have to go beyond could and the what
4 ifs?

5 A We have to look at everything involving the case, the
6 body, the injuries, the natural disease, the unnatural
7 disorders, scene investigation. We have to put everything
8 together.

9 Q You can't just take one thing you find and say -- and
10 discount the rest?

11 A Correct.

12 Q Is that fair?

13 A Yes.

14 Q Did anything Mr. Floyd brought up with you on cross
15 change your opinion as to Mr. Stewart's cause of death?

16 A No.

17 Q Stress is still a factor?

18 A Yes.

19 Q Did anything he asked you change your opinion to a
20 reasonable degree of medical certainty as to the manner of
21 death ---

22 A No.

23 Q --- of Gerald Stewart?

24 A No.

25 Q And that manner of death was what?

1 A Homicide.

2 Q Thank you, Doctor.

3 JANICE ROSS - RECROSS-EXAMINATION

4 BY MR. FLOYD:

5 Q Dr. Ross, to a reasonable degree of medical certainty,
6 could Gerald Stewart have just dropped dead due to his
7 enlarged heart?

8 A Yes, without any other situation.

9 Q Thank you.

10 MR. FLOYD: No further questions.

11 MR. HUBBARD: Just a follow-up on that, if I may,
12 Your Honor.

13 THE COURT: No. You've direct and redirect and no
14 further questions are allowed of the witness.

15 MR. HUBBARD: Yes, sir.

16 THE COURT: Thank you, Doctor. You may step down.

17 Ladies and gentlemen, we're going to take a few
18 minutes. Go to the jury room. Please do not discuss the
19 case.

20 (Jury out at 3:14 p.m.)

21 THE COURT: We'll take a few minutes.

22 (Court in recess for a short
23 break.)

24 (Court in session after short
25 break)

1 THE COURT: Thank you. Please be seated.

2 Are we ready for the next witness?

3 MR. HUBBARD: Yes, sir, Your Honor.

4 THE COURT: All right. Bring them on.

5 (Jury in at 3:24 p.m.)

6 THE COURT: Okay. Next witness.

7 MR. HUBBARD: Yes, sir, Your Honor. The State
8 calls Ms. Nelda Mefford.

9 Your Honor, we're without a clerk.

10 THE COURT: I'll swear her.

11 Ma'am, if you'd come forward and place your left hand
12 on the Bible, please?

13 Mr. Bell, if you'll help her.

14 Raise your right hand.

15 (WHEREUPON, NELDA MEFFORD was sworn
16 to tell the truth.)

17 THE COURT: Thank you.

18 NELDA MEFFORD - DIRECT EXAMINATION

19 BY MR. HUBBARD:

20 Q Ms. Mefford --

21 MR. HUBBARD: I'm sorry, Your Honor.

22 THE COURT: No, go ahead.

23 BY MR. HUBBARD:

24 Q Ms. Mefford, would you please state your name?

25 A Nelda Mefford, M-E-F-F-O-R-D.

1 Q Where do you live?

2 A I live on East Columbia.

3 Q How long have you lived there?

4 A Fifty-one years.

5 Q Where are you originally from?

6 A Leesville, South Carolina.

7 Q Ms. Mefford, just to get it out in the open. What, if
8 any, relationship did you have with Gerald Stewart?

9 A He was my nephew.

10 Q Your nephew. What sibling of yours was his parent?

11 A His mother was my sister.

12 Q And what was his mother's name?

13 A Mavis Stewart.

14 Q Is Mavis still alive?

15 A No.

16 Q Now, how many siblings did you have?

17 A I had eight.

18 Q And you were the baby?

19 A Yes.

20 Q So you were number?

21 A Nine.

22 Q Where did Mavis fit in that?

23 A She was number 5, just right in the middle.

24 Q Now, Gerald Stewart, where did he grow up?

25 A On Decree Avenue.

1 Q The same house we've been talking about?

2 A Yes. His only home.

3 Q Where did he go to school?

4 A B-C.

5 Q Brooklyn-Cayce?

6 A Yes.

7 MR. FLOYD: Your Honor, I object to this line of
8 questioning, hearsay.

9 THE COURT: Which line of questioning? Everything
10 that's already been said or?

11 MR. FLOYD: I know where it's going, Your Honor.

12 THE COURT: Okay. Well, I have to hear a question
13 before I can object, unless you want me to not allow her to
14 testify?

15 MR. FLOYD: Well, maybe if we approach, Your
16 Honor, I can explain to you why I'm objecting.

17 THE COURT: All right.

18 (Off the record bench conference with counsel and the
19 Court.)

20 BY MR. HUBBARD:

21 Q Ms. Mefford, Gerald Stewart grew up on what, on what
22 street, Decree Avenue?

23 A Decree Avenue.

24 Q As he grew up, were you always a part of his life?

25 A Well, yes.

1 Q Would you say your family ---

2 A I was his aunt.

3 Q Would you say being his aunt was an important job, an
4 important role?

5 A Well, we visited. Yeah. We talked a lot.

6 Q Throughout the years, did Gerald ever have any brothers
7 or sisters with his parents?

8 A No. He was an only child.

9 Q And as to his parents, what was his relationship with
10 his parents?

11 A With who? I'm sorry?

12 Q His parents?

13 A Very loving. He thought a lot of his parents.

14 Q Now, his mother, Mavis?

15 A Uh-huh (affirmative).

16 Q When did she pass?

17 A 1999.

18 Q What was Gerald's father's name?

19 A Clifford.

20 Q Is Clifford still alive?

21 A No. He died in 1991.

22 Q Where did Clifford work?

23 A Coca-Cola Bottling Company.

24 Q How long did he work there?

25 A That's the only job he ever had, retired. Retired from

1 there.

2 Q Now, that address we've talked about. Have you been in
3 that house?

4 A Have I?

5 Q Yes, ma'am?

6 A Many a time.

7 Q Ms. Mefford, did there come a time when you and other
8 family members realized that Gerald Stewart had a problem?

9 A No, not me.

10 Q What about drinking at some point?

11 A I never saw him drink.

12 Q Really?

13 A Never.

14 Q Okay. So he -- did you know of a problem, though?

15 A His mother would tell me sometime he was drinking, but
16 I never saw him drink.

17 Q Back when his father was alive, did he ever have issues
18 like that?

19 A No.

20 Q But his mother, your sister, would relay those issues
21 to you after his death, after his father died?

22 A Yes. Uh-huh (affirmative).

23 Q Did you see him periodically?

24 A Yes.

25 Q And on those occasions, he wouldn't drink?

1 A No. We would go out to lunch together. He would take
2 me out to lunch and he never drank in front of me.

3 Q When you say he would take you out to lunch ---

4 A Uh-huh (affirmative).

5 Q --- is that something that he would like to do?

6 A Yes.

7 Q I ask you, at some point did you learn that Gerald was
8 a homosexual?

9 A Uh-huh (affirmative).

10 Q How did you learn that?

11 A He told me about a year before he was killed.

12 Q So just about a year before he was killed -- his mom
13 and dad had already passed?

14 A Yes.

15 Q Have you ever shared this with the rest of the family
16 --

17 A No.

18 Q -- prior to this?

19 A No. Everybody was shocked. In fact, I told him I
20 didn't believe it.

21 Q When he told you, was he doing better with his issues
22 with alcohol at that time?

23 A He never discussed alcohol with me.

24 Q I want to show you what's been marked as State's
25 Exhibit No. 9, this black wallet. This photograph at the

1 very front of this wallet, do you recognize those people?

2 A Yes. That's his mama and daddy.

3 Q That's Mavis and Clifford?

4 A Yes.

5 Q Right here in the front?

6 A Yes.

7 Q And there's two other photos I want to show you. One
8 is a South Carolina ID Card. Is that Gerald?

9 A Yes.

10 Q And here's another one, Midland's Technical College?

11 A Yeah. He was -- at the time of his death he was going
12 to Midland's Tech?

13 Q He was going back to school at the time of his death?

14 A Yes.

15 Q What was he studying?

16 A Nursing.

17 Q One thing I have to point out on these photos, the big
18 smile.

19 A Yes. Looks just like him. Always jovial and cutting
20 up.

21 Q And Ms. Mavis [sic] he's a big man, but was he a big
22 personality?

23 A Yeah. He had a great personality. He was always the
24 life of the party. Loved to joke and carry on.

25 Q You mentioned his dad Clifford worked at Coca-Cola?

1 A Uh-huh (affirmative).

2 Q I show you a pictures that's been marked State's
3 Exhibit 28. Do you recognize this curio cabinet?

4 A Yes, I do.

5 Q What does that show?

6 A I see some Coca-Cola items up on top there.

7 Q Do you see some more items inside that curio?

8 A Yes, I do.

9 Q When your sister was alive and when your brother-in-law
10 was alive, were these items on display in the house?

11 A Yes.

12 Q Throughout the time Gerald Stewart was growing up, were
13 items like this on display?

14 A Yes.

15 Q Now, when Gerald's mother died, who got that house?

16 A Gerald.

17 Q Did he live there alone usually?

18 A Yes.

19 Q And when you would see him or talk to him, did you know
20 that he still kept these items in that house?

21 A Well, the last time I was in the house, which was about
22 a month before he died, I saw some.

23 Q Okay. Let me show you what's been marked, somewhere,
24 State's 36. Have you seen this box before?

25 A Yes, I have.

1 Q Have you seen the contents of this box before?

2 A Yes, I have.

3 Q Where have you seen this box?

4 A In the home.

5 Q Is that part of that collection?

6 A Yes.

7 Q Ms. Mefford, would Gerald Stewart give away or sell any
8 of those Coca-Cola items?

9 MR. FLOYD: Objection, Your Honor. Speculative.

10 MR. HUBBARD: I can rephrase it, Your Honor.

11 THE COURT: All right.

12 BY MR. HUBBARD:

13 Q Would the Gerald Stewart you know, that you saw grow
14 up, that you spent so much time with, ever depart with any
15 of the Coca-Cola items that were in that house?

16 A No. He treasured, he treasured those items.

17 MR. FLOYD: Your Honor, it's still speculative.

18 Move to be stricken.

19 THE COURT: I overrule the objection.

20 BY MR. HUBBARD:

21 Q He treasured those items?

22 A Yes.

23 Q Now, Ms. Mefford, we talked about his alcoholism. When
24 his mother died, what, if anything, besides that house did
25 Gerald Stewart get?

- 1 A (No response)
- 2 Q Was he left some money?
- 3 A He was left a trust fund.
- 4 Q A trust fund?
- 5 A Uh-huh (affirmative).
- 6 Q Why a trust fund, if you know?
- 7 A (No response)
- 8 Q Why was he left -- why as it in trust?
- 9 A Well, so he wouldn't spend it all.
- 10 Q His mama was concerned he would spend the money?
- 11 A Yes.
- 12 Q Now, were you in charge of that trust?
- 13 A No, I was not.
- 14 Q Can I ask you why?
- 15 A Because they knew that I would probably give in to him
- 16 and let him have it, you know, anytime he wanted it.
- 17 Q You're too soft-hearted?
- 18 A Pardon me?
- 19 Q You're too soft-hearted?
- 20 A Yes.
- 21 Q Who managed that trust fund for him?
- 22 A A neighbor.
- 23 Q A next door neighbor in that neighborhood?
- 24 A Yes.
- 25 Q Somebody that his parents knew?

1 A Yes.

2 Q That trust fund, if he needed money, would he have to
3 ask for it?

4 A Yes.

5 Q He couldn't just ---

6 A I think he was allowed so much per month, you know, for
7 personal use. But other than that, anything that came up he
8 had to get permission.

9 Q Ms. Mefford, I believe that's all I have for you right
10 now. Thank you so much for being her.

11 THE COURT: All right. Any questions.

12 Q But answer any questions, if you would, Ms. Mefford,
13 that Mr. Floyd might have.

14 MR. FLOYD: Your Honor, I have no questions>

15 THE COURT: All right. Thank you.

16 MR. GRAHAM: The State calls Chuck Bramlett.

17 (WHEREUPON, Chuck Bramlett was
18 sworn to tell the truth.)

19 THE CLERK: Have a seat, please, sir. Once you're
20 seated, state your full name spelling your last on record,
21 please?

22 MR. BRAMLETT: My name is Charles D. Bramlett,
23 Jr., B-R-A-M-L-E-T-T

24 CHARLES BRAMLETT - DIRECT EXAMINATION

25 BY MR. GRAHAM:

1 Q Mr. Bramlett, where are you employed?

2 A West Columbia Police Department.

3 Q And how long have you been employed with the West
4 Columbia Police Department?

5 A Twenty years.

6 Q In your twenty years at the West Columbia Police
7 Department, what have you done?

8 A When I started in West Columbia in '92, we started out
9 as a jailer. We then, from there we progressed to the road
10 as a, just as a police officer. And I was a police officer
11 for several years. I was then part of the community action
12 team. I did that for three years. I went back to the road.
13 I became the shift sergeant, shift supervisor. I went from
14 there into training and I was in training for a while before
15 I became an investigator. And then within the investigation
16 division, I became the evidence custodian and crime scene
17 investigator. And along with those jobs, I do crisis
18 negotiations and accident reconstructions.

19 Q So now you're talking about your job as an evidence
20 custodian. What does that mean?

21 A It means that anything that's collected as evidence by
22 the police officer or investigator, it's turned into
23 evidence, to the evidence room. Our room is construction of
24 a wall to ceiling concrete, with a steel door. The drop box
25 is like the old timey mail boxes that you would pull open.

1 It drops down into chute that goes into our evidence room
2 that is secure. And when I come into work, I'll take that
3 evidence and log it in.

4 Q Were you the evidence custodian are you still the
5 evidence custodian for the evidence involved in this case?

6 A At the time of this, I was the only evidence custodian.
7 In 2009 they brought a second evidence custodian on board.

8 Q Did you receive some items from an alleged sexual
9 assault with Joshua Phillips as the victim, as it related to
10 this case?

11 A Yes, I did.

12 Q Let me show you a box that's labeled State's Exhibit
13 Number 10 and ask if you recognize that box?

14 A Yes. This is the box that was dropped into evidence.

15 Q And what do your records show as far as who submitted
16 that item to you?

17 A That box was dropped by April Bayne on 4/22/05. It was
18 dropped in the West Columbia Police Department evidence.

19 Q Now, when you received this box, did it have evidence
20 tape on it?

21 A It did.

22 Q In fact, on the bottom of it, there appears to be two
23 pieces where the bottom goes to the side; is that fair?

24 A Yes.

25 Q What was the purpose of that tape?

1 A It's to secure the integrity of the components that's
2 inside that box.

3 Q When you receive this box, were those -- was it cut
4 like it is now or was it sealed?

5 A It was sealed?

6 Q Both of them?

7 A Yes. Now, this box particularly would go into the
8 refrigerator because it would have components or body
9 fluids, blood and stuff that would be required to be
10 refrigerated. We had a special refrigerator that evidence
11 goes into for that. And any other thing that's not
12 refrigerated, would be dropped into our evidence room.

13 Q So this box, you got out of the refrigerator?

14 A Yes. That would been in the refrigerator.

15 Q At some time, did you take this box and its contents to
16 SLED?

17 A I did.

18 Q And what was your purpose of taking it to SLED?

19 A Things that are inside this box would have to be tested
20 either for toxicology, DNA, so those would be things that
21 would have to be sent to them for testing.

22 Q Do you remember what day you took this box and its
23 contents out to SLED?

24 A This box itself, on April the 25th of '05, I took to
25 SLED.

1 Q And who did you relinquish this box and its contents
2 to?

3 A It would have been Betty Butler at log-in.

4 Q Okay. And she's a SLED employee?

5 A Yes.

6 Q Now, the day you turned this box over, was it -- what
7 did you say April 25th?

8 A That would have been the 25th.

9 Q Okay. On the 25th when you went out there and gave
10 this box to Betty Butler, was it sealed?

11 A Yes.

12 Q Did the seals get broken in your presence?

13 A Yes.

14 Q What happens after the seal was broken?

15 A As I said, there's items that there being either swabs
16 or slides or something that was collected at the time from
17 the hospital, that would have to go to different departments
18 within SLED, being DNA or toxicology. So what the log-in,
19 in this case, Ms. Butler, did was she broke the seals,
20 opened it up and took certain items out to be repackaged to
21 send to the departments within SLED.

22 Q Specifically, let me hand you what's already been
23 marked as State's No. 13. Do you see that?

24 A Yes.

25 Q That item was testified earlier by James Jeffcoat, who

1 was a nurse. Do you know him?

2 A No, I do not.

3 Q There is -- that is inside of a plastic bag. Do you
4 recognize the external plastic bag?

5 A Yes.

6 Q What is that bag in relation to those contents?

7 A This envelope in itself would been inside that bag that
8 Ms. Butler would have taken out. And what they do in log-in
9 is they have these evidence bags. They'd put it in here.
10 Across the top, they would heat seal it. And then I would
11 have to fill out the sealing agency, the date that I turned
12 it in, as well as across the sealing part of the plastic
13 bag, I would put the date and my initials.

14 Q Do you recognize your signature, with the date and the
15 initials on that bag?

16 A This is my handwriting on the front and my initials and
17 date at the top of the heat seal.

18 Q When you finally relinquished control and left it was
19 State's Exhibit No. 13 properly sealed inside the bag, the
20 SLED heat-sealed pouch you're referring to?

21 A Yes. When it left me, it did.

22 MR. GRAHAM: Your Honor, the State would offer the
23 SLED bag into evidence at this time.

24 THE COURT: Any objection?

25 MR. FLOYD: That's from the hospital?

(Mr. Graham and Mr. Floyd confer)

MR. FLOYD: I have no objection, Your Honor.

THE COURT: It's admitted.

(State's Exhibit No. 40, SLED

evidence bag, was marked and entered.)

BY MR. GRAHAM:

Q Investigator Bramlett, looking at State's No. 40, that contained part of the items that were broken out of this box and sealed in your presence. What do you, what's your understanding of what's inside there? What was -- what is, I guess, State's Exhibit 15?

A Well, this one, on the package itself, it says miscellaneous material envelope. Public hair, a combing envelope. Known public hair envelope. Known head hair envelope.

Q Let me hand you another item and ask if you recognize this one.

A This is another heat-sealed pouch that, again, this package in itself would have been inside the white box. And then taken out in front of me at log-in. Placed in a plastic bag. Across the top of it would have been heat sealed. Again, I put the date and my initials and I'd put my information on the front of it.

Q And you're referring to State's No. 14 that was in there; is that correct?

1 A Yes.

2 Q And that came out of the box, State's Exhibit No. 10?

3 A Yes.

4 Q When you -- when this was brought out of the box,
5 there's red evidence tape on State's No. 14. Was that
6 sealed or was it already broken when you brought it out of
7 the box or when it was brought out of the box by Ms. Butler?

8 A It would have been sealed. Had that seal been broken,
9 log-in would not have took it.

10 Q So this is another -- State's 14 is another item that
11 came out of the box, State's 10, that was opened in your
12 presence?

13 A Correct.

14 Q And it was also placed into a plastic bag by Ms.
15 Butler?

16 A Yes.

17 Q Let me show you a plastic bag and ask if you recognize
18 that as the bag that was containing State's Exhibit 14?

19 A It is. Across the top is, again, the date, 4/22/05 and
20 my initials where it was heat sealed and I initialed it.

21 Q And then let me show you another package in a bag and
22 ask if you recognize the package, which is State's No. 15, I
23 believe, as coming out of this box as well?

24 A This is a package that's marked underwear. And it has,
25 collected by James Jeffcoat, and the victim's name was

1 Joshua Phillips. This was the same bag, taken out of there,
2 put in a plastic bag. I filled out the front of it. They
3 heat sealed across the top. I put the date and my initials
4 on the top of it.

5 Q In addition to these items, are you aware if there were
6 any test tubes of blood that were in here?

7 A Yes. On the log-in sheet that Ms. Butler would have
8 filled out, she lists some things in here that -- it says, a
9 kit, hair, DNA, panties and tox.

10 Q So if I show you, which I guess I need a number on
11 first.

12 MR. GRAHAM: Your Honor, the State would offer the
13 plastic bag that Investigator Bramlett identified as
14 belonging with State's 14, that was sealed in his presence
15 and handed over to Ms. Butler, into evidence

16 MR. FLOYD: No objection, Your Honor.

17 THE COURT: It's admitted without objection.

18 (State's Exhibit No. 41, SLED
19 evidence bag, was marked and entered.)

20 MR. FLOYD: That was 14? Was that State's 14?

21 MR. GRAHAM: 14, yes. And 41.

22 MR. FLOYD: And 41.

23 BY MR. GRAHAM:

24 Q You were referring to some items. When it was broken
25 up, there are designations on here that SLED uses to track.

1 It's container numbers or their pouch number; is that
2 correct?

3 A Yes.

4 Q Okay. Item number -- State's Exhibit No. 40, what is
5 your understanding of what the tracking number is and what
6 the purpose of this was?

7 A When SLED takes or when log-in takes this, every case
8 gets assigned one basic number. And every piece of evidence
9 pertaining to that case, carries that one case number, per
10 se. But each individual item is addressed. This is listed
11 as E226031. And on the log-in sheet, 226031 says hair.

12 Q Let me hand you State's 15.

13 A This package has an E-number of 226034. And it's
14 listed here as panties.

15 Q State's 41?

16 A This has an E-number of 226033. And 033 would have
17 been DNA.

18 Q Are there some other items that are not present today
19 that you turned over to Ms. Butler that came out of this
20 box?

21 A Well, there would have been items in this package that
22 could have been broken down individually if --

23 Q Well, how about E22603. You testified to 1, and to 3,
24 and to 4, how about 5?

25 A 226035 is toxicology. Tox normally is blood. And when

1 that is submitted, then it's sent off to toxicology. That
2 blood would have been spent in testing and we would not have
3 gotten a package back from toxicology with anything in it.

4 Q Do you remember there being a specific sample that went
5 to toxicology out of this kit? Do you records reflect that
6 there was?

7 A The records reflects that E226035 was to tox.

8 Q When this kit was opened, did the contents ever leave
9 your sight?

10 A No.

11 Q Ms. Butler divided up everything into different heat
12 sealed bags or whatever appropriate container in your
13 presence?

14 A Yes.

15 Q And then you would have signed off and initialed on
16 those bag or those containers?

17 A I did, yes.

18 Q In addition to taking these items out there, did you
19 also attend the autopsy of Gerald Stewart?

20 A That, I did.

21 Q And what date was that?

22 A That would have been 4/22/05.

23 Q And what was your purpose of being present at the
24 autopsy?

25 A As part of the crime scene investigator, I go to most

1 all the autopsies. And the purpose for us being there is to
2 watch, document any injuries, photograph and then collect
3 the evidence. It's collected at the autopsy, then I would
4 collect it, bring it back, and take charge of it.

5 Q Part of the things that you observed being collected
6 and actually took possession of, would that have been blood
7 samples, tissue samples, organ samples, fluids, body fluids,
8 and things like that?

9 A Yes.

10 Q And did you, in fact, take possession of those?

11 A I did.

12 Q And did you actually see them being taken from Mr.
13 Stewart's body?

14 A That I did.

15 Q At some point, did you take those items out to SLED?

16 A Yes, I did.

17 Q And once you took them, from the autopsy, from the
18 presence of Mr. Stewart, how were they packaged to prevent
19 tampering?

20 A They were put into a bag at the autopsy, and I bring
21 them back, secure them. Do an evidence sheet to show a
22 chain of custody. And then at that point, at some point, I
23 would take them to SLED. They would be broken out,
24 individually broken out of the bag and placed, as these
25 have, to go to the separate departments within SLED.

1 Q Did you keep track of what you took from the autopsy?

2 A I did.

3 Q And would you tell the jury what you took possession
4 of?

5 A At the time of the autopsy when I left Newberry, I had
6 possession of two tubes of blood from the iliac vein. I had
7 a red-top test tube with bile. A red-top tube vitreous. A
8 bottle of urine, a bottle of blood, a bottle of gastric, a
9 bottle of tissue from the brain, a bottle of tissue from the
10 liver. A lavender-top test tube with blood. Three brown
11 envelopes with a swab from the rectal, penal and oral
12 cavities. One brown envelope with four swabs from the
13 penis. Two brown envelopes with two swabs from the rectal
14 and oral cavities. Three slides from rectal, penis, and
15 oral cavities. Two brown envelopes, clippings of
16 fingernails from each hand.

17 Q You collected those items and they were in a big bag?

18 A Yes.

19 Q Each had its own individual, liter, test tube, or
20 whatever container was holding that specimen. You took the
21 bag. You took it back to West Columbia. You put in the
22 refrigerator?

23 A Yes.

24 Q And at some point did you take those items out to SLED?

25 A I did.

1 Q Had anybody messed or tampered with those items prior
2 to you taking them to SLED?

3 A No, they did not.

4 Q Do you remember when you took them out to SLED?

5 A I took them out on April the 25th, of '05.

6 Q That was the same day that you took the other items out
7 that we previously discussed, from the sexual assault kit?

8 A And who did you turn these items over to?

9 A These were given to Ms. Betty Butler.

10 Q The same person at SLED that took possession of the
11 others?

12 A Yes, it was.

13 Q Now, again, these items would have been in a big bag?

14 A In a bag, yes.

15 Q Describe the process of you turning over the contents
16 of that bag over to Ms. Butler at SLED?

17 A These items would have been handled the same way as the
18 other ones were. Each two or I say each two, bile and brain
19 matter, liver could have gone to different departments.
20 It's going to DNA. It could go to toxicology. The items
21 that were required to be divided were taken out, placed in
22 the same plastic bag similar as these, would have been
23 sealed, initialed, dated and she would have taken and
24 secured them for somebody within the department to come down
25 and take possession of them.

1 Q That evidence transform that you've got, does it
2 reflect which items were sent to toxicology and which items
3 were sent to DNA?

4 A Yes, it does. As in these items when the tubes and the
5 vials were broken out of the package, they were assigned an
6 E number for tracking. Again, they would have had the lab
7 number as all the evidence does, but each one of these
8 packages would have had an individual E number on it. We
9 had E226027, that went to DNA. E226028 went to toxicology.
10 E226029 went to toxicology. And E226030 went to DNA.

11 Q What's your understanding of the items that are sent to
12 toxicology? Do you get them back? Does West Columbia get
13 them back?

14 A No.

15 Q Let me show you a bag and its contents and ask if you
16 recognize this?

17 A I do.

18 Q And how do you recognize that bag?

19 A That has my name where I filled out when I was given
20 this and the items were put in it. It was heat sealed. I
21 filled out the front of it. At the top of the heat seal, it
22 has a date and my initials.

23 Q The contents of that bag, do you recognize -- there's
24 gold envelop inside there. Do you recognize that?

25 A Yes, I do.

1 Q And where do you recognize that from or how do you
2 recognize it?

3 A This is the envelopes that -- it has the SLED Lab
4 Number on it. And it has the initials and the date,
5 coincide with the initials on this burnt area on the side of
6 the bag. And it has the iliac vein blood. It has the date
7 it was collected. It has, as Dr. Ross spoke earlier, that
8 they assign a number to the autopsy. It's got the number
9 here that would relate to this particular autopsy, and it
10 has Gerald Stewart's name on it.

11 Q Now, at the time that you took it out to SLED, it
12 wouldn't have been an envelope. It would have been a test
13 tube; is that correct?

14 A Correct, yes, sir.

15 Q The label that's on that gold envelope, would that have
16 been the label that was on the test tube?

17 A Could have been, yes.

18 Q Was the test tube containing blood going to DNA? When
19 it came out of the bag, Ms. Butler took it out of the bag
20 and she put it in a different bag. That was your testimony?

21 A Yes.

22 Q All those bags, were they sealed in your presence?

23 A Yes.

24 Q And they were initialed?

25 A Yes.

1 Q Like this bag?

2 A Exactly like this one.

3 Q Do you recognize that bag as being one of the bags that
4 have contents from the autopsy of Mr. Stewart that you
5 relinquished custody of and gave to Ms. Butler?

6 A Yes.

7 MR. GRAHAM: Your Honor, the State would offer the
8 bag and its contents into evidence.

9 MR. FLOYD: No objection, Your Honor.

10 THE COURT: Without objection.

11 (State's Exhibit No. 42, SLED
12 evidence bag, was marked and entered.)

13 Q Mr. Bramlett, in addition to that one single bag, there
14 would have been multiple other items in the large back
15 collected from Mr. Stewart's autopsy; correct?

16 A Correct. There would have been.

17 Q Everything you got from the autopsy you took out to
18 SLED?

19 A I did.

20 Q It hadn't been tampered with in between?

21 A No, it had not.

22 Q In your presence Ms. Butler opened up that bag and
23 sorted out as appropriate for SLED's needs?

24 A Yes.

25 Q And then you would have signed off and sealed every

1 pouch to make sure it was secure when it left your presence?

2 A Yes, I would have.

3 Q In addition to taking those items out, did you also
4 photograph items that were found in Mr. Stewart's pocket at
5 the autopsy?

6 A I don't know if I did or if Dr. Ross did, but the items
7 that were collect were.

8 Q Do you recognize the photograph?

9 A Yes, I do.

10 Q You're not sure whether you took it or not?

11 A This would have been from Dr. Ross because this is
12 their case number at the autopsy.

13 Q Do you recognize the contents of that picture?

14 A Yes, I do.

15 Q And where did those contents -- the items shown in the
16 picture, where did they come from?

17 A They came from the pocket of Gerald Stewart's pants.

18 Q And does that accurately reflect what you saw on the
19 day of Mr. Stewart's autopsy on April 22nd of '05 as being
20 the contents of his pockets?

21 A Yes, they are.

22 MR. GRAHAM: Your Honor, the State would offer
23 this photograph into evidence.

24 MR. FLOYD: No objection, Your Honor.

25 THE COURT: Admitted without objection.

1 (State's Exhibit No. 43, photo, was
2 marked and admitted.)

3 MR. GRAHAM: Your Honor, that's all the State has
4 for Mr. Bramlett at this time. We do have a witness who is
5 coming in from out-of-state and we'll need to recall Mr.
6 Bramlett later.

7 THE COURT: Cross-examination.

8 MR. FLOYD: I don't have any cross at this time.

9 THE COURT: All right. Thank you, sir.

10 MR. BRAMLETT: Thank you, Your Honor.

11 MR. GRAHAM: The State calls Betty Butler.

12 (WHEREUPON, Betty Butler was sworn
13 to tell the truth.)

14 THE CLERK: Have a seat, please, ma'am. Once
15 you're seated, speak up loud and clear. State your full
16 name, spelling your last, please?

17 MS. BUTLER: Betty Butler, B-U-T-L-E-R.

18 BETTY BUTLER - DIRECT EXAMINATION

19 BY MR. GRAHAM:

20 Q Ms. Butler, where are you employed, ma'am?

21 A I'm employed with the State Law Enforcement Division,
22 also known as SLED.

23 Q And how long have you worked with SLED?

24 A Over sixteen years.

25 Q And what are your current job responsibilities with

1 SLED?

2 A I am a forensic technician in the evidence processing
3 department.

4 Q And what does that mean? What do you do as a forensic
5 technician in the evidence processing department?

6 A As a forensic technician in the evidence processing
7 department, I collect evidence and I look at it for the
8 possibility of blood, semen, body fluids, hairs, fibers, or
9 anything that could be of value to a particular case.

10 Q Back in April of 2005, you had a different job; is that
11 correct?

12 A That's correct.

13 Q What was your job back then?

14 A I was a forensic technician in the evidence control
15 department.

16 Q And what does that mean?

17 A And that means we log-in the particular evidence into
18 our tracking system called LIMS at that particular time.
19 And we also delivered evidence and pick up evidence from
20 different departments.

21 Q And do you remember receiving evidence related to this
22 case from Investigator Bramlett at the West Columbia Police
23 Department?

24 A Yes, I did.

25 Q Specifically, let me show you what's already been

1 introduced as evidence as State's Exhibit No. 10 and ask if
2 you recognize that sexual assault kit box?

3 A Yes, I do.

4 Q And how do you recognize it?

5 A All evidence that comes into the SLED, SLED has to have
6 a tracking number. We have a lab number and we have a
7 container number. And this container E226032 is what I
8 placed on there for tracking purposes.

9 Q And Ms. Butler, you're referring to the bar code. Is
10 that on there? There's a -- the E number that you read is
11 reflected in that bar code for computer scanning?

12 A That's correct.

13 Q And that's how these items were tracked?

14 A That's correct.

15 Q When this item came into your presence, who brought it?

16 A Chuck Bramlett of West Columbia PD.

17 Q And this seal was broken in your presence; is that
18 correct?

19 A I broke it.

20 Q You broke the seal?

21 A Yes, sir.

22 Q There's actually two of them, you broke both of them?

23 A Yes, I did.

24 Q Once you went into -- why did you break the seals?

25 A The reason why I broke the seals I have to divide the

1 evidence to different departments.

2 Q Okay. So when you broke the seal on State's 10, which
3 is a sexual assault evidence collection kit, what was inside
4 and what did you do with it?

5 A When I broke the seal, I broke it out in one container,
6 another container number which is E226031, which is hair. I
7 put it into a different pouch. Another ---

8 Q So the first one, I'm sorry. This is 3. The box
9 itself is 3-2?

10 A That's correct.

11 Q And then you had one that you broke into, which was
12 what?

13 A The hair, E226031.

14 Q I'm going to hand you State's 40 and ask if you
15 recognize that?

16 A Yes, I do. It has the container number E226031 that I
17 placed on there.

18 Q When you receive that or when you took the contents of
19 State's 10 and put it in here, that would have been sealed
20 and Mr. Bramlett would have it signed it; is that correct?

21 A That's correct.

22 Q What's the purpose of him signing it and it being
23 sealed?

24 A So it will be secured when the analyst gets it.

25 Q Right now, it's showing -- it looks like there's a

1 staple in there. But there's actually a heat seal in there
2 too; isn't it?

3 A It's a heat-sealed bag that normally is here.

4 Q What's the purpose of heat sealing it?

5 A So it will be secured and so it won't be tampered when
6 the analyst gets it.

7 Q So can anybody open this without leaving a trail that
8 they did?

9 A No.

10 Q Okay. The next item, that was 31. Was there also
11 another item that was created out State's 10, the sexual
12 assault kit box?

13 A Container E226033, which went to DNA.

14 Q Let me show you State's 41 and ask if you recognize
15 that?

16 A State's 41, yes. We have the container number E226033.

17 Q And you put the items in here in this bag. Obviously
18 the cut wasn't there at the time. You heat sealed it and
19 then there's signing and then initials, who --

20 A That's Chuck Bramlett. He initialed, sign it. And
21 then he has to sign and date on the pouch itself.

22 Q There is another bag, E226034. Do you recognize that
23 bag, which is marked as State's Exhibit 15?

24 A This Exhibit 15 is put in container E226034. I put
25 this here, Chuck initial and date the seal, and sign and

1 date.

2 Q Now, there's another bag that I don't have to give you.
3 Was there another bag that you created out of the contents
4 of that box?

5 A That's correct.

6 Q And what was that bag number?

7 A E226035. That went to toxicology.

8 Q There is a -- how do you all keep track of items at
9 SLED once they start moving around? Because you didn't
10 analyze these at the time; right?

11 A That's correct.

12 Q So how does SLED keep track of these items?

13 A The container number is a tracking device in our LIMS
14 system.

15 Q And how does it work? Can you tell the jury how it
16 works?

17 A When evidence comes in, it's always given a lab number.
18 That lab number is on every pouch. But in addition to that,
19 every item has a container number. And we have to put
20 container number on each item so it could be tracked
21 throughout the whole system. This is so when it moves from
22 one place to the next, it will be tracked.

23 Q Do you have a copy of the chain of custody form that
24 SLED produced in relation to this case?

25 A Yes, I do.

1 Q Can you tell me what happened to these items and where
2 they went?

3 A Yes, I can.

4 Q Would you do so, please?

5 A Item number 1 ---

6 Q At this particular moment, we're talking about these
7 containers, which are going to break down into item 10.

8 A Okay.

9 Q What's the E number associated with ---

10 A The E number that is associated with the kit is
11 E226032.

12 Q And what happens to item 10 on your chain of custody
13 form?

14 A Once I receive this particular kit, E226032, I have to
15 open this up and break it down. First, I broke it down --
16 it says item 10.1.

17 Q And what was 10.1 that you created?

18 A 10.1 is the -- a known head hairs.

19 Q And what happened to item 10.1 after you created it?

20 A That went to a DNA box in the -- it's a box that we had
21 in the evidence control room that has a slot. It's actually
22 a refrigerator. It has a slot. It has a key so it will be
23 secured. The agency drops the contents into the slot and it
24 closes. And that's where it went at that particular time.

25 Q Now, 10.2 was what? You created 10.2 as well out of

1 this box?

2 A 10.2 is the known pubic hairs that also went to the DNA
3 box.

4 Q And 10.3 was -- when I say created, what you did was
5 labeled them; is that correct?

6 A That's correct.

7 Q What was 10.3?

8 A That was the pubic hair combings, the 10.3

9 Q And how about 10.12?

10 A 10.12 is miscellaneous materials.

11 Q Items 10.1, 10.2, 10.3, and 10.12 are all part of
12 E226031; is that correct?

13 A That's correct.

14 Q So what's the chain of custody on E226031, those four
15 items?

16 A I receive the evidence from Charles Bramlett. From
17 there, he dropped it into the DNA box. After that, K.D.
18 Corley, she came and she took the evidence. She had the key
19 to the particular box. She opened it and she took the
20 evidence from there. And from there she put it into our
21 refrigerator on the fourth floor. And from there, Adrienne
22 Riley took it.

23 Q And Adrienne Riley is who?

24 A Adrienne Riley is the DNA analyst on the case.

25 Q Looking at State's No. 41, that's going to be E226033.

1 The items that you created in there, I believe are 10.4,
2 10.5, 10.6, 10.7, 10.8, 10.9, and 10.10 and 10.11; is that
3 correct?

4 A (Reviews document)

5 Q I believe the first one would be 10.4. Was that
6 associated with E226033?

7 A That's correct.

8 Q And what was item 10.4?

9 A 10.4 is a known blood sample.

10 Q The known blood sample?

11 A Yes.

12 Q Okay. How about 10.5?

13 A 10.5 is described as the spears (sp).

14 Q 10.6?

15 A Vaginal swabs.

16 Q 10.7?

17 A That was the oral swabs.

18 Q 10.8?

19 A That was the rectal swabs.

20 Q 10.9?

21 A That was the miscellaneous body fluids?

22 Q 10.10?

23 A Fingernail scrapings.

24 Q 10.11?

25 A And that was bite marks.

1 Q And what was the chain of custody on all these items,
2 10.4, which is known blood through 10.11? Is the chain of
3 custody the same or is it different?

4 A It's the same.

5 Q And what's the chain of custody on State's Exhibit No.
6 41, which is SLED items number 10.4 through 10.11?

7 A I received the items from Charles Bramlett, West
8 Columbia PD. He dropped it in the DNA box in the side of
9 the evidence control room, which is a sealed, a refrigerated
10 lock box. And from there K.D. Corley, she was a forensic
11 technician in the DNA department. She took it then to room
12 four, which is on the fourth floor. From the analyst
13 Adrienne Riley took the evidence out. And after she
14 analyzed it, she put it in the DNA return.

15 Q She's a DNA analyst again, so she would have been the
16 one who labeled that bag and did whatever test on whatever
17 was collected; is that right?

18 A That's correct.

19 Q State's No. 15 is E226034. Did you also create an item
20 10.13 or label an item 10.13 that came out of this sexual
21 assault kit?

22 A Yes, I did.

23 Q And what was that?

24 A 10.13 is panties.

25 Q And is that what is State's No. 15? Does that

1 coordinate to that or correlate to that?

2 A State's Exhibit 15 is in container E226034. It's
3 panties.

4 Q And there would have been one more item that was in
5 this box. There was a -- you created a label for 10.14, I
6 believe; is that correct?

7 A That's correct. 10.14 is a known blood sample. That
8 went to toxicology. It's E226035.

9 Q And that item would have been sealed, and as we
10 discussed earlier sealed and put in the bag as well; right?

11 A That's correct.

12 Q What happened -- what's the chain of custody on 10.14,
13 the blood sample that went to the toxicology, that came from
14 State's 10, the sexual assault kit?

15 A Received by a Charles Bramlett, West Columbia PD. He
16 dropped it in the toxicology box that was a locked box
17 inside of the evidence control room. From there Marilyn
18 Fitzpatrick, she came, and she took it out of that box. And
19 she put it into a walk-in refrigerator that was 443. And
20 from there the analyst, Laurie Shacker, she took it out of
21 there.

22 Q And she is a toxicologist?

23 A Yes, she is.

24 Q That accounts for all the items that were contained in
25 the rape kit; is that right?

1 A That's correct.

2 Q Let's move on to SLED items 1 through 9, I believe.

3 Did Mr. Bramlett also bring you some items from the autopsy
4 of Mr. Stewart?

5 A Yes, he did.

6 Q And what items did he turn over -- and tell me how that
7 process works?

8 A When he brought the evidence it was in a container, a
9 pouch. What I have to do is break it out so it can go to
10 different departments. And I assign container numbers to
11 all the evidence. The same number, which was L54664 is on
12 all the items, but each item has a container number. And
13 items one through nine has different, various container
14 numbers on it.

15 Q So 1 through 9 all came out of a pouch that Mr.
16 Bramlett turned over to you?

17 A That's correct.

18 Q When you divided them up, I guess you created those
19 numbers that we're talking about; right?

20 A That's correct.

21 Q What was item 1 which you created?

22 A Item 1 was in container E226027. That went to DNA. It
23 was a blood tube.

24 Q Let me show you State's Exhibit No. 42 and ask if you
25 recognize that bag.

1 A State's Exhibit 42, we have our container number
2 E226027 for tracking. And this is his initials and the date
3 and he had to sign and date it.

4 Q When you received that bag, it would have had a test
5 tube in it?

6 A I put the test tube in this particular bag, seal it,
7 and Chuck initial and date it.

8 Q And, again, it's all done in each other's presence;
9 right?

10 A Yes.

11 Q Item number 2 that you labeled that came out of the bag
12 from the autopsy that Chuck Bramlett brought you, what was
13 item number 2?

14 A Item 2, also was blood. And it was in container
15 E226028.

16 Q And where did that item 2 go?

17 A It went to toxicology.

18 Q So, again, is it your understanding that items sent to
19 toxicology are destroyed?

20 A Yes.

21 Q Item number 3 was what?

22 A Urine.

23 Q Item number 4?

24 A Ocular fluid.

25 Q Where was number 4 scheduled to go?

- 1 A Number 4 went to toxicology.
- 2 Q As well. Item number 5?
- 3 A Bile.
- 4 Q Number 6?
- 5 A Gastrol.
- 6 Q 7?
- 7 A Brain.
- 8 Q 8?
- 9 A Liver.
- 10 Q And was there not a 9, as well?
- 11 A 9 was swabs and slides.
- 12 Q What can you tell me what -- some of those items go to
- 13 toxicology. Some of them go to DNA serology; is that
- 14 correct?
- 15 A That's correct.
- 16 Q Are you able to tell me which ones went where?
- 17 A Yes, I am.
- 18 Q Well, which one go to toxicology?
- 19 A Items 2 through 6 went to toxicology, which is
- 20 container E226028. And items 7 through 8 has another
- 21 container number, which is E226029 that went to toxicology.
- 22 Q And what was the chain of custody on those items, the
- 23 ones that went to toxicology? And are they same for each of
- 24 those items that you just listed?
- 25 A They are the same. The chain came in where Charles

1 Bramlett, West Columbia gave it to me. Then he dropped --
2 and I separated them. He dropped it in the toxicology box,
3 which is inside of the evidence control room. From there,
4 Marilyn Fitzpatrick came, got it out, put it into the
5 refrigerator, 443. And from there, the analyst Laurie
6 Shacker, she took it out.

7 Q How about the items from Mr. Stewart's autopsy that
8 went to DNA, what items were those?

9 A Items 1 and 9. 1 was the blood, E226027. And 9 was
10 the slides and swabs, E226030.

11 Q And are the chain of custody on those items the same?

12 A And the chain of custody is the same in that too. Came
13 in by Charles Bramlett. He dropped it into the DNA box.
14 From the DNA box K.D. Corley, which is a forensic
15 technician, took it out of there, put it in the fourth floor
16 in that room four. And from there the analyst Adrienne
17 Riley took it.

18 Q Thank you, Ms. Butler. Please answer any questions Mr.
19 Floyd has.

20 MR. FLOYD: No questions, Your Honor.

21 THE COURT: All right. Thank you, ma'am.

22 MR. GRAHAM: The State calls Laurie Shacker.

23 (WHEREUPON, Lori Shacker was sworn
24 to tell the truth.)

25 THE CLERK: Have a seat, please, ma'am. Once

1 you're seated, state your full name, spelling your last on
2 the record.

3 MS. SHACKER: Laurie Shacker, S-H-A-C-K-E-R.

4 LAURIE SHACKER - DIRECT EXAMINATION

5 BY MR. GRAHAM:

6 Q Ms. Shacker, where are you employed at?

7 A At the South Carolina Law Enforcement Division.

8 Q And what do you do there?

9 A I'm a forensic toxicologist.

10 Q What is a forensic toxicologist?

11 A Well, what I do is I analyze biological samples, such
12 as blood, urine, ocular fluid for the presence or absence of
13 alcohol and drugs. And we also interpret those results for
14 courts of law, for coroners. That's what a forensic
15 toxicologist does.

16 Q How long have you been a forensic toxicologist?

17 A I have been at SLED as a forensic toxicologist for a
18 little over thirteen years.

19 Q What's your educational background?

20 A I have a Bachelor of Science Degree with a Major in
21 Chemistry from the University of South Carolina.

22 Q Have you ever testified as an expert in South Carolina
23 Courts as an expert in forensic toxicology?

24 A Yes, I have.

25 Q How many times, approximately thirty-five. I've

1 testified in General Sessions Court as well as Magistrate's
2 Court.

3 MR. GRAHAM: Your Honor, the State would offer
4 Laurie Shacker as an expert in the field of forensic
5 toxicology?

6 MR. FLOYD: No objection, Your Honor.

7 THE COURT: She's so admitted.

8 BY MR. GRAHAM:

9 Q Ms. Shacker, did you have the opportunity to look at
10 samples related to this case?

11 A Yes, I did.

12 Q What did you look at?

13 A I tested a blood sample labeled Gerald Stewart as well
14 as a urine sample from Gerald Stewart and an ocular fluid
15 sample from Gerald Stewart. And I also tested a blood
16 sample labeled, Phillips, Joshua B.

17 Q Now, I don't have any items to show you. Why is that?

18 A Well, at this time, we didn't return biological
19 evidence. What we did of that is we disposed of it in
20 biohazardous waste.

21 Q All these items that you received, items 2, you said,
22 3, 4, and ---

23 A Those are the items that I tested. I also received
24 items 5, 6, 7, and 8 in this case as well.

25 Q There were other items you just didn't perform analysis

1 on?

2 A That's correct.

3 Q 2 through 8, the SLED items that you're referring to,
4 those all came to you how? Were they in a bag?

5 A Yes. They were in a sealed evidence bag, this bag
6 right here.

7 Q Would you have been able to tell -- looking at that
8 bag, you would have known what date it was submitted on?

9 A Yes.

10 Q And you would have seen the -- the policy, you would
11 have known that an officer who submitted it, would have
12 dated and initialed across the heat seal?

13 A Yes, that's correct.

14 Q Did everything appear to be in order?

15 A Yes.

16 Q Any evidence of tampering?

17 A No.

18 Q Had anybody else cut into that bag?

19 A Not before I did, no.

20 Q And was there -- nobody at SLED did anything with those
21 items, other than you?

22 A That's correct.

23 Q Except for move them around?

24 A That's correct.

25 Q Item 10.14, you said was a blood sample labeled

1 Phillips, Joshua B.; is that correct?

2 A That's correct.

3 Q Did you receive that in the same manner that it was in
4 a heat-sealed bag?

5 A Yes, that's correct.

6 Q And it had the date that it was submitted, the
7 officer's initials, everything appeared to be in order?

8 A Yes, that's correct.

9 Q Was there any evidence that anybody tampered with that
10 one?

11 A No.

12 Q If somebody had tampered with any of these items prior
13 to you getting them, what would you have done?

14 A Well, it would have been documented. Typically, if it
15 is documented, we have -- I've contacted my lieutenants and
16 made them aware. And generally, the decision is made at
17 that point whether or not to actually test the items.

18 Q Did you perform -- and you don't have any notes that
19 anything wasn't what it was supposed to be; is that correct?

20 A Not in this case, no.

21 Q You said coming from the autopsy you looked at items 2,
22 items 3, and items 4; is that correct?

23 A That's correct.

24 Q What was item 4?

25 A Item 4 was an ocular fluid.

1 Q What is ocular fluid?

2 A Fluid from the eye.

3 Q And did you perform an analysis on Mr. Stewart's ocular
4 fluid?

5 A I did, yes.

6 Q And what did you find?

7 A I found a 0.342 percent ethanol.

8 Q Ethanol means what?

9 A Ethanol is drinking alcohol.

10 Q And what is 0.342, what does that mean?

11 A Well, that's the level that was measured in the ocular
12 fluid.

13 Q Item 3 is urine. What did you find when you analyzed
14 that?

15 A A 0.337 percent ethanol.

16 Q And then item number 2 was blood. What did you find
17 when you analyzed Mr. Stewart's blood?

18 A I did an ethanol analysis on the blood, as well as a
19 drug screen analysis on the blood. So I found a 0.279
20 percent ethanol, as well as a 0.10 milligrams per liter of
21 Diazepam. And also 0.06 milligrams per liter of
22 Nordiazepam.

23 Q The .06 milligrams of Nordiazepam, what is that?

24 A Nordiazepam is a metabolite of Diazepam. So that's
25 basically once you ingest Diazepam, that's what the body

1 breaks it down into.

2 Q So that shows that Mr. Stewart had ingested Diazepam
3 and the body had started to break it up?

4 A Yes, that's correct.

5 Q You have .10 milligrams of Diazepam that you found in
6 Mr. Stewart's blood. What is Diazepam?

7 A Diazepam is commonly known as Valium. It's generally
8 prescribed for anxiety. It can be prescribed to help
9 someone sleep. Sometimes as an anticonvulsant.

10 Q The dosage there, .10 milligrams, what does that mean
11 to you?

12 A When we talk about levels of drugs in the blood,
13 generally, what we talk about is like a therapeutic level.
14 So that's you would expect to see if somebody is taking a
15 drug therapeutically. A 0.10 milligrams per liter is
16 probably more of a sub-therapeutic level, so slight less
17 than what you would expect to see in someone taking it
18 therapeutically.

19 Q When you say a therapeutic level, what does that mean?

20 A Therapeutic level would be someone who is taking the
21 medication as prescribed and it has reached a level that is
22 what they need to get a response from that patient.

23 Q What is, what's the effects of diazepam on the body?

24 A Diazepam is a central nervous system depressant.

25 Q And what does that mean? When you say central nervous

1 system, what does that mean?

2 A The central nervous system, for the most part is the
3 brain. So what it does is it depresses some of the brain
4 activity.

5 Q So you call it a central nervous system depressant?

6 A Yes.

7 Q When you say depressant, what does that mean?

8 A It slows down some activities in the brain.

9 Q Does it interfere with the signals of the brain in the
10 body?

11 A It can, yes.

12 Q So is it fair to say that it both slows and interferes?

13 A Yeah. It would basically slow down the brain's ability
14 to communicate with the rest of the body.

15 Q Let's talk about the ethanol. There was ethanol in his
16 blood and his urine and in his ocular fluid at different
17 levels?

18 A Yes, that's correct.

19 Q The highest level was in the ocular fluid; isn't that
20 correct?

21 A That's correct.

22 Q What does that tell us when there's a higher level in
23 the ocular fluid?

24 A Generally, that's an indication of someone who has
25 ingested ethanol and they're actually, their blood levels

1 are decreasing. Generally, you'll see a higher level in the
2 ocular fluid. Because as the body metabolizes the ethanol,
3 it just takes a little bit longer for it to move out of the
4 eye fluid.

5 Q So he had a .342 ethanol in the ocular fluid. It could
6 have been higher at some point?

7 A The blood level?

8 Q Just the ethanol in his system?

9 A Could have been higher than a .342? At some point,
10 yes, it could have.

11 Q In his blood, the level at the time of collection is
12 what?

13 A A 0.279.

14 Q Does the ethanol level in the blood or ocular fluid or
15 urine, does it change once the body stops functioning?

16 A No. Once someone is deceased, those levels don't
17 change.

18 Q So what conclusion, if any, can you reach as far as
19 whether -- well, what's the statutory, for driving under the
20 influence, what level of intoxication is there an inference
21 or a presumption that someone's under the influence?

22 A In this state, we do have the per se, limit, which is a
23 0.08 percent.

24 Q So how many -- 0.08?

25 A Yes.

1 Q So what kind of levels were we talking here in relation
2 to what's a legal or illegal limit of alcohol to be driving
3 a vehicle?

4 A Well, you're talking about a level that is a little
5 more than three times?

6 Q Three times the legal limit?

7 A Yes.

8 Q Can you equate that -- Mr. Stewart was 285 pounds. For
9 him to reach that level of intoxication, know that he weighs
10 285 pounds, can you give an estimate of how much alcohol he
11 had to drink to get to that level, because the body
12 eliminates alcohol as well; right?

13 A Yes. You do eliminate alcohol. If you're not
14 consuming, if you're not continuing to consume, the body
15 will eliminate alcohol.

16 Q Just in general terms then, explain elimination?

17 A Explain elimination?

18 Q Elimination?

19 A Well, once you've consumed alcohol and you stop, the
20 body is going to continue to break it down, basically to
21 flush it out of your system.

22 Q So if I drink one drink, one twelve ounce can of beer,
23 one mixed drink, how long would it be on average before my
24 body eliminated that and there wouldn't be any trace of it?

25 A Generally, it takes about an hour to eliminate one

1 average-size drink.

2 Q So for Mr. Stewart to get to the level we're talking
3 of, how many drinks did he have to consume above the
4 elimination rate of one an hour?

5 A You don't really factor in elimination rate when you're
6 talking about the number of drinks you have to consume to
7 get to a certain level. But for someone who weighs more, it
8 takes more alcohol to get to the same level as someone who
9 doesn't weigh as much. So for someone of that size to get
10 to a 0.279, estimated probably eighteen to twenty average-
11 sized drinks.

12 Q I'm sorry. That number again?

13 A Eighteen to twenty.

14 Q Eighteen to twenty?

15 A Uh-huh (affirmative). That's an average-size drink.
16 So you're talking about a twelve ounce beer, you know, one
17 mixed drink, generally an ounce and a quarter of alcohol in
18 that drink or a glass of wine.

19 Q Ms. Shacker, is that over the course of time or is
20 that, to get that level, you'd have to drink those eighteen
21 to twenty at one time?

22 A Yeah. When we're estimating how many drinks it takes
23 to get to a certain level, the only way to really do that is
24 to sort of make it not as much of a real life situation. So
25 all of that would have -- it is an estimation of how many

1 drinks it takes to get to that level. So basically, it's
2 looking at it as having consumed it all at one time, or
3 within about thirty minutes to an hour, not allowing for any
4 elimination to occur in that time frame.

5 Q Ethanol, is that, what effect does that have on the
6 central nervous system, on the brain?

7 A Well, Ethanol is a central nervous system depressant as
8 well.

9 Q So it would slow down the brain communicating with the
10 rest of the body as well?

11 A Yes, it would.

12 Q Have you heard the term, are you familiar with the
13 term, additive effect or synergistic effect?

14 A Yes, I am.

15 Q Combining the alcohol or ethanol, drinking alcohol,
16 with Valium or Diazepam, what does that combination together
17 do?

18 A Well, they are both central nervous system depressants.
19 So you would have at least an additive effect, adding those
20 together.

21 Q What does that mean when you say an additive effect?

22 A Basically, like one plus one equals two. I mean, it's
23 just very simply an additive effect. If you compare that
24 with something that would be called a synergistic effect,
25 you're talking about a much greater effect, such as one plus

1 one may equal three or five. So you're just getting a much
2 larger effect if there's a synergistic interaction.

3 Q But in this case, it's an additive effect?

4 A I believe so, yes.

5 Q So in general terms what's the effect of depressants,
6 Diazepam and ethanol on the central nervous system. What
7 does that do? How does that show itself? How does it
8 exhibit itself in people's behavior?

9 A Well, you know, as I said before, it does depress the
10 brains ability to communicate with the rest of the body.
11 Some of the initial effects you're going to see are like
12 euphoria. You may begin to feel better. But then you're
13 going to start having -- as your levels increase, it's going
14 to start to effect your judgment. You may be more willing
15 to do things you wouldn't normally do if you were not under
16 the influence. It's going to start to effect your
17 coordination. So it's going to increase your reaction time.
18 It's going to take you longer to react to something than it
19 normally would. And even when you get to much higher
20 levels, such as like a .35 or higher than that, you're going
21 to start to depress your respiratory system.

22 Q What would it do to somebody's behavior? Would it make
23 them aggressive, would it make them passive?

24 A It actually could be either one.

25 Q So is it -- the best way to determine that would be by

1 observation?

2 A Yes, that's correct.

3 Q Of that individual, because it can effect different
4 people different ways?

5 A Yes. It could lower your inhibitions so that could
6 make you less aggressive or it could make you more
7 aggressive. You know, it could give you more of a laid back
8 feeling. But then it also could make you get more likely to
9 react stronger to something. I guess that's why I say, you
10 know, you could have either one.

11 Q Looking at item 10.14, that was blood from the sexual
12 assault kit. Did you perform an analysis on that?

13 A Yes, I did. I did a volatiles analysis as well as a
14 drug screen sample on that sample as well?

15 Q And what did you find when you analyzed Mr. Phillips
16 blood?

17 A Well, it was negative for ethanol and the other
18 volatiles that we look for. And it was also negative for
19 our basic panel, drug screen panel, which would include
20 amphetamine, methamphetamine, barbiturates, benzodiazepines,
21 cannabinoids, cocaine, and opiates.

22 Q So no drugs, no alcohol?

23 A No, not that we tested for, no.

24 Q Hypothetically, if Mr. Phillips reported that he drank
25 twelve beers and passed out by midnight and this was, this

1 blood sample was collected at 7:00 or 8:00 in the morning,
2 what, if anything, would you have expected to see? If
3 that's true, would you have expected to see in the analysis
4 you performed for ethanol?

5 A Well, you know, as I said before it takes about an hour
6 to eliminate one average size drink. So I would expect that
7 if someone consumed twelve beers around midnight, that it
8 should take about twelve hours for that to clear the system.
9 So if you're looking at about eight hours after the
10 consumption, I would have expected to see some ethanol.

11 Q Thank you Ms. Shacker. Please answer any questions Mr.
12 Floyd has.

13 MR. FLOYD: Thank you.

14 LAURIE SHACKER - CROSS-EXAMINATION

15 BY MR. FLOYD:

16 Q Ms. Shacker, let me first ask you about what you just
17 testified to about Mr. Phillips' blood. Your answer was
18 based upon drinking twelve drinks all at midnight; is that
19 correct?

20 A That's correct, yes.

21 Q So if someone had had twelve drinks starting at 4:00 in
22 the afternoon, it would be gone from the system by 7:00 the
23 next morning; correct? Assuming he'd finished drinking at
24 midnight?

25 A Yes, that's possible. You know, I answered it just

1 based on the hypothetical of the consumption at or around
2 midnight.

3 Q That's what's happening when you're drinking. Your
4 body's going through two processes, isn't it? Absorption
5 and elimination?

6 A Yes, they both are occurring at the same time, yes.

7 Q Now, is it the more you drink the more that comes in,
8 and then it's being eliminated at a certain rate an hour?

9 A Right.

10 Q Would that be true?

11 A Yeah. That's correct.

12 Q Now, let me ask a couple questions about Mr. Stewart's
13 findings. Isn't it true that alcohol and diazepam can have
14 a synergistic effect?

15 A It is true. If you have consumed enough of both, yes,
16 they could interact in the body synergistically.

17 Q And would it be fair to describe synergistically, the
18 effect of the consumption of the drug and the alcohol is
19 greater than the combination of the two?

20 A Yes. That's correct.

21 Q Isn't that correct?

22 A Uh-huh (affirmative).

23 Q Kind of a multiplying type effect, as opposed to an
24 additive effect; is that correct?

25 A Yes, that's correct.

1 Q Now, Valium is a depressant; correct?

2 A That's correct.

3 Q Alcohol is a depressant; is that correct?

4 A That's correct.

5 Q And both of these substances would have been the
6 depressing the central nervous system of Mr. Stewart; is
7 that correct?

8 A Yes.

9 Q And you have a -- the more of those substances that are
10 consumed in a higher volume in your system, the more
11 depressive impact it would have; is that correct?

12 A Yes. That's correct.

13 Q And the ocular fluid level of .342 is very high; isn't
14 it?

15 A Yes, it is.

16 Q And, in fact, at some point in time before the death,
17 the blood alcohol level could have, in fact, been higher;
18 couldn't it?

19 A Higher than a .279. Yes, it could have been.

20 Q And the ocular level could have been higher than .342;
21 couldn't it?

22 A It could have been, yes.

23 Q And there is a point, isn't it, when if you consume
24 enough alcohol, that it just shuts down your system?

25 A Yes.

1 Q And how does that work?

2 A Well, you know, as I said before, it's going to depress
3 your respiration. So, ultimately, that is generally how you
4 die from drinking too much is you just stop breathing.

5 Q And then your heart stops beating, doesn't it?

6 A Yes.

7 Q And in this case, the studies you did on Mr. Stewart,
8 he had a .342 alcohol reading in the ocular fluid, plus .10
9 Valium, which if were in fact a synergistic effect, he could
10 have well have just shut down from the substances in his
11 system?

12 MR. GRAHAM: Objection, Your Honor. She's a
13 forensic toxicologist. I don't think she's qualified to
14 answer cause and manner of death as to what he's asking.

15 THE COURT: Do you object to the term, shut down?

16 MR. GRAHAM: I guess my objection is to the
17 question. I'm not sure that -- I don't know. Maybe a
18 forensic toxicologist can address that issue. I don't
19 believe that she can.

20 MR. FLOYD: Well, I think she's already testified
21 along those lines.

22 THE COURT: All right. Well, you can answer,
23 ma'am, if you can?

24 A I think maybe a better explanation is just based on
25 levels in the blood, there's no way to say whether that

1 could have, those levels could have killed someone or could
2 have been lethal. You have to couple those results with
3 results of an autopsy, such as a pathologist would do.

4 BY MR. FLOYD:

5 Q In the literature, is there a certain blood alcohol
6 level that generally is subject to death?

7 A Generally, in the literature, the level that is quoted
8 is about a 0.35.

9 Q Which is about what we have here?

10 A In the ocular fluid, yes.

11 Q In the ocular fluid. Thank you.

12 MR. FLOYD: No further questions.

13 LAURIE SHACKER - REDIRECT EXAMINATION

14 BY MR. GRAHAM:

15 Q I'm sorry, the 0.35 was what, Ms. Shacker?

16 A That's -- 0.342 was the level in the ocular fluid.

17 Q The question that Mr. Floyd asked you about the
18 literature. I didn't hear what you said?

19 A Oh. Generally what is quoted as a lethal level for
20 alcohol is about a 0.35.

21 Q If someone was a chronic drinker or chronic alcoholic,
22 would that be different?

23 A Yes. It generally would increase that level. Most of
24 the charts and the literature levels that you see quoted are
25 for casual drinkers.

1 Q For casual drinkers?

2 A Yes.

3 Q What's a casual drinker?

4 A Or a social drinker, someone who would drink
5 occasionally.

6 Q Someone who regularly drinks eighteen to twenty or more
7 at a time, is that a casual drinker?

8 A That is generally -- I mean, it could. If it's just
9 acute or infrequent it could be.

10 Q Acute meaning it's a one-time occurrence?

11 A Yes. That's right.

12 Q Would you expect a lethal level -- or do you know what
13 the lethal level is for chronic alcoholics?

14 A I mean, it could vary. I would expect it to be greater
15 than a .35.

16 Q And that varies by person?

17 A Yes, it would and your experience with alcohol.

18 Q Thank you, Ms. Shacker?

19 THE COURT: Anything else?

20 MR. FLOYD: Nothing further from us.

21 THE COURT: All right.

22 Thank you, ma'am.

23 MR. HUBBARD: Your Honor, we have a witness that's
24 flying in. He tried to change his schedule to this
25 afternoon. He couldn't do it. He's coming in at 7:00

1 tonight and that's all the witnesses the State's prepared
2 for at this time.

3 THE COURT: All right.

4 Ladies and gentlemen, we will recess for this day.
5 When we return tomorrow, Ms. Young, is it Tamba -- Tamba
6 Young. I'm going to appoint you to serve as the foreperson
7 of the jury. If you will take the first seat when you
8 return. As foreperson of the jury, it will be your
9 responsibility to serve as the spokesperson for the jury, to
10 communicate with the Court any concerns that the jury may
11 have. Also, to preside over the jury deliberations and to
12 complete the verdict form representing the unanimous of the
13 jury at the end of the case. Y'all have a good evening.
14 We'll reconvene tomorrow morning. 9:15.

15 (Jury out at 4:54 p.m.)

16 (Court in recess November 27, 2012
17 at 4:54 p.m.)

18 (Court in session November 28, 2012
19 at 9:33 a.m.)

20 THE COURT: Good morning. Are we ready?

21 MR. HUBBARD: The State's ready, Your Honor.

22 THE COURT: All right.

23 MR. FLOYD: The Defense is ready.

24 THE COURT: All right. Bring them on.

25 (Jury in at 9:34 a.m.)

1 THE COURT: All right. Good morning.

2 THE JURY: Good morning.

3 THE COURT: All right. Day number three.

4 Your next witness.

5 MR. GRAHAM: Thank you, Your Honor.

6 The State calls Dwight Vinkemulder.

7 (WHEREUPON, Dwight Vinkemulder was
8 sworn to tell the truth.)

9 THE CLERK: Have a seat, please, sir. Once you're
10 seated, speak up loud and clear, stating your full name,
11 spelling your last, please?

12 MR. Vinkemulder: My name is Dwight Vinkemulder,
13 V-I-N-K-E-M-U-L-D-E-R

14 DWIGHT VINKEMULDER - DIRECT EXAMINATION

15 BY MR. GRAHAM:

16 Q Is it Officer Vinkemulder?

17 A Yes, it is.

18 Q Officer Vinkemulder, where are you currently employed?

19 A (Inaudible) City Police Department. It's Central
20 Florida, just about an hour from Orlando.

21 Q What do you do there?

22 A I'm a police officer, just a patrol officer.

23 Q And how long have you done that?

24 A There, I'm going on two years. A total, eight.

25 Q Eight years in law enforcement?

1 A Yes, sir.

2 Q Originally, you're from South Carolina?

3 A Yes, I am.

4 Q From West Columbia?

5 A Yes, sir.

6 Q Is that where you began your career as a police
7 officer?

8 A Yes, it was.

9 Q When did you start? When were you first becoming a
10 police Officer?

11 A April of 2005.

12 Q Right when this case happened?

13 A Yes, sir.

14 Q Do you remember whether -- well, April 22, 2005, what
15 were you doing?

16 A I was still training. I was riding shotgun, with
17 Officer Mizner, Shawn Mizner.

18 Q And when you say riding shotgun, what does that mean?

19 A I was in the passenger's seat. I was sitting beside
20 him. He was teaching me how to do things. The policy,
21 procedures, you know, things beyond the academy.

22 Q So you had gone to the academy, graduated and been
23 sworn in as a West Columbia officer?

24 A I'd been to -- prior to that, I was corrections. I
25 went through the Corrections Academy. In South Carolina, at

1 least at the time, you're not required to have gone to the
2 academy immediately. I think I was only there for maybe
3 four weeks, five weeks before I went to the academy, but
4 this is just prior to me going to the Police Academy, but
5 after the Corrections Academy.

6 Q Okay. Did you have a chance to respond with Officer
7 Mizner to the Lexington Medical Center?

8 A Yes, I did.

9 Q And why were you all going there?

10 A We were told we were picking up an individual that had
11 been placed under arrest and we were to take him from the
12 hospital to the Lexington Detention Center for booking.

13 Q And did you and Officer Mizner go to the Lexington
14 Medical Center?

15 A Yes, sir, we did.

16 Q And who did you all take into custody?

17 A Mr. Prather.

18 Q And you're pointing over at the Defendant Robert
19 Prather?

20 A Yes.

21 Q Now, do you know him?

22 A Yes, I do.

23 Q How do you know him?

24 A We went to high school together, graduated in the class
25 of 2000.

1 Q Did you also have directions to seize the clothes and
2 the personal belongings that he had on at the time?

3 A Yes, sir, we did.

4 Q When you went back -- so you and Officer Mizner
5 transported him to the detention center?

6 A Correct.

7 Q When he gets booked in, he changes clothes from what he
8 was wearing on the street, what you transported him in, to a
9 detention center outfit?

10 A Yes, sir.

11 Q And did you take possession of his clothes that he was
12 wearing and the contents of his pockets?

13 A Yes, we did.

14 Q Let me show you some items and ask if you recognize
15 them. As we're doing that or getting ready to do that, can
16 you tell me how you and officer Mizner recorded what Mr.
17 Prather had?

18 A Well, once we took the bag from the corrections officer
19 and we left the jail, we returned to the West Columbia
20 Police Department and went into the squad room where we have
21 a rather large table, very similar to the one that you are
22 sitting at. At which time we emptied the contents of the
23 original bag and what I did, as I pulled it out of the bag
24 the detention center provided, and I would call out aloud to
25 Officer Mizner, who would then write it down on the evidence

1 sheet. And then I would place it in the bag.

2 Q Let me show you a document and ask if you recognize
3 this document?

4 A Yes, sir. This is the receipt for the evidence that we
5 filled out that day.

6 Q So when you called out the items, that's what Officer
7 Mizner recorded?

8 A Yes, it was.

9 MR. FLOYD: Your Honor, I'm going to object to
10 this point. I don't think they've established that this
11 officer personally took the clothes from this Defendant, or
12 watched the clothes come off the Defendant.

13 THE COURT: Mr. Graham?

14 BY MR. GRAHAM:

15 Q Explain the process of how Mr. Prather was booked in?

16 A Yes, sir. Again, I did work at the Lexington County
17 Detention Center for about a year prior to working with the
18 West Columbia Police Department and just after I got out the
19 U.S. Marines. What we do in the jail is when an individual
20 comes in for booking, they're taken immediately from the
21 sally port area, the intake hallway, where the officers
22 remain. They're taken inside and they're walked around the
23 booking desk to a changing room. There's nothing in the
24 changing room. There's a toilet and in the back there's a
25 shower when those needs arise. Basically, what happens is

1 they're walked all the way to the back of the shower.
2 There's nothing in there, no towels. There's no
3 undergarments, clothing of any kind. They're walked to the
4 back. They're stripped of all their clothes. They're asked
5 to take them off themselves. They take them off
6 individually, piece by piece. They'll tell, you know, I
7 want your left sock. I want your right sock, all the way
8 down to the underwear if it's a situation like this where
9 we're collecting whatever we need. Those items are then
10 bagged and then they're given a jumpsuit. The clothes were
11 put into a paper bag because we asked specifically that we
12 want everything, including the contents of his pockets. It
13 would have been put into that bag and walked back out. When
14 they walk from where I was standing -- it's a glass
15 partition, I could see them walk from where I brought him
16 in, to the changing room. And from the changing room, back
17 out. Two men in, two men out.

18 Q The correctional officer that went in there, did he
19 take or she -- I guess it would have been a he, correct?

20 A It would have been a he, yes, sir.

21 Q Did he take any other clothes or other items back there
22 with him?

23 A No, he didn't take anything. Well, he had to take a
24 jumpsuit, but Mr. Prather came out wearing that.

25 Q The clothes that you -- you got a bag at that time from

1 him; correct?

2 A Yes, I did.

3 Q And then you took the bag back to West Columbia, and
4 then you inventoried the bag?

5 A Yes, we did.

6 Q The clothes that he had on, as you were inventorying
7 them, the clothes that you inventoried, do you recognize
8 those as being the clothes in the bag?

9 A Yes. Yes, I do.

10 MR. FLOYD: Objection, Your Honor. They've still
11 not established the line or chain of custody.

12 THE COURT: I hear the objection. The objection
13 is overruled.

14 BY MR. GRAHAM:

15 Q Looking -- at this time in your hand is, I think a tee
16 shirt or a tank top tee shirt; is that correct?

17 A Yes, it is. That's right.

18 Q And do you recognize that as being the shirt that Mr.
19 Prather had on when you took custody of him from the
20 Lexington Medical Center?

21 A Yes, I do.

22 Q And when you transported him and had him booked in?

23 A Right.

24 MR. GRAHAM: Your Honor, the State would offer the
25 tank top tee shirt into evidence at this time?

1 THE COURT: What says the Defense?

2 MR. FLOYD: Your Honor, I object. There's no way
3 he can say that's the same one because he wasn't there when
4 the clothes were removed from the Defendant.

5 THE COURT: It's admitted over objection.

6 (State's Exhibit No. 44, Mr.
7 Prather's white tank top tee shirt, was marked and entered.)
8 BY MR. GRAHAM:

9 Q There was also another bag that contained the socks.
10 Do you recognize those socks as being the socks that Mr.
11 Prather had on?

12 A Yes.

13 Q The ones that you took inventory of at the West
14 Columbia Police Department?

15 A Yes, sir, I do.

16 MR. GRAHAM: Your Honor, the State would offer the
17 black [sic] socks into evidence at this time.

18 MR. FLOYD: Same objection, Your Honor.

19 THE COURT: All right. They're admitted over
20 objection.

21 (State's Exhibit Number 45, Mr.
22 Prather's socks, was marked and entered.)

23 BY MR. GRAHAM:

24 Q In addition to -- there were other clothes that you
25 took possession of as well?

1 A Yes, sir, there was.

2 Q In addition to the clothes, did you also take
3 possession of the personal property of Mr. Prather?

4 A Yes, sir, everything that was in his pockets or on his
5 person. Anything that he had, we took.

6 Q Looking at the inventory sheet that you helped create,
7 can you describe what the personal property was?

8 A Yes, sir. He was wearing blue jeans. He had white
9 socks, a white shirt, a white tank top, blue shoes, Marlboro
10 Cigarettes in a box. Blue shoestrings, brown belt, orange
11 lighter. He had a gold in color ring, a silver in color
12 ring, a brown wallet, and some medical papers. I guess they
13 were discharge papers from the medical center.

14 Q So his personal property would include, Marlboro
15 Cigarettes, was that a pack of cigarettes?

16 A Yes, sir. It was a hard pack, a box.

17 Q And how many cigarettes were in there?

18 A I noted here that -- well, Officer Mizner noted here
19 that there were five. I counted out five to him.

20 Q And it says gold, in color, ring?

21 A Yes, sir. We were instructed to write, or a least be
22 descriptive in coloring because obviously, we're not
23 jewelers. So we've written that it was gold and silver, not
24 necessarily denoting the make of the rings. But he had two
25 rings in his possession, yes.

1 Q And he had a lighter?

2 A Yes, sir.

3 Q A cigarette lighter, a gold ring and a silver ring and
4 then a brown wallet?

5 A Right.

6 Q Let me show you a wallet and ask if you recognize --

7 A I still have it.

8 Q You still have it? Do you recognize the wallet?

9 A Yes, I do. I've looked at it. I do recognize the
10 wallet?

11 MR. GRAHAM: Your Honor, the State would offer the
12 wallet for identification at this time?

13 THE COURT: What says the Defense?

14 MR. FLOYD: Same objection, Your Honor.

15 THE COURT: The wallet that you have just referred
16 to, is the wallet that was taken from the Defendant?

17 MR. VINKEMULDER: Yes, it was, Your Honor.

18 THE COURT: All right. Any further questions on
19 this issue?

20 MR. FLOYD: Your Honor, may we approach?

21 THE COURT: Yes, sir.

22 (State's Exhibit No. 46, Mr.

23 Prather's wallet was marked for ID.)

24 (Off the record bench conference with counsel and the
25 Court.)

1 BY MR. GRAHAM:

2 Q Office Vinkemulder, did you observe any injuries on Mr.
3 Prather --

4 A No, sir.

5 Q -- when you transported him?

6 A No, sir, I did not.

7 Q Did he give you any indication that he was, that he had
8 any injuries?

9 A No, sir.

10 Q Thank you for coming in today. Please answer any
11 questions Mr. Floyd has.

12 DWIGHT VINKEMULDER - CROSS-EXAMINATION

13 BY MR. FLOYD:

14 Q Office Vinkemulder, you observed no injuries on him; is
15 that correct?

16 A No, I did not.

17 Q You didn't observe any blood on him either, did you?

18 A I wasn't really looking.

19 Q Was he in your presence?

20 A Yes, sir, he sat directly behind me.

21 Q Well, you saw him walk in. You said you studied his
22 clothing. You said that's his clothing?

23 A Yes, sir.

24 Q So if you identified his clothing, you must have looked
25 at it closely?

1 A Well, once it was in the bag, yes, sir. But that's not.
2 the question you asked. You said when it was on him.

3 Q Oh. Then how do you know its his clothing if you don't
4 remember what it was before it went in the bag?

5 A Because -- well, I know what it looked like.

6 Q Okay.

7 A I didn't inspect his clothing.

8 Q You didn't observe his clothing?

9 A I did observe his clothing. I did not inspect them.

10 Q And did you see any blood on his clothing?

11 A Not at the time.

12 Q Now, you said he had a white shirt, a white tank shirt?

13 A Yes, sir.

14 Q And which was the one on top?

15 A I don't recall.

16 Q Was one like a regular, like a tee shirt, like
17 including sleeves?

18 A It just says a white shirt. And I haven't seen the
19 shirt in years. I don't recall. Again, I didn't fill it
20 out. I called it out and he wrote it out.

21 Q Well, you got him from the hospital; is that correct?

22 A Yes, sir.

23 Q Then he rode in your vehicle?

24 A Yes, sir.

25 Q Got out of the vehicle at the jail?

1 A Yes, sir.

2 Q And the hospital, it was fully lighted; is it not?

3 A Yes, it is.

4 Q And inside, the jail's fully lighted, is it not?

5 A Yeah.

6 Q And you don't recall whether or not the tee shirt or
7 the tank shirt was on top?

8 A No, sir, I don't. I can imagine.

9 Q And you weren't in the room when the clothing was
10 removed?

11 A No, sir. You're not allowed in the room.

12 Q Thank you.

13 MR. FLOYD: No further questions.

14 MR. GRAHAM: Just briefly, Your Honor.

15 DWIGHT VINKEMULDER - REDIRECT EXAMINATION

16 BY MR. GRAHAM:

17 Q Officer Vinkemulder, once you were done inventorying
18 it, and you and Officer Mizner put it back in the bag, what
19 happened with that bag?

20 A The bag was folded and sealed and it was put into our
21 evidence locker with the original property receipt attached
22 to the bags.

23 Q And that would have been all the contents of everything
24 that you received from Mr. Prather; correct?

25 A Yes.

1 Q Thank you.

2 THE COURT: Anything else?

3 MR. FLOYD: Nothing further, Your Honor.

4 THE COURT: All right. Thank you, sir.

5 MR. VINKEMULDER: Thank you, Your Honor.

6 MR. GRAHAM: The State recalls Chuck Bramlett to
7 the stand.

8 THE CLERK: He's still under oath, Your Honor.

9 THE COURT: Yes.

10 THE CLERK: Yes, sir.

11 CHARLES BRAMLETT - DIRECT EXAMINATION

12 BY MR. GRAHAM:

13 Q Mr. Bramlett, again briefly, where are you employed?
14 What do you do and what were you doing back on April of
15 2005?

16 A I am employed by the West Columbia Police Department.
17 I've been an officer there for twenty years. I'm currently
18 the crime scene investigator, evidence custodian. I was the
19 evidence custodian at the time of this incident.

20 Q Let me show you some items and ask if you recognize it?

21 A I do.

22 Q And how do you recognize it?

23 A At some point, I did Buccal Swabs from Mr. Prather, in
24 the presence of his attorney. And in this package, once I
25 swabbed his cheeks -- the procedure is I wear a mask,

1 gloves, I have the individual open their mouth. I swab the
2 right cheek. I swab the left cheek, and we seal them inside
3 a package. And we seal it again in this package. And then
4 this package is sent, I take them to SLED.

5 Q Describe what a Buccal Swab is?

6 A A Buccal Swab is a long stick -- it's an extended
7 cotton swab. And then what we do is we -- like I said, we
8 just swab the inside of the mouth on one side of your cheek
9 and then use the second swab to swab the opposite side.

10 Q And what's the purpose of that?

11 A The purpose of the swabs is for DNA collection.

12 Q So you collected a swab or two swabs for Mr. Prather.
13 You put them in a bag, the bag that you have in front of
14 you, and you seal it up; is that correct?

15 A I put them in -- this is the original packaging. And
16 once I swabbed, put the swab in here, fill out the
17 paperwork, there's a seal on the back that I put on the
18 package, put my initials. It's then put inside this
19 package, a second seal would have been put in place of it.
20 And that way it's double-sealed and the DNA swabs cannot be
21 contaminated. They're protected.

22 Q Then you store it in the West Columbia Evidence Room?

23 A I would do an evidence sheet showing chain of custody
24 that I took it. As the evidence custodian, I placed in the
25 evidence control, and it's one point -- or some point I took

1 it out to SLED for analysis.

2 Q When did you take it out to SLED?

3 A September the 19th of '08, I took it to SLED. And once
4 I took it to SLED, again, they would place it in this bag.

5 I would have to fill out the front of it, put the date.

6 When they heat sealed it, I'd put the date and initial
7 across the top of it, saying that it was sealed.

8 Q And do you recognize that bag as being the bag that you
9 turned over to SLED then?

10 A Yes, I do. This has my initials and date at the top
11 and that's my handwriting on the front.

12 Q Do you remember who assisted you at SLED log-in that
13 day?

14 A Nikki Perry. She's Nikki Perry Hughes now, but at the
15 time, she was Nikki Perry.

16 MR. GRAHAM: Your Honor, the State would offer the
17 swab and the bags into evidence at this time.

18 MR. FLOYD: No objection, Your Honor.

19 THE COURT: Admitted without objection.

20 (State's Exhibit No. 47, swabs, was
21 marked and entered.)

22 BY MR. GRAHAM:

23 Q Mr. Bramlett, let me show you another item in the box,
24 and ask you to look at the box and its contents?

25 A Yes, sir.

1 Q Do you recognize that?

2 A I do.

3 Q And what is that?

4 A This is clothes, wrapped up clothes that was taken from
5 Joshua Phillips.

6 Q Well, the clothes have already been introduced into
7 evidence. Those are State's Exhibit No. 11. What kind of
8 clothes are we talking about?

9 A It says a black sleeveless Slipknot tee shirt and
10 Wrangler blue jeans.

11 Q And I believe there was a belt on the jeans?

12 A And the black belt.

13 Q Now, being the evidence custodian, how did you receive
14 this information? I mean, receive these items?

15 A These items would have been taken from -- at this point
16 Investigator Bayne had collected them and dropped them into
17 evidence. And then as the evidence custodian, I took them
18 and logged them into evidence.

19 Q So they were maintained in the evidence room under your
20 custody and control. And at some point you took them out to
21 SLED for analysis?

22 A Yes, I did.

23 Q When did you take the clothes, Mr. Phillips' clothes
24 out to SLED for analysis?

25 A These items went to SLED on April the 25th of '05. And

1 then as the other procedures that we've testified to, the
2 package, when I take it to SLED, SLED will take that package
3 and put it in the box. And once it's placed in the box,
4 there is a tamper seal across -- in this case, they put it
5 across the ends of it. This seals the box and the contents
6 in it. And, again, I have to put the date and my initials
7 on each piece of tape that they put in, in my presence.

8 Q Do you see on the evidence tape that you're talking
9 about, do you see the date and your initials on there?

10 A Yes. My mistake. When I mentioned that -- there was
11 two things that went out to SLED at separate times. The
12 rape kit that we talked about yesterday went out on 4/25/05.
13 This package being the clothing went out on 7/3/08. And
14 7/3/08 is the date across the top of both of these tapes.

15 Q And you recognize your handwriting, your initials on
16 there?

17 A That's my initials on there, yes.

18 MR. GRAHAM: Your Honor, the State would offer the
19 outer box into evidence at this time.

20 MR. FLOYD: No objection.

21 THE COURT: Admitted.

22 (State's Exhibit No. 48, box, was
23 marked and entered.)

24 BY MR. GRAHAM:

25 Q Do you as the evidence custodian show receiving the

1 clothing and personal property of Mr. Prather when he was
2 arrested that was submitted by Officers Mizner and
3 Vinkemulder?

4 A I do. They placed it into evidence on 4/22/05. And I
5 took it from there and placed it into evidence on 4/25/05.

6 Q When it came into you, was it already separated out or
7 was it in one bag?

8 A One bag.

9 Q What was your job as far as that item when it came into
10 the evidence room?

11 A While the officers that submitted the evidence had did
12 an in depth inspection of the items, I have to do the same
13 thing. I will take them out. I will verify what they have
14 on their evidence as to what's in there. And a lot of
15 times, I will take them and put them into individual
16 packages, separate from the one package that it came in.

17 Q And did you do that in this case?

18 A I did.

19 Q Let me show you two different items that have already
20 been in evidence, State's 44 and 45 and ask if you recognize
21 those?

22 A This was the pair of white socks, which is listed as
23 item B on the evidence sheet. And the other item is white
24 tank top, listed as item D.

25 Q And do you recognize those as being the items that were

1 submitted by Mizner and Vinkemulder from Mr. Prather?

2 A I do because they're in my handwriting. When I broke
3 them out, I put them individual bags. And these bags are
4 the same as they were when I -- when entered.

5 Q And did you continue as the evidence custodian to keep
6 control of those until some time later you took them out to
7 SLED?

8 A I did.

9 Q When did you take them out to SLED?

10 A These items went out 7/3/08 to SLED.

11 Q And who did you turn them over to?

12 A They were turned over to. at the time, Ms. Perry, Nikki
13 Perry. Ms. Hughes now.

14 Q And explain the process of how those items were turned
15 over, State's 44 and 45, the tank top and the socks?

16 A The items, when they were taken out, would have been in
17 separate bags when I got there to SLED. And they logged
18 them in. They would have been put into another container,
19 which would have been sealed. Again, with my date or the
20 date and my initials on the outer packaging.

21 Q Let me show you a box and ask if you recognize this
22 box?

23 A I do.

24 Q And how do you recognize it?

25 A As with the other box, what they did this time is they

1 put a piece of tape, evidence tape across each side of it
2 and at the top across the seam. And each one has the date
3 and my initials on both sides. And that way it shows both
4 sides of it being intact and sealed.

5 Q . So when you went out to SLED on July 3rd of '08 and you
6 saw Ms. Perry, you had other clothes items, but you had the
7 socks and the shirt from Mr. Prather. In your presence it
8 was placed inside this box and closed and sealed in your
9 presence and you initialed and dated it, and turned over
10 control?

11 A Yes.

12 MR. GRAHAM: Your Honor, the State would offer
13 that outer box into evidence at this time.

14 MR. FLOYD: Subject to my earlier objections to
15 some of these items of evidence, Your Honor.

16 THE COURT: All right. It's admitted.

17 (State's Exhibit Number 49, box,
18 was marked and entered.)

19 Q Mr. Bramlett, as you were breaking up the package that
20 came from Mr. Prather, did you do an inventory of everything
21 that was there?

22 A Yes.

23 Q And one of those items was a wallet; is that correct?

24 A Correct.

25 Q Let me show you what's been marked as State's Exhibit

1 No. 46 for identification and ask if you recognize that?

2 A It's the brown wallet marked Exhibit L on my sheet.

3 Q And once you took that into your possession, has it
4 always maintained and been in your possession and control?

5 A It has.

6 Q And at some point, did you inventory the contents of
7 Mr. Prather's wallet?

8 A I did.

9 Q Looking inside that wallet now, do you recognize those
10 items as being some of the items that were in Mr. Prather's
11 wallet at the time you inventoried it?

12 A I do.

13 MR. GRAHAM: Your Honor, the State would offer the
14 wallet and its contents into evidence at this time.

15 THE COURT: All right. Show it to Mr. Floyd. Mr.
16 Floyd, any objection?

17 MR. FLOYD: Just subject to our earlier objection.

18 THE COURT: All right. Admitted over objection.

19 (State's Exhibit No. 46, Mr.
20 Prather's Wallet, was marked and entered.)

21 MR. GRAHAM: It's evidence now?

22 THE COURT: Yes.

23 BY MR. GRAHAM:

24 Q Mr. Bramlett, would you open the wallet and pull out
25 the contents and share with the jury what's inside?

1 A There's two forms of ID. One of them is a South
2 Carolina Driver's License with the name Robert Jared
3 Prather. And the other one is a Military ID in the name of
4 Robert Prather. There is a South Carolina registration to a
5 1987 Toyota in the name of Robert Prather. And here is a
6 handwritten note.

7 Q You can go ahead and publish it?

8 A It said, Jared, talked to the Judge. He can help you.
9 Please call Stewart at 794-4348. If I'm not home, leave a
10 message. We can meet at Calloway's. Stewart. I need to
11 talk to you ASAP. And on the back side are two phone
12 numbers. One is 794-4348 -- they're the same numbers
13 written twice.

14 Q Was there anything else in the wallet?

15 A There is a Wachovia Visa Check Card in the name of
16 Robert J. Prather. That's it.

17 Q Thank you, Mr. Bramlett. Please answer any questions
18 that Mr. Floyd has please?

19 CHARLES BRAMLETT - CROSS-EXAMINATION

20 BY MR. FLOYD:

21 Q So Mr. Bramlett, some of these items were not taken to
22 SLED until July of '08?

23 A Correct, sir.

24 Q How about the shoes? How about Mr. Prather's shoes?

25 A They were in the items that were sent to SLED, yes.

1 Q That would have been the same time in July of '08, the
2 shoes?

3 A Correct, sir.

4 Q In your evidence room, do you have any photographs of
5 Mr. Prather taken at the time of his arrest?

6 A No, I do not.

7 Q Thank you.

8 MR. FLOYD: No further questions.

9 THE COURT: Anything further?

10 MR. GRAHAM: Nothing else, Your Honor.

11 THE COURT: All right. You may step down.

12 MR. GRAHAM: The State calls Nikki Perry Hughes.

13 (WHEREUPON, Nikki Perry Hughes was
14 sworn to tell the truth.)

15 THE CLERK: Have a seat, please ma'am. Once
16 you're seated, state your full name, spelling your last on
17 the record.

18 MS. HUGHES: My name Nikki Perry Hughes, H-U-G-H-
19 E-S.

20 NIKKI PERRY HUGHES - DIRECT EXAMINATION

21 BY MR. GRAHAM:

22 Q Ms. Hughes, where are you employed, ma'am?

23 A I'm employed with the South Carolina Law Enforcement
24 Division, commonly known as SLED.

25 Q And how long have you been with SLED?

1 A I've been with SLED since June of 2006.

2 Q And what is your job at SLED today?

3 A I'm a forensic technician in the evidence control
4 department. We log-in and package and transfer evidence
5 that is submitted to the forensic laboratory for analysis.

6 Q Back in 2008, did you have the same job?

7 A I did.

8 Q And what do you do as far as logging in evidence and
9 transferring it around? Just in general, how does that
10 process work?

11 A It begins in the laboratory in my department. Officers
12 from different agencies around the State will bring evidence
13 into evidence control. What they will do is provide us with
14 a SLED Forensic Services Request Form, and that entails
15 listing the items of evidence that they're submitting, as
16 well as the case information about the case. I will then
17 take that information and log it into our computer system,
18 where our computer system will then generate unique lab
19 number for that case, as well as an item number for each
20 item submitted.

21 Q Let me show you some items and ask if you recognize
22 them? A bag and its contents, State's No. 47. I want to
23 show you that bag and ask if you recognize it?

24 A I do. I recognize the yellow label affixed on the
25 front of the SLED heat-sealed pouch. The label states L05-

1 04664, and it's our item number 54.

2 Q The L-number that you read, that's the SLED lab number
3 that was assigned to this case?

4 A Yes, sir.

5 Q And then you said that's SLED item number 54?

6 A Yes, sir.

7 Q And when did that item come into SLED?

8 A According to my chain of custody, that particular item
9 was submitted to SLED on September 19th of 2008 by Charles
10 Bramlett with the West Columbia Police Department.

11 Q And who logged it in?

12 A I did.

13 Q Once you logged it in, what, if anything did you do
14 with that bag or what happened to that bag?

15 A I would place the evidence inside of the heat-sealed
16 pouch, and I would then seal it. I would have Chuck initial
17 and date the seal and sign and date the front of the bag.
18 After the log-in process is complete, I would then place
19 this piece of evidence in my DNA evidence intake storage,
20 which is located in a secure evidence room.

21 Q And what happened to item number 54 after it was taken
22 into possession by SLED and put into that storage room?

23 A According to the chain on September 23rd, '08, forensic
24 technician Selena Kinard retrieved it from the DNA evidence
25 intake storage and transferred custody to forensic

1 technician Angela Drayton, which was at the time, the DNA
2 Department.

3 Q So after Angela had it, where did it go?

4 A It appears that she placed in the DNA refrigerator,
5 fourth floor.

6 Q And then who took it out of the refrigerator?

7 A It was taken out of refrigerator by forensic scientist
8 Adrienne Hefney.

9 Q And she is one of the scientists for serology and DNA?

10 A Yes, sir.

11 Q Let me show you another item, which is State's No. 48
12 and ask if you recognize this?

13 A I do. I recognize the label that's affixed to the box.
14 The label L05-04664. And this is container B.

15 Q And when did you take possession of this box?

16 A I took possession from Chuck Bramlett of the West
17 Columbia Police Department on July 3rd of 2008.

18 Q And then once you took possession of that box it was
19 sealed and initialed by Chuck; correct?

20 A That's correct.

21 Q And then what happened to that box and the contents?

22 A Then I placed the box in our secure evidence room onto
23 the large evidence processing intake shelf.

24 Q And where did it go from the intake shelf?

25 A It was then taken off the shelf by forensic technician,

1 Selena Kinard, which worked in my department at the time,
2 and she transferred custody forensic technician Janice
3 Bryson.

4 Q What does SLED show as the contents of that box?

5 A Per my chain of custody, it was clothing taken from
6 Joshua Phillips.

7 Q Let me show you State's Exhibit No. 49 and ask if you
8 recognize that box?

9 A I do. I recognize the yellow label, again, affixed to
10 this box. The lab numbers states L05-04664 and this box is
11 container A.

12 Q And who took possession of that box at SLED?

13 A I took possession of that box from Chuck Bramlett with
14 the West Columbia Police Department on July 3rd of 2008.
15 And after I logged it in and packaged and he initialed and
16 dated all the seals, I then placed it, again, in our secure
17 evidence room, on the large evidence processing intake,
18 shelf 7.

19 Q Once it was placed on the intake shelf, where did it
20 go?

21 A. Forensic technician Selena Kinard retrieved it off of
22 the shelf and transferred custody to forensic technician
23 Janice Bryson.

24 Q What does SLED show as the contents of that box?

25 A Per my chain of custody, the contents were described as

1 clothing from Robert Prather.

2 Q And, again, Mr. Bramlett, Officer Bramlett would have
3 put items in this box, the description he gave to you,
4 sealed in your presence and initialed in your presence and
5 you took custody?

6 A That is correct.

7 Q And then eventually, it made its way to Jan Bryson?

8 A That is correct.

9 Q Thank you, Ms. Hughes. Please answer any questions Mr.
10 Floyd has?

11 MR. FLOYD: No questions, Your Honor.

12 THE COURT: All right. Thank you.

13 MS. HUGHES: Thank you.

14 MR. GRAHAM: The State calls Jan Bryson.

15 (WHEREUPON, Janice Bryson was sworn
16 to tell the truth.)

17 THE CLERK: Have a seat, please. Once you're
18 seated, please state your full name spelling your last.

19 MS. BRYSON: My name is Janice Bryson, B-R-Y-S-O-
20 N.

21 JANICE BRYSON - DIRECT EXAMINATION

22 BY MR. GRAHAM:

23 Q Ms. Bryson, are you employed anywhere right now?

24 A No, sir, I'm not.

25 Q Are you retired?

1 A Yes, sir.

2 Q Where did you retire from?

3 A I retired from South Carolina Law Enforcement Division.

4 Q And how many years did you work for SLED?

5 A I had twenty-three years at SLED.

6 Q Your last job at SLED, what did you do?

7 A I was a forensic technician in our evidence processing
8 department.

9 Q And what does a forensic technician in the evidence
10 processing department do?

11 A Whenever law enforcement agencies throughout the State
12 would submit evidence to the forensic lab with a request to
13 look for hair, fiber, blood or semen, it was my
14 responsibility to process the evidence, collect the evidence
15 and make sure that it was routed to the appropriate
16 department.

17 Q And how long were you a forensic technician collecting
18 at SLED years, how many years did you do that?

19 A Approximately sixteen years.

20 Q And what kind of education or training did you have in
21 the collection of DNA and serological material from
22 clothing?

23 A While at SLED I trained under court-qualified forensic
24 experts in the areas of serology, trace and DNA. And SLED
25 is Nationally Accredited by the American Society of Crime

1 Laboratory Directors. And it's a requirement of ASCLD, that
2 each analyst and technician be certified. And I have been
3 certified in the collection of hair, fiber, blood and semen.

4 Q Have you ever testified as an expert in that area
5 before?

6 A Yes, sir, I have.

7 Q About how many times?

8 A I'd say approximately thirty.

9 MR. GRAHAM: Your Honor, at this time, the State
10 would offer Ms. Bryson as an expert in evidence processing
11 and collection.

12 MR. FLOYD: No questions, Your Honor.

13 THE COURT: All right. She is so qualified.

14 BY MR. GRAHAM:

15 Q Ms. Bryson, did you have an opportunity to look and
16 process some clothing related to this case?

17 A Yes, sir, I did.

18 Q I want to show you some boxes and ask if you recognize
19 those boxes? State's No. 49, do you recognize that box?

20 A Yes, sir, I do.

21 Q And how do you recognize that box?

22 A It has the SLED lab number, the container number and it
23 has my initials and date on the yellow tape.

24 Q When did you first receive this box?

25 A That was container -- July the 31st of 2008.

1 Q When you received this box, was it properly sealed?

2 A Yes, sir, it was.

3 Q Now, looking at it now, there's four pieces of SLED
4 evidence tape on there. When you got it, were there four or
5 only two?

6 A There was only two.

7 Q And it was properly sealed?

8 A That's correct.

9 Q Did you cut into the box and go into it at that time?

10 A Yes, sir, I did.

11 Q You do your processing work, and then later put the
12 items back in there and reseal it. That's why you were
13 saying that you recognize the second seal with your
14 initials?

15 A That's correct.

16 Q When you went into that box, what did you find?

17 A Container A contained SLED items 47 through item 50,
18 which were from, clothing from a Robert Prather.

19 Q Let me show you what's been marked as State's No. 44
20 and State's No. 45, the contents of that box. Let me get
21 you some gloves.

22 A Do you want me to pull the item out of the bag?

23 Q Yes, ma'am, if you would.

24 A (Witness complies.)

25 Q Do you recognize that as being one of the items that

1 you processed in relation to this case?

2 A Yes, sir, I do. These are my initials and the SLED
3 item number.

4 Q Is that your handwriting on there?

5 A Yes, sir, it is.

6 Q How did you go about processing that shirt, what were
7 you looking for?

8 A The request was made to look for blood. So I did a
9 visual of the item, looking for any areas on the item that
10 appear to be blood. And if I see a stain, I'll do a
11 chemical test. It's a phenolphthalein test and if I get a
12 positive from that test, I take a cutting and send that
13 cutting to the DNA Department for further examination.

14 Q When you did a visual examination of that shirt, did
15 you see any areas that visually appear to be blood to you?

16 A Yes, sir, I did.

17 Q And did you then perform that phenolphthalein test on
18 it?

19 A Yes, sir, I did.

20 Q And did any of those areas indicate to being positive
21 for potential blood?

22 A Yes, sir. I took one cutting that was positive for the
23 presumptive test of blood.

24 MR. GRAHAM: Your Honor, if I could have Ms.
25 Bryson step down and show the jury where she took that

1 cutting from is she could?

2 THE COURT: Yes, You can.

3 (Witness steps down)

4 A The item was submitted as SLED item number 49. And
5 that's the item. And I took a cutting from the back of the
6 tank shirt. And that cutting I gave it sub-item 49.1.

7 BY MR. GRAHAM:

8 Q And is on the front or the back of the shirt?

9 A It's on the back of the tank tee shirt.

10 Q And can you walk down here and show this end of the
11 jury too. Where on the shirt it came from?

12 A I took a cutting right there.

13 Q And would it be fair to describe that as the lower left
14 of the bottom middle back?

15 A Yes, sir.

16 Q Where the cutting came from?

17 A Yes, sir.

18 Q Ms. Bryson, you may have a seat. Thank you.

19 (Witness takes stand)

20 Q In addition to your visual examination of the shirt,
21 did you also perform a visual examination on all the other
22 clothes that were submitted?

23 A Yes, sir, I did.

24 Q And specifically on SLED number 47, which is State's
25 No. 45, on the socks, did you perform a visual examination

1 on those?

2 A Yes, sir, I did.

3 Q And what did you find on your visual examination of the
4 socks? Do you recognize those socks as being the ones that
5 you analyzed, you processed?

6 A Yes, sir, I do. It has my initials and the SLED item
7 number. And I took a cutting. The SLED item number, the
8 parent number was 47. I took a cutting and gave that
9 cutting 47.1. The cutting was positive for the presumptive
10 test of blood.

11 Q Thank you, Ms. Bryson. If you could put those back in
12 there?

13 A (Witness complies)

14 Q Once you had taken your cuttings from the tank top and
15 from the socks, then did you put those items back into the
16 box that we looked at earlier and seal it back up?

17 A Yes, sir.

18 Q Now you say you created cuttings. What does that mean?

19 A The SLED item, the tank tee shirt, item number 49 was
20 the parent item. So I made my cutting 49.1.

21 Q Let me show you a bag and its contents and ask if you
22 recognize it?

23 A Yes, sir, I do.

24 Q And how do you recognize it?

25 A This is the heat-sealed pouch I generated where I

1 placed my cuttings. I placed the individual cuttings in
2 individual gold coin envelopes. I place those envelopes
3 into the heat-sealed pouch and seal the heat-sealed pouch.
4 I initial it and date it.

5 Q And is that the bag that contained the cuttings that
6 you took from the tank top and the socks and Mr. Prather?

7 A Yes, sir, it is.

8 MR. GRAHAM: Your Honor, the State would offer the
9 bag and its contents into evidence at this time?

10 THE COURT: What says the Defense?

11 MR. FLOYD: Just subject to our earlier objection.

12 THE COURT: It's admitted.

13 (State's Exhibit No. 50, evidence
14 bags (2), was marked and admitted.)

15 BY MR. GRAHAM:

16 Q Ms. Bryson, there are two gold envelopes in here. What
17 are those two envelopes?

18 A One gold coin envelope contains cutting 47.1, which was
19 a cutting from the pair of socks. And the other envelope
20 contains cutting 49.1, which was a cutting from the tank tee
21 shirt.

22 Q And that's indicted on those gold coin envelopes
23 themselves; right?

24 A That's correct.

25 Q. What it is? On the back of those there appear to be

1 initials and a date. What are those?

2 A Those are my initials and the date that I sealed the
3 envelope.

4 Q Once you put those two envelopes containing the
5 cuttings that you took from Mr. Prather's clothes into this
6 bag, did you say you heat sealed this bag?

7 A Yes, sir, I did.

8 Q And do you see your initials and the date that you
9 heat-sealed it on there?

10 A Yes, sir, I do. My initials, JSB and the date that I
11 sealed it.

12 Q Once you sealed this bag containing the cuttings from
13 Mr. Prather's clothes, what did you do with it?

14 A I took it to our evidence intake area and gave it to
15 forensic technician Selena Kinard.

16 Q It was sealed when you gave it to Ms. Kinard?

17 A Yes, sir, it was.

18 Q And after you gave it to Ms. Kinard, what do SLED
19 records reflect as to what happened with that item?

20 A 47.1 it shows that Selena place it into the DNA
21 evidence intake storage on August the 1st of 2008.

22 Q And where did it go from there?

23 A It appears that Doris Yarborough, which is a technician
24 in the evidence intake area, she took custody of it and gave
25 it to Sheree Brown, which is the technician in the DNA

1 department.

2 Q Once Ms. Brown took custody of the bag that you
3 created, where did it go?

4 A Sheree took custody of it and she placed the heat-
5 sealed pouch in the DNA refrigerator on the fourth floor.

6 Q And then once it was placed in the DNA refrigerator,
7 who removed it from there?

8 A Adrienne Hefney removed it on August the 6th of 2008.

9 Q That's Adrienne Riley Hefney?

10 A Yes, sir.

11 Q And she's a forensic scientist?

12 A That's correct.

13 Q For DNA and serology?

14 A Right.

15 Q In addition to creating that cutting from Mr. Prather's
16 clothes, did you also look at some clothes from Mr.
17 Phillips?

18 A Yes, sir, I did.

19 Q Let me show you another box and ask if you recognize
20 this? This is State's Exhibit No. 48.

21 A Yes, sir. This is container B, which contains SLED
22 items 51 through 53, which is clothing from a Joshua
23 Phillips.

24 Q And how do you recognize this box?

25 A It has my initials and the date on it.

1 Q And it also has SLED tracking number as well?

2 A That's correct.

3 Q What day did you receive this box?

4 A I took it into my custody on July the 31st of 2008.

5 Q When you took possession of this box, was it properly
6 sealed?

7 A Yes, sir, it was.

8 Q And once you broke the seal, what did you find inside?

9 A Clothing, from a Joshua Phillips.

10 Q And does it specify what clothing that you received?

11 A Yes, sir. I received a pair of blue jeans, a belt with
12 a silver buckle, and a sleeveless tee shirt.

13 Q Let me ask you to look into the contents of that box
14 and ask if you recognize items of what you processed?

15 A Yes, sir, this is the clothing that I processed. It
16 has my initials and the SLED item number.

17 Q There were three items in there, I believe, is that
18 correct, Ms. Bryson?

19 A That's correct.

20 Q What are the item numbers and what is the description,
21 what are they?

22 A SLED item number 51 was a pair of blue jeans. Sled
23 item 52 is a belt with a silver buckle. And SLED item
24 number 53 is a sleeveless tee shirt.

25 Q And you recognize those items in that as being items

1 that you processed?

2 A Yes, sir, I do.

3 Q In general terms, again, how did you process the jeans,
4 the belt, and the shirt?

5 A The request was made from the submitting law
6 enforcement agency to look for blood. I do a visual looking
7 for any stain that appears to be blood. And if I see a
8 stain, I use a the chemical test, which is phenolphthalein.
9 And if that test is positive, I will take a cutting from
10 that item and send the item to DNA for further examination.

11 Q First on item, SLED item number 52, the belt with the
12 silver buckle that was on the jeans. Did you do a visual
13 examination of that?

14 A Yes, sir. And it was negative.

15 Q So did you collect or take any cuttings or from the
16 belt?

17 A No, sir, I did not.

18 Q I refer you to the blue jeans. What did you find on
19 your visual examination?

20 A I took three cuttings that were positive for the
21 presumptive test of blood, and one cutting that was positive
22 for the presumptive test of semen.

23 Q And that was on the jeans?

24 A Yes, sir.

25 Q So you took four total cuttings?

1 A That's correct.

2 Q As far as the shirt, the black sleeveless, Slipknot
3 brand tee shirt, what did you find on your visual
4 examination on the shirt?

5 A I took one cutting that was positive for the
6 presumptive test of blood.

7 Q Do you have a diagram that indicates where you found,
8 where you took the cuttings from?

9 A Yes, sir, I do.

10 Q Where on the shirt? Can you describe where on the
11 shirt you took the cutting from the Slipknot tee shirt?

12 A I'm sorry. I can't locate my drawing.

13 Q You have a lot of papers up there. Let me show you a
14 drawing and ask if you recognize that as being the drawing
15 for the shirt in this case?

16 A This is SLED item number 36. My SLED item number is
17 53. This is a diagram that we use to document where we took
18 the cutting from an item.

19 Q So where did you take the cutting from the Slipknot tee
20 shirt?

21 A It was on the front lower left area, on the side.

22 Q In the lower left, by the rib cage?

23 A That's correct.

24 Q For the Wrangler jeans, you took four cuttings. What
25 were the approximate locations of those?

1 A Item 51.1, which was a cutting for blood was taken on
2 the front, approximately about the knee area. Item 51.2 was
3 a cutting that was for blood. It was taken from the back of
4 the jeans, near the pocket area. Item 51.3 was a cutting
5 for blood. It was taken on the back of the jeans, the left
6 leg, below the knee area. And item 51.4 is a cutting from
7 the left pocket lining, which was positive for the
8 presumptive test of semen.

9 Q And those drawings that you're referring to, those are
10 drawings that you prepared while you were making the
11 cuttings from the these items?

12 A That's correct.

13 Q Let me show you a bag containing several yellow coin
14 envelopes and ask if you recognize the bag and its contents?

15 A Yes, sir, I do. These are the gold coin envelopes that
16 I placed the individual cuttings into.

17 Q Looking inside the bag, Ms. Bryson, do you recognize
18 those as being the cuttings that we've been referring to
19 that came from the jeans and the Slipknot tee shirt of Mr.
20 Phillips?

21 A Yes, sir, I do.

22 Q How were they labeled on there?

23 A It has the SLED lab number, the SLED item number, and
24 the description of the item, which is the blue jeans. And
25 it was a cutting for blood. So 51.1 is in this gold coin

1 envelope. I seal it, initial and date it. And I do the
2 same with the rest of them.

3 Q And those are all the cuttings that have been described
4 that you cut from the jeans and the shirt?

5 A That's correct.

6 Q Once you made those cuttings and you put them in those
7 gold envelopes, identified them in writing and sealed them,
8 what did you do with them?

9 A I placed them in the heat-seal pouch. I filled out the
10 front. I sealed it, initialed and dated.

11 Q Now, you have pointed to an area where it appears to be
12 sealed on one of the corners and has initials that looks
13 like JAB, and a date of 8/1/08?

14 A It's JSB.

15 Q JSB?

16 A And that's my initials.

17 Q Okay. And that's where you wrote on it when you put
18 those in there and sealed it?

19 A That's correct.

20 Q So when that bag was leaving your possession, all the
21 cuttings were in gold envelopes that were sealed inside of a
22 plastic tamper resistant bag that was sealed?

23 A That's correct.

24 Q What did you do with that bag?

25 A I gave this heat-sealed pouch to the technician in our

1 evidence intake area, Selena Kinard.

2 Q And where did it go from Ms. Kinard?.

3 A She placed it into the DNA evidence intake storage area
4 on August the 1st of 2008.

5 Q And where did it go after it was in the intake area?

6 A Doris Yarborough took possession of it. She
7 transferred it to technician Sheree Brown in the DNA
8 department. And Sheree placed it into the DNA refrigerator
9 on the fourth floor on August the 4th of 2008.

10 Q And who took it out of the DNA refrigerator?

11 A Adrian Hefney, Adrian Riley.

12 Q Adrian Riley. Thank you, Ms. Bryson. Please answer
13 any questions Mr. Floyd has for you.

14 JANICE BRYSON - CROSS-EXAMINATION

15 BY MR. FLOYD:

16 Q Ms. Bryson, first, let me ask you some questions about
17 the Joshua Phillips items?

18 A Yes, sir.

19 Q And I believe those were items 51, 52 and 53; is that
20 correct?

21 A Yes, sir.

22 Q And 51 was the blue jeans from Mr. Phillips?

23 A That's correct.

24 Q And maybe I misunderstood or wrote it down wrong. But
25 did you say you found four items that were positive for

1 blood?

2 A No, sir. I took three cuttings from the jeans that
3 were positive for the presumptive test for blood?

4 Q Three, on that?

5 A That's correct.

6 Q And the fourth was for semen?

7 A That's correct.

8 Q And would you tell me again where you got the semen
9 cutting from?

10 A It was from the lining of the front pocket.

11 Q And right or left?

12 A From the left pocket lining.

13 Q Left, okay. And am I correct in that you got one of
14 the blood spots from the front of the knee?

15 A I can't hear you.

16 Q Oh, I'm sorry. The front of the knee is one of the
17 blood spots?

18 A That's correct.

19 Q And one from the back pocket?

20 A That's correct.

21 Q Is that exterior or interior?

22 A The jeans were right-side out. It was the outside of
23 the jeans.

24 Q I'm sorry. And then one from the back of the jeans,
25 the left leg below the knee; is that correct?

1 A It would be the right leg. I'm sorry.

2 Q Right leg. And the on the sleeveless tank shirt, you
3 had one positive for blood, the front of the shirt, lower
4 left rib cage?

5 A I can't hear you. I'm sorry.

6 Q Oh, this doesn't come to you? Okay. On the tank top,
7 tank shirt, sleeveless tank shirt?

8 A Yes, sir.

9 Q There was one that was positive for blood on the front
10 of the shirt, lower left rib cage area; is that correct?

11 A That's correct.

12 Q All right. Now, if we could go to items from Mr.
13 Prather?

14 A Okay.

15 Q You tested his shoes?

16 A No, sir, I did not test a pair of shoes.

17 Q Did not test the shoes at all?

18 A I never received the shoes?

19 Q You never received the shoes?

20 A No, sir.

21 Q So you just received the jeans and the two shirts or
22 the jeans, a shirt and a sock?

23 A From Mr. Prather, I received blue jeans, a pair of
24 socks, a tee shirt and a tank tee shirt.

25 Q Okay. Now, the tee shirt, did you find anything on the

1 tee shirt?

2 A No, sir, it was negative for the presumptive test of
3 blood.

4 Q And then you say you found a spot on the back of the
5 tank tee shirt?

6 A That's correct.

7 Q Now, I think you showed the jury where that was. It
8 was on the lower back of the shirt?

9 A That's correct.

10 Q Now, how big of a cutting did you make?

11 A It was approximately a half-dollar size cutting.

12 Q But now the spot itself was not that large, was it?

13 A I don't recall. But I generally make my cutting larger
14 than the actual size of the stain.

15 Q So do you have any idea how large the actual size of
16 the stain was?

17 A I don't recall how large the stain was.

18 Q But the cutting was about a half a dollar size, you
19 say?

20 A Yes, sir, that's correct.

21 Q And certainly, if you make a cutting, you're going to
22 leave enough area around the cutting so that you don't mess
23 with the stain itself, wouldn't you?

24 A That's correct.

25 Q And how much leeway do you give yourself usually on a

1 cutting?

2 A Oh, maybe an inch or two outside of the actual stain.

3 Q So would you agree with me then the stain was probably
4 just a very small stain?

5 A I don't recall. I can pull the cutting out if you...

6 Q Could you let us know how large the stain was?

7 A I'm sorry?

8 Q Could you let us know how large the stain is? Is there
9 a way to do that?

10 A Is it okay if I pull the cutting out?

11 Q It's okay with me. I don't know.

12 MR. GRAHAM: The State doesn't object, Your Honor.

13 THE COURT: You may.

14 A (Witness complied.)

15 Q And so which would be the stain?

16 A Apparently, when Ms. Riley gets the cutting, she does
17 additional examination. My cutting would just be this, not
18 the two smaller cuttings. Mine is the larger cutting.

19 Q But that's it. And would you agree there's really no
20 stain visible anymore, is there?

21 A No, sir. Ms. Riley may have ---

22 Q So whatever stain was there would have to be smaller
23 than the little areas that are cutout there; would that be
24 correct?

25 A No, sir. You'd have to ask Ms. Riley.

1 Q Well, there's no stain visible now is it?

2 A No, sir. I don't see any visible stain.

3 Q Now, you said you also took a cutting from a sock?

4 A Yes, sir. That's correct.

5 Q Can you tell us the area of the sock?

6 A I took a cutting from the heel area.

7 Q And was it just from one of the socks?

8 A That's correct.

9 Q You checked both socks?

10 A That's correct.

11 Q Can you show us where you took that cutting from? Can
12 you show us the sock? Have you got a picture of it there?

13 A This is the diagram that I generate to document where I
14 take my cuttings. It's not drawn to scale.

15 Q Okay. So it's up toward the heel area of the sock?

16 A That's correct.

17 Q Could you actually check the sock and show us the
18 cutting that was made?

19 A Could you repeat that?

20 Q Could you check the sock and show us the cutting, where
21 the cutting was made?

22 A Yes, sir, I can. This is where I took my cutting.

23 Q Okay. And do you have the cutting? Do you have the
24 cutting back yet? Do you have the cutting there also, so we
25 could see what was actually the size of the stain?

1 A Yes, sir.

2 Q So that's the little hole there in the middle; is that
3 correct?

4 A No, sir. I didn't make that hole in the middle.

5 Q I got you. That would have been made by Ms. Riley?

6 A The DNA Analyst; that's correct.

7 Q Thank you. There's no more blood visible on that area,
8 is it?

9 A Some very tiny areas that appear to be possible blood.

10 Q And where you talking about tiny areas?

11 A Right there.

12 Q You're talking about that area right next to the
13 cutting there?

14 A That's correct.

15 Q And that's about a -- I don't know what to compare that
16 to. Go ahead and show that to the jury so they can see what
17 you're talking about?

18 (Witness steps down)

19 A It's just very minute, the areas that appears to be
20 possible blood. It's very small.

21 (Witness takes stand)

22 Q Thank you, Ms. Bryson.

23 MR. FLOYD: I have no further questions, Your
24 Honor.

25 JANICE BRYSON - REDIRECT EXAMINATION

1 BY MR. GRAHAM:

2 Q Ms. Bryson, that cutting that Mr. Floyd was just
3 talking about, you took a big cutting, gave it to Ms. Riley.
4 There was a piece already cut out and that's what you were
5 showing the jury; is that correct?

6 A That's correct.

7 Q What Mr. Floyd was having you show was what?

8 A There was an area on the sock that appeared to be a
9 very small area of possible blood?

10 Q Would you mind showing that to me too, ma'am?

11 A Sure.

12 Q If you had to describe that, would you describe it as a
13 smear or a drop or what would it be?

14 A I couldn't say.

15 Q What does it look like? Describe it? The shape of it?

16 A It just looks like three dots of possible blood.

17 Q Three round dots of possible blood?

18 A That's correct.

19 Q Thank you, ma'am.

20 JANICE BRYSON - RE-CROSS EXAMINATION

21 BY MR. FLOYD:

22 Q Ms. Bryson, didn't you have an item 50?

23 A Item 50? Yes, sir. It's a pair of tennis shoes.

24 Q And they were checked, were they not?

25 A Yes, sir, apparently they were and the shoes were

1 negative for the presumptive test of blood.

2 Q Okay. Those are Mr. Prather's shoes, are they not?

3 A That's correct. I overlooked that.

4 Q Thank you.

5 MR. FLOYD: No further questions, Your Honor.

6 THE COURT: You may step down, ma'am.

7 MR. GRAHAM: The State calls Adrienne Riley.

8 THE COURT: Let's stand for a moment, ladies and
9 gentlemen.

10 (Everyone stands)

11 THE COURT: All right.

12 (WHEREUPON, Adrienne Riley was
13 sworn to tell the truth.)

14 THE CLERK: Have a seat. Once you're seated,
15 please, ma'am, state full name, spelling your last on the
16 record, please?

17 MS. RILEY: Adrienne Riley Hefney, H-E-F-N-E-Y.

18 ADRIENNE RILEY HEFNEY - DIRECT EXAMINATION

19 BY MR. GRAHAM:

20 Q Ms. Riley, where are you employed?

21 A With the South Carolina Law Enforcement Division, more
22 commonly known as SLED.

23 Q And how long have you been employed by SLED?

24 A Since November of 1997, so a little over fifteen years.

25 Q And what have you done through your career at SLED?

1 A I joined as a forensic technician in the DNA
2 department. In March of 1999, I was promoted to forensic
3 DNA analyst. And that's what I'm currently, my current
4 role.

5 Q What's your education background?

6 A I have a Bachelor of Science Degree in Biology from the
7 University of South Carolina. And I also have a Master's of
8 Business Administration Winthrop University.

9 Q Specifically to serology and DNA, in addition to your
10 educational background as far as academically and schools
11 with your degrees, do you have any other education or
12 experience relating to serology and DNA?

13 A Sure. I've taken post-graduate courses in the field of
14 molecular genetics and statistics. And I was trained at
15 SLED under a court-qualified analyst. And in addition to
16 that, and according to our DNA Advisory Board Guidelines,
17 which we go by that are mandated from the FBI, we take
18 continuing education courses each year. And so we may
19 attend a conference or take an additional class and stay
20 abreast of any changes in the field of DNA analysis.

21 Q Have you ever been qualified as an expert in the Courts
22 of South Carolina as an expert in serology and DNA?

23 A Yes, sir, I have.

24 Q How many times?

25 A Roughly, about sixty times.

1 MR. GRAHAM: Your Honor, the State would offer Ms.
2 Adrian Riley as an expert in the fields of serology and DNA.

3 MR. FLOYD: No objection, Your Honor.

4 THE COURT: She's so qualified.

5 BY MR. GRAHAM:

6 Q What is serology and DNA?

7 A Serology is scientific bodily fluid identification.
8 That is when we receive items of evidence that, say, that
9 looks like it has a blood stain or looks like it may have a
10 semen stain, we have tests that can identify whether it's
11 blood or whether it's semen or whether it be saliva. That
12 is what serology is. As far as DNA, forensic DNA involves
13 comparisons. Comparisons of unknown items in evidence.
14 That's evidence that was left behind at a crime scene, and
15 make comparisons to known items of evidence or known items,
16 which would be, the known standard from -- whether it be a
17 blood standard from the vein of the victim or a suspect, a
18 Buccal swab from the inside of a victim or suspect's cheeks.

19 Q When you develop a DNA profile, what does that mean?

20 A When we develop a profile -- well, in forensics, I'll
21 start there as to what DNA is. DNA stands for
22 Deoxyribonucleic Acid. It's a chemical that's found in the
23 cells of our bodies. It's essentially what makes us who we
24 are. A lot of us have the same DNA. It's the DNA that code
25 for us being hearing. It codes for us to have two arms and

1 two legs and two eyes, but if we look around this courtroom
2 we notice everyone looks different. So everyone's DNA is
3 unique to themselves. No two people will have the same DNA,
4 with the exception of identical twins. We use this fact in
5 forensics to make the comparisons because no two people will
6 have the same DNA, with the exception of identical twins.
7 We'll use that to compare evidence, such as blood left behind
8 at a crime scene or semen left behind at a sexual assault
9 case. We make comparisons to known standards, which would
10 be the Buccal swabs or blood standards that we receive from
11 the persons involved in the case, whether it be the victim
12 and/or the suspect.

13 Q Ms. Riley, very briefly, would you describe when you
14 get an item in, be it a known standard or an unknown item,
15 how do you chemically, physically, go about developing a
16 profile?

17 A Sure. We will take cuttings as you've seen on this.
18 We'll take cuttings of items like dried blood stains left on
19 our item. Or cuttings from swabs. And we'll apply
20 chemicals to that cutting that will release cells, release
21 the cells into solution. From there we'll purify any actual
22 cellular material from that, and get purified DNA. Now,
23 theoretically, we can have a pinhead-size stain, with the
24 DNA system we do now, and be able to develop a full DNA
25 profile. That's known as PCR. That's the latest form, I

1 guess, of DNA testing. That's more widely accepted and used
2 throughout the nation. And what that is, in generally, like
3 I said, taking that pinhead stain and you can think of it as
4 a Xerox copier. Like if you lay a piece of paper on a Xerox
5 copier and you can copy it a million-fold times. It's not
6 going to change the piece of paper that you laid on there.
7 It's just a copy of it. So that small pinhead-sized stain
8 can be multiplied over and over to make a DNA profile. And
9 that's we use to make comparison.

10 Q When you develop a profile, is it a full profile
11 listing every part on the DNA chain or is it on certain
12 locations?

13 A Not every part is in certain locations, the locations
14 that do not code for anything and that are unique from
15 individual to individual.

16 Q So in performing the analysis on the items related to
17 this case, how many different spots on the DNA chain did you
18 look at, did you attempt to look at?

19 A Okay. We use a test now that has fifteen different
20 locations, including amelogenin, which is our sex-typing
21 chromosome.

22 Q Let me show you some items and ask if you recognize
23 them. State's No. 42, which would have been SLED number 1,
24 I believe. Do you recognize that item?

25 A Yes, this is the blood standard from Gerald Stewart.

1 And I see my initials and a date of 10/6/05 on the front as
2 well as on the back.

3 Q Ms. Riley, when that bag came to you, was it properly
4 sealed?

5 A Yes.

6 Q And where did you get that item from?

7 A Item 1, I received this item from our DNA refrigerator
8 on the fourth floor, known as DNA-R. And I have a space or
9 a box in that refrigerator that contains all my evidence.

10 Q When you received that item, it was contained in the
11 same bag that it's in now; is that correct?

12 A That's correct.

13 Q Was it properly sealed?

14 A Yes.

15 Q Was there any evidence it had been tampered with?

16 A No, sir.

17 Q And if somebody else had gone into the bag, would you
18 have noticed it?

19 A Yes. There would be additional seals, and it's only
20 two on here. The one I made and the one that was sealed by
21 Chuck Bramlett.

22 Q Once you went into the bag, there was a coin envelope
23 -- actually, at the time, there would have been blood vial
24 in there, a test tube; is that right?

25 A That's correct.

1 Q And you would have taken that test tube and done what?

2 A Preserved it on a sterile piece of paper, which is a
3 long-standing, so it would not be a liquid form of blood.

4 Q And that's what you recognize as being in there?

5 A Correct. In this coin envelope.

6 Q And you see your initials on that?

7 A Yes, sir, right here.

8 Q Were you able to develop a profile for the known
9 standard for the victim in this case, Gerald Stewart?

10 A Yes, sir, I was.

11 Q Additionally, let me show you State's No. 47, which is
12 SLED lab number 54, and ask if you recognize that?

13 A Yes. This envelope contains my initials on the
14 outside. As well as another envelope containing my
15 initials. And it's within another pouch. And this is the
16 Buccal swab collection kit from Robert Prather.

17 Q And did the bag appear to be properly sealed and not
18 tampered with when you received it?

19 A Yes, sir, it did.

20 Q Once you went into the bag, did you find everything to
21 be in order?

22 A Yes, sir, we did.

23 Q And were you able to develop a DNA profile from the
24 Buccal swab with Mr. Prather?

25 A Yes, sir, I was.

1 Q Let me show you State's No. 41, which would also
2 contain, among many things, SLED item 10.4 and ask if you
3 recognize that item?

4 A Yes, sir, I do. This is the sexual assault evidence
5 collection kit from Joshua Phillips.

6 Q And one of those items is 10.4, is that a -- would have
7 been a blood test tube at the time?

8 A Yes, sir. Again, it was a blood test tube that I
9 preserved onto a sterile piece of paper. And it's marked
10 with my initials as well as my initials on the front and the
11 date.

12 Q And was the outer bag, the SLED evidence bag, was it
13 properly sealed when you got it?

14 A Yes, sir.

15 Q And you would have also gotten that out of the
16 refrigerator, the DNA refrigerator, I guess?

17 A Yes, sir. It would have been placed in the DNA-R in my
18 area, in that refrigerator.

19 Q And you were able to develop the full DNA profile of
20 Mr. Phillips as well?

21 A That is correct.

22 Q In addition to the three items we've talked about,
23 which are known standards, were there also some unknown
24 items that came to you from Ms. Bryson processing clothes?

25 A Yes, sir, there was.

1 Q Let me show you State's Exhibit No. 50, which contains
2 SLED 47.1 and 49.1 and ask if you recognize those?

3 A I do. 47.1 and 49.1. 47 is listed as a cutting from a
4 sock. 49.1 is listed as a cutting from a tank tee shirt.
5 And my initials along with Janice Bryson's initials are on
6 the back of these envelopes.

7 Q. When you received that bag and its contents, was it
8 properly sealed?

9 A Yes, sir.

10 Q Any evidence of tampering?

11 A No, sir.

12 Q Let me show you another item containing SLED lab
13 numbers 51.1, 51.2, 51.3, and 51.4, and 53.1 Do you
14 recognize those items?

15 A Yes, sir. These items also have my initials and the
16 date on the back.

17 Q And those are additional items that you processed in
18 this case?

19 A Yes, sir.

20 Q And those are the cuttings that Ms. Bryson created
21 relating to Mr. Phillips clothes?

22 A Yes, sir. And I processed items 51.1 and 53.1.

23 Q And the bag and its contents was properly sealed when
24 it came to you with no evidence of tampering?

25 A That's correct.

1 Q Let's talk about the results of that bag. You said you
2 analyzed 51.1, 51.2, and 53.1; is that correct?

3 A Yes, sir. I analyzed 51.1, which were cutting from
4 jeans from Joshua Phillips. 51.2, cutting from jeans from
5 Joshua Phillips. And 53.1, cutting from tee shirt of Joshua
6 Phillips.

7 Q And as far as the cutting from the jeans, what were
8 your findings?

9 A The DNA profile developed from items 51.1 and 51.2,
10 also matches Joshua Phillips.

11 Q So the cuttings from Joshua Phillips jeans were his own
12 blood?

13 A That is correct.

14 Q Any evidence of anyone else's blood or DNA there?

15 A No, sir.

16 Q Item 53.1 was a cutting from Mr. Phillips tee shirt; is
17 that correct?

18 A Yes, sir.

19 Q Was there blood on that cutting?

20 A There was no blood indicated on that cutting.

21 Q As far as the DNA profile, what did you find?

22 A And I will read directly from my report. The DNA
23 profile developed from item 53.1 is a mixture of at least
24 two individuals. The DNA profile developed from the major
25 contributor to this mixture, matches the DNA profile of

1 Joshua Phillips. The probability of randomly selecting an
2 unrelated individual matching the DNA profile of the major
3 contributor to this item is approximately one in fifteen
4 trillion. No conclusive statement can be made as to the
5 inclusion or exclusion of Robert Prather and Gerald Stewart.

6 Q When you say a mixture of at least two individuals,
7 what does that mean that you found when you developed the
8 profile for that item?

9 A That means that it was indicative of more than one
10 person's DNA on that item.

11 Q Do you know how many?

12 A At least two people. So that would include the major
13 contributor and one other person possibly.

14 Q When you say major and minor, what is -- what does that
15 designation mean?

16 A Major contributor is like -- when we see a higher
17 concentration of DNA from one person versus another person.
18 So, say, had this DNA had -- had this cutting had a
19 bloodstain, we would have constantly gotten more DNA from
20 the blood than the underlying skin cells that may have been
21 left behind from the owner of that item. So because of
22 that, we can designate major contributor, because we see
23 more of a more increased concentrated DNA profile from one
24 person versus a minor profile from another person or a less
25 concentrated profile.

1 Q Moving on to the cuttings from the tank top tee shirt
2 and the socks of Mr. Prather, 47.1 and 49.1. Were you able
3 to develop DNA profiles for those items?

4 A Yes, sir, I was.

5 Q And what did you find?

6 A Again, reading directly from my report. The DNA
7 profile developed from item 47.1 and the partial DNA profile
8 developed from item 49.1 are mixtures of at least two
9 individuals. The DNA profile of the major contributor to
10 these mixtures matches the DNA profile of Gerald Stewart.
11 The probability of randomly selecting an unrelated
12 individual matching the DNA profile of the major contributor
13 to these items is approximately one in six point four
14 quadrillion. Robert Prather cannot be excluded as a
15 possible minor contributor to these mixtures. Joshua
16 Phillips can be excluded as a possible contributor to these
17 mixtures.

18 Q 47.1 and 49.1 was a mixture?

19 A That is correct.

20 Q The major contributor was who?

21 A Gerald Stewart.

22 Q And were you able to determine whether the profile you
23 developed, the stain that it came from, was that blood?

24 A Yes. Item 47.1 and 49.1, the sock was 47.1. The tank
25 tee shirt was 49.1, both had blood indicated.

1 Q And whose blood is it?

2 A The DNA profile of the main person was Gerald Stewart.
3 So that would be his blood, with the minor contributor being
4 possibly skin cells that were left behind, from the owner of
5 the item.

6 Q Thank you, ma'am. Please answer any questions Mr.
7 Floyd has.

8 ADRIENNE RILEY HEFNEY - CROSS-EXAMINATION

9 BY MR. FLOYD:

10 Q Good afternoon, Ms. Riley?

11 A Good afternoon.

12 Q Do you make note of the size of the samples that you
13 test?

14 A No, sir, I do not. I take a cutting from the stain
15 that I see.

16 Q Okay. Were these small stains?

17 A Well, I will have to look at the stains to see.

18 Q Now, did you also do some testing of some oral swabs
19 and some penile swabs in connection with this case?

20 A Yes, sir. I did penile swab testing from Gerald
21 Stewart that were obtained at the autopsy.

22 Q And what did the testing of the -- what is a penile
23 swab?

24 A Penile swab is typically a swab that was taken from the
25 urethra of a male's penis.

1 Q And what did it indicate, the test?

2 A Indicated that there was semen identified. And DNA
3 wise, I'll read directly from the report with --
4 specifically that that item. The DNA profile developed from
5 item 9.3 matches the DNA profile of Gerald Stewart.
6 Probability of randomly selecting an unrelated individual
7 from a population having a DNA profile matching these items,
8 or this item is approximately one in six point four
9 quadrillion.

10 Q And did you test an oral swab for Mr. Stewart, 9.2?

11 A Yes, sir, I did.

12 Q And what is an oral swab?

13 A Oral swab is typically a swab from the inside of the
14 cheek. And in sexual assault cases, we test that for semen.

15 Q And did you find any results from that test?

16 A There was semen indicated, which means we had a positive
17 presumptive test for semen, but the DNA from it also matched
18 Gerald Stewart.

19 Q Thank you. And did you also test on item 10.8, a
20 rectal swab from Joshua Phillips?

21 A Yes, sir, I did. 10.8 there semen indicated once
22 again. And I did a DNA analysis on that. And the DNA
23 profile developed on 10.8 was not unlike the DNA profile of
24 Joshua Phillips.

25 Q So you found -- that was from the rectal swab of Joshua

1 Phillips?

2 A Item 10.8, yes, sir, was the rectal swab.

3 Q. Now, did you also test a dildo?

4 A Yes, sir. And that would be our item 32.1.

5 Q And can you tell me what the results of that was?

6 A Sure. There was blood indicated on the dildo. I did
7 DNA testing on it. And the DNA profile developed from item
8 32.1 was -- matched the DNA profile of Gerald Stewart.

9 Q Now, did you also test a swab from a knife, item 30.1?

10 A Yes, sir. I test a swab from knife from vehicle.

11 Q What was the result of that test?

12 A Well, there was no visible stain, so this item went
13 straight to DNA analysis. And no interpretable DNA profile
14 was developed from item 30.1.

15 Q So to recap, you found the semen of Gerald Stewart on
16 an oral swab from the autopsy; is that correct, 9-2

17 A The oral swab. Are you referring to item 9.2?

18 Q 9.2?

19 A Okay. That was his oral swab. And there was semen
20 indicated, but a DNA profile matched the victim, or the
21 person whose oral swab that was. So it could have come from
22 the skin cells or saliva in his mouth.

23 Q The penile swab also Gerald Stewart, 9.3?

24 A Okay. 9.3, the DNA profile developed from it was --
25 also matched Gerald Stewart.

1 Q And the DNA 32.1 from the dildo, Gerald Stewart?

2 A Yes, sir.

3 Q And the 10.8 rectal swab from Joshua Phillips, the
4 semen was who?

5 A The rectal swab from Joshua Phillips, the DNA on that
6 matched Joshua Phillips.

7 Q Thank you.

8 MR. FLOYD: NO further questions.

9 ADRIAN RILEY HEFNEY - REDIRECT EXAMINATION

10 BY MR. GRAHAM:

11 Q Ms. Riley, the items that Mr. Floyd was talking about,
12 let's go through those real quick. 32.1, would be the swabs
13 from the dildo; correct?

14 A That is correct.

15 Q Whose DNA was found on it?

16 A There was blood indicated on the dildo. And the DNA
17 found on it matched Gerald Stewart.

18 Q And there was blood?

19 A There was blood indicated, yes, sir.

20 Q 30.1, the swab from the knife?

21 A Uh-huh (affirmative).

22 Q I believe you testified there were no visible stains
23 and there was no interpretable DNA?

24 A That is correct.

25 Q Can blood or DNA be cleaned off an item?

1 A Yes, sir, it can.

2 Q And how is that done?

3 A It can be cleaned off by bleach. That will damage DNA
4 as well as water can get DNA off. It may not get all of it,
5 but bleach probably will get the majority of it off.

6 Q Can you wipe it off?

7 A You can wipe it off. But there should be, maybe a
8 trace amount left behind by just wiping it off.

9 Q 10.8, the rectal swab, and that's going to be of Joshua
10 Phillips; correct?

11 A 10.8 is the rectal swab of Joshua Phillips; that's
12 correct.

13 Q Now, it says semen indicated. That's a presumptive
14 test; right?

15 A That's correct.

16 Q What does presumptive mean?

17 A That means that it was not confirmed by a foreign
18 person being on this rectal swab. So when we do semen, when
19 we test for semen and it says semen indicated, that means we
20 have to have two things that say semen identified. We have
21 to have a positive, say a P-30 card. And P-30 is a protein
22 that's found in the prostate gland of males that we test for
23 -- to test for semen. So there was P-30 found, as well as
24 male DNA profile that's foreign to the owner of that swab.
25 By owner means it came from his rectum so we expect to find