

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper Circuit Court Judge

RECEIVED

JUN 01 2017

S.C. SUPREME COURT

ELBERT WALLACE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000057

APPENDIX

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COUNTY OF RICHLAND)	2009-GS-40-0988
)	2009-GS-40-0989
)	2009-GS-40-0997
)	2009-GS-40-1225
)	2009-GS-40-1228
)	2009-GS-40-1229
)	2010-GS-40-1229
)	2010-GS-40-1230
)	
THE STATE)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
ELBERT WALLACE,)	
)	
Defendant)	

July 18-21, 2011
Columbia, South Carolina

BEFORE:

The Honorable Clifton Newman, Judge and a Jury
The Honorable Stephanie McDonald, Judge

APPEARANCES:

Luck Campbell, Asst. Solicitor
Joanna McDuffie, Asst. Solicitor
Nicole Simpson, Asst. Solicitor
Attorneys for the State

Tivis Sutherland, Esq.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

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1	Line Up		268
2	Photo	226	359
3	Photo	226	359
4	Photo	226	359
5	Photo	226	359
6	Photo	226	667
7	Photo	226	667
8	Photo	226	667
9	Photo	226	667
10	Photo	226	667
11	Photo	226	279
12	Photo	226	279
13	Photo	226	279
14	Photo	226	279
15	Photo	226	279
16	Photo	226	279
17	Photo	226	279
18	Photo	226	336
19	Photo	226	336
20	Photo	226	336

EXHIBITS: (Continued)

No.	Description	ID	EV
21	Photo	226	336
22	Photo	226	336
23	Photo	226	336
24	Photo	226	336
25	Photo	226	336
26	Photo	226	336
27	Photo	226	336
28	Photo	226	336
29	Photo	226	336
30	Photo	226	336
31	Photo	226	336
32	Photo	226	336
33	Photo	226	667
34	Photo	226	343
35	Photo	226	343
36	Photo	226	363
37	Photo	226	363
38	Photo	226	363
39	Photo	226	363
40	Photo	226	363
41	Photo	226	363
42	Photo	226	363

<u>EXHIBITS: (Continued)</u>			
<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
43	Photo	226	363
44	Photo	226	363
45	Photo	226	363
46	Photo	226	363
47	Photo	226	363
48	Photo	226	363
49	Photo	226	363
50	Photo	226	426
51	Photo	226	426
52	Photo	226	426
53	Photo	226	426
54	Photo	226	426
55	Photo	226	426
56	Photo	226	426
57	Photo	226	426/529
58	Photo	226	426
59	Photo	226	426
60	Photo	226	426
61	Photo	226	426
62	Photo	226	565
63	Photo	226	565
64	Photo	226	565

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No.	Description	ID	EV
65	Photo	226	565
66	Photo	226	565
67	Photo	226	425
68	Photo	226	630
69	Photo	226	630
70	Photo	226	630
71	Photo	226	426
72	Photo	226	426
73	Photo	226	613
74	Photo	226	613
75	Photo	226/613	
76	Photo	226/613	
77	Photo	226	603/613
78	Photo	226	603/613
79	Photo	226	603/613
80	Photo	226	603/613
81	Photo	226	603/613
82	Photo	226	603/613
83	Photo	226	544/548
84	Photo	226	544/548
85	Photo	226	544/548
86	Photo	226	544/548

EXHIBITS: (Continued)

No.	Description	ID	EV
87	Photo	226	544/548
88	Photo	226	544/548
89	Photo	226	544/548
90	Photo	226	544/548
91	Photo	226	544/548
92	Photo	226	544/548
93	Photo	226	544/548
94	Photo	226	544/548
95	Photo	226	544/548
96	Photo	226	545/548 & 932
97	Photo	226	545/548 & 932
98	Photo	226	544/548
99	Photo	226	544/548
100	Photo	226	544/548
101	Photo	226	544/548
102	Photo	226	544/548
103	Photo	226	544/548
104	Photo	226	544/548
105	Photo	226	544/548
106	Photo	226	544/548
107	Photo	226	544/548
108	Photo	226	544/548

EXHIBITS: (Continued)

No.	Description	ID	EV
109	Photo	226	544/548
110	Photo	226	544/548
111	Photo	226	544/548
112	Photo	226	544/548
113	Photo	226	544/548
114	Photo	226	544/548
115	Photo	226	544/548
116	Photo	226	565
117	Photo	226	565
118	Photo	226	565
119	Photo	226	565
120	Photo	226	565
121	Photo	226	424
122	Photo	226	424
123	Photo	226	424
124	Photo	226	424
125	Photo	226	424
126	Photo	226	424
127	Photo	226	424
128	Photo	226	424
129	Photo	226	424
130	Photo	226	424

EXHIBITS: (Continued)

No.	Description	ID	EV
131	Photo	226	424
132	Photo	226	424
133	Photo	226	424
134	Photo	226	424
135	Photo	226	424
136	Photo	226	424
137	Photo	226	424
138	Photo	226	424
139	Photo	226	424
140	Photo	226	424
141	Photo	226	424
142	Photo	226	424
143	Photo	226	426
144	Photo	226	426
145	Photo	226	426
146	Photo	226	426
147	Photo	226	428
148	Photo	226	428
149	Photo	226	428
150	Photo	226	428
151	Photo	226	347
152	Photo	226	347

EXHIBITS: (Continued)

No.	Description	ID	EV
153	Photo	226	347
154	Photo	226	347
155	Photo	226	347
156	Photo	226	347
157	Photo	226	347
158	Photo	226	347
159	Photo	226	347
160	Photo	226	347
161	Photo	226	347
162	Photo	226	347
163	Photo	226	349
164	Photo	226	349
165	Photo	226	562
166	Photo	226	562
167	Photo	226	562
168	Photo	226	562
169	Photo	226	562
170	Photo	226	562
171	Photo	226	425
172	Photo	226	425
173	Photo	226	425
174	Photo	226	

EXHIBITS: (Continued)

No.	Description	ID	EV
175	Photo	226	307
176	Photo	226	569
177	Photo	226	569
178	Photo	226	569
179	Photo	226	569
180	Photo	226	569
181	Photo	226	569
182	Photo	226	569
183	Photo	226	569
184	Photo	226	525
185	Photo	226	525
186	Photo	226	525
187	Photo	226	525
188	Photo	226	523
189	Photo	226	523
190	Photo	226	523
191	Photo	226	523
192	Photo	226	523
193	Photo	226	523
194	Photo	226	523
195	Photo	226	523
196	Photo	226	354

EXHIBITS: (Continued)

<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
197	Photo	226	354
198	Photo	226	319
199	Photo	226	354
200	Photo	226	354
201	Photo	226	450
202	Photo	226	
203	Photo	226	
204	Photo	226	
205	Photo	226	
206	Photo	226	
207	Photo	226	
208	Photo	226	
209	Photo	226	
210	Photo	226	
211	Photo	226	
212	Photo	226	
213	Photo	226	
214	Photo	226	
215	Photo	226	
216	Photo	226	
217	Photo	226	
218	Photo	226	

EXHIBITS: (Continued)

No.	Description	ID	EV
219	Photo	226	450
220	Photo	226	451
221	Photo	226	451
222	Photo	226	451
223	Photo	226	451
224	Photo	226	451
225	Photo	226	451
226	Photo	226	451
227	Photo	226	451
228	Photo	226	451
229	Photo	226	451
230	Photo	226	451
231	Photo	226	451
232	Photo	226	451
233	Photo	226	451
234	Photo	226	451
235	Photo	226	451
236	Photo	226	451
237	Photo	226	451
238	Photo	226	451
239	Photo	226	451
240	Photo	226	451

EXHIBITS: (Continued)

No.	Description	ID	EV
241	Photo	226	451
242	Photo	226	451
243	Photo	226	451
244	Photo	226	579
245	Photo	226	579
246	Photo	226	510
247	Photo	226	510
248	Photo	226	510
249	Photo	226	510
250	Photo	226	510
251	Photo	226	510
252	Photo	226	510
253	Photo	226	510
254	Photo	226	510
255	Photo	226	510
256	Photo	226	510
257	Photo	226	510
258	Photo	226	510
259	Photo	226	510
260	Photo	226	510
261	Photo	226	510
262	Photo	226	510

EXHIBITS: (Continued)

No.	Description	ID	EV
263	Photo	226	510
264	Photo	226	510
265	Photo	226	510
266	Photo	226	510
267	Photo	226	510
268	Photo	226	510
269	Photo	226	510
270	Photo	226	626
271	Photo	226	629
272	Photo	226	932
273	Photo	226	626
274	Photo	226	626
275	Photo	226	626
276	Photo	226	626
277	Photo	226	629
278	Photo	226	629
279	Photo	226	629
280	Photo	226	557
281	Photo	226	626
282	Photo	226	626
283	Photo	226	626
284	Photo	226	557

EXHIBITS: (Continued)

No.	Description	ID	EV
285	Photo	226	557
286	Photo	226	557
287	Photo	226	557
288	Photo	226	629
289	Photo	226	557
290	Photo	226	557
291	Photo	226	629
292	Photo	226	557
293	Photo	226	557
294	Photo	226	557
295	Photo	226	629
296	Photo	226	629
297	Photo	226	629
298	Photo	226	629
299	Photo	226	629
300	Photo	226	629
301	Photo	226	629
302	Photo	226	629
303	Photo	226	557
304	Photo	226	629
305	Photo	226	629
306	Photo	226	557

EXHIBITS: (Continued)

No.	Description	ID	EV
307	Photo	226	629
308	Photo	226	629
309	Photo	226	629
310	Photo	226	629
311	Photo	226	629
312	Photo	226	629
313	Photo	226	629
314	Photo	226	629
315	Photo	226	629
316	Photo	226	629
317	Photo	226	629
318	Photo	226	629
319	Photo	226	629
320	Photo	226	629
321	Photo	226	629
322	Photo	226	629
323	Photo	226	629
324	Photo	226	629
325	Photo	226	630
326	Photo	226	630
327	Photo	226	630
328	Photo	226	630

EXHIBITS: (Continued)

No.	Description	ID	EV
329	Photo	226	630
330	Photo	226	630
331	Photo	226	
332	Photo	226	
333	Photo	226	
334	Photo	226	
335	Photo	226	
336	Photo	226	
337	Photo	226	
338	Photo	226	
339	Photo	226	
340	Photo	226	
341	Clothing	226	362
342	Handkerchief	226	340
343	Swab	226	408
344	Swab	226	341
345	Cell Phone	226	340
346	Swab	226	932
347	Saw Blade	226	357
348	Swab	226	357
349	Swab	226	571
350	19 Swabs	226	

EXHIBITS: (Continued)

No.	Description	ID	EV
351	5 Swabs	226	567
352	5 Swabs	226	567
353	4 Swabs	226	529/567
354	Gloves	226	529
355	Tape	226	529
356	Swab	226	529
357	Gloves	226	
358	Swabs	226	
359	Swabs	226	932
360	Swabs	226	519/932
361	Swab	226	529
362	Blow Up	226	287
363	Blow Up	226	282
364	Blow Up	226	429
365	Blow Up	226	429
366	Blow Up	226	429
367	Ring & Cross	226	307
368	Photo	245	268
369	Photo (marked for ID at some prior point)		518/849
370	Photo	314	626
371	Photo	314	626
372	Photo	314	626

EXHIBITS: (Continued)

No.	Description	ID	EV
373	Photo	314	629
374	Photo	314	629
375	Photo	314	629
376	Swab	314	597
377	Pants	314	599
378	Clothing/Bed	314	656
379	Comforter	314	656
380	Swabs	314	658
381	Tape/Clothing	314	658
382	Swabs	314	658
383	Swabs	314	665
384	Swabs	314	665
385	Swabs	314	657
386	Swabs	314	657
387	Swabs	314	658
388	Swabs	314	659
389	Swabs	314	659
390	Swabs	314	659
391	Swabs	314	659
392	Swabs	314	658
393	Swabs	314	580
394	Swabs	314	601

EXHIBITS: (Continued)

No.	Description	ID	EV
395	Photo	314	557
396	Photo	314	557
397	Blow Up	455	584
398	Consent (marked for ID at some prior point)		410
399	Clothing	603	726
400	Pawn Shop Video	603	709
401	Drivers License	603	869
402	Buccal Swabs	603	883
403	Blow Up	603/898	898/901
404	Blow Ups - DNA Chart	603	800
405	Blow Ups	603	800
406	Blow Ups	603	800
407	Blow Ups	603	800
408	Blow Ups	603	800
409	Autopsy Report	603	686
410	Log Crime Scene		679
411	Certificate	685	686
412	Blow Up Diagram	757	764
413	Blow Up Diagram	757	764
414	Blow Up Diagram	757	764
415	Blow Up Diagram	757	764
416	Defendant's Wallet	850	910

EXHIBITS: (Continued)

(There were no defense exhibits introduced.)

COURT'S EXHIBITS

<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
1	Death Certificate	165	
2	Order	455	
3	Charge	1059	

1 MS. CAMPBELL: The State calls State vs. Elbert
2 Wallace, 988, 989, 997, 2009-GS-40-1225, 1228, 1229,
3 1230, 2010-GS-40-1229 and 1230.

4 Your Honor, those charges are burglary in the
5 first, two counts; armed robbery, two counts; assault
6 and battery with intent to kill; murder; burglary
7 second, and petit larceny.

8 THE HONORABLE CLIFTON NEWMAN: All right.
9 Mr. Sutherland?

10 MR. SUTHERLAND: May it please the Court, sir. I
11 do rise in opposition to joinder of these three
12 separate cases together. I have handed the motion and
13 the supporting case law up to Your Honor.

14 The State is alleging that this is a single chain
15 of circumstances because it had occurred at some point
16 between the 30th and the 31st of January.

17 Just because these incidents have happened in
18 that brief time period, it doesn't establish any other
19 connection in that it happened in a brief time period.

20 THE HONORABLE CLIFTON NEWMAN: Well, the
21 indictment says the 31st.

22 MR. SUTHERLAND: Yes. Yes, sir; yes, sir. Well,
23 they actually don't know the time, the time of death,
24 for one of victims.

25 THE HONORABLE CLIFTON NEWMAN: I'm just

1 responding. You said the State argues that it's
2 between the 30th and the 31st?

3 MR. SUTHERLAND: Oh, yes, sir; yes, sir.

4 THE HONORABLE CLIFTON NEWMAN: The indictments
5 list each offense that occurred on the 31st.

6 MR. SUTHERLAND: Yes, sir.

7 THE HONORABLE CLIFTON NEWMAN: All right. Go
8 ahead.

9 MR. SUTHERLAND: Ultimately, in evidentiary terms,
10 they really can't come up with the time of death, sir.

11 It's my sincere belief that these are three
12 distinct incidents. The incident of, say, the
13 Lutheran church burglary, there are no victims present.

14 In the incident involving Ms. Webb's case,
15 they're alleging --- they are sure to allege a beating
16 and a stabbing, but they're alleging an assault, an
17 attack with a deadly weapon and A.B.I.K. in an armed
18 robbery in which, I believe, \$16 was taken.

19 In the case of Ms. Derrick, they are alleging a
20 burglary first degree and a murder. They really ---
21 they're not alleging the use of a weapon. They're
22 alleging the taking of several items, the taking of a
23 car, the taking of some jewelry, of a cell phone, of a
24 purse and a set of keys and other items so that what
25 they are alleging as far as what was taken was

1 distinct from what was alleged to have been taken in
2 the Webb case.

3 The use of a weapon in a Webb case is distinct
4 from what they're able to allege in the Derrick case,
5 and there is no real relation to --- or anything that
6 would tie these two cases together.

7 They would argue that they could use some of the
8 same evidence to try one offense --- or some of the
9 same evidence to try another offense.

10 The bottom line is they had the same
11 investigators investigating these different
12 incidents in that area at the same time. That's
13 basically their link in these three cases.

14 There is D.N.A. evidence that will be introduced
15 in the Webb case that they would seek to introduce in
16 the Webb case that they would seek to introduce in the
17 church --- in the Lutheran church burglary case, but
18 not with respect to --- I said --- I did say the
19 Derrick case.

20 It's so convoluted, I'm sorry. I get confused.
21 There is D.N.A. evidence that they would intend to
22 introduce with respect to the Derrick case and with
23 respect to the church case that would not be --- there
24 is no D.N.A. evidence in the Webb case at the incident
25 location.

1 Further, these disconnected offenses would all
2 serve to prejudice the defense and its propensities,
3 its character evidence. It's the kind of that that ---
4 that's why the 404(b) --- 404(b) motion and part (2)(d)
5 of both the motions, Your Honor, the defense would be
6 prejudiced by having a trial on these distinct cases
7 at the same time.

8 It's a very tenuous connection using the same
9 investigators. They are alleging with respect to the
10 Webb offense but not with respect to the church
11 burglary offense that they are saying he had come to
12 the door early in the morning, and that he had
13 borrowed or begged or however they choose to put it
14 \$15 from Ms. Webb, and her friend Ms. Blizzard was
15 present at that time.

16 THE HONORABLE CLIFTON NEWMAN: At the church?

17 MR. SUTHERLAND: Well, actually this was present
18 at the Webb incident location. I refer to them as the
19 Webb A.B.I.K., the Derrick murder, and the church
20 burglary to try and keep them distinguished with
21 everything that's flying around in my head when I
22 think about it.

23 THE HONORABLE CLIFTON NEWMAN: This --- well,
24 despite whatever may have be flying around your head,
25 remember I'm hearing this for the first time.

1 MR. SUTHERLAND: Oh, absolutely.

2 THE HONORABLE CLIFTON NEWMAN: I have no
3 orientation as to what this matter is about, so I'm
4 trying to follow what's flying in your head, too.

5 MR. SUTHERLAND: I'm sorry, Your Honor.

6 Effectively, their allegations are --- I'm
7 assuming that they're going to argue some sort of
8 pattern of similarity between the Webb case and
9 between the Derrick case, because in the Webb case, it
10 is alleged that he had borrowed \$15 in the morning or
11 early afternoon; that he had come back by at nine
12 o'clock in the evening and had said, "I don't have it
13 yet, but I will bring it to you. I wasn't able to
14 cash my paycheck," or something "I'll bring to it you
15 later," and that he came back and he robbed the
16 incident location around one o'clock in the morning.
17 They don't really ---

18 THE HONORABLE CLIFTON NEWMAN: The incident
19 location being Webb?

20 MR. SUTHERLAND: The Webb incident location.

21 THE HONORABLE CLIFTON NEWMAN: All right.

22 MR. SUTHERLAND: Where they're trying to allege a
23 pattern, where they're trying to introduce hearsay
24 statements that were taken from people: One, Dennis
25 Black on the 9th of February, I believe, gave a

1 statement that Ms. Derrick had told him that someone
2 had come to her house begging for money and that she
3 didn't open the door.

4 You know, this is well, well after the fact.
5 It's clearly hearsay, and the only way that they could
6 offer it would be for the truth of the matter asserted
7 that he actually did go to the door --- that he did go
8 to the door for that purpose.

9 The next hearsay statement is from Ms. Henrietta
10 Sanford. Ms. Sanford, on the evening while they were
11 investigating the case, had approached --- I believe
12 it was either Scott McDonald or --- Investigator
13 McDonald or Investigator Isenhoward and said that she
14 had had a conversation with Ms. Derrick where
15 Ms. Derrick had told her that someone had come to the
16 door.

17 What they then go and do is draw conclusions from
18 that statement, and the statement says plainly that
19 there was no description of who had come to the door;
20 that she never opened the door.

21 They asked Ms. Sanford whether or not she got a
22 description whether the guy was black or white. She
23 said no.

24 The conclusion that they draw is that because
25 this neighborhood, at some point well in advance of

1 this murder and this burglary and murder --- if there
2 was consent --- if there was no consent, but it is
3 well in advance of this, within a week or so, that
4 somehow that falls into the pattern of what they're
5 alleging in the Webb A.B.I.K. case.

6 In both incidents, these are plainly hearsay.
7 They would be offered for the truth of the matter
8 asserted, and they are inadmissible. So effectively,
9 what they ---

10 THE HONORABLE CLIFTON NEWMAN: Are you now
11 arguing evidence, or are you still on your motion?

12 MR. SUTHERLAND: Oh, I'm still ---

13 THE HONORABLE CLIFTON NEWMAN: Or a Bigger motion?

14 MR. SUTHERLAND: As far as what --- from each
15 individual incident what they are alleging brings them
16 into the fold of a single --- or what they could
17 possibly argue brings them into the fold of a single
18 chain of circumstances.

19 THE HONORABLE CLIFTON NEWMAN: It seems as if
20 rather than me attempt to base a ruling on what you're
21 telling me that you think they're going to ---

22 MR. SUTHERLAND: Yes, sir.

23 THE HONORABLE CLIFTON NEWMAN: Let me hear from
24 the State first.

25 MR. SUTHERLAND: Yes, sir.

1 THE HONORABLE CLIFTON NEWMAN: And then come back
2 to you.

3 Yes, Ms. McDuffie.

4 MS. McDUFFIE: Thank you, Your Honor, may it
5 please the Court. Your Honor, the State's theory of
6 the case is that all of these incidents occurred on
7 January 31, 2009, around one o'clock in the morning.

8 The State's contention is that at 1:02 a.m. or
9 shortly right before that, Your Honor, the defendant
10 went to the home of Ms. Carolyn Webb. He knocked on
11 the door. Ms. Webb had loaned him money earlier in
12 the day. He said his car had broken down and he
13 needed money. She gave him money.

14 He then returned earlier that day and said, "I
15 don't have my paycheck yet, but I'll bring you the
16 money." He came back shortly before one o'clock in
17 the morning, Your Honor.

18 When she opened the door, he punched her in the
19 face. He began to beat her, to assault her. He ---
20 she then fought back. She managed to push him down.
21 She then pulled out --- he pulled out a knife and
22 stabbed her two times, Your Honor.

23 At that point, she said, "I'll give you anything
24 you want. Whatever you want, I'll give you." He
25 demanded money from her, which she gave him, and he

1 left the residence, but it was only after she began to
2 fight back that the beating stopped, and he then began
3 to stab her.

4 Your Honor, Richland County was called out to
5 Ms. Webb's house, and they brought a K-9 unit with
6 them. The K-9 unit tracked from Ms. Webb's house,
7 which was at Winyah Drive to Winyah Drive,
8 which is the Christ Lutheran Church, which is on the
9 corner --- or Winyah Drive makes a sharp curve.

10 The church is on the corner of Ms. Webb's house,
11 the house that is next to the church. There are some
12 woods that separate those two incidents --- incident
13 locations.

14 When the K-9 tracked to Winyah Drive, which
15 is the church, officers observed an open door and a
16 busted out window, Your Honor.

17 They were not able to contact the key holder at
18 the time to ascertain whether this was fresh damage or
19 old damage or what was going on.

20 A day later, Your Honor, they were able to get
21 the pastor, Ms. Ann Christiansen to come into the
22 church. There was blood inside of the church, and a
23 box of matches was taken from the church, which proves
24 to be significant, Your Honor. They analyzed the
25 blood from that crime scene, as well.

1 Shortly after --- it's our contention that
2 shortly after Mr. Wallace broke into the church, he
3 then went to the home of Ms. Linda Derrick, again,
4 knocked on the door and asked for money, as he had
5 done previous, on the day before.

6 He somehow makes it into her house and began ---
7 begins to beat her. He beats her causing her death,
8 Your Honor. There is no stabbing involved in that
9 case.

10 Your Honor, our contention is that sometime
11 either during the stabbing of Ms. Webb or when he
12 broke the glass to get into the church, Mr. Wallace
13 cut himself, leaving blood in the church and in the
14 home of Ms. Linda Derrick.

15 Your Honor, investigators began working all three
16 of these crime scenes. He also took Ms. Linda
17 Derrick's car. That car was seen at ten o'clock in
18 the morning on January 31st.

19 So at the most, Your Honor --- and the State does
20 not contend that the timeline is this large --- but at
21 that time most, we're looking at a nine-hour period of
22 time in which these crimes were committed. However,
23 Your Honor, we think the timeline is much smaller than
24 that.

25 Your Honor, after he --- after he takes the car,

1 the matches that were taken from the church are then
2 used in the car to begin to burn the car and the
3 gloves that we believe Mr. Derrick was wearing when
4 these crimes were committed. So in --- I'm sorry,
5 Mr. Wallace.

6 So in Ms. Derrick's car, we find the matches from
7 the church, as well as evidence he beat --- or he
8 tried to destroy evidence in her car. There is also
9 his blood that comes back to his D.N.A. in
10 Ms. Derrick's home, in the church and in the vehicle.

11 Your Honor, when the police --- the police are
12 able to identify Mr. Wallace through Ms. Carolyn Webb
13 and also a photo lineup. They bring Mr. Wallace into
14 police headquarters.

15 His clothing is taken at that time pursuant to
16 the investigation of the assault and battery of
17 Ms. Webb, and on his shoes is the blood of Linda
18 Derrick. So Your Honor, all three of these crime
19 scenes are --- are intertwined.

20 Your Honor, we do believe that they arise out of
21 a single chain of circumstances and can be proven by
22 the same evidence.

23 Your Honor, there are only four witnesses that
24 are distinct to the church and Ms. Webb. The rest of
25 the witnesses all overlap, Your Honor, so this would

1 only require the State to call four extra witnesses:
2 One being Ms. Webb, the key holder at the church, Your
3 Honor, the doctor that treated Ms. Webb, and the
4 friend of Ms. Webb that was present when he came and
5 asked for money at the time of this incident.

6 Further, Your Honor, we believe that these
7 charges are of the same general nature, and finally,
8 that the defense has not shown how the defendant would
9 be prejudiced from trying these four cases together.

10 We believe that we meet the standards for joinder
11 that are adopted by the State of South Carolina and
12 the City of Greenville vs. Champert (phonetic).

13 THE HONORABLE CLIFTON NEWMAN: The City of
14 Greenville, is that the leading case?

15 MS. McDUFFIE: Your Honor, that is the case in
16 which the four factors for joinder are laid out.
17 There have been cases since then that have expounded
18 upon that. Most recently, Your Honor, the State vs.
19 Cutro, the 2005 Cutro opinion, which allowed the State
20 to join the death of three children that occurred over
21 a much more significant period of time than this
22 because those charges were of the same general
23 character.

24 THE HONORABLE CLIFTON NEWMAN: And what is the
25 standard for joinder?

1 MS. McDUFFIE: Your Honor, the standard of
2 joinder is that the state can charge together if they
3 arise out of a single chain of circumstances, can be
4 proven by the same evidence, or of the same general
5 nature.

6 No right of the defendant can be prejudiced.
7 However, it is in Your Honor's discretion.

8 THE HONORABLE CLIFTON NEWMAN: All right. Yes,
9 sir, Mr. Sutherland.

10 MR. SUTHERLAND: If it pleases the Court,
11 obviously, I disagree with their characterization
12 because they used the same ---

13 THE HONORABLE CLIFTON NEWMAN: Their
14 characterization of ---

15 MR. SUTHERLAND: Their characterization of the
16 link between these cases and their characterization of
17 these cases being basically out of the same facts and
18 circumstances provable by the same evidence.

19 It's distinct evidence that they used the same
20 D.N.A. laboratory technicians and scientists to test
21 the D.N.A. from the different locations, but that ---
22 that doesn't make it the same evidence. These are
23 distinct cases.

24 And it's my belief that these would not be
25 admissible under 404(b) Lyle in the trial of the same

1 the case; therefore, these cases should not be joined
2 together.

3 There --- there is no --- as far --- they kind of
4 --- I guess they're not alleging it so I wouldn't
5 argue it, but all of --- all of my arguments are
6 reported, and they're reported in detail with the
7 citation of the various cases which have been provided
8 to the Court, sir, but it is my sincere belief that
9 these cases should not be joined.

10 THE HONORABLE CLIFTON NEWMAN: Well, I know it is
11 your sincere belief that they shouldn't, their sincere
12 belief that they should. So I would ask you, I mean,
13 those two things balance out, so I have to ---

14 MR. SUTHERLAND: Yes, sir. Again, I mean, I just
15 believe that the key is the distinction between the
16 incidents themselves that --- just because they have
17 D.N.A. at a particular location, if they want to try
18 characterize an incident as a D.N.A. case and an
19 assault case, for those purposes and make that sort of
20 comparison, then it doesn't apply to the Lutheran
21 church burglary, but what I'm saying is that if the
22 D.N.A. that is recovered at one place is reviewed by
23 the same technician and the D.N.A. that's recovered at
24 another place is reviewed by the same technician but
25 it's not the same evidence, it's distinct evidence in

1 two separate cases.

2 THE HONORABLE CLIFTON NEWMAN: Well, the issue is
3 the identity of the person who committed the crimes.
4 That's the essence of the case, right?

5 MR. SUTHERLAND: Well, if --- if they are going
6 to --- it's going to depend, obviously, on what's
7 admissible, ultimately, but as far as identity, there
8 is no unique characteristic to each offense.

9 They --- that's where earlier I started to get
10 into where there --- someone is coming and borrowing
11 money. There is --- there is nothing as distinctive
12 from one offense, which is an A.B.I.K., use of a
13 deadly weapon, taking of \$16 and another offense,
14 which is blunt force trauma, the taking of the vehicle,
15 the taking of jewelry, the taking of the cell phone.

16 They are just plain dissimilar, Your Honor, and
17 when they --- with respect to the nine-hour period,
18 they can't say with any certainty which order and what
19 the connection, the temporal connection might be
20 between any of these cases.

21 These are --- while they are in the same
22 neighborhood, they are certainly distinct offenses.
23 If they want to try to prove identity by admitting
24 evidence in a particular case that wouldn't be
25 admissible if you were to try the cases separately ---

1 I do believe I have case law on point of the 404(b)
2 analysis with respect to joinder.

3 If Your Honor will beg the Court's indulgence.

4 (Pause)

5 Let me look very briefly. I have a lot of
6 information here, sir.

7 (Pause)

8 Okay. The case that I handed up is State vs.
9 Jillian, and I believe I have a couple of other
10 citations. In the State vs. Jillian, they admitted
11 the evidence of a couple of burglaries.

12 A guy breaks in and steals a pistol, and then he
13 commits a murder behind another location that he had
14 burglarized.

15 The connection between these cases is, obviously,
16 the taking of the weapon from the first burglary and
17 his having made the admission to another person that
18 he had killed a person behind the location of a second
19 burglary.

20 Those are the facts which are interconnected and
21 which prove the offense at bar. There is no
22 connection between these two incidents other than the
23 allegations of similarities. There is no evidence
24 that was taken. They're not saying a knife was taken
25 from one location and used in another location with

1 respect to that offense for them to be similar enough,
2 for them to be able to identify them.

3 Again, the presence of D.N.A. evidence and the
4 identification of a particular person as having
5 committed a particular offense doesn't give them the
6 right to introduce that offense because they can say
7 that he did this and they don't have the evidence to
8 say that he did that.

9 The connection has to be --- they have to be
10 interwoven to the point where, really, proof of one is
11 proof of another, and that's where in State vs.
12 Jillian why they allowed these burglaries in, because
13 he stole the gun from one place, he took it and he
14 shot a guy behind another place that he burglarized,
15 and he --- and he admitted that. That's just my point
16 with respect to the distinctions, sir.

17 And I do --- I do have a number of other
18 citations in the motion briefly, sir.

19 Oh, okay. In State vs. Beck ---

20 THE HONORABLE CLIFTON NEWMAN: Well, it's kind of
21 hard for me to read it and hear you at the same time
22 so...

23 MR. SUTHERLAND: Absolutely, sir, absolutely.
24 I'm sorry.

25 In State vs. Beck, there was an individual who

1 would call an escort service, and he would call from
2 basically his apartment that he shared with his
3 roommate.

4 He committed these offense, I believe --- yes, he
5 did. He committed these offenses with the same weapon,
6 wearing the same pair of combat boots, and there were
7 descriptions.

8 So he commits one murder of an escort in this
9 fashion, with the same weapon and the same distinctive
10 clothing, and then he commits another. In State vs.
11 Beck, it's decided that still --- that still wasn't
12 enough, if I'm not mistaken, to make the connection to
13 bring those cases together.

14 THE HONORABLE CLIFTON NEWMAN: Over the same
15 period of time, the same sequence of events?

16 MR. SUTHERLAND: I believe it was ---

17 THE HONORABLE CLIFTON NEWMAN: Different days?

18 MR. SUTHERLAND: I believe that it was within a
19 week, sir.

20 THE HONORABLE CLIFTON NEWMAN: Within a week.
21 Well, of course, they can't be the same.

22 MR. SUTHERLAND: But it...

23 Beg the Court's indulgence.

24 (Pause)

25 I don't have it in the motion. I'm going to have

1 to quickly refer to the case.

2 THE HONORABLE CLIFTON NEWMAN: You're talking
3 about the Richland County case, State v. Roy Beck, Jr.?

4 MR. SUTHERLAND: Yes, sir, absolutely.

5 THE HONORABLE CLIFTON NEWMAN: Convicted in
6 Richland County, Thomas W. Cooper, Jr., affirmed, an
7 escort service.

8 (Pause)

9 So that's not on the issue of severance. That's
10 on the issue of admissibility of testimony?

11 MR. SUTHERLAND: Yes, sir. It is on the issue of
12 the 404(b) analysis where one case --- it's --- if you
13 can't admit something under Lyle in a particular case,
14 then you can't join the case together for trial.

15 THE HONORABLE CLIFTON NEWMAN: All right.

16 MR. SUTHERLAND: That's where he ---

17 THE HONORABLE CLIFTON NEWMAN: What part of State
18 v. Beck favors what ever you are now talking about?

19 MR. SUTHERLAND: Well, it would deal with the
20 inadmissibility of the other --- inadmissibility of
21 the other offense.

22 THE HONORABLE CLIFTON NEWMAN: It sounds like
23 everything is admissible.

24 MR. SUTHERLAND: I'm sorry, I'm sorry, Your Honor.
25 I had --- I had confused that with another --- with

1 another case. This is where the crimes were committed
2 within a short period of time, and the --- again, it's
3 just the number of 30-something cases that are in my
4 head presently, sir. This was found admissible in ---

5 THE HONORABLE CLIFTON NEWMAN: I mean, you put
6 30-some cases in your brief, you're saying?

7 MR. SUTHERLAND: I don't actually have ---

8 THE HONORABLE CLIFTON NEWMAN: Just highlight
9 whatever is important to your position, because this
10 one is contrary to your argument.

11 MR. SUTHERLAND: Yes, sir. And I believe the
12 point that I was trying to make by utilizing that case
13 was to point --- was to point out the actual
14 similarities and the location and the stabbing, but
15 if --- if Your Honor would bear with me, I'm sure that
16 I'm correct on that.

17 THE HONORABLE CLIFTON NEWMAN: I'll bear with you.
18 I'll come back to the State and then come back to you
19 ---

20 MR. SUTHERLAND: Yes, Your Honor.

21 THE HONORABLE CLIFTON NEWMAN: --- and hear your
22 argument.

23 Ms. McDuffie.

24 MS. McDUFFIE: Your Honor, we believe we have
25 significantly narrowed what the State intends to prove

1 in this case and what the three incidents, as far as
2 the intent to join.

3 This defendant was also linked to at least half a
4 dozen, and I think maybe ten other burglaries that
5 occurred in a very short time span around these
6 incidents with the same --- same motive, the same
7 chain of circumstances where he would come to the door
8 and ask for money because his car broke down. He just
9 needed a few dollars to get going.

10 Then the people would come back there. Their
11 houses would be burglarized. The State is not
12 intending to introduce any of those --- those crimes.

13 We don't think that they fall within the
14 standards of joinder. We're not intending to log
15 those in our case. However, we do feel like we've
16 narrowed it down to follow the rules of court, and we
17 do think that these charges should be properly joined.

18 THE HONORABLE CLIFTON NEWMAN: And why? Why is
19 it important, from the State's perspective, that these
20 be joined?

21 MS. McDUFFIE: Your Honor, we believe there ---
22 these three crimes are intertwined so that --- proof
23 of one and evidence from one is necessary in order
24 to --- to prove the other two, Your Honor.

25 THE HONORABLE CLIFTON NEWMAN: Such as?

1 MS. McDUFFIE: Such as, Your Honor, the matches
2 taken at the church burglary were then found in ---
3 using to burn evidence in Linda Derrick's car, Your
4 Honor.

5 We believe the defendant was injured and cut
6 himself either during the burglary of Ms. Webb's home
7 or the church, which then caused him to bleed at the
8 church and at the home of Ms. Linda Derrick, leaving
9 D.N.A. evidence there.

10 Further, when this defendant was arrested for the
11 assault and battery with intent to kill, armed robbery
12 and burglary first of Ms. Webb, when his clothes were
13 taken in that case, Linda Derrick's blood was found on
14 the defendant's shoes.

15 Your Honor, we believe that these facts all arise
16 out of a single chain of circumstances and should be
17 joined in this matter.

18 THE HONORABLE CLIFTON NEWMAN: And before I come
19 back to you, Mr. Sutherland ---

20 MR. SUTHERLAND: Yes.

21 THE HONORABLE CLIFTON NEWMAN: --- with respect
22 to the jury panel, are they waiting for us? I think
23 we need to let them go to lunch, don't we?

24 And how many other issues prior to jury selection
25 do we need to talk about?

1 MR. SUTHERLAND: Well, I have a --- just a motion,
2 and the State may agree to this, but with respect to
3 the photos, I request black and white photos, a motion
4 to exclude the autopsy photos and ---

5 THE HONORABLE CLIFTON NEWMAN: That's not
6 relating to jury selection.

7 MR. SUTHERLAND: Oh, not related to jury
8 selection.

9 Yes, sir. This would be the only issue presently,
10 yes, sir.

11 MS.CAMPBELL: The only other one, Your Honor, is
12 possibly a motion for a continuance.

13 THE HONORABLE CLIFTON NEWMAN: All right. So
14 we'll have the --- we need them back at 2:30.

15 THE CLERK: 2:30.

16 THE HONORABLE CLIFTON NEWMAN: The jury panel at
17 2:30.

18 All right. Go ahead.

19 MR. SUTHERLAND: And --- and I'd like to thank
20 the court for your patience.

21 The point that I was ultimately trying to make in
22 citing Beck and Jillian was to distinguish it from
23 this case. They have proximity. They have proximity
24 and location.

25 They have --- they do not have a modus operandi.

1 The --- what they would intend to allege with respect
2 to the Derrick offense is all hearsay, and it's
3 inadmissible.

4 One of the people that they get this from is the
5 last person to see her alive, sir. So there's just
6 nothing connecting these three cases other than the
7 utilization of the same resources to investigate three
8 distinct offenses.

9 They can make the argument about the K-9 track to
10 or the K-9 track from the church, and that would
11 certainly be more reasonable, in any event, than
12 trying to somehow fold the murder into these other two
13 cases which there, they're alleging a connection that
14 they can back up with a K-9 track to the extent that
15 that's reliable.

16 But in those instances, they can't say, you know,
17 whether one happened before the other. They're
18 alleging an extreme of circumstances in a short burst
19 of time, but ultimately, what they concluded is that
20 it's possible that one of these offenses could have
21 happened the next morning, for all that they know.

22 They just don't have the timing on two of the
23 three --- they don't have the timing on two of the
24 three incidents, and they don't have the necessary
25 evidence from one crime tying it to another crime such

1 as an implement, Your Honor.

2 (Pause)

3 THE HONORABLE CLIFTON NEWMAN: Well, it sort of
4 sounds like to me, Mr. Sutherland, that to grant your
5 motion might prevent the State from showing the full
6 context of the crimes and to fully present their
7 evidence.

8 If you're saying that blood from this burglary
9 found in the car and in the home of the deceased, that
10 that evidence should not be admitted in this trial
11 because it would constitute a 404 violation, but in
12 the State's perspective, they're trying to give a
13 picture of what he did on that night and the offenses
14 that he committed, and they're all intertwined with
15 each other where --- your argument, contrary to that
16 --- I'm trying to get a clear picture of what you're
17 telling me.

18 MR. SUTHERLAND: Yes, sir. Well, with respect
19 to --- if they presented the allegations that there is
20 blood from one burglary in --- at the scene of another
21 burglary, that's certainly not the case.

22 What they are speaking about with respect to
23 Ms. Derrick's blood being on his shoe is that after he
24 was taken into custody on February 1st --- on
25 February 1st on the other offense, that's when they

1 took the clothes, and that's when they took the D.N.A.
2 swabs that they later --- that they later on tested
3 the evidence against.

4 There was --- there was no, you know, co-mingling
5 of D.N.A. between incident locations. The D.N.A. ---

6 THE HONORABLE CLIFTON NEWMAN: They may have ---

7 MR. SUTHERLAND: --- at the church is supposed to
8 be his blood, sir.

9 THE HONORABLE CLIFTON NEWMAN: All right. Well,
10 whose blood was in the Webb's house?

11 MS. McDUFFIE: Your Honor, he was --- there was
12 no blood, other than Ms. Webb's, in her home.

13 When he was arrested on the burglary first, armed
14 robbery and assault and battery with intent to kill
15 for the offenses that occurred to Ms. Webb, when he
16 was taken into custody, Ms. Derrick's blood was found
17 on his shoes.

18 THE HONORABLE CLIFTON NEWMAN: Ms. Derrick's
19 blood ---

20 MS. McDUFFIE: Correct.

21 THE HONORABLE CLIFTON NEWMAN: --- was found on
22 his shoes.

23 So when the --- when --- Ms. Webb and Derrick
24 lived in what proximity to each other?

25 MS. McDUFFIE: Your Honor, Ms. Webb lived at

1 Winyah Drive, and Ms. Derrick lived at ---

2 Winyah Drive ---

3 THE HONORABLE CLIFTON NEWMAN: Well ---

4 MS. McDUFFIE: --- and the church was It's
5 all within a block.

6 THE HONORABLE CLIFTON NEWMAN: So they're putting
7 him, pretty much, at the scene or near the scene of
8 Derrick's murder, because Ms. Webb will say that he
9 came and asked her for money and then came back later
10 and punched her and robbed her and did those things,
11 then the bloodhound trails him from her house to the
12 church where the window is broken out, stuff stolen
13 from the church to Ms. Derrick's home, according to
14 the evidence, where they found what, matches or
15 something?

16 MS. McDUFFIE: Your Honor, in Ms. Derrick's home
17 was the defendant's blood, we believe, which was the
18 result of a struggle from Ms. Webb or the breaking of
19 the glass at the church.

20 We found the defendant's blood in Ms. Derrick's
21 home. Her car was taken, and in her car were the
22 matches that were taken from the church, along with
23 the defendant's blood, Your Honor.

24 MR. SUTHERLAND: I'm sorry, Your Honor, matches?
25 I mean, if you've got a charcoal grill, you've got

1 some at home.

2 THE HONORABLE CLIFTON NEWMAN: All right. Well,
3 we're going to take a lunch break soon. I'll have
4 some more time to think about it ---

5 MR. SUTHERLAND: Yes, sir.

6 THE HONORABLE CLIFTON NEWMAN: --- but they're
7 all --- we'll skip that. You all --- unless you have
8 more to say about it, then we'll think about it over
9 lunch.

10 MR. SUTHERLAND: Everything is contained in the
11 motion, sir, and more cogently, I might add.

12 THE HONORABLE CLIFTON NEWMAN: All right. Now,
13 let's hear about the motion for a continuance.

14 MR. SUTHERLAND: The motion to continue is based
15 on this fact, Your Honor: Several days ago, I believe
16 it was last Tuesday, Ms. Campbell had notified me that
17 Dr. Nichols, who is the pathologist in the case, had
18 had a stroke, a TIA, some sort of medical incident,
19 and that he would not be available for trial.

20 She proposed to me --- that they bring an expert
21 in to testify, and I told --- I told her, after some
22 consideration, that I would have to object to that.

23 Basically, the basis of my objection would be
24 just cross-examining an expert's opinion about the
25 work of another person where the --- you know, the

1 methodology or the credibility or any of those sorts
2 of issues that might arise with the underlying work
3 couldn't be fleshed out with the person that was
4 rendering an opinion.

5 I actually do have a ---

6 THE HONORABLE CLIFTON NEWMAN: That's an
7 objection to testimony. You know, I thought you had a
8 motion for a continuance.

9 MR. SUTHERLAND: Oh. Well, the motion to
10 continue is based on the unavailability of the
11 pathologist, and the ---

12 THE HONORABLE CLIFTON NEWMAN: The defense is
13 making a motion for a continuance based on the
14 unavailability of a State's witness, not a defense
15 witness.

16 MR. SUTHERLAND: Of a State's witness with
17 respect to the cause of death in the Derrick murder,
18 yes, sir.

19 THE HONORABLE CLIFTON NEWMAN: Well, it seems as
20 if the State would be making that motion.

21 MR. SUTHERLAND: Well, they intended to offer
22 expert testimony, and it would be my position that I
23 would prefer to cross-examine Dr. Nichols where I
24 could cross-examine about any issues that he might
25 have had or any problems with the procedures or

1 methodology or any historical problems.

2 Just the issue is the underlying credibility at
3 work. I just don't see how an opinion witness would
4 allow me to cross-examine the person who actually
5 performed the autopsy when the person was neither
6 present nor supervising nor anything to that effect.

7 THE HONORABLE CLIFTON NEWMAN: All right. What
8 says the State?

9 MS. CAMPBELL: Your Honor, just briefly, if I can,
10 I think maybe he couched this as a motion for
11 continuance, but it might be more of a motion to
12 suppress our ability to bring in experts to talk about
13 the actual cause of death when the actual pathologist
14 himself is unavailable, and I believe Ms. Simpson
15 could address you as far as our argument on that
16 pretrial issue.

17 THE HONORABLE CLIFTON NEWMAN: All right. Ms.
18 Simpson.

19 MS. SIMPSON: And, Your Honor, I'm familiar with
20 the fact --- I believe, the defense is relying
21 primarily on a recent case that came out, Cummings vs.
22 New Mexico.

23 At the outset, I'll say Dr. Marcus is going to
24 testify essentially based on his review of the records
25 and independent conclusions based on his review of the

1 injuries to Ms. Derrick. That is substantially or
2 significantly distinguished from the Bull Cummings'
3 case, which is the defense's primary grounds.

4 The State would submit that Bull Cummings is not
5 applicable in this case. Essentially, it addresses
6 Crawford violations pertaining to violations of the
7 confrontational clause of the 6th amendment.

8 We don't have that here, because essentially,
9 Crawford is only initiated when there is a testimonial
10 statement within the case. Prior to --- if the
11 confrontation clause it is not implicated, then it
12 becomes an evidentiary matter, which I submit that we
13 have here.

14 Under Crawford, it is said that the State may not
15 offer or introduce a report without offering a live
16 witness competent to testify to the truth of the
17 reports. However, as I said, that's only where the
18 statement is testimonial.

19 Autopsy reports, Your Honor, which is the record
20 that we have in this case with respect to the forensic
21 pathologist have been found to be not testimonial ---
22 or non-testimonial.

23 I provided Your Honor with several cases, some
24 from South Carolina, as well as other jurisdictions,
25 where autopsy reports have routinely been held

1 non-testimonial.

2 Bull Cummings is actually based on the blood
3 alcohol testing and the SLD report, which the court
4 did find was testimonial.

5 In that case --- additionally, Your Honor, the
6 State failed to assert the unavailability of the
7 witness for which it would be substituting a separate
8 expert witness to testify on his behalf.

9 The court also addressed the inadequacy of the
10 testing and the basis of the expert's opinion where he
11 was certified only as to the machine and the
12 procedures. That case did not render an independent
13 opinion.

14 Here Dr. Marcus will be rendering his own opinion
15 based on his own review of the records, as well as his
16 own review of Ms. Derrick's injuries.

17 So, Your Honor, at the outset, Bull Cummings
18 should not apply. Autopsy reports are not testimonial.
19 Additionally, Your Honor, the autopsy report, unlike
20 the other testing or drug analysis, they are not
21 solely for an evidentiary purpose. Their primary
22 purpose is not for criminal proceedings, but rather,
23 to determine the cause of death.

24 Your Honor, additionally, we would be happy ---
25 the coroner is available, as well, and his testimony

1 alone would be enough to establish cause of death.

2 If Your Honor requires us to put him up in
3 addition to Dr. Marcus who is qualified or will be
4 qualified to testify as to his own expert opinion,
5 there is no violation of the confrontational clause
6 through this, and our burden of proof is met, and
7 there is --- we actually intend to call the coroner in
8 this case.

9 THE HONORABLE CLIFTON NEWMAN: All right.
10 Mr. Sutherland.

11 MR. SUTHERLAND: May I approach, Your Honor?

12 THE HONORABLE CLIFTON NEWMAN: Yes.

13 MR. SUTHERLAND: She mentioned the motion to
14 exclude. It is, sir, based on the --- based on the
15 reasoning and the trend in the confrontational clause
16 over the past several years.

17 Any of the conclusions that Dr. Nichols might
18 have reached are his own conclusions, and by mention
19 of action, those are hearsay. To say that a
20 pathologist's report, an autopsy report in a murder
21 case, is not testimonial in nature is astounding to me,
22 sir.

23 I mean, he is one of --- he is board certified in
24 forensic pathology, which is a law enforcement
25 investigation of suspicious deaths and maladies and so

1 forth.

2 I believe where Bull Cumming might come in handy
3 with respect to establishing whether or not the report
4 is testimonial is there --- Justice Ginsburg does
5 discuss, you know, the issue of the nature of these
6 various reports.

7 There was an argument upstate in Bull Cumming vs.
8 New Mexico that the certification of the blood alcohol
9 content or the BAC analysis was just a routine report
10 potentially for medical purposes or something to that
11 effect, and the idea is what's really reasonable and
12 what's logical.

13 It's not reasonable. It's not logical to say
14 that a pathologist's report and a pathologist's
15 findings in a case where an individual citizen is
16 accused of murder is not testimonial.

17 It's incredible. It's incredible to me, sir.
18 There is no business record exception or anything.
19 It's not for the primary purpose of the thing. It's
20 to determine the cause of death under suspicious
21 circumstances, sir.

22 THE HONORABLE CLIFTON NEWMAN: Well, just looking
23 at State v. Cutro, it says evidence reports are not
24 hearsay under Rule 803. Subsection eight of this rule
25 excepts hearsay, public records and reports containing

1 matters, there is a duty to report.

2 Autopsies are required in cases of SIDS if law
3 enforcement deems it necessary. That's the first
4 statute. Additionally, subsection nine of Rule 803
5 specifically exempts from hearsay the reports of vital
6 statistics, including the reports of deaths.

7 If the report --- an error is made to a public
8 official pursuant to the requirements of law, autopsy
9 reports are required to be kept by the medical
10 examiner's office. Accordingly, an autopsy report is
11 not inadmissible hearsay.

12 I'm just responding to one of the --- one thing
13 that you said that's incredible.

14 MR. SUTHERLAND: Yes, sir, and I do believe that
15 that issue is addressed by Bull Cumming vs. New Mexico
16 where a similar argument and a similar hearsay
17 exception argument was also made with respect to the
18 BAC ---

19 THE HONORABLE CLIFTON NEWMAN: Did Bull Cumming
20 concern an autopsy report? I thought it was a
21 breathalyzer or breath test of some sort.

22 MR. SUTHERLAND: Well, it is indeed, sir, but I
23 guess the position of the defense is that if there is
24 a right to confrontation with respect to findings in a
25 DUI case, there is certainly a right to confrontation

1 with respect to findings in a murder case.

2 THE HONORABLE CLIFTON NEWMAN: So now we've gone
3 from a motion to continue based on what you think the
4 State is going to do, to a New Mexico case involving
5 breath tests that you're extrapolating to apply the
6 principle to say that an autopsy report --- or the
7 Supreme Court's --- talking about the Supreme Court's
8 opinion is not good law.

9 MR. SUTHERLAND: Well, it's my belief that Bull
10 Cumming would overcome that, sir.

11 THE HONORABLE CLIFTON NEWMAN: All right. Well,
12 maybe yes, maybe no. I don't know.

13 MR. SUTHERLAND: Yes.

14 THE HONORABLE CLIFTON NEWMAN: But I'm dealing
15 with your motion for a continuance.

16 MR. SUTHERLAND: Yes, sir.

17 THE HONORABLE CLIFTON NEWMAN: And you've jumped
18 from that to handing me a motion to exclude testimony.

19 MR. SUTHERLAND: And I --- and I apologize for
20 that, Your Honor. It sort of slid in that direction.

21 THE HONORABLE CLIFTON NEWMAN: And this is not
22 the time to try to make those judgments, regarding
23 whether the doctor's testimony is admissible or
24 inadmissible if I'm considering whether or not at 2:30
25 we're going to pick a jury and continue the case.

1 You know, I'm sure you --- maybe you ---
2 Dr. Nichols is someone you'd like to cross-examine, I
3 don't know. It seems --- he had a stroke. He can't
4 be here, so the question is if the case is to be
5 continued --- if it's to be continued, the State is
6 not seeking a continuance.

7 I'm not giving any kind of advisory or
8 preliminary ruling on the extent to which someone else
9 can testify, another expert can testify. We have to
10 cross that bridge when we get to it, but I'm denying
11 the motion to continue the case.

12 MR. SUTHERLAND: Thank you, Your Honor.

13 THE HONORABLE CLIFTON NEWMAN: All right. What
14 else do we have before we leave for lunch?

15 MS. CAMPBELL: Your Honor, the only other thing
16 we need to take up at some point, the memo when we get
17 back from lunch, he handed up a rather lengthy voir
18 dire.

19 THE HONORABLE CLIFTON NEWMAN: All right.

20 MR. SUTHERLAND: Oh, I e-mailed that to y'all.

21 THE HONORABLE CLIFTON NEWMAN: They haven't ---
22 she hasn't ---

23 MS. CAMPBELL: I haven't seen it. I'm just
24 saying we need address it at some point.

25 THE HONORABLE CLIFTON NEWMAN: She wants to talk

1 about it. Go ahead.

2 Voir dire, you object to some of the voir dire
3 questions?

4 MS. CAMPBELL: Your Honor, more than anything, I
5 don't object to your general addressing these issues
6 as far as --- but as far as to the length of the form
7 in which he's done it. I believe all of this is part
8 of your general...

9 THE HONORABLE CLIFTON NEWMAN: Yeah, I don't
10 generally use a request as to format that I follow
11 line by line. I use it for pretty much the subject
12 matter and the context.

13 MS. CAMPBELL: I don't think we have any problem
14 with that, other than when he asked if anyone has been
15 employed by the Solicitor's Office, we would ask that
16 it be made reciprocal Public Defenders and with
17 defense attorneys.

18 THE HONORABLE CLIFTON NEWMAN: All right.

19 MS. CAMPBELL: And I think those may have be
20 included in the ones we submitted, Your Honor.

21 THE HONORABLE CLIFTON NEWMAN: All right.

22 Any objection to any of the State's requests?

23 MR. SUTHERLAND: I don't --- I have briefly
24 thumbed through them. I didn't see any problems that
25 I had with them.

1 THE HONORABLE CLIFTON NEWMAN: All right. Well,
2 if you see any over lunch, we'll --- just let me know
3 before we get to it.

4 MR. SUTHERLAND: Yes, sir.

5 THE HONORABLE CLIFTON NEWMAN: We're going break
6 for lunch and be back at 2:30.

7 MS. CAMPBELL: Thank you, Your Honor.

8 MR. SUTHERLAND: Thank you, Your Honor.

9 THE HONORABLE CLIFTON NEWMAN: All right.

10 (WHEREUPON, a lunch break was taken.)

11 THE HONORABLE CLIFTON NEWMAN: All right. On the
12 issue of the motion for severance, the rule is that
13 the trial judge has the discretion for separate
14 charges to be tried together over the defense's
15 objection where the offenses charged are of the same
16 general nature involving connected transactions
17 closely related in kind, place, and character.

18 Based on what has been represented to me in this
19 case, I find that the matters that would be subject to
20 this joint trial are related in kind, place, and
21 character involving the closely connected transaction
22 of offenses in that the defense has failed to show
23 that the defendant's right to a fair trial would be
24 prejudiced by having a joint trial on all of these
25 charges, these various indictments, that is.

1 Although the matters that are closely related in
2 kind, place, and character can be tried together, the
3 court nevertheless should not join them in the same
4 trial when the multiplication of the charges would
5 confound the defendant's --- the defendant in his
6 defense or prejudice him or cause the jury to be ---
7 the attention of the jury to be distracted.

8 I've considered all of the factors and find that
9 the defense has failed to show any prejudice that
10 would ensue from a joint trial, and I deny the motions
11 for severance.

12 MR. SUTHERLAND: Thank you, sir.

13 THE HONORABLE CLIFTON NEWMAN: All right. So
14 we're ready for the jury panel, I think.

15 MR. SUTHERLAND: I'm sorry, Your Honor, if I may?

16 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

17 MR. SUTHERLAND: With respect to the voir dire
18 issue that came up about the particularity of the
19 questions that I had submitted, the reason for it was
20 pretty straightforward.

21 There was just a story in the newspaper back on
22 May 9th ---

23 THE HONORABLE CLIFTON NEWMAN: Uh-huh.

24 MR. SUTHERLAND: --- where two of the witnesses
25 in this case went on the record and commented about

1 this case, so I have particular concerns about the
2 jury's exposure.

3 There was a lot of attention paid in the
4 beginning, but that would be the reason.

5 THE HONORABLE CLIFTON NEWMAN: I'll use what
6 you've submitted as a guide, but I'm not wedded to
7 your words. I'm just --- I'll --- the substance of
8 what you want, we'll get into, but not necessarily
9 if --- in the --- using the words in the manner in
10 which you requested.

11 MR. SUTHERLAND: Thank you, Your Honor.

12 THE HONORABLE CLIFTON NEWMAN: Because these are
13 not --- these are areas that the court typically
14 inquires of the jury. There's nothing --- nothing new
15 that I could see.

16 MR. SUTHERLAND: Thank you.

17 THE HONORABLE CLIFTON NEWMAN: But if there's
18 anything that I do not address, you can get an
19 opportunity to point it out so that I can address it.

20 MR. SUTHERLAND: Thank you, Your Honor.

21 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

22 THE COURT: Ms. Whitaker.

23 PROSPECTIVE JUROR: Yes.

24 THE HONORABLE CLIFTON NEWMAN: If you'll come
25 forward. If you'll just stand over there, that will

1 be fine.

2 PROSPECTIVE JUROR: All right.

3 THE HONORABLE CLIFTON NEWMAN: Ms. Whitaker, you
4 were here during jury qualifications this morning?

5 PROSPECTIVE JUROR: Yes. I didn't have a medical
6 statement, so I didn't want to say anything.

7 THE HONORABLE CLIFTON NEWMAN: I mean, did you
8 have a --- I mean, the problem that you now say you
9 have, this --- did you have it this morning, or is it
10 something that's just ---

11 PROSPECTIVE JUROR: Yes. I have an anxiety
12 disorder, so I have a really bad time with driving, so
13 bad I had to get my neighbor to come take me today.
14 And I didn't want to say anything about it until I got
15 it during the lunch break --- my doctor note from ---
16 my doctor gave it to me and I brought it.

17 THE HONORABLE CLIFTON NEWMAN: Yeah. This note
18 from the doctor doesn't really say anything specific.
19 It just says that you're currently under treatment for
20 a condition that, in his opinion, would prevent you
21 from participating on a jury at this point in time
22 without specifying what he's talking about. So ---

23 PROSPECTIVE JUROR: I mean, it's --- you can feel
24 free to --- do you want to call him? I'm not sure.

25 THE HONORABLE CLIFTON NEWMAN: No. I'm not going

1 to call him. It's --- I guess that's why you got the
2 note.

3 PROSPECTIVE JUROR: Yes.

4 THE HONORABLE CLIFTON NEWMAN: The note doesn't
5 tell me anything. That's why I asked to speak to you.

6 PROSPECTIVE JUROR: Oh, okay. How much detail do
7 you want me to go into?

8 THE HONORABLE CLIFTON NEWMAN: Well, to let me
9 know why you think you're physically or mentally
10 incapable of serving on a jury.

11 PROSPECTIVE JUROR: It's just that --- I just
12 started treatment for anxiety. I have a hard time
13 driving and I have panic attacks. So I --- right now
14 my sister --- I go to work, but she drives me because
15 we go to the same place. Right now I can't take
16 myself anywhere until I get treated and work through
17 this.

18 THE HONORABLE CLIFTON NEWMAN: And when do you
19 think you'll be in shape enough to be on a jury?

20 PROSPECTIVE JUROR: Hopefully --- hopefully soon.
21 I'm starting therapy soon, but I'm not sure right now.

22 THE HONORABLE CLIFTON NEWMAN: So maybe in six
23 months.

24 PROSPECTIVE JUROR: Yes.

25 THE HONORABLE CLIFTON NEWMAN: Definitely in six

1 months?

2 PROSPECTIVE JUROR: Yes.

3 THE HONORABLE CLIFTON NEWMAN: You hope in six
4 months.

5 PROSPECTIVE JUROR: I hope so.

6 THE COURT: For sure, all right. All right.
7 Well, we'll transfer you to come back ---

8 PROSPECTIVE JUROR: All right.

9 THE HONORABLE CLIFTON NEWMAN: And send you
10 another notice maybe after six months or so.

11 PROSPECTIVE JUROR: Okay. Sounds good. Thank
12 you very much.

13 THE HONORABLE CLIFTON NEWMAN: Thank you very
14 much.

15 PROSPECTIVE JUROR: Uh-huh.

16 (WHEREUPON, the jury panel entered the courtroom.)

17 (Pause)

18 THE BAILIFF: The jury panel is all present, Your
19 Honor.

20 THE HONORABLE CLIFTON NEWMAN: All right. Thank
21 you, sir.

22 All right. Madam Solicitor, you may call the
23 case.

24 MS. CAMPBELL: May it please the Court, Your
25 Honor. The State calls the State vs. Elbert Wallace.

1 He is before you today. Beg the Court's indulgence.

2 (Pause)

3 With two counts of burglary in the first degree;
4 two counts of armed robbery; one count of assault and
5 battery with intent to kill; one count of murder; one
6 count of burglary in the second degree, and one count
7 of petit larceny.

8 THE HONORABLE CLIFTON NEWMAN: All right. Ladies
9 and gentlemen, the State has called for trial the case
10 of the State vs. Elbert Wallace.

11 This case comes into court as a result of an
12 indictment by the grand jury of Richland County
13 charging Mr. Wallace with the offense of murder,
14 assault and battery with intent to kill, two counts of
15 armed robbery, two counts of burglary first degree,
16 one count of burglary second degree, and one count of
17 petit larceny.

18 He has pled not guilty to each and every one of
19 these charges. Under the law, he is presumed to be
20 not guilty of each and every one of the charges.

21 He cannot be found guilty unless the State
22 presents evidence which convinces a jury of his guilt
23 beyond a reasonable doubt, and that is the purpose of
24 a trial, to determine whether the State can meet that
25 burden of proof.

1 Mr. Elbert Wallace, if you will stand and face
2 the jury panel, along with counsel.

3 Counsel, if you'll introduce yourself to the jury
4 panel, please.

5 MR. SUTHERLAND: Ladies and gentlemen, my name is
6 Tivis Sutherland, and I am privileged to represent
7 Mr. Wallace.

8 THE HONORABLE CLIFTON NEWMAN: All right. Thank
9 you, sir.

10 The State is represented through the 5th Circuit
11 Solicitor's Office, and Ms. Campbell, if you'll
12 introduce yourself and other solicitors or anyone else
13 you would like to, please.

14 MS. CAMPBELL: I'm Luck Campbell. I'm with the
15 5th Circuit Solicitor's Office. I'm an assistant
16 solicitor.

17 MS. SIMPSON: My name is Nicole Simpson. I'm
18 also an Assistant Solicitor with the 5th Circuit
19 Solicitor's Office.

20 MS. McDUFFIE: My name is Joanna McDuffie, and
21 I'm an Assistant Solicitor with the 5th Circuit
22 Solicitor's Office.

23 THE HONORABLE CLIFTON NEWMAN: If any member of
24 the jury panel is a friend, relative or associate of
25 any of the lawyers involved in this case, or if you

1 know the defendant in this case, please stand.

2 (There was no response.)

3 If you are a friend, relative or associate of the
4 defendant, please stand, or if you know him?

5 (There was no response.)

6 And the offenses alleged in this indictment
7 occurred when and where, Solicitor?

8 MS. McDUFFIE: Your Honor, these offenses
9 occurred on January 31st, 2009, on Winyah Drive in
10 Richland County.

11 THE HONORABLE CLIFTON NEWMAN: That's in the
12 Denny Terrace?

13 MS. McDUFFIE: That's in the Denny Terrace
14 neighborhood, Your Honor.

15 THE HONORABLE CLIFTON NEWMAN: All right. Ladies
16 and gentlemen, the offenses alleged in this case are
17 alleged to have occurred on January 31st, 2009, on
18 Winyah Drive in the Denny Terrace area of Richland
19 County in the area off of North Main Street, I believe,
20 near Monticello --- running from North Main to
21 Monticello Road involving the alleged victims,
22 Ms. Linda Derrick, alleged to have been murdered and
23 to have been a victim of burglary first degree and
24 armed robbery, Ms. Carolyn Webb.

25 If Ms. Webb is here, please stand.

1 (Complies)

2 That's Carolyn Webb standing, alleged to have
3 been the victim of the assault and battery with intent
4 to kill and armed robbery and burglary, first degree.

5 Thank you, Ms. Webb.

6 And also the Christ Lutheran Church. If anyone
7 is here from that church, please stand, thank you.
8 Alleged to have been the victim of a burglary second
9 degree and petit larceny.

10 If any member of the jury panel is a friend,
11 relative, associate or if you are an acquaintance with
12 any of the alleged victims in this case, please stand.
13 Or if you know them, any of them, or if you are
14 associated with, or have any affiliation with the
15 church, the Christ Lutheran church. If so, please
16 stand.

17 (There was no response.)

18 No one is standing.

19 If you have heard anything about this case, if
20 you have heard anything about this case, please stand.

21 (There was no response.)

22 Now, ladies and gentlemen, I want to remind you,
23 as I mentioned to you during jury qualifications
24 earlier this morning that if any of the questions that
25 are posed to the jury panel, if any of them apply to

1 you, if you have any thought in your mind as to
2 whether or not they apply to you, some question in
3 your mind as to whether any of the questions apply to
4 you, please let us know.

5 The time to make that known is this time, not
6 after you are put on a jury, but during the jury
7 selection process so that the court and the attorneys
8 will have the benefit of that information.

9 Under your oath, you are required to disclose any
10 information that --- in response --- that you should
11 disclose in response to any questions that I might
12 want to ask you or that Judge McDonald asks you.

13 Now, has any member of the jury panel ever been
14 the victim of a crime of violence? If you have ever
15 been the victim of a violent crime --- violent crimes
16 are generally classified as being rape, burglary, or
17 assault of a serious nature. If you have been a
18 victim of any of those particular crimes, or if any
19 member of your immediate family has ever been the
20 victim of a violent crime, please stand.

21 All right. Tell us who you are and the
22 particular crime that you're referencing.

23 PROSPECTIVE JUROR: My name is Elizabeth Moore,
24 and my brother got killed in 1986.

25 THE HONORABLE CLIFTON NEWMAN: All right. And do

1 you believe that fact would affect your ability to be
2 a fair and impartial juror in this case?

3 PROSPECTIVE JUROR: Yes.

4 THE HONORABLE CLIFTON NEWMAN: All right. Your
5 last name again is?

6 PROSPECTIVE JUROR: Moore.

7 THE HONORABLE CLIFTON NEWMAN: Elizabeth Moore.

8 PROSPECTIVE JUROR: Uh-huh.

9 THE HONORABLE CLIFTON NEWMAN: All right. Ms.
10 Moore, we will not consider you as a juror in this
11 case, but stay with us. If you'll be seated. Thank
12 you.

13 (Black female)

14 Yes, ma'am.

15 PROSPECTIVE JUROR: Danielle Adams. You have it
16 as Danielle Koon. I was a teller, and I was robbed.

17 THE HONORABLE CLIFTON NEWMAN: All right. Would
18 you say most of that again, please?

19 PROSPECTIVE JUROR: Danielle Koon is the name you
20 have listed, but it's Danielle Adams.

21 THE HONORABLE CLIFTON NEWMAN: Actually, ladies
22 and gentlemen, it suits --- it suits me fine if you
23 will just give us your juror number as opposed to your
24 name and all of that. That's fine, as well.

25 And you're juror number?

1 PROSPECTIVE JUROR: 152.

2 THE HONORABLE CLIFTON NEWMAN: And you said you
3 were robbed?

4 PROSPECTIVE JUROR: Robbed at gunpoint. I was a
5 teller.

6 THE HONORABLE CLIFTON NEWMAN: At gunpoint as a
7 teller. And do you believe that fact would affect
8 your ability to be a fair and impartial juror if you
9 were selected to serve in this case?

10 PROSPECTIVE JUROR: I don't know.

11 THE HONORABLE CLIFTON NEWMAN: You don't know?

12 PROSPECTIVE JUROR: I don't know.

13 THE HONORABLE CLIFTON NEWMAN: Do you believe
14 that you could set aside the fact of what occurred to
15 you and decide this case solely based on the evidence
16 presented in this case, relating to this case, and
17 based on the law as I will instruct you to apply to
18 the evidence in this case?

19 PROSPECTIVE JUROR: Yes.

20 THE HONORABLE CLIFTON NEWMAN: Pardon me? You
21 would be able to do that?

22 PROSPECTIVE JUROR: Yes.

23 THE HONORABLE CLIFTON NEWMAN: Thank you very
24 much. The juror is qualified.

25 Yes, ma'am.

1 PROSPECTIVE JUROR: 250, Marie Stewart.

2 THE HONORABLE CLIFTON NEWMAN: And Ms. Stewart,
3 you stand for what reason?

4 PROSPECTIVE JUROR: Yes. My sister was killed 15
5 years ago.

6 THE HONORABLE CLIFTON NEWMAN: And do you believe
7 that fact would affect your ability to be a fair and
8 impartial juror in this case?

9 PROSPECTIVE JUROR: No.

10 THE HONORABLE CLIFTON NEWMAN: All right. Thank
11 you, Ms. Stewart.

12 Yes, ma'am?

13 PROSPECTIVE JUROR: Juror number 12. My
14 apartment was burglarized in college while I was there,
15 but I was not hurt.

16 THE HONORABLE CLIFTON NEWMAN: And do you believe
17 that fact would affect your ability to be fair and
18 impartial in this case?

19 PROSPECTIVE JUROR: No.

20 THE COURT: All right. Thank you. The jurors
21 are qualified.

22 If you or any member of your immediate family has
23 ever been charged with or convicted of a crime of
24 violence, please stand.

25 Yes, ma'am.

1 PROSPECTIVE JUROR: My son has been charged for
2 attempted armed robbery in 2008, and he's serving a
3 term of four years.

4 THE HONORABLE CLIFTON NEWMAN: All right. And
5 your juror number, please?

6 PROSPECTIVE JUROR: Seventy-two.

7 THE HONORABLE CLIFTON NEWMAN: Seventy-two, ma'am.
8 Do you believe that fact would affect your ability to
9 be fair and impartial in this case?

10 (Juror indicates in the negative.)

11 THE HONORABLE CLIFTON NEWMAN: Thank you.

12 Yes, sir.

13 PROSPECTIVE JUROR: Juror 229. My brother-in-law
14 is awaiting trial on a murder charge.

15 THE HONORABLE CLIFTON NEWMAN: All right. And is
16 that in this county or someplace else?

17 PROSPECTIVE JUROR: Yes.

18 THE HONORABLE CLIFTON NEWMAN: In Richland County?

19 PROSPECTIVE JUROR: Yes, sir.

20 THE HONORABLE CLIFTON NEWMAN: And do you believe
21 that fact would affect your ability to be fair and
22 impartial in this case?

23 PROSPECTIVE JUROR: No, sir.

24 THE HONORABLE CLIFTON NEWMAN: All right. Thank
25 you, sir. Your juror number again, please?

1 PROSPECTIVE JUROR: 229.

2 THE COURT: 229.

3 Yes, sir?

4 PROSPECTIVE JUROR: I am juror number 263. My
5 cousin is in the process of being convicted of two ---
6 two attempted murders, two counts of attempted murder.

7 THE HONORABLE CLIFTON NEWMAN: Your cousin is
8 being prosecuted for two counts of attempted murder?

9 PROSPECTIVE JUROR: In the process of going to
10 court.

11 THE HONORABLE CLIFTON NEWMAN: In the process of
12 going to court. Do you believe that would affect your
13 ability to be fair and impartial in this case?

14 PROSPECTIVE JUROR: No, sir.

15 THE HONORABLE CLIFTON NEWMAN: All right. Thank
16 you, sir.

17 Has any member of the jury panel or any member of
18 your immediate family --- I think I've asked you this,
19 but related by blood or connected by marriage to any
20 employee of the law office of Tivis Sutherland, the
21 defense counsel, or anyone in the 5th Circuit
22 Solicitor's Office? Not just the lawyers involved in
23 the prosecution of this case, but with any other
24 lawyers or any other employees of the Solicitor's
25 Office of the 5th Circuit? If so, please stand.

1 (There was no response.)

2 Does any member of the jury panel or any member
3 of your immediate family belong to or contribute to
4 any organization that supports victim's rights, such
5 as Mothers Against Drunk Driving, et cetera,
6 prisoners' rights, such as the Innocence Project, ACLU
7 or any similar organization? If so, please stand.

8 Yes, sir.

9 PROSPECTIVE JUROR: I do support the ACLU.

10 THE HONORABLE CLIFTON NEWMAN: And tell us your
11 juror number, please.

12 PROSPECTIVE JUROR: I'm sorry, 179.

13 THE HONORABLE CLIFTON NEWMAN: 179. All right.
14 You said you support the ACLU?

15 PROSPECTIVE JUROR: Yes.

16 THE HONORABLE CLIFTON NEWMAN: That's the
17 Americans Civil Liberties Union?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE HONORABLE CLIFTON NEWMAN: All right. And
20 would that fact affect your ability to be a fair and
21 impartial juror in this case?

22 PROSPECTIVE JUROR: No, sir.

23 THE HONORABLE CLIFTON NEWMAN: All right. Thank
24 you, sir.

25 The following people may testify in this case.

1 If you're here, I need you to stand: Shawn Gunderson.
2 You might want to be looking in the back, jurors that
3 is. Grover Derrick, Richard Gates, Henrietta Sanford,
4 Carolyn Webb. You met Ms. Webb already. April
5 Preston; Vernell Wallace, Denise Gunderson, Steve
6 Pulliam. You're Steve Pulliam?

7 THE WITNESS: No. I'm Gunderson.

8 THE HONORABLE CLIFTON NEWMAN: All right. Denise
9 Gunderson. Modell Blizzard. Laura Huger or Hugee,
10 Dorothy Warth, Nance Price, Phyllis Campbell, Dennis
11 Lail, Mrs. Lail, Mary Glenda Watts, Laverne Newman,
12 Teriaca Wallace, Lorraine Wallace, Debbie Wallace,
13 Jason Wheeler, Edna Wheeler, Pastor Ann Christianson,
14 Dennis Black, Bonnie Bonner, Shirley Durell, Elsie
15 Bosov, Nicholas Sergeant, Damon Scott, Lucy Ballentine,
16 9-1-1 Custodian of Records, Wachovia's Custodian of
17 Records, Dr. Clay Nichols, Jacob Bagley, Carolina
18 Commercial Maintenance, Quinton House, First Cash Pawn,
19 April Haltiwanger, Scott Leeds, Postal Service, Jody
20 Gray of Bi-Lo, Cedric Byers, Alltel's Custodian of
21 Records, the Custodian of Records for the S.C. State
22 Credit Union; Dr. William H. Richardson, Palmetto
23 Richland Memorial; Leonard Bradley; Gary Watts, the
24 Coroner; Leonard Bradley is with the Coroner's Office;
25 Custodian of Records from Professional Pathology

1 Service; Dr. Bradley Marcus from Palmetto Health
2 Richland; Darwin Canon from the Richland EMS; Dora
3 Haselden EMS; Lieutenant Anna Elsey from the Sheriff's
4 Department; as is Sergeant Stan Richards from the
5 Sheriff's Department; Timothy Harold Lee --- or
6 Timothy Lee; is that correct?

7 MS. McDUFFIE: That's correct.

8 THE HONORABLE CLIFTON NEWMAN: All right.
9 Investigator Harold Bouknight of the Sheriff's
10 Department; Trish Odom from the Sheriff's Department;
11 John Barron of the Sheriff's Department; Rachael Grant,
12 Sheriff's Department; David Fairbanks, Sheriff's
13 Department; Deputy Jay Shuler, Sheriff's Department;
14 Sergeant Don Robinson, Sheriff's Department; Brian
15 Gwyn, Sheriff's Department; Deputy Miller, Deputy
16 Jernigan from the Sheriff's Department; Investigator
17 Mann with the Sheriff's Department, Bill Mann; Cassidy
18 Radford; Investigator Travis Holdorf, Sheriff's
19 Department; Investigator Tommy Croxton, Sheriff's
20 Department; Deputy Jimmy Walker; Kevin Isenhoward with
21 the Sheriff's Department; Major Stan Smith from the
22 Sheriff's Department; Lieutenant Scott McDonald,
23 Sheriff's Department; Investigator Potash with the
24 Sheriff's Department; Michael Beeler, Sheriff's
25 Department --- Investigator; Deputy Chris Alexander

1 from the Sheriff's Department; Deputy Gerard Cucurullo,
2 Sheriff's Department; Robert Scott, Sheriff's
3 Department; Investigator Yvonne Woods, Sheriff's
4 Department; William Cedarstaff, Sheriff's Department;
5 Christine Barrickman of the Sheriff's Department;
6 Curtis Burnett; Tena Goff; Jeremy Weis; the first two
7 from the Sheriff's Department and last, Jeremy Weis,
8 is from SLED.

9 If any jurors, if you know any of these folks,
10 friend, relative, associate. This is jurors only, if
11 you know any of these people, if you're a friend,
12 relative or associate of any of them, please stand.
13 Let us know about it.

14 Yes, sir. Are you on the jury panel, sir?

15 SPECTATOR: No, sir.

16 THE HONORABLE CLIFTON NEWMAN: All right. It
17 doesn't --- do you need to speak to somebody?

18 SPECTATOR: No, sir, but I'd like to just tell
19 you ---

20 THE HONORABLE CLIFTON NEWMAN: No. Just a ---
21 just hold a moment, sir.

22 If you'll see what he --- what he wants.

23 (Pause)

24 All right. Ladies and gentlemen, has any
25 potential juror seen, heard or read anything about the

1 facts of this case? Anyone. If you think you may
2 have, please stand.

3 (There was no response.)

4 THE HONORABLE CLIFTON NEWMAN: All right. No one
5 is standing.

6 If you have formed an opinion at this moment in
7 time as to the guilt or innocence of the defendant,
8 please stand. If you have formed an opinion at this
9 moment in time concerning the guilt or the innocence
10 of the defendant, please stand.

11 (There was no response.)

12 If any member of the jury panel has in the past
13 or is currently employed by anyone who works in law
14 enforcement on the State, local or federal level,
15 including any police officers, law enforcement
16 officers or prosecutor's officers, if so, please stand,
17 if you have any relatives in law enforcement.

18 All right. Yes, ma'am.

19 PROSPECTIVE JUROR: My uncle works for the police.

20 THE HONORABLE CLIFTON NEWMAN: Which?

21 PROSPECTIVE JUROR: My uncle is State Transport
22 Police.

23 THE HONORABLE CLIFTON NEWMAN: State Transport
24 Police, and your juror number please?

25 PROSPECTIVE JUROR: 314.

1 THE HONORABLE CLIFTON NEWMAN: 314. All right.

2 Thank you.

3 Yes, sir.

4 PROSPECTIVE JUROR: Juror 229. My son is a
5 police officer for the City of Columbia.

6 THE HONORABLE CLIFTON NEWMAN: All right. Thank
7 you, sir.

8 PROSPECTIVE JUROR: Juror number 19. My brother
9 is an investigator for Richland County Sheriff's
10 Department.

11 THE HONORABLE CLIFTON NEWMAN: All right. And
12 what's his name?

13 PROSPECTIVE JUROR: Tony Bixler.

14 THE HONORABLE CLIFTON NEWMAN: All right. Thank
15 you.

16 Yes, sir.

17 PROSPECTIVE JUROR: Juror 78. Back in '70, for
18 five years, I was a police officer in Tennessee and
19 North Carolina.

20 THE HONORABLE CLIFTON NEWMAN: All right. Thank
21 you, sir.

22 Okay. Based on anything that you have heard
23 about the allegations in this case, the charges
24 against the defendant, all of which he has pled not
25 guilty to, if there is anything that you heard at this

1 point that would affect your ability or impair your
2 ability to be a fair and unbiased juror, if so, please
3 stand.

4 All right. And, ma'am, tell us your name please.

5 PROSPECTIVE JUROR: Flo Green, Juror 109.

6 THE COURT: All right. If you'll come forward,
7 please, and the lady behind you, as well. I mean not
8 behind you, but in front of you, and counsel can come
9 forward as well.

10 Mr. Bailiff.

11 (The following was heard out of the juror's
12 hearing.)

13 THE BAILIFF: That man right there was saying
14 that someone's name was called, and one of the people
15 that you called on the list, is his son.

16 THE HONORABLE CLIFTON NEWMAN: What's the son?

17 THE BAILIFF: She has it on the ---

18 THE HONORABLE CLIFTON NEWMAN: It doesn't matter.
19 You know, that's of no consequence.

20 THE BAILIFF: Okay.

21 THE HONORABLE CLIFTON NEWMAN: You know what I
22 mean.

23 (Juror 50)

24 Yes, ma'am, just tell me about it.

25 PROSPECTIVE JUROR: I just don't feel comfortable

1 sitting on a jury like that.

2 THE HONORABLE CLIFTON NEWMAN: Nobody is
3 comfortable. Beyond that, beyond not being
4 comfortable, why are --- why do you think you're not
5 comfortable?

6 PROSPECTIVE JUROR: I just feel like I'm a bit
7 too young for this.

8 THE HONORABLE CLIFTON NEWMAN: Too young. How
9 old are you?

10 PROSPECTIVE JUROR: Nineteen.

11 THE HONORABLE CLIFTON NEWMAN: Nineteen. All
12 right. She thinks she is too young to be involved in
13 this.

14 What do you do for a living?

15 PROSPECTIVE JUROR: I'm a student, and I help
16 teach karate.

17 THE HONORABLE CLIFTON NEWMAN: Karate.

18 PROSPECTIVE JUROR: Uh-huh, yeah.

19 THE HONORABLE CLIFTON NEWMAN: She thinks she is
20 too young to be involved in this.

21 MR. SUTHERLAND: I was overseas in the Army when
22 I was 19.

23 THE HONORABLE CLIFTON NEWMAN: Yeah, people have
24 been in the military. People have been in Afghanistan
25 and Iraq at 18.

1 Do you --- I mean, is there anything that you
2 think would prevent you from being able to give both
3 the State and the defense a fair and impartial trial?

4 PROSPECTIVE JUROR: Not really.

5 THE HONORABLE CLIFTON NEWMAN: Okay.

6 PROSPECTIVE JUROR: I just get really emotional
7 sometimes.

8 THE HONORABLE CLIFTON NEWMAN: Well, I mean, are
9 you --- you don't have any --- you're not on
10 medication or anything?

11 PROSPECTIVE JUROR: No, no, no.

12 THE HONORABLE CLIFTON NEWMAN: I mean, you just
13 --- you don't think 're old enough all of this stuff?

14 PROSPECTIVE JUROR: No.

15 THE HONORABLE CLIFTON NEWMAN: Well, you know ---
16 you know, everyone is --- by nature of the case, this
17 is something that will cause people to be
18 uncomfortable, but that in itself --- because I
19 wouldn't have any jurors if it's just uncomfortable.

20 Do you really want --- I mean, we don't have any
21 volunteers. Everyone here has been summoned to appear.

22 PROSPECTIVE JUROR: Yeah.

23 THE HONORABLE CLIFTON NEWMAN: The lawyers will
24 take that information into consideration and decide
25 whether to put you on the jury. You've made it known

1 that you are uncomfortable and don't want to be on it.
2 Well, you didn't say you don't want to be on it. You
3 didn't say that, did you?

4 PROSPECTIVE JUROR: I mean, I don't really want
5 to.

6 THE HONORABLE CLIFTON NEWMAN: You don't really
7 want to.

8 PROSPECTIVE JUROR: I mean, I will, but ---

9 THE HONORABLE CLIFTON NEWMAN: The fact that you
10 will --- you will if called upon.

11 PROSPECTIVE JUROR: Yes, sir.

12 THE HONORABLE CLIFTON NEWMAN: All right. Thank
13 you very much.

14 Come. Just a moment. Did we get a juror number?

15 MS. McDUFFIE: 50.

16 THE HONORABLE CLIFTON NEWMAN: 50, okay. Thank
17 you.

18 (Juror 109)

19 THE HONORABLE CLIFTON NEWMAN: Hey.

20 PROSPECTIVE JUROR: I just wanted you to know I
21 spoke earlier about passing judgment.

22 THE HONORABLE CLIFTON NEWMAN: Uh-huh.

23 PROSPECTIVE JUROR: The more I hear about this
24 case, I don't think I can pass judgment concerning
25 this case.

1 THE HONORABLE CLIFTON NEWMAN: Uh-huh. Because
2 you are --- is it religious, is that what you said?

3 PROSPECTIVE JUROR: Yes.

4 THE HONORABLE CLIFTON NEWMAN: And what --- and
5 the --- what's your religious beliefs, ma'am?

6 PROSPECTIVE JUROR: Jehovah's Witness.

7 THE HONORABLE CLIFTON NEWMAN: Jehovah's Witness.
8 And do you think you can decide the case based on the
9 law and based on the evidence, or --- or you can't
10 decide at all or you can't tell anyone?

11 PROSPECTIVE JUROR: Well, I don't feel that I
12 have the right to make a decision concerning his life.

13 THE HONORABLE CLIFTON NEWMAN: Concerning his
14 life. The jurors will be asked to decide whether he's
15 guilty or not guilty. That's the decision of the jury,
16 not what the possible punishment is or anything of
17 that nature. The question is he guilty or not guilty.
18 That's the only question the jurors have to decide.

19 PROSPECTIVE JUROR: When I have to render a
20 decision concerning the things that I'm going to
21 hear ---

22 THE HONORABLE CLIFTON NEWMAN: You're not going
23 to ---

24 PROSPECTIVE JUROR: --- that's going to have an
25 impact on me, as well.

1 THE HONORABLE CLIFTON NEWMAN: Oh yeah. Yeah.
2 Obviously, it has an impact, because he'll be found
3 guilty or not guilty.

4 PROSPECTIVE JUROR: I would prefer if I can serve
5 on a different case, though.

6 THE HONORABLE CLIFTON NEWMAN: All right. In a
7 civil case? You don't think you can decide a criminal
8 case?

9 PROSPECTIVE JUROR: No.

10 THE HONORABLE CLIFTON NEWMAN: All right. Any
11 objection to her being excused for cause?

12 MR. SUTHERLAND: No, sir.

13 MS. McDUFFIE: No, sir.

14 THE HONORABLE CLIFTON NEWMAN: All right. What's
15 your juror number, 109? We'll put you on a different
16 case.

17 PROSPECTIVE JUROR: Okay.

18 THE HONORABLE CLIFTON NEWMAN: Something that
19 won't upset you.

20 PROSPECTIVE JUROR: Okay.

21 (109, black female)

22 THE HONORABLE CLIFTON NEWMAN: That other man
23 that just stood up, he was saying that his son was one
24 of the names that were called.

25 THE BAILIFF: The juror stood up and said that he

1 just remembered he was a cop 30 years ago.

2 THE HONORABLE CLIFTON NEWMAN: Yeah. I'll give
3 him a chance to stand up.

4 Anything else that comes to mind that you may ask?

5 MR. SUTHERLAND: I think we're good to go. I'm
6 surprised nobody has heard of the case.

7 THE HONORABLE CLIFTON NEWMAN: Well, you know,
8 people --- they're not...

9 MR. SUTHERLAND: Major Smith and Stan Richards
10 were in the newspaper two months ago. It drove me
11 crazy that nobody has heard about it.

12 THE HONORABLE CLIFTON NEWMAN: Well, I didn't see
13 any.

14 We've got Ms. 109.

15 (Addressing all jurors on the jury panel.)

16 Ladies and gentlemen, as to any question that
17 I've asked up to this point in time, if you did not
18 respond and you --- your brain is catching up slowly
19 and you believe it's something that you should, and
20 that you're required to disclose, please stand and
21 answer the question at this time.

22 Yes, sir.

23 PROSPECTIVE JUROR: I apologize, Your Honor.

24 THE HONORABLE CLIFTON NEWMAN: It's all right.

25 PROSPECTIVE JUROR: It slipped my mind. I was a

1 Columbia City policeman for a very short time about 30
2 years ago.

3 THE HONORABLE CLIFTON NEWMAN: All right. Your
4 juror number is?

5 PROSPECTIVE JUROR: 108.

6 THE HONORABLE CLIFTON NEWMAN: 108. Thank you,
7 sir.

8 Yes, sir.

9 PROSPECTIVE JUROR: Juror 53. I recognize one of
10 the gentleman back there.

11 THE HONORABLE CLIFTON NEWMAN: All right. Which
12 one do you recognize?

13 PROSPECTIVE JUROR: Grover Derrick.

14 THE HONORABLE CLIFTON NEWMAN: Derrick. All
15 right.

16 And I believe this is your son who is to be a
17 witness, Mr. Derrick?

18 PROSPECTIVE JUROR: Yes, that's correct, sir.

19 THE HONORABLE CLIFTON NEWMAN: And, sir, your
20 juror number again?

21 PROSPECTIVE JUROR: Fifty-three.

22 THE HONORABLE CLIFTON NEWMAN: And the fact that
23 you recognize the gentleman whose son may be a witness,
24 would that fact affect your ability to be fair and
25 impartial?

1 PROSPECTIVE JUROR: No.

2 THE HONORABLE CLIFTON NEWMAN: All right. Thank
3 you, sir.

4 If you know of any reason why you should not be
5 selected to be a juror in this case, please stand. If
6 you know any reason you should not be selected to be a
7 juror in this case, please stand.

8 (There was no response.)

9 No one is standing.

10 Any additional questions from the State or the
11 defense?

12 MS. McDUFFIE: None from the State, Your Honor.

13 MR. SUTHERLAND: None from the defense, sir.

14 THE HONORABLE CLIFTON NEWMAN: All right. We
15 will proceed with the jury selection. If you will
16 give the clerk your attention.

17 (Pause)

18 THE CLERK: Ladies and gentlemen of the jury
19 panel, when I call your juror number, bring all your
20 personal belongings with you and come to this
21 microphone. State your juror number and your
22 occupation, please.

23 THE HONORABLE CLIFTON NEWMAN: Ms. McDuffie?

24 MS. McDUFFIE: May we approach briefly?

25 THE HONORABLE CLIFTON NEWMAN: Sure. I'm sorry.

1 (The following was heard outside the jury's
2 presence.)

3 MS. CAMPBELL: The one that stood up, I am
4 prosecuting him. He was at a bond setting, which was
5 very contentious on ---

6 THE HONORABLE CLIFTON NEWMAN: You don't want him
7 on?

8 MS. CAMPBELL: He also didn't disclose that he
9 knew one of the police officers from CPD, and maybe
10 that was his son who is an investigator, which I need
11 to make sure I turn over to you, is an investigator.

12 THE HONORABLE CLIFTON NEWMAN: He said that his
13 son was employed as a policeman.

14 MS. CAMPBELL: This was an additional one.

15 (Whispering)

16 (Inaudible)

17 THE COURT REPORTER: I'm sorry. I can't hear.

18 THE HONORABLE CLIFTON NEWMAN: Kevin Schmidt
19 (phonetic).

20 Do you want to bring him up here, or do you
21 object to him being stricken for cause?

22 (Inaudible)

23 THE HONORABLE CLIFTON NEWMAN: Prosecutor...

24 (Inaudible)

25 THE HONORABLE CLIFTON NEWMAN: What's the number?

1 MS. CAMPBELL: 229.

2 THE HONORABLE CLIFTON NEWMAN: I'll strike him.

3 MS. CAMPBELL: Thank you, Judge.

4 THE COURT: We'll strike him.

5 THE CLERK: And it's five, ten.

6 THE HONORABLE CLIFTON NEWMAN: Five, ten.

7 MS. CAMPBELL: Five, ten.

8 THE CLERK: 314.

9 THE HONORABLE CLIFTON NEWMAN: What do you want
10 them to do?

11 THE CLERK: I told them. They need to come to
12 this microphone, state their juror number and
13 occupation.

14 THE HONORABLE CLIFTON NEWMAN: Okay.

15 (Black female)

16 PROSPECTIVE JUROR: 314, nursing associate
17 assistant.

18 THE CLERK: What says the State?

19 MS. CAMPBELL: Please present the juror.

20 THE CLERK: What says the defense?

21 MR. SUTHERLAND: Please swear the juror.

22 THE CLERK: Have a seat in the jury box, please.
23 297.

24 THE BAILIFF: Watch your step.

25 (Black male)

1 PROSPECTIVE JUROR: 297, Air Force.

2 THE CLERK: What says the State?

3 MS. CAMPBELL: Please present the juror.

4 THE CLERK: What says the defense?

5 MR. SUTHERLAND: Please swear the juror.

6 THE CLERK: Have a seat in the jury box.

7 140.

8 PROSPECTIVE JUROR: 140, human resource assistant.

9 THE CLERK: What says the State?

10 MS. CAMPBELL: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. SUTHERLAND: Please swear the juror.

13 THE CLERK: Have a seat in the jury box.

14 195.

15 (Black female)

16 PROSPECTIVE JUROR: 195, and I work for Michelin.

17 THE CLERK: What says the State?

18 MS. CAMPBELL: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. SUTHERLAND: Please swear the juror.

21 THE CLERK: Have a seat in the jury box.

22 196.

23 THE BAILIFF: Watch your step.

24 (White male)

25 PROSPECTIVE JUROR: 196, I work in health care.

1 THE CLERK: What says the State?

2 MS. CAMPBELL: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. SUTHERLAND: Please swear the juror.

5 THE CLERK: Have a seat in the jury box.

6 263.

7 (Black male)

8 PROSPECTIVE JUROR: 263, car associate at Sam's
9 Club.

10 THE CLERK: What says the State?

11 MS. CAMPBELL: Excuse the juror.

12 THE CLERK: Have a seat in the back of the
13 courtroom.

14 302.

15 (White male)

16 PROSPECTIVE JUROR: 302, college graduate.

17 THE CLERK: What says the State?

18 MS. CAMPBELL: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. SUTHERLAND: Please swear the juror.

21 THE CLERK: Have a seat in the jury box.

22 187.

23 (Black female)

24 PROSPECTIVE JUROR: 187, instructional assistant.

25 THE CLERK: What says the State?

1 MS. CAMPBELL: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. SUTHERLAND: Please swear the juror.

4 THE CLERK: Have a seat in the jury box.

5 258.

6 THE BAILIFF: Watch your step.

7 PROSPECTIVE JUROR: 258, maintenance technician.

8 THE CLERK: What says the State?

9 MS. CAMPBELL: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. SUTHERLAND: Please excuse the juror.

12 THE CLERK: Have a seat in the back of the
13 courtroom.

14 262.

15 (Black female)

16 PROSPECTIVE JUROR: 262, sales associate.

17 THE CLERK: What says the State?

18 MS. CAMPBELL: Please excuse the juror.

19 THE CLERK: Have a seat in the back of the
20 courtroom.

21 179.

22 (White male)

23 PROSPECTIVE JUROR: 179, I have a research
24 fellowship at USC.

25 THE CLERK: What says the State?

1 MS. CAMPBELL: Please excuse the juror.

2 THE CLERK: Have a seat in the back of the
3 courtroom.

4 78.

5 (White male)

6 PROSPECTIVE JUROR: 78, retired.

7 THE CLERK: What says the State?

8 MS. CAMPBELL: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. SUTHERLAND: Please excuse the juror.

11 THE CLERK: Have a seat in the back of the
12 courtroom.

13 108.

14 (White male)

15 PROSPECTIVE JUROR: 108, OSHA safety supervisor,
16 Labor Licensing Regulation.

17 THE CLERK: What says the State?

18 MS. CAMPBELL: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. SUTHERLAND: Please excuse the juror.

21 THE CLERK: Have a seat in the back of the
22 courtroom.

23 289.

24 (White female)

25 PROSPECTIVE JUROR: 289, retired educator.

1 THE CLERK: What says the State?

2 MS. CAMPBELL: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. SUTHERLAND: Please excuse the juror.

5 THE CLERK: Have a seat in the back of the
6 courtroom.

7 111.

8 (White male)

9 PROSPECTIVE JUROR: 111, electrical contractor.

10 THE CLERK: What says the State?

11 MS. CAMPBELL: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. SUTHERLAND: Please swear the juror.

14 THE CLERK: Have a seat.

15 72.

16 (Black female)

17 PROSPECTIVE JUROR: 72, I work for His House.

18 THE CLERK: What says the State?

19 MS. CAMPBELL: Please excuse the juror.

20 THE CLERK: Have a seat in the back of the
21 courtroom.

22 67.

23 (White male)

24 PROSPECTIVE JUROR: 67, retired, Honeywell.

25 THE CLERK: What says the State?

1 MS. CAMPBELL: Excuse the juror.

2 I'm sorry, I apologize. I misspoke. Please
3 present the juror. I apologize.

4 THE CLERK: What says the defense?

5 MR. SUTHERLAND: Please have a seat in the jury
6 box.

7 MS. CAMPBELL: I'm sorry.

8 THE CLERK: 124.

9 (Black male)

10 PROSPECTIVE JUROR: 124, retired BellSouth
11 Communications.

12 THE CLERK: What says the State?

13 MS. CAMPBELL: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. SUTHERLAND: Please swear the juror.

16 THE CLERK: Have a seat in the jury box.

17 185.

18 THE BAILIFF: Watch your step. Watch your step
19 there for me.

20 (White female)

21 PROSPECTIVE JUROR: 185, I'm a school teacher and
22 educational therapist.

23 THE CLERK: What says the State?

24 MS. CAMPBELL: Please present the juror.

25 THE CLERK: What says the defense?

1 MR. SUTHERLAND: Please excuse the juror.

2 THE CLERK: Go to the back of the courtroom,

3 ma'am.

4 50.

5 (White female)

6 PROSPECTIVE JUROR: 50. I'm a student.

7 THE CLERK: What says the State?

8 MS. CAMPBELL: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. SUTHERLAND: Please excuse the juror.

11 THE CLERK: 170.

12 (White female)

13 PROSPECTIVE JUROR: 170, elementary school

14 teacher.

15 THE CLERK: What says the State?

16 MS. CAMPBELL: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. SUTHERLAND: Please swear the juror.

19 THE CLERK: Have a seat in the jury box.

20 261.

21 THE BAILIFF: Watch your step.

22 (White female)

23 PROSPECTIVE JUROR: 261, and I work for the

24 University of South Carolina as the program director,

25 house director, for the assistant.

1 THE CLERK: What says the State?

2 MS. CAMPBELL: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. SUTHERLAND: Please excuse the juror.

5 THE CLERK: Have a seat in the back of the
6 courtroom.

7 31.

8 (White female)

9 PROSPECTIVE JUROR: 31, high school English
10 teacher.

11 THE CLERK: What says the State?

12 MS. CAMPBELL: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. SUTHERLAND: Please excuse the juror.

15 THE CLERK: 19.

16 (White female)

17 PROSPECTIVE JUROR: I'm juror number 19,
18 full-time student.

19 THE CLERK: What says the State?

20 MS. CAMPBELL: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. SUTHERLAND: Please excuse the juror.

23 THE CLERK: 152.

24 (Black female)

25 PROSPECTIVE JUROR: 152, Air Guard.

1 THE CLERK: What says the State?

2 MS. CAMPBELL: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. SUTHERLAND: Please excuse the juror.

5 THE CLERK: 53.

6 (White male)

7 PROSPECTIVE JUROR: 53, engineer.

8 THE CLERK: What says the State?

9 MS. CAMPBELL: Please present the juror.

10 THE CLERK: Does the defense challenge for cause?

11 MR. SUTHERLAND: I do challenge. I do challenge
12 for cause in that he knows the victim's family in one
13 of the cases.

14 THE HONORABLE CLIFTON NEWMAN: He said he knew
15 the father.

16 MR. SUTHERLAND: Yes. Yes, sir.

17 THE HONORABLE CLIFTON NEWMAN: Of a witness.

18 MR. SUTHERLAND: One of the witnesses.

19 THE HONORABLE CLIFTON NEWMAN: That's what he
20 said. You said he knows who?

21 MR. SUTHERLAND: Oh well, the Derrick --- the
22 Derrick family.

23 THE HONORABLE CLIFTON NEWMAN: Do you know the
24 Derrick family?

25 PROSPECTIVE JUROR: I know Grover Derrick.

1 THE HONORABLE CLIFTON NEWMAN: Grover Derrick.
2 Would that affect your ability to be fair and
3 impartial in this case?

4 PROSPECTIVE JUROR: No, sir.

5 THE HONORABLE CLIFTON NEWMAN: The motion is
6 denied.

7 THE CLERK: Have a seat in the jury box.

8 THE BAILIFF: Watch your step.

9 107.

10 (White male)

11 PROSPECTIVE JUROR: 107, RC technician and
12 student.

13 THE CLERK: What says the State?

14 MS. CAMPBELL: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. SUTHERLAND: Please swear the juror.

17 THE CLERK: I'm sorry?

18 MR. SUTHERLAND: Swear the juror.

19 THE CLERK: Have a seat in the jury box, please.
20 127.

21 (White male)

22 PROSPECTIVE JUROR: 127, graduate student.

23 THE CLERK: What says the State?

24 MS. CAMPBELL: Please swear the juror.

25 THE CLERK: What says the defense?

1 MR. SUTHERLAND: Please swear the juror.

2 THE CLERK: Have a seat in the jury box.

3 18.

4 (White female)

5 PROSPECTIVE JUROR: 18, a program specialist for
6 Save the Children.

7 THE CLERK: What says the State?

8 MS. CAMPBELL: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. SUTHERLAND: Please swear the juror.

11 THE CLERK: Have a seat in the jury box.

12 THE HONORABLE CLIFTON NEWMAN: Any matters of law
13 regarding the jury selection?

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

15 (Pause)

16 Nothing from the State, Your Honor.

17 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

18 MR. SUTHERLAND: None from the defense.

19 THE HONORABLE CLIFTON NEWMAN: All right. Ladies
20 and gentlemen, you have been selected to be the jury
21 in the trial in this case.

22 Ladies and gentlemen, those of you who were not
23 selected, with the exception of Ms. Koon, you all will
24 return to the jury assembly room.

25 Ms. Koon, if you will come forward, please.

1 (WHEREUPON, there was a bench conference in the
2 presence, but not within hearing of the jury.)

3 THE HONORABLE CLIFTON NEWMAN: All right. Ladies
4 and gentlemen, you have been selected and once you
5 are selected to serve on a case, from this point
6 forward, you cannot discuss the case at all with each
7 other or with anyone else. That would constitute
8 premature deliberations.

9 I'll give you a detailed instruction concerning
10 that, and it will be, among other things, to emphasize
11 the importance of your deciding the case solely based
12 on the evidence presented in court and to discuss it
13 only with everyone who has heard the same thing, which
14 means your fellow jurors, but only after you have
15 heard everything.

16 So that means that you are not to go home and
17 deliberate with any family or friends or to seek to
18 find out any additional sources of information by
19 watching television or searching the internet or
20 becoming private investigators, because you are to
21 decide the case solely and only based on the evidence
22 presented in the courtroom during the course of the
23 trial and after I have given you the complete
24 instruction of law concerning it all and after you
25 have heard the arguments of the lawyers. And that's

1 when you should discuss the case.

2 I'm going to ask that you follow Mr. Bowen, the
3 bailiff, and others and go to the jury room while we
4 review some preliminary matters and figure out how
5 we're going to proceed and when we're going to proceed.

6 Please do not discuss the case. If you'll follow
7 the bailiff.

8 THE BAILIFF: Follow me, please.

9 (WHEREUPON, the jury left open court at
10 approximately 3:48 p.m.)

11 THE HONORABLE CLIFTON NEWMAN: All right. What's
12 the plan?

13 MS. McDUFFIE: Your Honor, we would prefer if we
14 could finish arguing the pretrial this afternoon and
15 then resume with the jury in the morning.

16 There's also quite a few photographs and exhibits
17 that I think we could speed things up tomorrow if we
18 can show Mr. Sutherland what we intend to introduce
19 and pre-mark as exhibits, as well, this afternoon.

20 THE HONORABLE CLIFTON NEWMAN: All right.
21 Mr. Sutherland.

22 MR. SUTHERLAND: Yes, sir. I started to lose my
23 voice a little bit, but I'm prepared to go forward
24 with the remainder of the pretrial issues, if we can
25 get them ready.

1 THE HONORABLE CLIFTON NEWMAN: And have the jury
2 panel come back at 9:30?

3 MR. SUTHERLAND: Yes; yes, sir, if we're not done.

4 THE HONORABLE CLIFTON NEWMAN: All right. Teckla
5 just reminded me we have got a telephone hearing at
6 9:30 tomorrow morning, so we'll have them come at ten
7 o'clock.

8 MR. SUTHERLAND: Yes, sir.

9 THE HONORABLE CLIFTON NEWMAN: Ten o'clock.

10 MR. SUTHERLAND: Yes, sir.

11 THE HONORABLE CLIFTON NEWMAN: All right. If we
12 could have the jury panel come back in, please.

13 (WHEREUPON, the jury came into open court at
14 approximately 3:50 p.m.)

15 THE BAILIFF: The jury is seated, Your Honor.

16 THE HONORABLE CLIFTON NEWMAN: Thank you.

17 Ladies and gentlemen, we do have some preliminary
18 matters that we will need to address.

19 During the course of the trial, you will discover
20 that there are matters that we have to talk about,
21 matters of law that we need to talk about outside of
22 your presence.

23 So rather than have you all wait and rather than
24 attempt to start the case late this afternoon, we're
25 going to let you all go now, and we're going to have

1 you come back at ten tomorrow morning. So if you all
2 will follow the bailiff's instructions and do not come
3 through the courtroom but come through the way that
4 they tell you directly into the jury room. We need
5 you there at ten o'clock tomorrow morning.

6 Have a good evening. We'll see you then.

7 THE BAILIFF: Follow me again.

8 (WHEREUPON, the jury left open court at
9 approximately 3:52 p.m.)

10 THE HONORABLE CLIFTON NEWMAN: Do you all need an
11 opportunity to confer to see what's in dispute or do
12 you know?

13 MS. McDUFFIE: Your Honor, I believe that there
14 still is his outstanding motion to exclude the
15 evidence, the autopsy evidence, from Bradley Marcus
16 and the coroner. I believe there's a Neil vs. Biggers
17 issue. Other than that, I'm not aware of any other
18 issues.

19 THE HONORABLE CLIFTON NEWMAN: All right. Yes,
20 sir.

21 MR. SUTHERLAND: Well, if we are to continue, I
22 actually had a chance during --- during the lunch
23 break to read the Cutro case. I would just ---

24 THE HONORABLE CLIFTON NEWMAN: To read what?

25 MR. SUTHERLAND: To read the Cutro case, with

1 respect to the motion to exclude the testimony of
2 Dr. Marcus.

3 I would just point out, to distinguish that case,
4 that case was relative to a survey of autopsies
5 statewide in a statistical gathering with respect to
6 the injuries. The actual pathologist who performed
7 the autopsy in that case did testify.

8 The objection was to testimony about a survey of
9 autopsies statewide. I mean, other than that, I
10 believe that we have pretty much concluded the
11 arguments in that regard, sir.

12 THE HONORABLE CLIFTON NEWMAN: All right. So
13 would you say --- issue a blanket order excluding
14 testimony on the basis to do so --- or based on the
15 argument that you anticipate his testimony will be
16 based on an inadmissible autopsy report.

17 Well, that doesn't give me any basis to exclude
18 his testimony. If --- it might well be that the
19 issues might involve some specific objection to the
20 specific line of testimony or --- to have to testify
21 in a particular matter, but to exclude a witness
22 without any basis to do so other than that he looked
23 at an autopsy, which you contend to be hearsay, I deny
24 your motion on that basis.

25 If anything in particular comes up, we certainly

1 will be happy to revisit it.

2 MR. SUTHERLAND: Yes, sir. Thank you, Your Honor.

3 THE HONORABLE CLIFTON NEWMAN: All right.

4 As far as Neil vs. Biggers matters, are you ready
5 to --- what is the motion on that?

6 MR. SUTHERLAND: Well, with --- with respect to
7 the identification made by Ms. Webb, her initial ---
8 to the initial reporting officer --- she told the
9 initial reporting officer that she was 80 percent sure
10 that it was the person that had come by earlier during
11 the day.

12 Later, later on, I think she went on to tell
13 either --- it was Travis Holdorf --- to tell Travis
14 Holdorf that she didn't recognize the person that came
15 to the door, and that's --- and she tried to close the
16 door at that point.

17 Then later on down the line at the lineup, that's
18 when, you know, the testimony becomes the --- you know,
19 she is 100 percent sure.

20 THE HONORABLE CLIFTON NEWMAN: Are you referring
21 to prior testimony or what you expect she will say or
22 creating a ---

23 MR. SUTHERLAND: Yeah, just through the
24 statements and the reporting of the various officers.

25 THE COURT: So you --- you object to the

1 identification procedures used by the State as
2 violative of your client's due process rights?

3 MR. SUTHERLAND: Yes, sir.

4 THE HONORABLE CLIFTON NEWMAN: All right. So I
5 think it requires a hearing outside the presence of
6 the jury.

7 MS. McDUFFIE: Yes, Your Honor, we're prepared to
8 call them as witnesses.

9 THE HONORABLE CLIFTON NEWMAN: All right. You
10 may proceed.

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

12 (Pause)

13 The State would call Carolyn Webb.

14 CAROLYN WEBB,

15 after being duly sworn, testified as follows:

16 THE CLERK: Have a seat in the witness box and
17 state your name when you have a seat, please.

18 DIRECT EXAMINATION:

19 BY MS. CAMPBELL:

20 Q Ms. Webb, are you currently employed?

21 A No, I'm not.

22 Q And what did you used to do, ma'am?

23 A I'm a retired educator.

24 Q Educator.

25 A Yes, ma'am.

- 1 Q And how long were you in the education field?
- 2 A Thirty years.
- 3 Q Where do you currently live, ma'am?
- 4 A Winyah Drive.
- 5 Q And that's here in Richland County?
- 6 A That's correct.
- 7 Q In the Denny Terrace community?
- 8 A That's correct.
- 9 Q And how long have you been living in Denny
- 10 Terrace on and off?
- 11 A On and off since 1947.
- 12 Q Okay. And you lived there with anyone else?
- 13 Does anyone else live with you?
- 14 A No, they don't.
- 15 Q And back when this happened in the end of
- 16 January 2009, was anybody else living with you?
- 17 A No.
- 18 Q Can you tell the judge, turning to the day this
- 19 happened, earlier in the day, did someone show up at
- 20 your door?
- 21 A That's correct.
- 22 Q And can you briefly tell the judge what happened?
- 23 A A man came to my door, and he --- well, my friend
- 24 went to the door. I had a friend with me at the time.
- 25 Q Ms. Blizzard?

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1 A Yes, that's correct.

2 Q Uh-huh.

3 A I went to the door, and he gave a story of ---
4 well, my friend went to the door, but I could hear him
5 talking. He said that his wife and child were broken
6 down on the interstate and that he needed some money
7 to get a part to fix it.

8 Q Okay. And when he first came to the door, did
9 you get a look at his face?

10 A Not at that time.

11 Q Not at that time, but you could hear what he was
12 saying?

13 A Yes, that's correct.

14 Q And did he ask you for money at that point, did
15 you say?

16 A He asked for money, yes.

17 Q Okay. And what did you do when he asked you for
18 money?

19 A I went to my pocketbook, got some money and came
20 back to the door.

21 Q And when you came back to the door, did you get a
22 good look at him?

23 A Yes, I did.

24 Q Was it daylight that day?

25 A Yes, it was.

1 Q Were you able to get pretty close to him?

2 A Yes.

3 Q Did you get a good look at his face?

4 A Yes.

5 Q And at that point, did you give him the money?

6 A I handed it to Ms. Blizzard.

7 Q Okay. And was the money given to the man at the
8 door?

9 A That's correct.

10 Q Did he say anything else while he was at the door
11 that day?

12 A He handed me his I.D.

13 Q Okay. And when he --- why did he hand you his
14 I.D., do you remember?

15 A He was trying to tell me that he lived in the
16 neighborhood and trying to show that he --- that's
17 where he lived.

18 Q When you looked at the I.D., was there anything
19 about it that you remembered later?

20 A Yes. He lived on Truman Street. I said, "That's
21 not in this neighborhood."

22 Q Do you remember anything about the name that was
23 on the I.D. that the man gave you?

24 A Yes. His first name was something, something
25 like Albert.

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1 Q Uh-huh.

2 A And I wasn't --- I couldn't remember his actual
3 name, but it was --- it reminded me of someone else
4 whose name was Albert.

5 Q Yes.

6 A And his last name started with a "W".

7 Q Okay. And once he was handed the money, did you
8 see him any more or just right then? Did he walk off?

9 A Yes, at that point.

10 Q And at that point, it was you and Ms. Blizzard at
11 your house?

12 A That's correct.

13 Q And that was during the daylight hours, right?

14 A Right.

15 Q Later that afternoon, did the same man come back
16 to your door?

17 A Yes.

18 Q Do you remember how much later that was,
19 approximately?

20 A It was shortly after dark.

21 Q Shortly after dark?

22 A Sometime after six o'clock. I don't know exactly
23 what time.

24 Q And before he had left on the first occasion when
25 he came to your door, did he tell you he was going to

1 repay you in any way?

2 A Yes, he did.

3 Q And when he came back to the door shortly after
4 dark, what, if anything, did he say to you? How did
5 that happen? Tell the judge.

6 A He said he was going to --- well, initially, he
7 said that he would get his check, and he would get it
8 cashed and bring me the money back.

9 Q And how much money are we talking about?

10 A I gave him \$15. He asked for \$13. I gave him
11 \$15.

12 Q Okay. And when he came back after dark, did you
13 get another look at him?

14 A Yes, I did.

15 Q And did y'all have a conversation?

16 A Yes.

17 Q And without going into all of the details of the
18 conversation, what was the gist of the conversation?

19 A He said he wasn't able to get his check cashed,
20 and that he would bring it to me the next day. I said,
21 "Nope, not a problem. Just bring it to me whenever if
22 you --- you know, Monday would be fine."

23 Q Okay. Was this going into a weekend?

24 A Yes. It was on a Friday.

25 Q Friday. And once he came back and told you he

1 didn't have the money yet and would repay you later,
2 did he then leave?

3 A Yes.

4 Q And during those night hours, up until around ---
5 sometime after midnight, you didn't have any more
6 contact with him?

7 A No.

8 Q And tell the judge what happened at your house
9 shortly --- well, right around one o'clock that
10 morning.

11 A Someone knocked at the door, and I thought it was
12 someone else.

13 Q Who did you think it was?

14 A I had a yardman that used to come and work for me,
15 and he would come --- if my light was on, he would
16 come looking for money.

17 Q Okay. That night, were you still up?

18 A Yes, I was.

19 Q And was that unusual for you to stay up that late?

20 A No.

21 Q You're a night owl?

22 A Yes, I am.

23 Q And when you heard the knock at the door, tell
24 the judge what you did.

25 A I got up and went to the door. I opened the main

1 door, but I had forgotten to lock my storm door. So
2 he was standing there in the door with the storm door
3 already opened.

4 Q And what happened once you opened the door?

5 A As soon as I opened the door, he swung at me.

6 Q And did he ---

7 A I ---

8 Q --- connect? Did he hit you?

9 A Yes, he did. I threw up my arm to block it, and
10 I stepped back at the same time. And he hit me two or
11 three more times in the forehead right, you know,
12 above my glasses.

13 Q Okay. And what happened next?

14 A I kept stepping backwards until I hit the edge of
15 the couch, and I sat down on the couch.

16 Q And what was he doing?

17 A Well, at that point, he stopped and he asked me
18 who else was in the house. I was looking straight at
19 him then. I still had my glasses on.

20 Q Uh-huh.

21 A And I was looking right at him, and I told him
22 that my husband was in the other room.

23 Q Your ---

24 A He said, "You're lying".

25 Q And were the lights on in the house?

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1 A Yes, they were.

2 Q And at this point, was he pretty close to you?

3 A Yes, very close.

4 Q Did you have a clear view of his face?

5 A Yes, I did.

6 Q Was there anything obstructing your view of his
7 face?

8 A No.

9 Q Were you paying attention to what he looked like?

10 A Yes, I was.

11 Q At this point, what's going through your mind?

12 A I don't remember all of it, about what was going
13 through my mind. It was just what was going to happen
14 next, you know.

15 Q Uh-huh. And you told him that your husband was
16 in the house. What did he say then?

17 A He said, "You're lying".

18 Q Then what happened?

19 A He starting hitting me again on top of the head.
20 I ducked down. I think I threw up my other arm at
21 that time.

22 Q Okay.

23 A And I had my cell phone in my hand. When I went
24 to the door, I was trying to hide it. I dialed 9-1-1.
25 He realized what I was doing, and he snatched it out

1 of my hand and broke it in half.

2 Q Then what happened?

3 A He was standing directly in front of me, and I
4 pushed him with my foot and he fell, fell across the
5 room, and he hit the electric heater that I had.

6 Q Okay. And then what?

7 A Then he --- when he stood up, he pulled out a
8 knife.

9 Q And that was the first time you saw the knife?

10 A Yes.

11 Q And that was after you had kicked him across ---
12 kind of into the room?

13 A Yeah. I pushed him more than I kicked him.

14 Q Pushed him?

15 A Yeah.

16 Q What happened next?

17 A He came toward me with a knife, and I threw up my
18 arm. He cut me across the arm.

19 Q Right there where the scar is?

20 A Yes.

21 Q And then what happened?

22 A He stepped in front of me and cut me, stabbed me
23 in the leg.

24 Q And which leg was it?

25 A My left leg, upper leg.

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1 Q And then what happened?

2 A I starting to kick him again, and he stepped back.

3 I asked him, I said, "Just tell me what you want, and

4 I'll give it to you." He said, "I want money."

5 He stepped back some more, and I picked up my

6 glasses off the floor and gave --- my pocketbook

7 happened to be in the room.

8 Q At some point, had your glasses come off?

9 A Yes, they did. In fact, that was early on when
10 he was hitting me on the head when I was --- first sat

11 down on the couch. It cut my head --- I think my

12 glasses cut my head.

13 Q Okay.

14 A And I was bleeding some.

15 Q And at that point, you were able to get your

16 glasses back on?

17 A Yes.

18 Q And at that point, he told you that he wanted

19 money. He just told you he wanted money right before

20 you put your glasses on?

21 A No.

22 Q Sorry.

23 A That was after --- right after he stabbed me in

24 the leg.

25 Q Okay. After he stabbed you in the leg?

1 A Yes.

2 Q And then at some point, you told him --- you just
3 asked him, "What do you want? I'll give you whatever
4 you want"?

5 A Yes.

6 Q And then what happened?

7 A He took the money and left.

8 Q Where did the money come from?

9 A Out of my pocketbook.

10 Q And who got it out of your pocketbook?

11 A I did.

12 Q And where was your pocketbook located there in
13 the --- were you in like this den area?

14 A I was in the den.

15 Q That's the only room that you and he were ever in?

16 A That's the only room that we were ever in, yes,
17 at that time anyway.

18 Q Were you able to get a good look at his face
19 again after you put your glasses back on?

20 A Yes.

21 Q And as well as you had seen him before?

22 A I was missing a lens, I think, but I still could
23 see him.

24 Q Were you paying attention to what he looked like?

25 A Yes, I was.

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1 Q Were you scared?

2 A I don't think I had time to be scared.

3 Q Okay.

4 A I was wondering what was going to happen next.

5 Q You had already been stabbed twice?

6 A Yes.

7 Q Once he left, what did you do?

8 A I then slipped off the couch, I think, and
9 crawled to the phone, my house phone, and used the
10 house phone to call 9-1-1.

11 Q You had to crawl over there?

12 A Well, it was easier to sit down on the door than
13 it was to try to get up.

14 Q Okay. And then you called the police?

15 A Yes, I did.

16 Q And they responded?

17 A Yes, within a very short period of time.

18 Q And did you give the police a description of the
19 man who had attacked you?

20 A Yes, I did.

21 Q Do you remember what you described him --- what
22 you said?

23 A I said he was about 6 feet. I was --- he had on
24 a coat of some description, a brown coat, as I
25 remember it. I think I said jacket at the time, but

1 it was actually a coat that came down to right above
2 his knees.

3 Q Uh-huh. And ---

4 A And it was --- it was difficult to tell how much
5 he weighed at that point. I'm not very good at
6 judging weight anyway.

7 Q Okay.

8 A But I said under 200 pounds.

9 Q Under 200, and as far as height, you gave a
10 general?

11 A Yeah, he was slightly taller than me.

12 Q Okay. And how tall are you?

13 A I am --- I used to be 5'10".

14 Q Once you gave them a description, did you also
15 mention the person that had been by your house earlier
16 that day?

17 A Yes, I did.

18 Q And did you tell them that --- what did you tell
19 them about that?

20 A I said I thought it was the same person.

21 Q But you got the best look at the person that
22 attacked you?

23 A Yes.

24 Q Were you taken by ambulance to the hospital that
25 night?

1 A Yes, I was.

2 Q And I believe you were actually treated, and
3 after five or six hours released, somewhere around
4 five in the morning?

5 A I think it was a little earlier than that.

6 Q A little earlier, sometime in the early morning
7 hours. Is that fair?

8 A Yes, that's correct. I was there at
9 three o'clock, I remember it was.

10 Q Okay. And they had to stitch up your wounds?

11 A Yes.

12 Q You got some x-rays done, things of that nature?

13 A A scan of some type.

14 Q A scan of some type. And then they released you;
15 is that correct?

16 A Yes.

17 Q And did you go back home?

18 A I had a couple of friends pick me up. They took
19 me back to the house, yes.

20 Q Okay. And did you stay at your house that day?

21 A No, I didn't. I got some clothes and left. I
22 called the deputy to meet me when I went back to the
23 house.

24 Q Okay. And when you then went back to the house,
25 was --- had anything been done to your house when you

1 went back that day?

2 A No.

3 Q Everything was fine, so then you locked up your
4 house and left?

5 A Yes.

6 Q And where did you go?

7 A I went to a friend's house.

8 Q Okay. Was that out of state?

9 A No.

10 Q At that time, that was ---

11 A It was off of Veterans Road.

12 Q Okay. That next day, did you make arrangements
13 to spend the night in another state?

14 A Not in another state, in North Augusta.

15 Q North Augusta, and prior to that, did you go back
16 by the house to get some clothes?

17 A Yes. About two o'clock Saturday afternoon I went
18 back to the house again.

19 Q And what did you discover when you got there?

20 A I found a concrete block on the couch, and ---
21 and I realized somebody else had been back in the
22 house.

23 Q Okay. At that point, did you leave town?

24 A Yes, I did.

25 Q Did the police make contact with you either that

1 day or the next day about looking at some photos?

2 A On Sunday, yes.

3 Q On Sunday?

4 A Right.

5 Q And when you made contact with those police
6 officers, did you come back to Columbia to meet with
7 them?

8 A Yes.

9 Q And I think they actually took a formal statement
10 from you that the point?

11 A That's correct.

12 Q I'm not going to go into all of those details,
13 but the gist of it is in there?

14 A Uh-huh.

15 Q I want to show you what's been marked as State's
16 Exhibit Number 1.

17 A I'm sorry. Say that again, ma'am.

18 Q This is State's Exhibit Number 1.

19 A All right.

20 Q Just ignore that terminology.

21 A Okay.

22 Q So is this a series of photos that they showed
23 you?

24 A It's not exactly like that, no.

25 Q It didn't have any writing on it when you saw it,

1 right? It was blank?

2 MR. SUTHERLAND: Your Honor, she is testifying.

3 THE WITNESS: It's not the same set of photos.

4 BY MS. CAMPBELL:

5 Q Is this your signature?

6 A Yes, but it's not the same lineup.

7 Q What was different?

8 A I mean --- there were ---

9 Q Do you want a minute to look at it?

10 A There were four pictures on the bottom row, and
11 the --- it's not the same order.

12 Q Not the same order?

13 A Right.

14 Q Is that your initials up next to one of the
15 pictures there?

16 A Yes.

17 Q Is this your signature at the bottom?

18 A Yes, it is.

19 Q And what's the information that's contained on
20 that lineup.

21 A (There was no response.)

22 Q Is that your information?

23 A That's my information.

24 Q That's what you thought they were for?

25 A I did pick that person out as ---

1 Q Is that the same photo you identified at the time?

2 A Yes, it is. It's the same photo, yes.

3 Q You just thought there were four on the bottom,
4 but there are actually three?

5 MR. SUTHERLAND: Your Honor, if I may, she is
6 testifying.

7 THE HONORABLE CLIFTON NEWMAN: Don't lead the
8 witness.

9 MS. CAMPBELL: I won't lead, Your Honor.

10 THE WITNESS: It seems to me like there were four
11 across the bottom and three across the top, too.

12 BY MS. CAMPBELL:

13 Q Is ---

14 A But at any rate, yeah, I eliminated some right
15 off the bat. I had problems with --- I had to study
16 those two for awhile, and I was no --- no longer
17 wearing my regular glasses. I had on a different
18 pair ---

19 Q Uh-huh.

20 A --- but I finally, you know, identified this one
21 as being the correct one, yes.

22 Q And is that number three on that lineup?

23 A Yes, it is.

24 Q And that's what's indicated here on the bottom?

25 A Yes, it is.

1 Q And that's memorialized as the one you picked out
2 that day?

3 A Yes.

4 Q Did anyone influence you in any way?

5 A No, they did not.

6 Q Did anyone tell you who to pick?

7 A No.

8 Q Did anyone do anything to make you pick out
9 number three as the person who had attacked you that
10 night?

11 A No. They did not.

12 Q And the person that you identified as the person
13 that attacked you, is that based on your memory of
14 what happened during the assault that night?

15 A Yes, that's correct.

16 Q And when you identified him, you wanted to be
17 sure?

18 A Yes.

19 Q And that's who you identified?

20 A Yes.

21 Q Other than you thought there were four on the
22 bottom; is that correct?

23 A Yes. I eliminated all of those to start with,
24 and I narrowed it down to those two. Then I studied
25 those for awhile and I finally ---

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1 Q And that's pictures two and three?

2 A Yes, that's correct.

3 Q And other than that, everything on here --- I
4 believe, nobody influenced your ---

5 A No.

6 Q --- who you picked or anything?

7 A No.

8 Q And you recognize that person as the person ---

9 A Yes.

10 Q --- that actually assaulted you with the knife
11 that night?

12 A That's correct.

13 Q This whole experience, was it pretty upsetting to
14 you?

15 A Yes, it was.

16 Q And just for the record, again, did anyone tell
17 you who to pick or influence your decision in any way?

18 A No, they did not.

19 Q The person that you identified in this picture,
20 is that the person that assaulted you?

21 A That's correct.

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

23 (Pause)

24 That's all I have, Your Honor.

25 THE HONORABLE CLIFTON NEWMAN: Mr. Sutherland.

1 MR. SUTHERLAND: May it please the Court, sir.

2 CROSS-EXAMINATION:

3 BY MR. SUTHERLAND:

4 Q Ma'am, how are you?

5 A I think I'm doing all right.

6 Q All right. I'm going to try to let you talk.

7 A Okay.

8 Q You had --- you had testified that you saw the
9 lineup that Ms. Campbell handed you, and your
10 immediate reaction was, "That's not it. What is
11 that?"

12 That's --- from watching you testify and from
13 hearing you trying to talk past her talking over you,
14 you were telling her that that's not the lineup that
15 you looked at; is that correct?

16 A I think they were the same pictures. It just
17 seemed to me like I remembered there being four on the
18 bottom and three across the top.

19 Q So you remember four on the bottom and three
20 across the top. Do you remember --- do you remember
21 when you looked at it, the one that you ended up
22 picking, was it in the row of three or was it in the
23 row of four?

24 A The row of three.

25 Q Okay.

1 A The top right, which is where this one was.

2 Q Yes, ma'am. Now, you had also testified --- let
3 me --- let me back up a little bit. When you had come
4 back from, was it Augusta --- my family is from up in
5 the mountains. I talk a little different. Was it
6 from --- or North Augusta?

7 A North Augusta.

8 Q You had come back from there, and you had met
9 with the deputies or the investigators from the
10 sheriff's department?

11 A That's correct.

12 Q Are they in here? Do you see the ones that you
13 met with?

14 A I met with Captain Smith.

15 Q Okay. And was anybody with him or do you
16 remember?

17 A Yes, there were. I can't remember the name now,
18 but there was a lady that met me when I came up in the
19 parking lot.

20 Q I mean, it could have been somebody from the
21 Victim's Advocate's Office or something like that
22 maybe that --- well, all right. But as far as
23 investigators, you just remember Major Smith? Oh,
24 he's Major Smith now.

25 A Oh, okay. Sorry.

1 Q Okay. How long do you think --- I remember you
2 had testified that --- that you were having some ---
3 some trouble with this thing. How long do you think
4 you looked at it? When did --- did Major Smith ---
5 I'm sorry. Did Major Smith hand you the thing to look
6 at, or was it somebody else?

7 A No. Captain Smith did it.

8 Q Oh. Well, he was ---

9 A Captain Smith at the time.

10 Q He was Captain Smith. Do you remember what he
11 said to you? Did he talk to you about having arrested
12 anybody or anything prior to --- prior to your having
13 looked at this lineup? Did he say that, "We arrested
14 somebody and we want you to" ---

15 A No. In fact, after I identified him and told him
16 that the man lived on --- had lived on Truman Street.
17 He said, "Go pick him up."

18 Q Okay. All right. Had he --- just had you been
19 given any names or anything ---

20 A No.

21 Q --- to that --- to that effect at that time?

22 A No.

23 Q Okay. Your --- earlier when the deputies first
24 showed up --- and again, I am just trying to get
25 your --- you know, get your testimony here and not Ms.

1 Campbell's --- you had told the deputy that first
2 showed up, I think it was Deputy Scott, that --- at
3 least he wrote in his report after talking to you that
4 you were about 80 percent that it was the person that
5 had come earlier in the day.

6 A I don't recall ever saying that.

7 Q Okay. If --- if he had that in his report, would
8 that --- would you think that may have been something
9 that y'all talked about?

10 A I don't recall talking about that to him. He ---

11 Q Okay. Okay. That's fine.

12 A He asked me for a description. I do remember
13 that.

14 Q All right. And did you give a --- did you give a
15 description? You did talk about a jacket and you did
16 talk about ---

17 A I think I said jacket, but when I thought about
18 it later, I think --- I'm sure it was a coat or some
19 --- like an overcoat, more.

20 Q Yes, ma'am. And did you make --- would you say
21 medium complexion? Do you remember saying that?

22 A I don't remember saying that, no.

23 Q Okay. And do you remember about the age range or
24 anything?

25 A Yes. I said mid to late 30s.

1 Q Okay. All right. Let me look back here and see
2 some of the stuff I was going to ask you before. Just
3 briefly, going through --- the stuff about the glasses
4 and when you first had opened the door, when you first
5 --- do you remember talking to Investigator Travis
6 Holdorf? Does that name sound familiar to you?

7 A I don't remember that name.

8 Q Do you --- do you remember talking to other
9 people or is it just so long ago that...

10 A I remember talking with some other people but ---

11 Q Okay.

12 A --- I don't recall individual names.

13 Q All right. Do you --- do you remember telling
14 Investigator Holdorf that you didn't recognize the
15 person when you opened the door or somebody, one of
16 these guys with guns that when --- when you opened the
17 door, you tried to close it because you didn't
18 recognize the person?

19 A I didn't have a chance to try to close the door.

20 Q Okay. Yes, ma'am.

21 A I didn't say that. I'm sure I did not say that.

22 Q Okay. So if --- somebody would just be wrong?

23 A But I recognized it at the same time that he was
24 not the person I thought it was.

25 Q Because you had thought it was Curtis?

1 A Right.

2 Q Okay. And you had testified earlier that Curtis
3 sometimes comes around knocking late at night asking
4 for money?

5 A (Nods in the affirmative.)

6 Q How many times do you think Cur --- how long has
7 Curtis been doing --- and it's not unusual ---

8 A Uh-huh.

9 Q --- to give somebody some money to do some yard
10 work and then they're showing up, you know, asking for
11 payment in advance and that sort of thing ---

12 THE HONORABLE CLIFTON NEWMAN: Is that a question,
13 statement or...

14 MR. SUTHERLAND: Yes, sir. Yes, sir. I'm trying
15 to be comfortable, and I'm sorry, Your Honor.

16 BY MR. SUTHERLAND:

17 Q How many times do you reckon that Curtis or
18 anybody had come up asking for money from you?

19 A Well, Curtis came on a regular basis.

20 Q And do you know --- did Curtis live nearby or
21 anything ---

22 A He lived off Monticello.

23 Q Okay. And if --- I'm going to wind this up. If
24 you --- if you had said in your earlier statement that
25 when you reached in your purse to get the money, you

1 put your glasses on ostensibly to go in the purse, and
2 that's when you --- when recognized the person? Is
3 that your recollection of your testimony?

4 A No. I recognized him from earlier on when he
5 stopped to ask me who else was in the house.

6 Q Okay. It's --- okay. I have no further
7 questions, ma'am. Thanks.

8 A Uh-huh.

9 THE HONORABLE CLIFTON NEWMAN: Anything further?

10 MS. CAMPBELL: Nothing further from this witness,
11 Your Honor.

12 THE HONORABLE CLIFTON NEWMAN: All right. You
13 may step down, ma'am.

14 MS. CAMPBELL: The State would call Major Smith.

15 JAMES STANTON SMITH,

16 after being duly sworn, testified as follows:

17 THE CLERK: Have a seat in the witness box.

18 State your name for the record, please.

19 THE WITNESS: James Stanton Smith.

20 DIRECT EXAMINATION:

21 BY MS. CAMPBELL:

22 Q Major Smith, where are you employed?

23 A The Richland County Sheriff's Department.

24 Q What do you do there, sir?

25 A I'm a supervisor in the criminal investigative

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1 division.

2 Q Sometimes you get involved directly in the
3 investigation of certain homicide cases?

4 A I do.

5 Q And I want to turn your attention back to
6 January 31st of 2009. Did you become involved in the
7 investigation that ultimately led to the arrest of
8 Elbert Wallace?

9 A I did.

10 Q And did you have an occasion to make contact with
11 Ms. Webb, who was one of the victims in this case?

12 A Yes. I was briefed on the 31st by Lieutenant
13 McDonald and the Shift Supervisor, Sergeant Robinson.
14 The following day I actually became directly involved
15 in it, which would be the 1st.

16 Q Can you tell the judge basically how you became
17 involved, and your involvement with Ms. Webb?

18 A I came out that Sunday morning, which was the 1st,
19 and began reviewing some of the reports involving a
20 companion incident to the homicide.

21 I was briefed about the homicide the night before
22 in conjunction with the assault of Ms. Webb, and as a
23 result of the homicide, I came on out that Sunday
24 morning to begin working on it.

25 We realized there was a possible connection

1 between the crimes immediately. I began involving ---
2 I involved myself in a canvas of the neighborhood, and
3 that, coupled with some information that Lieutenant
4 McDonald had gained the night before, led us to
5 Mr. Wallace as a suspect in this case.

6 Q And that was ---

7 A On these cases.

8 Q --- information you gained independently from
9 what Carolyn Webb had related to the police?

10 A That's correct.

11 Q Based on that information, what did you do?

12 A We prepared a photographic lineup. We summoned
13 Ms. Webb back. She had left the --- the area, was
14 staying with relatives, or I believe they were friends,
15 I want to say in Augusta or Aiken.

16 We summoned her back though the use of our victim
17 advocate, Cassie Radford. We got her to come back to
18 Columbia for the purpose of doing a photographic
19 lineup and securing a statement from her.

20 Q When did you --- where did you actually make
21 contact with her?

22 A She actually came to the sheriff's department.

23 Q Approximately what time of day was this?

24 A We actually showed her the lineup, began talking
25 to her --- bear with me.

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1 (Pause)

2 Around 4:50 p.m. that afternoon I actually --- is
3 when I actually presented the lineup to her.

4 Q And you were aware that Ms. Webb actually
5 sustained injuries during the attack?

6 A Yes.

7 Q And had been treated at the hospital and released?

8 A Yes.

9 Q When you made contact with her that day, I
10 believe you mentioned Ms. Cassie Radford was with you?

11 A Yeah. She --- Cassie was instrumental in getting
12 her back. She was the assigned victim advocate that
13 weekend. She was communicating with her and her
14 family or friends, whoever was involved in
15 transporting her back to Columbia.

16 Q Okay. And what was the purpose of your meeting
17 with her around 4:00 that Saturday afternoon?

18 A To show ---

19 Q Excuse me, Sunday afternoon. I said that wrong.

20 A --- the photographic lineup, and to --- we also
21 secured her statement at that time.

22 Q And did you, in fact, do those?

23 A Yes.

24 Q And which one did you do first?

25 A I believe we did the photographic lineup first.

1 Q I want to show you what's being marked as State's
2 Exhibit Number 1. Do you recognize that lineup?

3 A Yes.

4 Q And is that the actual lineup that was shown to
5 her that day?

6 A It is.

7 Q And has it been altered or changed in any way
8 other than the handwriting that's been filled in on it?

9 A Just the Court sticker.

10 Q The Court sticker?

11 A That's correct.

12 Q Tell the judge exactly how you went about showing
13 her the lineup and what information, if any, you gave
14 her?

15 A Ms. Webb, obviously, knew why she was at the
16 sheriff's department to look at a lineup involving a
17 possible individual who had committed this crime that
18 occurred against her.

19 I basically advised her that there was a series
20 of photographs, and I wanted her to look at them and
21 see if she recognized anyone. That's basically the
22 language that I always used.

23 I handed her the lineup and let her study it. I
24 think she was seated across the table from me. She
25 took her time and was very careful. She ultimately

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1 identified the defendant.

2 Q And that's photograph number three?

3 A Yes.

4 Q And did you have her memorialize that in any way
5 on the actual document itself?

6 A Yes. I had her initial it, put the date by the
7 photograph. On this particular photo lineup form, the
8 affidavit section is at the bottom of the actual
9 lineup.

10 We have other lineups that we use, depending on
11 the pictures we use, where we have another page, but
12 in this particular case, the affidavit was at the
13 bottom. Lieutenant McDonald actually filled out the
14 information at the bottom.

15 Q Okay. And other than I note the date has the
16 wrong year on it. It says 2/1/08. It should be
17 2/1/09 ---

18 A Correct.

19 Q --- is that all the information that was provided
20 to you?

21 A Yes.

22 Q While you were present and in her presence, you
23 were there during the entire time when she was being
24 shown --- handed the lineup, shown the lineup, and
25 when she ultimately identified the person that

1 attacked her, did anyone influence her in any way?

2 A No.

3 Q Did anyone offer her any help in picking out
4 someone or telling her she had to pick out someone?

5 A Absolutely not.

6 Q And in your opinion, did she pick out the person
7 that she recognized from attacking her?

8 A She did.

9 Q And once that was done, did she also fill this in
10 out here?

11 A Yes. She actually signed her name on this
12 affidavit along with her address and phone number.
13 Actually, during that interview, she came up with
14 another piece of information that she had not related
15 before.

16 She indicated that she remembered that the
17 driver's license shown to her had a Truman Street
18 address. That was highly significant because we knew
19 that by that point in time, that his driver's license
20 did, indeed, have a Truman Street address.

21 Q And that was the first time you had gotten that
22 information?

23 A Yes.

24 Q In fact, after she had identified the person?

25 A Yes. During the course of the --- yes, ma'am.

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1 Q And she was able to give you that information
2 which you didn't have beforehand?

3 A That's correct.

4 Q Once she had identified the person, did you have
5 her memorialize that down here and sign off on it?

6 A Yes.

7 Q That was ---

8 A This is Lieutenant McDonald's handwriting here,
9 and Ms. Webb signed here, several witnesses, and I
10 notarized the actual affidavit.

11 MS. CAMPBELL: May I approach, Your Honor?

12 THE HONORABLE CLIFTON NEWMAN: Sure.

13 BY MS. CAMPBELL:

14 Q Were you --- did you actually participate in
15 formulating that lineup?

16 A It was a joint effort between myself and
17 Lieutenant McDonald.

18 Q And in making that lineup, as you do with every
19 lineup, I guess, tell the judge what factors you look
20 and what factors were involved in formulating this
21 lineup?

22 A Well, the goal is to be fair, to have the same
23 basic age, hairstyle, that kind of thing. In this
24 particular case, the picture that we had available to
25 us, the defendant had a jersey that was a different

1 color than the rest of them.

2 Out of an abundance of fairness and caution, we
3 cropped that jersey. That's where Lieutenant McDonald
4 had to help me because I'm not very good with some of
5 those computer skills, but he was actually able to
6 crop that part of the jersey out.

7 So that you see the photographs are coming just
8 under the chin of each person in the lineup. That's
9 the reason for that, so he would not stand out to the
10 person we presented the lineup to.

11 Q And once Ms. Webb had looked at the lineup again,
12 she identified number three as the person that
13 attacked her?

14 A Yes.

15 Q Did she ever waiver from that identification in
16 your presence?

17 A No, ma'am.

18 MS. CAMPBELL: That's all I have, Your Honor.

19 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

20 CROSS-EXAMINATION:

21 BY MR. SUTHERLAND:

22 Q May it please the Court.

23 You heard --- you heard the testimony that this
24 lineup was not the lineup that was shown to her?

25 A She said she felt like it had four pictures on

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1 the bottom rather than three on the top.

2 Q You heard her say that straight out of the box
3 that that's not it. That's ---

4 A Then I heard her waiver on that just a little bit,
5 yes, sir, but she was clear on who she identified.

6 Q Well, that was with Ms. Campbell taking her down,
7 down ---

8 MS. CAMPBELL: Objection, Your Honor, to his
9 characterization.

10 MR. SUTHERLAND: Well, I mean, with the leading.
11 That was with the leading.

12 THE HONORABLE CLIFTON NEWMAN: What is the
13 question for the witness?

14 MR. SUTHERLAND: Well, I was going to ask him
15 where the other one is.

16 BY MR. SUTHERLAND:

17 Q Where is --- where is the lineup with the four
18 pictures?

19 A It was clear to me that she identified the top
20 right photograph, and that is, indeed, the lineup that
21 was shown to her that day.

22 Q Okay.

23 A It was 36 hours. That's the a pretty traumatic
24 experience.

25 Q Well, now I ---

1 A She was pretty upset at that point. She was sure
2 of her identification.

3 Q I --- I understand. I don't --- what I do ---
4 what I do recall is her testifying that she was doing
5 pretty well and, you know, she seems to remember
6 things pretty well. But I mean, if it's your
7 assertion that she is mistaken about the lineup that
8 you presented to her ---

9 MS. CAMPBELL: Objection, Your Honor. Is there a
10 question?

11 BY MR. SUTHERLAND:

12 Q Is it your assertion that she is mistaken about
13 the lineup that was presented to her?

14 A It was my assertion she identified number three.

15 Q So she is not --- so wasn't wrong when she
16 testified there were three pictures up top and four on
17 the bottom?

18 A It's my assertion that she identified number
19 three, and I believe she waivered just a little bit
20 about that in her testimony.

21 Q All right. We'll get past it.

22 Just a question for you, how long --- I believe
23 she testified that she had trouble initially, and she
24 isolated it down to two pictures. Was that --- was
25 that your observation?

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1 A I don't remember her saying, verbalizing, "I've
2 narrowed it down to two pictures." She took her time,
3 and she identified the defendant.

4 Q Okay. How long --- how long do you think it took,
5 or how long do you recall that it took or do you?

6 A I could estimate less than two minutes, more than
7 30 seconds. She was very careful.

8 Q I understand, sir.

9 Your Honor, I have no further questions of this
10 witness at this time, sir.

11 THE HONORABLE CLIFTON NEWMAN: All right.
12 Anything further from the State?

13 MS. CAMPBELL: No, sir.

14 THE HONORABLE CLIFTON NEWMAN: Next witness?

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

16 (Pause)

17 MS. McDUFFIE: No further witnesses on this issue,
18 Your Honor.

19 THE HONORABLE CLIFTON NEWMAN: Any witnesses by
20 the defense?

21 MR. SUTHERLAND: The --- is Travis here,
22 Investigator Holdorf here?

23 MS. CAMPBELL: He didn't participate in the
24 lineup.

25 MR. SUTHERLAND: Okay.

1 No, sir. I don't have any more witnesses.

2 Sort of sorting through the position that ---
3 that I'm in here, it was the testimony of the witness
4 that there were three pictures on the top and four
5 pictures on the bottom, and certainly, that would be
6 unusual.

7 I understand that Major Smith testified that
8 there were only three and three. It's my opinion that
9 if it were the three and four, that that would be a
10 suggestive lineup.

11 If you put the person in the three simply because
12 it's picking one of three versus one of four row to
13 row, I think ultimately with the testimony that we
14 heard, it's just going to end up that it's going to
15 end up being a credibility or recollection sort of
16 issue with the identification.

17 When it comes to --- it --- it would be unusual
18 for that to have occurred as far as the lineup goes,
19 so I will withdraw the motion to suppress at this time
20 and will cross-examine the witnesses during the trial,
21 sir.

22 THE HONORABLE CLIFTON NEWMAN: All right. Well,
23 I haven't heard the motion, I nevertheless ---

24 MR. SUTHERLAND: Oh, the objections, withdraw the
25 objections.

1 THE HONORABLE CLIFTON NEWMAN: All right.

2 MR. SUTHERLAND: I withdraw the objection, sir ---

3 THE HONORABLE CLIFTON NEWMAN: All right.

4 MR. SUTHERLAND: --- to the lineup being
5 suggestive, sir.

6 THE HONORABLE CLIFTON NEWMAN: All right. Well,
7 I've heard the motion at this point, so though you may
8 want to withdraw it from your purposes, I'm going to
9 make a finding for my purposes.

10 MR. SUTHERLAND: Yes, sir, thank you.

11 THE HONORABLE CLIFTON NEWMAN: Having heard it, I
12 find that the identification process was not unduly
13 suggestive; that the witness has an opportunity to
14 view the criminal at the time of the crime.

15 She had on her glasses, she said, for --- when
16 she first came to the door, and that she remembered
17 him from earlier during the day.

18 As to the accuracy of the witness's prior
19 description of the defendant, it appears that it was
20 reasonably accurate as to the defendant's present
21 appearance. I'm not certain what his appearances was
22 at the time of his arrest in '09.

23 The witness had a sufficient level of certainty,
24 and there was no significant lapse of time between the
25 time of the crime and the time of the identification

1 itself.

2 I find the defendant's constitutional rights were
3 not violated in the process of the witness being shown
4 and picking the defendant from this photo lineup.

5 What else do we have, pretrial nature?

6 MR. SUTHERLAND: There's been a motion on --- the
7 a motion on the photographs, and this could be
8 something that we might be able to just sit down and
9 take a look at and get figured out maybe after ---

10 MS. CAMPBELL: We've got the ones --- we can let
11 him review everything tonight, so if he has objections,
12 we can narrow it down in the morning. There were some
13 3,000, how many thousand, photographs? We've narrowed
14 it down from that scope, so I think we can save time.

15 THE HONORABLE CLIFTON NEWMAN: All right. All
16 right. I hope you ---

17 MS. CAMPBELL: Your Honor, the only other thing
18 we would have, and we did this based on his earlier
19 assertions by the defense, on his motion to exclude
20 testimony, because it would be crucial to our case at
21 some point to be able to tell the jury what the cause
22 of death is in the case.

23 We do have the coroner here who is prepared to
24 testify, as well as the pathologist who has reviewed
25 the documents, as well as the photographs in order to

1 come to an independent conclusion.

2 He is prepared to testify, if that is a matter
3 the Court would be willing to take up at this time. I
4 know, and I agree you can't do a blanket speculation
5 on what the evidence would be. I didn't know if you
6 would want us to put up, briefly, just basically the
7 basic areas we would be going into.

8 THE HONORABLE CLIFTON NEWMAN: All right. Well,
9 if there is a motion to exclude and you have witnesses
10 here and you want to conduct a hearing, Judge McDonald
11 will preside over that phase of it.

12 MS. CAMPBELL: All right.

13 THE HONORABLE STEPHANIE McDONALD: If you'll call
14 your first witness.

15 MR. SUTHERLAND: If it please the court.

16 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

17 MR. SUTHERLAND: I thought the motion was denied,
18 sir.

19 THE HONORABLE CLIFTON NEWMAN: Well, gee. I
20 said --- you just said a blanket motion to exclude ---

21 MR. SUTHERLAND: Yes, sir.

22 THE HONORABLE CLIFTON NEWMAN: --- a witness was
23 denied.

24 If you --- if there's some issue with regard to
25 the specific testimony, and if you are still

1 contesting the limits on the testimony and what the
2 witness can testify to, then --- and if your motion to
3 exclude is still there regarding the standard of
4 testimony, then that will be something that can be
5 heard.

6 MR. SUTHERLAND: Yes, sir. Well, it would ---
7 what I would object to is anything --- a stating of an
8 actual --- of the actual cause of death, an opinion
9 making sure it's recognized that this is an opinion;
10 that this person did not perform the autopsy; that
11 they're simply coming in on the basis of observing
12 other reports.

13 THE HONORABLE CLIFTON NEWMAN: And that's what
14 I'm saying. You see, I can't rule on that objection.
15 There is nothing --- I haven't heard anything.

16 MR. SUTHERLAND: Yes, sir.

17 THE HONORABLE CLIFTON NEWMAN: I know you have an
18 objection, but what can I say? You have to hear some
19 testimony ---

20 MR. SUTHERLAND: Yes, sir.

21 THE HONORABLE CLIFTON NEWMAN: --- to have some
22 basis to make a ruling.

23 MR. SUTHERLAND: Yes, sir.

24 THE HONORABLE CLIFTON NEWMAN: And that's what
25 she is wanting to offer testimony so that the court

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1 would have a basis to either grant or deny your motion.

2 MR. SUTHERLAND: Yes, sir. Thank you, Your Honor.

3 THE HONORABLE CLIFTON NEWMAN: Yeah, and Judge
4 McDonald will preside over that.

5 MS. CAMPBELL: The State would call Gary Watts.

6 GARY WATTS,

7 after being duly sworn, testified as follows:

8 THE CLERK: Have a seat in the witness box, state
9 your name for the record please.

10 THE WITNESS: Gary Watts.

11 DIRECT EXAMINATION:

12 BY MS. CAMPBELL:

13 Q Sir, where are you employed?

14 A I am the Richland County Coroner.

15 Q And how long have you been the coroner for
16 Richland County?

17 A Since 2000 --- January 2001 is when I first took
18 office.

19 Q What do your duties include as a coroner for
20 Richland County?

21 A Certification of death certificates, cause and
22 manner of death on anyone that dies under certain
23 circumstances within the county of my jurisdiction.

24 Q And your duties are actually --- you are actually
25 elected; is that correct?

1 A That's correct.

2 Q But your duties are actually outlined by statute?

3 A That's correct.

4 Q And what section of the code is that in?

5 A There's a couple of different sections, but one
6 under section 17-5-560 is a certification of the cause
7 of death on death certificates and also under 17-5-510,
8 which is the duties of the coroner and medical
9 examiner.

10 It states, "In counties which have both a coroner
11 and medical examiner," which Richland County does,
12 "the coroner has the ultimate responsibility for
13 carrying out the duties required in this article," and
14 that goes on to the certification of the death
15 certificate.

16 Q Okay. And you are not the person that actually
17 performs the actual autopsy; is that correct?

18 A No. That's performed by a medical doctor, a
19 pathologist.

20 Q But your office is actually an investigative
21 agency?

22 A My office is an investigative agency, and we use
23 what we receive not only from the pathologist but also
24 other investigative agencies, the sheriff's office or
25 toxicology reports, all the different things that come

1 into our office that we then, in turn, use to make the
2 final determination on the cause and manner on death.

3 Q And ultimately, that's published for the public
4 by way of a death certificate; is that correct?

5 A That's correct.

6 Q And your files --- there are certain records that
7 are kept in your office in the normal course of
8 business?

9 A Yes, ma'am.

10 Q And in those files, it also contains, I believe,
11 your own investigation, as well as maybe the sheriff's
12 department or whatever agency it is, as well as the
13 autopsy is always pertinent to your findings.

14 A That's correct. The autopsies are --- all those
15 reports are forwarded to us, and we do keep those.

16 Q Did your office actually participate in the
17 investigation in the death of Linda Derrick back on
18 January 31, 2009?

19 A Yes, we did.

20 Q And generally when you all go --- I believe your
21 office actually responded to the crime scene that day?

22 A That's correct.

23 Q And conducted an independent investigation and
24 attended the autopsy itself?

25 A Correct.

1 Q As a result of your investigation after reviewing
2 the autopsy, were you able to determine a cause of
3 death in this case?

4 A Yes.

5 Q And what was the cause of death as far as your
6 findings?

7 A The final listing on the death certificate was
8 intracranial trauma due to a beating.

9 Q And cranial part is what part of the body?

10 A Skull.

11 Q Skull. So it would be consistent with blunt
12 force trauma to the head?

13 A Blunt force trauma to the head, homicide.

14 Q And that's actually what you published in the
15 death certificate in this case?

16 A That's correct. Now, I will point out that that
17 was actually signed by someone else in our office, but
18 it was our office.

19 Q They're all under your direction?

20 A One of my deputies, correct.

21 Q And as far as classifying what type of death this
22 is, you have suicide and homicide, natural deaths,
23 accidents, things of that nature?

24 A Correct.

25 Q Would this be classified as what?

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1 A This is a homicide.

2 Q Thank you. And just for the record, the death
3 certificate for Linda Derrick ---

4 A Correct.

5 Q And what's the date of birth on that?

6 A /46, I believe.

7 Q Is that a copy there?

8 A That is a copy. This death certificate is
9 actually done electronically, so that is a copy. It's
10 not a certified copy, but that is what we have in our
11 files.

12 MS. CAMPBELL: Your Honor, at this time, I'd make
13 it a Court's Exhibit.

14 THE HONORABLE STEPHANIE McDONALD: Thank you.

15 (WHEREUPON, Court's Exhibit No. 1 was marked for
16 identification only.)

17 MS. CAMPBELL: Your Honor, may I approach?

18 THE HONORABLE STEPHANIE McDONALD: Yes.

19 MS. CAMPBELL: That's all I have, Your Honor.

20 THE HONORABLE STEPHANIE McDONALD: Counsel.

21 MR. SUTHERLAND: May it please the Court.

22 THE HONORABLE STEPHANIE McDONALD: Yes.

23 CROSS-EXAMINATION:

24 BY MR. SUTHERLAND:

25 Q Again, could you restate what your involvement

1 with this particular case was?

2 A I'm the coroner for Richland County, so as the
3 coroner, our office is in charge of --- responsible
4 for making the final determination of cause and manner
5 of death.

6 Q And it would be the people that were employed
7 with your office that made those determinations, or
8 that made the determination with respect to this case?

9 A Actually, I make the final determination.

10 Q And the determination, is it --- is it based on a
11 discussion with the --- with the person who performed
12 the autopsy?

13 A It's based on a discussion with the person who
14 performed the autopsy, the actual review of the
15 autopsy report itself, and other bits of information
16 that may come in, yes, sir.

17 Q Do you ever participate in --- for example, do
18 you ever maybe look at any brain slides or perform any
19 type of independent analysis or go --- basically, it's
20 the discussion with the pathologist?

21 A No, sir. That's something that is just basically
22 left up to the physicians.

23 MR. SUTHERLAND: Thank you, sir. No further
24 questions, Your Honor.

25 THE HONORABLE STEPHANIE McDONALD: Thank you, sir.

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1 MS. CAMPBELL: Nothing further, Your Honor, for
2 this witness.

3 THE HONORABLE STEPHANIE McDONALD: You may step
4 down, sir. Thank you.

5 THE WITNESS: Thank you.

6 MS. McDUFFIE: If it please the Court, Your Honor.
7 The State would call Dr. Bradley Marcus.

8 THE HONORABLE STEPHANIE McDONALD: Thank you.
9 Dr. Marcus.

10 BRADLEY MARCUS,
11 after being duly sworn, testified as follows:

12 DIRECT EXAMINATION:

13 BY MS. McDUFFIE:

14 Q Please state your name for the record.

15 A Bradley J. Marcus.

16 Q And Dr. Marcus, where are you currently employed?

17 A I work for Professional Pathology Services here
18 in Columbia.

19 Q And as part of your duties --- as part of your
20 work duties, are you also the medical examiner for
21 Richland County?

22 A I am.

23 Q And as the medical examiner for Richland County,
24 please tell the Court what your duties are.

25 A My duties are basically, the coroner's office,

1 whenever they need an autopsy done, they call our
2 private practice, and we do it at Richland Hospital.
3 So I review --- I review not only my autopsy reports
4 but my colleague's autopsy reports, any autopsy report
5 that any --- that any --- Gary Watts has me review.

6 Q And part of your duties are performing autopsies?

7 A Yes.

8 Q And how long have you been the medical examiner
9 for Richland County?

10 A Approximately nine months as the chief, but for
11 three years now, total.

12 Q And who was the previous medical examiner for
13 Richland County?

14 A Dr. Clay Nichols.

15 Q And are you aware of Dr. Nichols' present
16 condition?

17 A Yes.

18 Q And what is that?

19 A Dr. Nichols had some medical issues he had to
20 deal with, and he's out of service for now.

21 Q And is he currently in the State of South
22 Carolina?

23 A No, he's not.

24 Q And were you asked to review the autopsy of Linda
25 C. Derrick, date of birth, /1946?

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1 A Yes, I was.

2 Q And who was the original physician that performed
3 that autopsy?

4 A Dr. Clay Nichols.

5 Q And are you a board certified forensic
6 pathologist?

7 A I am.

8 Q And please tell the court what a forensic
9 pathologist does?

10 A A forensic pathologist is really --- determines
11 the cause --- the cause and --- the cause and manner
12 of death by performing an autopsy on someone who died
13 suddenly and unexpectedly, either naturally and/or
14 through a traumatic incident, such as an accident or
15 homicide, suicide, et cetera.

16 Q And in order for you to determine the cause and
17 manner of death, is it necessary for you to perform
18 the autopsy yourself?

19 A Not necessarily, no.

20 Q Please tell the Court how you can come to those
21 conclusions without having actually performed the
22 autopsy?

23 A Well, through photographs, from looking at the
24 slides and the autopsy report. Based on what you're
25 given in front of you, you can actually determine the

1 cause and manner of death based on --- on that.

2 Q And did you do that in the case of the death of
3 Ms. Linda Derrick?

4 A I did.

5 Q And did you come to your own independent
6 conclusions as to the cause and manner of death and
7 also the nature of the injuries of Linda Derrick?

8 A I did.

9 Q And please tell the Court what you relied on in
10 making those independent determinations.

11 A Well, during the autopsy, multiple photographs
12 were taken. So I reviewed all the photographs from
13 that autopsy. In addition to that, I did read the
14 report.

15 Q But is your opinion based solely on what the
16 report says or on your own independent conclusions
17 from looking at the photographs of the injuries?

18 A It's based on my own independent conclusions
19 after looking at the photographs.

20 Q And you examined a number of photographs in this
21 case?

22 A I did.

23 Q And can you please briefly tell the Court what
24 the injuries Ms. Linda Derrick suffered, in your
25 opinion, were?

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1 A Ms. Derrick suffered from multiple injuries to
2 her head, mainly on the left side of her upper face
3 and skull area, and then also including, after opening
4 the --- removing the scalp, seeing injuries on the
5 skull and in the brain itself.

6 Q And did those injuries include multiple
7 contusions, skull fracture, things of that nature?

8 A Yes, they did.

9 Q And based on your review independently of the
10 photographs and the injuries to Ms. Linda Derrick, in
11 --- to a reasonable degree of medical certainty, what
12 is your opinion of the cause of death of Ms. Linda
13 Derrick?

14 A Ms. Derrick died of blunt head trauma.

15 MS. McDUFFIE: Thank you, Your Honor. No further
16 questions.

17 THE HONORABLE STEPHANIE McDONALD: Thank you,
18 ma'am.

19 Counsel?

20 MR. SUTHERLAND: May it please the Court.

21 CROSS-EXAMINATION:

22 BY MR. SUTHERLAND:

23 Q Doctor, how are you?

24 A Good, sir.

25 Q You had replaced Dr. Nichols about --- was it

1 nine months ago?

2 A I believe it was October 31st.

3 Q October 31st. Do you --- do you know why
4 Dr. Nichols left your position?

5 A He --- he took a job in North Carolina.

6 Q He took a job in North Carolina?

7 A From my understanding.

8 Q Are you --- are you aware of any issues of ---
9 with respect to --- and, of course, you may or may not
10 know this, but would you be aware of any problems that
11 he was having with represent to his work, with respect
12 to work product, whether he was having any issues with
13 basically what he was producing as far as his work
14 product?

15 A Not that I'm aware of.

16 Q Okay. And actually, that would have been --- I
17 should have probably asked the guy who was up here
18 before.

19 Okay. Now, you testified that you don't
20 necessarily have to participate in the --- in the
21 autopsy, but you said not --- not necessarily.

22 You also testified that, you know, you reviewed a
23 lot of these photographs and you also reviewed the
24 report.

25 A Correct.

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1 Q Now, is it your --- your testimony here that your
2 conclusions are based on the photographs and solely on
3 the photographs or on the report that you read and the
4 photographs?

5 A Well, the photographs correlated with what the
6 report said.

7 Q Okay, photographs correlated.

8 A Right.

9 Q But you --- you didn't participate in this
10 particular autopsy?

11 A No. No, sir.

12 Q Did you perform any type of --- well, if you
13 didn't participate, you didn't perform any type of
14 independent analysis with respect to the actual
15 autopsy?

16 A Not --- not necessarily, no. Just --- just what
17 I did when I was asked to do last week.

18 Q Okay. And did --- what did they come --- what
19 did they ask you to do last week?

20 A I was notified that Dr. Nichols had had a
21 stroke ---

22 Q Yes, sir.

23 A --- and he is in the hospital and wasn't going to
24 be able to testify for this trial, and they asked me
25 to review, review the photographs and the autopsy

1 report.

2 Q About how long did that take?

3 A Probably about 30 minutes or so.

4 Q Okay, 30 minutes.

5 Now, did you take any notes or did you --- did
6 you produce your own report or anything? In other
7 words, is everything in your mind right now other than
8 this report and the photographs that are out there ---
9 or did you, you know, actually take some notes as you
10 were going through this process?

11 A Well, it might sound a little odd, but I've done
12 so many autopsies that I can pretty much look at the
13 photos and kind of correlate what would I think the
14 cause of death is.

15 Q Okay.

16 A And I don't really need to take any notes ---

17 Q Okay.

18 A --- to be honest with you. I can't really
19 explain it. It's just part of my nature. I can kind
20 of ---

21 Q You remember things in pictures?

22 A Not --- not necessarily.

23 Q Okay.

24 A But I have a very good memory, yes.

25 Q I can understand that.

1 Okay. I think I'm just about done here. Hold on
2 a second.

3 (Pause)

4 Yeah, thanks.

5 No further questions, Your Honor.

6 THE HONORABLE STEPHANIE McDONALD: Thank you, sir.

7 MS. McDUFFIE: Nothing further from the State on
8 this issue or from this witness, Your Honor.

9 THE HONORABLE STEPHANIE McDONALD: Thank you.

10 Anything further from the State at all?

11 MS. McDUFFIE: No, Your Honor.

12 THE HONORABLE STEPHANIE McDONALD: Counsel,
13 anything from the defendant?

14 MR. SUTHERLAND: No, Your Honor, I don't have any
15 witnesses or anything. With respect to argument, it
16 would still be that the testimony is hearsay.

17 THE HONORABLE STEPHANIE McDONALD: Okay. I
18 appreciate your argument. I'm going to just go ahead
19 and rule pretrial. Of course, anything that comes up
20 during the witness's actual testimony that you'd like
21 to object to, you can ---

22 MR. SUTHERLAND: Yes, sir.

23 THE HONORABLE STEPHANIE McDONALD: --- but the
24 Court would like to deny your motion to exclude, based
25 primarily on Rule 703 regarding basically the opinion

1 testimony by experts.

2 This is clearly the type of evidence and reports
3 reasonably relied upon by experts in a particular
4 field in forming opinions and inferences on this
5 subject.

6 As such, the facts and the data in an autopsy
7 report need not even be admissible in evidence.
8 However, under Rule 803(6) and --- excuse me, 803(8)
9 and probably 803(6) and (9), as well, autopsy reports
10 are not hearsay.

11 In fact, I'm citing --- that's from State v.
12 Cutro, which we discussed earlier at length, a 2005
13 Supreme Court case. A Supreme Court of Ohio case the
14 State handed up, I think, is applicable here, as well.
15 An autopsy report prepared by a medical examiner in
16 documenting objective findings is the quintessential
17 business record.

18 In Cutro, our Supreme Court went into that in
19 additional details specifically noting that defense
20 counsel would have ample opportunity to cross-examine
21 the witnesses to any inaccuracies that he might like.
22 Certainly, that is your province to do, but your
23 motion to exclude would be denied.

24 MR. SUTHERLAND: Thank you, Your Honor.

25 THE HONORABLE STEPHANIE McDONALD: Anything

1 further?

2 MS. McDUFFIE: Your Honor, we'd ask the witness
3 be allowed to step down.

4 THE HONORABLE STEPHANIE McDONALD: You may step
5 down, Doctor. Sorry about that.

6 MS. CAMPBELL: That's all we have at this time,
7 Your Honor.

8 THE HONORABLE STEPHANIE McDONALD: Do you have
9 anything else before we recess and get started again
10 in the morning?

11 MR. SUTHERLAND: It's --- well, actually, we were
12 going to try to work together on the issue of the
13 particular photos. I had a motion to exclude gruesome
14 and cumulative photographs.

15 MS. CAMPBELL: There are thousands of pictures in
16 this case, Your Honor. I think we can narrow it down
17 what we intend to offer for him so that he doesn't
18 have to go through every single one that may not be
19 offered. We agree many of them should be excluded.

20 THE HONORABLE STEPHANIE McDONALD: That would be
21 very helpful. You can make the point without
22 thousands of photos, I would imagine.

23 MS. CAMPBELL: Thank you, Your Honor.

24 THE HONORABLE STEPHANIE McDONALD: Thank you.

25 We'll be in recess. We'll see you at ten o'clock.

1 MR. SUTHERLAND: Thank you, Your Honor.

2 MS. CAMPBELL: Thank you, Your Honor.

3 (WHEREUPON, court was adjourned for the day.)

4 THE HONORABLE CLIFTON NEWMAN: Good morning. I
5 got two notes from jurors. One is juror number 67.
6 It says, "I would like to disclose that I have a
7 brother that works at Broad River Corrections. He
8 guards the people serving life terms." That's from
9 juror number 67.

10 What says the State?

11 MS. CAMPBELL: I don't know if the defense wants
12 to request maybe voir dire and if that would affect
13 him in any way.

14 THE HONORABLE CLIFTON NEWMAN: What says the
15 defense?

16 MR. SUTHERLAND: I --- I would hope that he would
17 be excused, obviously. I guess we have to voir dire
18 him, but I will just note there was opportunity for
19 this to come up prior to the jury selection.

20 THE HONORABLE CLIFTON NEWMAN: Which question
21 would have applied? Which question should he have
22 gotten up and said this concerning?

23 MR. SUTHERLAND: I believe there was a direct
24 question about does anyone have a family member with
25 the Department of Corrections.

1 THE HONORABLE CLIFTON NEWMAN: Now ---

2 MR. SUTHERLAND: But I specifically --- well, I
3 remember the Department of Corrections being mentioned.

4 THE HONORABLE CLIFTON NEWMAN: Part of the
5 qualifications questions is if you are employed by the
6 Department of Corrections, you are entitled to be
7 exempted from jury duty. That's one. Then, of course,
8 there is a question of whether or not you or any
9 member of your immediate family works in law
10 enforcement.

11 MR. SUTHERLAND: Yes, sir.

12 THE HONORABLE CLIFTON NEWMAN: And any
13 prosecutor's office, federal, local or state law
14 enforcement agency.

15 MR. SUTHERLAND: Yes, sir.

16 THE HONORABLE CLIFTON NEWMAN: I guess the
17 question then becomes is a correctional officer a law
18 enforcement officer.

19 MR. SUTHERLAND: And if I'm --- the wheels are
20 turning here. I think for the --- I know it's an
21 assault on a correctional employee officer, yes, sir.
22 I'm sorry. I was trying to think of some cases or
23 case law.

24 MS. CAMPBELL: I believe that there is a statute
25 that says an employee or officer at the Department of

1 Corrections is not law enforcement.

2 MR. SUTHERLAND: All right. Just as long as my
3 objection is noted.

4 THE HONORABLE CLIFTON NEWMAN: Well, you know, I
5 don't want to just make --- I don't want to make
6 anything just perfunctory. Everything is meaningful
7 so...

8 MR. SUTHERLAND: Oh, and then further, I would
9 point out that Ms. Derrick is retired from the
10 Department of Corrections.

11 THE HONORABLE CLIFTON NEWMAN: Of course --- of
12 course, that wasn't made the basis of any questions.

13 MR. SUTHERLAND: Yes.

14 MS. CAMPBELL: And you did read her name out as
15 far as anybody having any knowledge of her or anything,
16 and he did not respond to that question.

17 THE HONORABLE CLIFTON NEWMAN: Do you want me to
18 inquire any further with this juror?

19 MR. SUTHERLAND: If it pleases the Court, just
20 about whether or not the objectivity, there must be
21 some reason behind the note, sir.

22 THE HONORABLE CLIFTON NEWMAN: All right. Well,
23 that --- that's that juror.

24 MR. SUTHERLAND: Yes, sir.

25 THE HONORABLE CLIFTON NEWMAN: You may stay

1 standing for the next one. I'll read this one to you,
2 too.

3 MR. SUTHERLAND: Okay.

4 THE HONORABLE CLIFTON NEWMAN: From juror number
5 314: "I do not feel comfortable serving on this jury.
6 I feel scared. I am a single parent and could not
7 sleep because I kept thinking this man killed somebody.
8 I know that we are supposed to remain impartial, but I
9 don't feel that I can. The thought of this man having
10 killed someone is overruling all other logical
11 thought," from juror number 314.

12 MR. SUTHERLAND: I would move that that juror be
13 excused, Your Honor.

14 THE HONORABLE CLIFTON NEWMAN: All right. What
15 says the State?

16 MS. CAMPBELL: We leave it in the Court's
17 discretion.

18 THE HONORABLE CLIFTON NEWMAN: All right. If
19 you'll bring juror number 314 out, please.

20 (Juror number 314 entered the courtroom.)

21 THE BAILIFF: Yes, sir.

22 THE HONORABLE CLIFTON NEWMAN: All right. Ma'am,
23 juror number 314?

24 THE JUROR: Yes.

25 THE HONORABLE CLIFTON NEWMAN: You sent a note

1 indicating some problems with your serving on the case.

2 THE JUROR: Yes.

3 THE HONORABLE CLIFTON NEWMAN: And is this
4 something that you --- a concern that you developed
5 after you were selected or before you were selected?

6 THE JUROR: Well, a little before, but more so
7 after.

8 THE HONORABLE CLIFTON NEWMAN: And, ma'am, have
9 you discussed your thoughts with anyone on the jury?

10 THE JUROR: No, sir.

11 THE HONORABLE CLIFTON NEWMAN: All right. Well,
12 have you --- do you have anything in the jury room?

13 THE JUROR: Yes, my purse is in there.

14 THE HONORABLE CLIFTON NEWMAN: Okay. Mr. Bailiff,
15 could you get her --- have someone pass her purse out
16 from the jury, please.

17 All right. Thank you, ma'am. You'll be excused
18 from service on this jury.

19 She can return to the assembly room.

20 THE JUROR: Okay.

21 THE HONORABLE CLIFTON NEWMAN: Ma'am, please do
22 not discuss your thoughts or views regarding this
23 matter with anyone as long as this case is going on.

24 THE JUROR: All right. Thank you.

25 THE HONORABLE CLIFTON NEWMAN: Thank you. Thank

1 you. And if you'll ask juror number 67 to come out.

2 THE BAILIFF: Sixty-seven?

3 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

4 (Juror number 67 entered the courtroom.)

5 THE BAILIFF: Juror number 67, Your Honor.

6 THE HONORABLE CLIFTON NEWMAN: Sir, you sent a
7 note saying that you wanted to disclose that you have
8 a brother working at Broad River Corrections; he
9 guards the people serving life terms.

10 And, sir, would that fact affect your ability to
11 be a fair and impartial juror in this case?

12 THE JUROR: No.

13 THE HONORABLE CLIFTON NEWMAN: All right, sir.
14 And the fact that you decided to disclose this
15 information, does that have any impact whatsoever on
16 your ability to serve as a juror in this case?

17 THE JUROR: No.

18 THE HONORABLE CLIFTON NEWMAN: All right. Thank
19 you, sir. Sir --- and please, sir, the disclosure of
20 our conversation, if you will not disclose that to any
21 member of the jury panel.

22 THE JUROR: Okay.

23 THE HONORABLE CLIFTON NEWMAN: All right. Thank
24 you, sir.

25 Any objections or any further inquiry sought by

1 the State or the defense?

2 MS. CAMPBELL: No, sir.

3 MR. SUTHERLAND: Sir, I would just hope that when
4 the jury panel is brought in, that the court might
5 inquire as to whether they had spoken with one another,
6 not to be particular, but just to see if everything is
7 on the up and up.

8 THE HONORABLE CLIFTON NEWMAN: All right. I'll
9 do that.

10 MR. SUTHERLAND: Thank you.

11 THE HONORABLE CLIFTON NEWMAN: All right. Other
12 matters?

13 MR. SUTHERLAND: Sir, if I may, we do have the
14 issue of the photographs and which photographs the
15 State would intend to admit.

16 We did meet last night until about seven, and we
17 did get through a number of them. But there are still
18 --- there are photographs which the State intends to
19 introduce, which I would object to, and I do have a
20 motion which I provided to the State with supporting
21 case law in that regard, sir, if I may approach.

22 THE HONORABLE CLIFTON NEWMAN: And at what point
23 in time does the State intend to offer these
24 photographs?

25 MS. CAMPBELL: Later down the line. We can go

1 ahead and start.

2 THE HONORABLE CLIFTON NEWMAN: All right.

3 MS. CAMPBELL: We aren't offering them with the
4 first five or six witnesses at all.

5 THE HONORABLE CLIFTON NEWMAN: All right. We can
6 address all that.

7 MS. CAMPBELL: And some of them were withdrawn
8 based on his request, so it's a very narrow field
9 based on what he told us.

10 THE HONORABLE CLIFTON NEWMAN: All right. We'll
11 deal with photographs later. Anything else?

12 MR. SUTHERLAND: Well, it's --- it's my
13 understanding that the State does not intend to
14 introduce any statements by my client, and just for
15 the record, I would say that I believe that there are
16 a number of statements that would be involuntary due
17 to a Miranda violation, but if they are not intending
18 to introduce those statements, I'm just saying that I
19 will hold them to that if it should come up later.

20 MS. CAMPBELL: We can look at that later, Your
21 Honor, and take it up on a break if you want to take
22 it up then. It will not come up with the first 15
23 witnesses.

24 THE HONORABLE CLIFTON NEWMAN: All right. I
25 think Rule 103 provides that any matters regarding

1 admissibility of statements and voluntariness of
2 statements, any Jackson Denno type hearings be
3 conducted outside the presence of the jury prior to
4 such statements being offered.

5 MR. SUTHERLAND: Sir, if it --- it's the State's
6 motion, I believe that something is likely to be
7 attempted to be introduced. It's just my thought and
8 maybe a little paranoia on my part.

9 But I want to make --- I might --- we may --- we
10 may have to establish the Miranda violation pretrial
11 if --- I don't know about doing things just in case,
12 but I would ask leave from the Court, if they do
13 introduce the statement to raise the issue at that
14 time, sir.

15 MS. CAMPBELL: Prior to us introducing any
16 statements, which will not be mentioned in opening
17 prior to using any statement by the defendant, of
18 course, we will notify the Court and do the
19 appropriate thing.

20 THE HONORABLE CLIFTON NEWMAN: That will be
21 consistent with Rule 103, as I just indicated.

22 MR. SUTHERLAND: Thank you, sir. That's ---
23 that's all --- that's my greatest concern.

24 THE HONORABLE CLIFTON NEWMAN: All right.

25 MR. SUTHERLAND: Just for housekeeping matters,

1 I'd renew my Rule 5 motion at this time.

2 I would move to sequester the jury. The basis
3 would be that --- not the jury, I'm sorry, Your Honor,
4 the witnesses. The basis would be that I wouldn't
5 want their observation of the testimony of another
6 witness to potentially influence their own
7 recollections or their own testimony. Again, that
8 witness sequestering ---

9 THE HONORABLE CLIFTON NEWMAN: Those are two
10 motions you've made, Rule 5, renew your Rule 5, and
11 also a motion to sequester witnesses.

12 MR. SUTHERLAND: Yes, sir.

13 THE HONORABLE CLIFTON NEWMAN: All right.
14 Regarding Rule 5.

15 MS. CAMPBELL: Your Honor, we have met with the
16 defense counsel on a number of occasions. We are not
17 aware of anything he has not seen.

18 We've gone through all the photographs with him.
19 He's had an opportunity --- we met over the weekend.
20 He went through all the evidence.

21 We have provided and gone through our notebook
22 and provided him everything. I want to put that on
23 the record, as well. I'm not aware of anything that
24 has not been provided to him as part of Rule 5.
25 That's pretty much everything in the case.

1 MR. SUTHERLAND: And that's just out of an
2 abundance of caution. If anything should come up
3 during the course of the trial as to reports or notes
4 or something that might not be in their possession but
5 may in the possession of one of the government
6 agencies.

7 THE HONORABLE CLIFTON NEWMAN: All right.
8 Regarding sequestration.

9 MS. CAMPBELL: Your ---

10 MR. SUTHERLAND: The witnesses.

11 MS. CAMPBELL: Just the lay witnesses?

12 MR. SUTHERLAND: Well, law enforcement witnesses.

13 MS. CAMPBELL: Law enforcement witnesses all have
14 reports, you. Usually in these cases --- as far as
15 lay witnesses, we will be glad to sequester the lay
16 witnesses.

17 MR. SUTHERLAND: I mean, that would ---

18 MS. CAMPBELL: With the exception, of course, of
19 the victims in the case and the victims' families.

20 MR. SUTHERLAND: It's just --- again, it's just
21 the lay witnesses aren't present. I would still ask
22 that law enforcement witnesses --- in that this was
23 two-and-a-half years ago, if they have reports, some
24 of them do not have reports.

25 So again, it would be my hope that their

1 testimony would be based on their recollection if they
2 did not write reports at that time.

3 MS. CAMPBELL: We aren't aware of anyone that the
4 State intends to introduce that does not have a report.
5 If ---

6 MR. SUTHERLAND: Croxton?

7 MS. CAMPBELL: We'll sequester Croxton, if we
8 call him.

9 MR. SUTHERLAND: Okay. Sir, but again, I'll just
10 go ahead and make the motion on the basis that I want
11 their testimony to be their own and to be not
12 influenced by the testimony of other witnesses.

13 THE HONORABLE CLIFTON NEWMAN: All right. Well,
14 there is no --- there's no sequestration in the matter
15 right in State court. It's a matter of discretion of
16 the court, upon sufficient showing of some need or
17 basis to sequester, as opposed to just a blanket
18 statement that because a case is old, I just believe
19 that the witnesses will be influenced by the testimony
20 of others. It's inconvenient and time delaying to
21 just send witnesses out and try to find witnesses in
22 between, find people in between witnesses being called
23 to the stand, so I don't make a practice of automatic
24 sequestration, absent a showing.

25 I certainly --- with respect to lay witnesses,

1 it's more commonplace to sequester them, or the court
2 is more apt to sequester them. I will sequester the
3 lay witnesses and law enforcement witnesses who have
4 not written a report. Other than that, the other
5 witnesses may remain.

6 MS. CAMPBELL: Your Honor ---

7 THE HONORABLE CLIFTON NEWMAN: And the victims
8 may remain, as well.

9 MS. CAMPBELL: And if you can just give us a
10 second to get those witnesses out of the courtroom,
11 Your Honor.

12 In addition, Your Honor, I didn't want to
13 misspeak as far as he also confessed to someone in the
14 jail. Of course, that was not the subject.

15 I don't think it's any kind of ruling. It's not
16 someone was planted in the jail or anything like that,
17 so we would be talking about his confessions with a
18 cellmate.

19 MR. SUTHERLAND: Well, it's ---

20 MS. CAMPBELL: So I'm not ---

21 MR. SUTHERLAND: I'm not alleging that he's a
22 government agent.

23 MS. CAMPBELL: All right.

24 THE HONORABLE CLIFTON NEWMAN: All right.

25 MS. CAMPBELL: Your Honor, the first witness

1 we're going to put up, is she allowed to remain in the
2 courtroom?

3 THE HONORABLE CLIFTON NEWMAN: Yes.

4 MS. CAMPBELL: Ms. Blizzard can stay in.

5 THE HONORABLE CLIFTON NEWMAN: And any witness
6 who has been sequestered can remain after they testify.

7 MS. CAMPBELL: Thank you, Your Honor.

8 THE HONORABLE STEPHANIE McDONALD: Do you have
9 something else, Mr. Sutherland?

10 MR. SUTHERLAND: Yes, Your Honor. Your Honor,
11 briefly, when they began to introduce evidence, I
12 would just briefly stand and renew my previous
13 objections. I would be speaking about the objections,
14 this joinder, and to juror number 53, sir.

15 THE HONORABLE CLIFTON NEWMAN: At what point in
16 time?

17 MR. SUTHERLAND: Once they begin to introduce
18 evidence after the jury begins to hear evidence, I
19 will renew my previous objection to join --- and I
20 will just stand up and say, "Renew my previous
21 objections, Your Honor, to joinder and to seat juror
22 number 53."

23 THE HONORABLE CLIFTON NEWMAN: And why is that
24 necessary?

25 MR. SUTHERLAND: It's --- it would be --- if it's

1 the belief of the Court that the issue would be
2 preserved at this point ---

3 THE HONORABLE CLIFTON NEWMAN: Well, you ---

4 MR. SUTHERLAND: --- out of an abundance of
5 caution, sir, I pretty much renew all my...

6 THE HONORABLE CLIFTON NEWMAN: Obviously, you
7 object to there being a --- all these different
8 charges being joined. We've had a hearing, and I
9 ruled on it.

10 I don't see why it would be necessary for you to
11 object during the trial. You've already objected
12 during the trial. The trial --- this is the trial.

13 MR. SUTHERLAND: Yes, sir.

14 THE HONORABLE CLIFTON NEWMAN: To randomly get up
15 and say, "I object to this" it sounds pretty awkward
16 to me. Now, the other one you said is what?

17 MR. SUTHERLAND: Was the matter in respect to
18 juror number 53 who knows or is a friend of the family
19 member of the victim, Linda Derrick.

20 THE HONORABLE CLIFTON NEWMAN: All right. Then
21 that objection is noted. What is the basis of the
22 objection again?

23 MR. SUTHERLAND: The basis for the objection is
24 that he is a friend of the family of the murder victim,
25 sir. And it's --- it's my --- it's my belief that

1 it's --- people always want to say, "Of course, I can
2 be fair. Of course, I can be objective."

3 In the final analysis, it just appears to me that
4 the risk is too great.

5 THE HONORABLE CLIFTON NEWMAN: Of course, you had
6 ten strikes.

7 MR. SUTHERLAND: Yes, sir.

8 THE HONORABLE CLIFTON NEWMAN: All right. And
9 you ran out of strikes.

10 MR. SUTHERLAND: Yes, sir.

11 THE HONORABLE CLIFTON NEWMAN: All right. Maybe
12 should have saved that strike.

13 MR. SUTHERLAND: Yes, sir.

14 THE HONORABLE CLIFTON NEWMAN: That's the way it
15 goes.

16 MR. SUTHERLAND: I understand, Your Honor.

17 THE HONORABLE CLIFTON NEWMAN: It doesn't
18 disqualify him as a juror. It may be a juror you
19 would prefer not to have ---

20 MR. SUTHERLAND: Yes, sir.

21 THE HONORABLE CLIFTON NEWMAN: --- but you have
22 ten strikes, and you just, you know, kind of went
23 through them.

24 I'm sure you had reasons for wanting to strike
25 the others, but at this moment in time, you probably

1 wish you had saved it for that particular one, but you
2 didn't.

3 MR. SUTHERLAND: Yes, sir.

4 THE HONORABLE CLIFTON NEWMAN: But there's no
5 point in jumping up again to try to single out that
6 juror, and say that, "I object to this juror being on
7 this case." The jury --- the jury has been seated at
8 this point, and that's not a matter for the jury.
9 That's a matter for the Court. So for you to object
10 to a juror serving would be inappropriate.

11 MR. SUTHERLAND: Yes, sir, as long as the issue
12 is preserved.

13 THE HONORABLE CLIFTON NEWMAN: Well, it's well
14 preserved, absolutely.

15 MR. SUTHERLAND: Thank you, Your Honor. I do
16 believe ---

17 THE HONORABLE CLIFTON NEWMAN: Your objection was
18 for cause because a person knows him. I mean, he
19 disclosed it. He knew the person, and you knew the
20 person was in the jury panel. You --- that's the
21 matter with which you used your strikes.

22 MR. SUTHERLAND: Yes, sir. Thank you, Your Honor.

23 THE HONORABLE CLIFTON NEWMAN: All right.

24 MR. SUTHERLAND: And as far as settling the
25 record, the State's witnesses, I imagine, just as

1 they're about to come to the stand, there are a couple
2 of guys with pretty serious records.

3 MS. CAMPBELL: Let me check.

4 MS. McDUFFIE: Your Honor, while we're getting
5 those records, if there are any issues, we'll bring it
6 to the Court's attention at the appropriate time.

7 THE HONORABLE CLIFTON NEWMAN: All right.

8 MS. CAMPBELL: The first two witnesses don't have
9 records.

10 THE HONORABLE CLIFTON NEWMAN: All right. Ready
11 for the jury?

12 MS. McDUFFIE: The State's ready.

13 MR. SUTHERLAND: The defense is ready, sir.

14 THE HONORABLE CLIFTON NEWMAN: All right. Let's
15 bring them in.

16 (WHEREUPON, the jury came into open court at
17 approximately 10:20 a.m.)

18 THE BAILIFF: Your Honor, the jury is present.

19 THE HONORABLE CLIFTON NEWMAN: All right. Good
20 morning.

21 THE JURORS: Good morning.

22 THE HONORABLE CLIFTON NEWMAN: Ladies and
23 gentlemen, if you all will stand to be sworn.

24 THE CLERK: Raise your right hand.

25 Ladies and Gentlemen of the jury, please stand

1 and raise your right hand to be sworn.

2 You shall well and truly try and true deliverance
3 make, between the State of South Carolina, and the
4 defendant at bar, whom you shall have in charge, and a
5 true verdict give, according to the law and the
6 evidence, so help you God.

7 Thank you. You may take your seats.

8 PRE-TRIAL CHARGE

9 THE HONORABLE CLIFTON NEWMAN: Members of the
10 jury, we are about to try the case of the State vs.
11 Elbert Wallace.

12 Mr. Wallace has been indicted by the grand jury
13 and charged with multiple charges, including murder,
14 armed robbery, burglary, several counts of some of
15 those charges.

16 He has pled not guilty to each and every charge.
17 He is presumed to be not guilty of the charges. He
18 cannot be found guilty unless the State presents
19 evidence which convinces each juror of his guilt
20 beyond a reasonable doubt as to each and every offense.

21 Before we begin this trial, I want to tell you
22 that this trial will probably be different from what
23 you might expect.

24 Many people do not have a chance to attend actual
25 court sessions as you are doing now, and many people

1 may think from watching television or movies or
2 reading books that trials are always full of high
3 drama, intense action, and riveting circumstances.

4 While that may be true at times, this trial is
5 not for entertainment. It is a fundamental part of
6 our democracy. It is a search for the truth in an
7 effort to make sure that justice is done between the
8 parties before the Court.

9 In searching for the truth and making sure that
10 justice is done is often slow, repetitive and
11 deliberate, the opposite of what you may have seen on
12 television or in movies or read in books.

13 This courtroom is a place of honor dedicated to
14 the protection and preservation of citizens' rights
15 through what many have called to be the greatest
16 system ever created, the greatest justice system ever
17 created.

18 The attorneys appearing before you are advocates
19 for the parties they represent, for the State and for
20 the defense, but first and foremost, they are officers,
21 they are officers of the Court, and they are sworn to
22 uphold the integrity and fairness of our judicial
23 system and to help you in your search for the truth.
24 You should expect them to be professional, competent
25 and ethical in the representation of the respective

1 interests.

2 Remember that you have just taken an oath to try
3 this case and to reach a fair and just verdict, and
4 you also are expected to be professional, reasonable
5 and ethical.

6 I want to thank you for accepting your call to
7 jury service and for serving on this jury and for
8 making your contribution to our justice system.

9 Now, by way of explanation, I want to outline for
10 you the procedures that we will follow in the trial of
11 this case so that you may better understand what may
12 be happening.

13 On the issue of taking notes, if you all desire
14 taking notes, the bailiffs will give you a --- during
15 the break, a note and a pad so that you may take notes.

16 Many times, however, when jurors elect to take
17 notes, their focus are (sic) distracted from the
18 testimony of the witnesses, but rather than heads are
19 down writing, and you might miss a critical view of a
20 witness that might be important to you in assessing
21 credibility.

22 But if you --- if any of you desire to take notes,
23 you can make that known during a break, and then we
24 will accommodate you in that regard.

25 However, should you elect to take notes, you

1 must --- the fact that you have taken notes must not
2 be considered to be --- what you've written down must
3 not be considered to be any more accurate than what
4 than what another juror might recollect.

5 Now, the elements of the crimes for which the
6 defendant is on trial will be explained to you later.
7 They are contained in these indictments, which were
8 returned by the grand jury of Richland County.

9 Now, these indictments are simply charges by
10 which the case is brought into court, and it is in ---
11 it is not in any sense evidence of any of the
12 allegations contained in the indictments, because the
13 defendant has pled not guilty to this indictment.

14 That plea of not guilty, therefore, places upon
15 the State the burden of proving each of the elements
16 of each indictment beyond a reasonable doubt.

17 It will be your duty, ladies and gentlemen, to
18 decide whether the State has met that burden, and your
19 purpose as jurors is to find and to determine the
20 facts of this case. You are the sole judges of the
21 facts of this case.

22 Out of all the other folks who are summoned to
23 jury duty, out of all the other people who live in
24 Richland County, out of all the people who live in
25 this state, only the 12 of you who will deliberate can

1 decide the facts of this case.

2 If, at any time, I make any comment or you think
3 I have made a comment regarding the facts of this case,
4 you must regard it because --- you must disregard it
5 because you are the sole judge of the facts of this
6 case.

7 You are to determine the facts of this case from
8 the testimony that you hear from this witness stand,
9 as well as the other evidence that is presented during
10 the course of the trial.

11 It is up to you to determine the inferences which
12 you feel may be properly drawn from the evidence. It
13 is especially important that you perform your duty of
14 determining the facts of this case diligently and
15 contentiously, because ordinarily, there is no way to
16 correct an erroneous determination of the facts by a
17 jury.

18 Now, on the other hand, and with equal emphasis,
19 the same law that makes you the judges and the
20 determiners of the facts of this case make Judge
21 McDonald and I the judge of the law --- the judges of
22 the law of this case.

23 The law, as given by the Court, is the only law
24 that you may consider, and you must accept as correct
25 the law as it is given to you, even if you may

1 disagree with it.

2 I cannot tell you what the facts are, nor Judge
3 McDonald can, and you cannot tell us about what the
4 law is.

5 Your job is to take the law as we give it to you
6 and apply it to the facts as you find them from the
7 testimony of the witnesses and the other evidence and
8 to make your determination by deliberating and
9 rendering a true and just verdict under the solemn
10 oath that you took.

11 As I stated to you yesterday, and until you get
12 authorization to do so, you must not discuss this case
13 with anyone, including your fellow jurors, friends,
14 family members, or anyone else involved in this case.
15 This includes face-to-face discussions or by telephone
16 and e-mails, texts or any other method of
17 communications.

18 You may not use a computer, cell phone or other
19 electronic device capable of communication --- capable
20 of communication at any time while in the courtroom or
21 during deliberations or during any time that you are
22 away from the courtroom as it relates to obtaining any
23 information concerning this case.

24 I further instruct you not to read, listen to or
25 watch any news reports about this case or otherwise be

1 exposed to any information concerning the case through
2 the internet, radio, television or any other social
3 media.

4 All right. After the case is submitted to you,
5 you must discuss the case only in the jury room with
6 your fellow jurors.

7 It is important that during any time that we are
8 not in court in session that you avoid contact with
9 any person that may have anything to do with this case,
10 including any witnesses, family members or anyone,
11 lawyers or anyone connected with this case.

12 It is your solemn duty to determine the guilt or
13 innocence of the defendant with respect to the charges
14 that he is facing, and your verdict must be based
15 solely on the evidence as it is presented to you in
16 this trial and on the law as you will be instructed at
17 the close of the trial.

18 In just a minute the Solicitor, Ms. Simpson...

19 MS. SIMPSON: Correct.

20 THE HONORABLE CLIFTON NEWMAN: You'll do the
21 opening.

22 Solicitor Ms. Simpson will make an opening
23 statement in which she will explain to you the issues
24 in this case, at least what she contends the issues to
25 be. Then the attorney for the defense, Mr. Sutherland,

1 will also have an opportunity to make an opening
2 statement, though he is not required to do so. We
3 will then begin with the presentation of the testimony
4 by the witnesses.

5 Now, I will do all that I can to keep the case
6 moving to make sure that you're not worn out from
7 having to sit in those seats for long periods of times,
8 try to keep you as comfortable as possible.

9 If at any point in time, you need a break or
10 you're unduly uncomfortable, just get my attention.
11 We'll accommodate you, because you are the most
12 important people in this courtroom, because you all
13 will decide the facts of this case.

14 We'll now proceed with opening statements.

15 I want to mention one additional thing: That is
16 that later in the process, one of you all will be
17 appointed to be the foreperson of the jury, and that
18 person will have the responsibility of serving as the
19 spokesperson for the jury, the responsibility of
20 presiding over the jury deliberations and of
21 completing the verdict form at the end of the trial
22 representing the unanimous verdict of the jury.

23 Opening statements.

24 Ms. Simpson.

25 MS. SIMPSON: Thank you, Your Honor. May it

1 please the Court.

2 THE HONORABLE CLIFTON NEWMAN: Yes, ma'am.

3 OPENING STATEMENT

4 MS. SIMPSON: Forty-eight dollars, it probably
5 won't fill up anybody's gas tank these days.
6 Forty-eight dollars might cover a quarter or a third
7 of a person's electric bill, if they're lucky.

8 Forty-eight dollars only buys a family several
9 days' worth of groceries, but we are here today
10 because \$48, to the defendant, Elbert Wallace, seated
11 between counsel, was the value of human life.

12 The \$16 that he got from one of his victims was
13 Carolyn Webb. After beating her, punching her and
14 stabbing her in her home, and \$32 that he got from
15 pawning jewelry that he stole from another victim,
16 Ms. Linda Derrick, who he beat and murdered, 16 plus
17 32. Forty-eight dollars is the value of human life.

18 Now, the defendant has been charged with two
19 counts of burglary in the first degree, burglary
20 second degree, two counts of armed robbery, assault
21 and battery with intent to kill, petit larceny, and
22 murder for his actions during the morning hours of
23 January 31, 2009, in the Denny Terrace neighborhood.

24 Now, you're going to hear from one of the victims,
25 Ms. Carolyn Webb. You will learn that it was just

1 past midnight on January 31st. She was in her home
2 where she lives alone, age 66, preparing for bed when
3 there was a knock at the door.

4 Now, she thought that this knock might be from a
5 man named Curtis who often does yard work for her and
6 sometimes comes at odd hours asking for money. So she
7 went to the door, but unfortunately, it wasn't Curtis.

8 She will tell you here today that she wishes that
9 she hadn't opened the door, because when she did,
10 there was the defendant.

11 He punched her in the forehead between the eyes
12 causing her to step backwards, but she didn't fall.
13 He pushed his way through the door and continued
14 punching her repeatedly until she fell on to the couch
15 where the assault continued.

16 Now, she had her cell phone by her side, and was
17 attempting to hide it and call 9-1-1, but the
18 defendant saw what she was doing, tore the phone from
19 her hand and ripped it in half.

20 At that point, she recalls all of a sudden he
21 took out a knife, an eight or 10-inch blade and swung
22 it at her stabbing her in the thigh.

23 She is struggling, terrified. He swings the
24 knife again, but this time, she puts up her arm to
25 block it and receives a laceration.

1 She asked the defendant, "What do you want?" He
2 demands money. She says, "I'll give it to you," and
3 she goes and gets her glasses, which had been torn off
4 during the attack.

5 She puts them on, goes into her pocketbook and
6 retrieves \$16. At that point, she looks up to give
7 the defendant the money, and she sees that this is the
8 same person who had been to her house earlier Friday
9 before, the same person who had been to her house
10 asking for money with some story about his children
11 and his wife stranded on the interstate, and he just
12 needed 13 bucks to fix his car.

13 Well, Ms. Webb, she gave him \$15, and the
14 defendant even said, "I'll come back and repay you the
15 money later today," and showed her an I.D. She
16 recalls that the name was Albert or Elbert and that
17 the last name began with a W.

18 He did return later that day, around nine o'clock
19 in the evening. He said, "I don't have the money. I
20 couldn't get my check cashed, but I'll have it to you
21 on Monday."

22 So Ms. Webb says, "That's fine," but he returned
23 again, not to return money but to take it. She had
24 two good opportunities to look at the defendant, and
25 she positively identified him as her attacker.

1 Now, once he got the \$16, she was able to go to
2 her house phone and call 9-1-1. She was transported
3 to the hospital, and law enforcement responded.

4 At the hospital, it was learned that she suffered
5 a laceration to her leg, her forearm and her scalp, as
6 well as contusions and abrasions.

7 Now, when law enforcement responded to the scene,
8 a K-9 unit was called out, and they initiated a K-9
9 track. Now, that track, they were actually able to
10 pick up a scent, which led them directly to Christ
11 Lutheran Church, probably a block away, on Winyah
12 Drive just near Ms. Webb's home.

13 Now, while the track ended there, as a result of
14 that track, officers were led to an open door and a
15 broken window. It looked as though there was a blood
16 smear on the deadbolt where the entry had been made.

17 Now, the crime scene was called out, the scene
18 was processed and swabs were collected. Law
19 enforcement would learn that the D.N.A. swabs matched
20 that of the defendant, Elbert Wallace.

21 Now, they would also learn that a set of Fire
22 Chief matches had been taken from the church. Now,
23 this would prove important later in the case.

24 Now, what happened on January 31st, 2009, doesn't
25 end here, because the defendant had yet another victim,

1 Ms. Linda Derrick, but as a result of his actions,
2 Ms. Derrick lost her life.

3 You're going to hear from Shawn Gunderson, her
4 son-in-law, who found the body. Now, Ms. Derrick, age
5 63 when she died, a mother and grandmother, loved by
6 her family and friends, a respected member of the
7 community and active in her church.

8 Now, Denise, her daughter, had been calling her
9 earlier in the day repeatedly, but had been unable to
10 reach her.

11 Now, this was odd because Ms. Derrick usually
12 answers the phone. During the course of the day,
13 later in the day they found out that Ms. Derrick
14 hadn't gone to a church meeting that morning, because
15 they were planning a supper on Sunday, and she was
16 supposed to be there.

17 So concerned, Denise calls her husband Shawn, and
18 Shawn calls Ms. Derrick around seven, eight o'clock at
19 night, but leaves a message because there is no
20 response.

21 Very concerned at this point, Shawn drives to
22 Ms. Derrick's home, and when he arrives, he finds that
23 the front door is locked and that all of the lights
24 are off, which is strange because Ms. Derrick always
25 had a light on. So he retrieved the spare key and

1 went into the home. He turned on the living room
2 light and began to call out her name, but received no
3 response, so he goes through the house to her bedroom
4 and turns on the lights.

5 In here, he doesn't find Linda, but the sheets of
6 the bed are covered and soaked in blood. There's
7 blood on the floor, on the furniture, everywhere.

8 He looks towards the washroom and goes to the
9 bathroom where he turns on the light and there is
10 Linda, dead.

11 Her head and body surrounded in a pool of blood,
12 blood smeared on the walls of the bathroom and floor,
13 her face covered in bruises and dried blood, almost
14 unrecognizable.

15 He shakes her and calls her name, but Linda is
16 dead. So he goes, he calls 9-1-1 and goes across the
17 street to get a neighbor, Richard Gates. They return
18 to the home, all the time on the phone with 9-1-1. He
19 can't bear to go back into the house because it was
20 all too much.

21 Now, you will learn here today that Linda
22 suffered from numerous abrasions, contusions and
23 lacerations; that she suffered a skull fracture and an
24 intracranial hemorrhage and that the cause of death
25 was determined to be blunt force trauma to the head,

1 blunt force trauma to the head. She was beat to death.

2 So law enforcement responds to the scene. Once
3 again, investigators are called out, crime scene comes
4 out and begins to process the scene, collect the
5 evidence, swabs, looking for DNA.

6 I can tell you that that --- those swabs will
7 later be tested, and that the DNA would come back on
8 some of those swabs to match the defendant.

9 Now, they also learned while they were there that
10 Ms. Derrick's jewelry had been gone through and that
11 perhaps some of it was missing, so law enforcement
12 began searching for --- local pawn shops.

13 Now, during the course of this, just a few hours
14 later after they respond to this incident during the
15 early hours of February 1st, probably around 12:30 in
16 the morning, officers were on patrol in the area
17 looking for Linda's car because it also was missing.

18 They found it not far from Linda's home,
19 abandoned on the side of the road off Apache Drive.
20 When officers walked up, they found a burned glove in
21 the front seat, evidence of burning in the vehicle.
22 They came out, they processed the car, swabbed for DNA,
23 and again, the defendant's DNA was found on the
24 outside and inside of that car.

25 Now, during the course of the investigation, law

1 enforcement found where the defendant did, in fact,
2 pawn some of Ms. Derrick's jewelry. He was on video
3 January 31st, 2009, pawning, there's video.

4 I can tell you that you're going to hear from a
5 neighbor who had seen the car earlier that day that
6 had been abandoned and that she had seen it as early
7 as nine or ten o'clock on the 31st. All of this,
8 members of the jury, happened on January 31st during
9 the morning hours.

10 With respect to that jewelry that he pawned, the
11 family would positively identify it as belonging to Ms.
12 Derrick, a gold ring and a necklace. They believe
13 that the necklace was one that she wore every day.

14 So the defendant is arrested for the crimes
15 against Ms. Webb. You will learn that clothing items
16 were taken from him and that the blood of Ms. Derrick
17 was actually found on his shoe.

18 In addition to that, a search warrant was
19 executed at the defendant's home. They located
20 matches similar to those found to be stolen from the
21 church.

22 You're also going to hear from Damon Scott, a
23 fellow inmate of the defendant. You're going to hear
24 how the defendant confessed to Mr. Scott about the
25 murder and even outlined the sequence of events

1 leading up to it.

2 \$48, members of the jury, \$48 is the value of
3 human life.

4 Good morning. My name is Nicole Simpson, and I,
5 along with my co-counsel, Senior Assistant Solicitor
6 Luck Campbell and Assistant Solicitor Joanna McDuffie,
7 together, we represent the State in this matter.

8 As Solicitors, it is our job to prosecute crimes
9 that occur in Richland County. As a result of his
10 actions, the defendant has been charged with burglary
11 first degree, two counts; burglary second degree; two
12 counts of armed robbery; petit larceny; assault and
13 battery with intent to kill, and murder.

14 Now, in every criminal case, the defendant is
15 presumed innocent until proven guilty, and as the
16 State, we bear the burden of proof in this case, just
17 as we do in the prosecution of every criminal case. I
18 can tell you that we welcome that burden here today.

19 Now, I stated a number of charges, and I'm
20 briefly going to touch on some of these elements that
21 we must prove. We must prove to you each of these
22 elements beyond a reasonable doubt.

23 Now, a person is guilty of burglary first degree
24 if he enters the dwelling of another without consent
25 and with the intent to commit a crime therein.

1 He enters that, either armed with a deadly weapon
2 or during the nighttime or hours of darkness. Now a
3 person is guilty of burglary in the second degree,
4 essentially the same elements, but he enters a
5 building, church perhaps, without consent with the
6 intent to commit a crime therein while armed with a
7 deadly weapon or during the nighttime hours.

8 Now, the defendant is also charged with assault
9 and battery with intent to kill. Now, that is an
10 unlawful act or attempt to commit a violent injury
11 upon the person of another with malicious intent
12 accompanied by the present ability to do so,
13 Ms. Carolyn Webb.

14 Now, he is also charged with petit larceny, which
15 is the taking and carrying away of the personal
16 property of another, and the value of that property is
17 less than \$1,000.

18 An armed robbery: Taking the property of another,
19 from their person by use of threats, force or
20 intimidation while armed with a deadly weapon or the
21 representation of a deadly weapon.

22 And finally, members of the jury, the defendant
23 is charged with murder. Now, murder is one of our
24 most serious crimes, perhaps the most serious in South
25 Carolina, but it has probably the shortest definition.

1 Murder is the unlawful killing of another with malice
2 aforethought, either expressed or implied.

3 Now, I stated to you that as the State, we must
4 prove these elements to you beyond a reasonable doubt.
5 So what is proof beyond a reasonable doubt?

6 Well, I can tell you that it is that proof that
7 leaves you firmly convinced of the defendant's guilt.
8 Now, there are very few things in this world that we
9 know with absolute certainty, and the law does not
10 require the State to produce proof that overcomes
11 every possible doubt, only that doubt which is
12 reasonable.

13 Now, the Honorable Judge Newman and the Honorable
14 Judge McDonald are the judges of the law in this case.
15 If ever there is a discrepancy between what they say
16 and what the attorneys in this case say, you are to
17 follow their instructions and their rulings to you.

18 Now, with that said, you are the sole judges of
19 the facts. Each of you here today is wearing a black
20 robe, and individually and collectively, you must
21 decide, and only you can decide if the defendant is
22 guilty of these crimes.

23 But you're not here to solve a mystery, and we
24 don't expect you to solve the mystery. As the State,
25 it is our job to give you all the tools that you need

1 to do your job and decide this case.

2 We plan to do just that that through the evidence
3 and testimony produced during this trial. Now, some
4 of that evidence is going to be physical evidence,
5 evidence that you can see, that you can touch,
6 photographs, videos, the DNA swabs, the clothing that
7 the defendant wore when he pawned the jewelry, his
8 shoes, things of that nature, but a significant
9 portion of the evidence is going to come from right
10 here on this witness stand, the testimony that you
11 will hear from each and every witness that takes this
12 stand.

13 Now, you're going to hear from several witnesses
14 today, including Ms. Webb, one of the victims. You're
15 going to hear from Shawn Gunderson who discovered
16 Linda's body. You're going to hear from law
17 enforcement officers who responded to the scene, the
18 investigators in this case, the crime scene
19 investigators who processed the scene.

20 You're going to hear from a forensic pathologist.
21 You're going to hear from a DNA analyst who tested the
22 swabs. You're going to hear from a number of
23 witnesses, and through these witnesses, I submit that
24 you're going to learn several things. You're going to
25 hear how the defendant was positively identified by

1 Ms. Carolyn Webb as being her attacker.

2 You're going to hear how the defendant's DNA was
3 found in Ms. Derrick's living room, her bathroom, her
4 bedroom, the walls, the floor, all over her house.

5 You're going to hear how the defendant's DNA was
6 found at the church, the entryway, and how his DNA was
7 found on the exterior of Ms. Derrick's car and on the
8 inside of the driver's side door, as well as the
9 steering wheel, and how matches similar to those
10 stolen from the church were found in the defendant's
11 home.

12 You're going to see and hear how the defendant
13 pawned Ms. Derrick's jewelry, that gold ring and the
14 necklace, on January 31st.

15 You're also going to hear how the defendant had
16 an injury to his hand, I submit an injury possibly
17 consistent with beating someone.

18 You're going to hear how when the defendant was
19 arrested, Linda Derrick's blood was found on his shoe.
20 You're going to hear how the defendant confessed to
21 Damon Scott about this murder.

22 Now, you will also learn that the defendant was
23 living with his sister on Denny Road, which can best
24 be described as the epicenter for all these events,
25 the Webb attack on Winyah Drive, the church burglary a

1 few blocks away, Ms. Derrick's murder, also on Winyah
2 Drive just a few blocks away, and the location where
3 the car was found on Apache.

4 The defendant is at the center of this, and the
5 defendant is connected to each of these, and I submit
6 responsible for the incidents that occurred there.

7 Now, you're going to hear from these witnesses,
8 and it is up to you to judge their credibility, and
9 based on your decision, you can believe some of what a
10 witness says, you can believe all of what a witness
11 says, or you don't have to believe anything that a
12 witness says.

13 In making that determination, we just ask that
14 you consider just few things: Ask yourselves what was
15 that witness's demeanor on the stand? Was that
16 witness hesitant or forthright when testifying? Is
17 the testimony of that witness corroborated by other
18 evidence? Is it consistent within itself? Perhaps
19 most importantly, did that witness have any reason to
20 be biased or prejudiced in this case?

21 Now, it is said that truth is the mother of
22 justice, and it is your job, your duty here today, to
23 find the truth and to seek justice.

24 I submit to you that at the close of this case
25 when you've heard all of the evidence, there will be

1 only one just verdict.

2 Now, at the end of this case, my co-counsel,
3 Ms. Campbell, is going to come before you, and she is
4 going to ask you for a verdict that the evidence will
5 support and that justice will demand.

6 She is going to ask that you find the defendant
7 guilty of two counts of burglary in the first degree,
8 guilty of burglary in the second degree and petit
9 larceny, guilty of two counts of armed robbery, guilty
10 of assault and battery with intent to kill, and guilty
11 of murder.

12 Thank you.

13 THE HONORABLE CLIFTON NEWMAN: Mr. Sutherland.

14 MR. SUTHERLAND: May it please the Court.

15 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

16 OPENING STATEMENT

17 MR. SUTHERLAND: Ladies and gentlemen, it may
18 come as a surprise to you, considering everything that
19 we just heard, that you haven't heard any of the
20 evidence in this case yet.

21 The evidence in this case is going to come from
22 this witness stand here, not from the characterization
23 of government agents through dramatic presentations of
24 what they think each of the pieces of evidence means.

25 They have decided today to try three different

1 cases in front of you at the same time. They are able
2 to do that. What they are going to do, and you heard
3 a little bit of it just now in the dramatic
4 presentation, they are going to try to inflate these
5 three cases so that you come to believe that proof of
6 one is proof of another.

7 You must decided each individual case based on
8 the evidence in each individual case.

9 I can tell you here, and I can tell you now, that
10 a lot of what you just heard, despite what you ---
11 despite what's going to come out on the stand, it's
12 going to be up to you to decide whether it's credible.

13 She kept referring to Damon Scott saying that
14 there was a confession to Damon Scott down at the
15 detention center.

16 You're going to be the ones to decide what that
17 means. There is no way around the fact that this was
18 a highly publicized case.

19 There is no way around the fact that this is
20 going to come out --- I'll go ahead and say it, and if
21 it doesn't, then you can judge my credibility, that
22 Damon Scott was in jail for murder, that Damon Scott
23 got out on bond --- well, murder, burglary first, a
24 number of other charges, that he got out on bond and
25 that he picked up two burglary first degree charges

1 and an arson charge and that he ended up back down at
2 the jail.

3 I'm not going to take issue with all the dramatic
4 presentation, but just to show you that everything you
5 hear, that's kind of like T.V.

6 You know, the real stuff comes in from here, and
7 the real stuff is what you're going to make judgments
8 about, so Damon Scott is back in jail after being out
9 on bond for murder and burglary first, and I am
10 forgetting some charges, I do promise you that.

11 He is back in jail on another burglary first,
12 another arson, and he was in there for three weeks,
13 and suddenly, he is the confidant of every person
14 that's is incarcerated down there.

15 Now, that's an overgeneralization on my part, but
16 he went to the sheriff's department with information
17 about another case, and it turned out that he had
18 information about this case. You know, how that came
19 to be, I don't know, but what I do know, and I was
20 shocked that none of you have heard anything about
21 this case because of the number of articles and the
22 number of news programs about it, that information was
23 available to him.

24 It's widely known down at the jail what this case
25 is all about. For him to come in and for him to take

1 the stand and for him to regurgitate some of the
2 information that he may have gotten from the news or
3 may have concocted --- it's going to be up to you to
4 decide --- is an example of the problem with listening
5 to the drama of the accusations, with listening to the
6 characterization.

7 This is not a slight against Ms. Simpson. I know
8 her. I respect her. This is not a slight against
9 Ms. Campbell, who will be speaking later. I know and
10 I respect both of them.

11 Your job here is not to listen to them,
12 particularly prior to hearing the evidence. At the
13 end of the case when they come up and they talk to you
14 about the evidence, you will have heard the evidence
15 and you will be able to process when you get back in
16 the jury room whether or not there were problems with
17 an identification, whether or not DNA evidence
18 purports, says what it purports to say, whether or not
19 anything in that long line of accusations and stories
20 is actually true.

21 It's your --- it's your decision, and no matter
22 how I would sit up here and frame it or no matter how
23 government lawyers would sit up here and frame it, or
24 really, no matter how government lawyers might frame
25 something during the testimony, credibility --- one of

1 the aspects of credibility is bias.

2 Any law enforcement, any government agent who
3 takes the stand during the course of this case,
4 they're here to win, and that's something that you
5 need to consider when hearing from any witness: Why
6 might there be problems with this testimony?

7 It's much more complex than telling a story of a
8 chain of events where the part that was left out, they
9 don't know when two of the three incidents happened,
10 but they seem to have formulated a very convincing
11 story of exactly what happened.

12 These are just an --- this is just an example of
13 the illusions that can take shape in people's minds
14 when they listen to these characterizations.

15 It's not about characterizations. It's about
16 evidence. A trial is a matter of constitutional
17 import. When the government is accusing a citizen of
18 a crime, the government is threatening that
19 individual's liberty.

20 Ironically, it's the liberty of every person
21 that's the source of the government's power. This is
22 why America is where it is in the world today, not
23 because we are imperialists or mean or anything. It's
24 because people are free to pursue their own dreams and
25 their own ends, to buy what they want, to do what they

1 want.

2 When the government comes to try and take that
3 liberty away from a person, it's protected. It's
4 protected by the constitution. It's protected by you.

5 Your role is a role of constitutional import, and
6 whatever people may say in opening statements or what
7 they say in closing statements, it's not about any of
8 that. It's about how you see this evidence. Do you
9 believe it on these individual cases?

10 The Court is going instruct you on the elements
11 of these individual cases. Somebody can come up here
12 and tell you this is what armed robbery means.
13 Somebody could come up here and tell you this is what
14 burglary second means.

15 It doesn't matter what anyone who is not sitting
16 on the bench tells you that a crime is, and that's
17 another thing I would just caution you to keep in mind.
18 The judge is going to instruct you on the law at the
19 end.

20 Focus on the facts and keep the facts, and you're
21 going to be able to keep notes and take notes, but pay
22 attention to everything.

23 Don't let the nature of these offenses, the
24 gravity of these offenses, take you off track. I know
25 personally --- I haven't done this, you know, my whole

1 life or anything.

2 I've only been doing this for about
3 seven-and-a-half years. I've --- so I've been on the
4 outside looking in when there are accusations, when
5 they're putting people's faces on the television
6 saying that they did something. There's always a
7 tendency to say, "Well, I'm glad they caught the guy."

8 In an instance where a government lawyer, who is
9 still a government agent, is telling you this story,
10 you think, "My, you know, that's terrible. He's
11 terrible. I mean, his lawyer is terrible for sitting
12 there with him today."

13 Those kinds of observations, when you come in and
14 you're instructed by the court, that's how you pass
15 that. I've done everything from sweeping floors to
16 loading trucks. I was a soldier. I was an accountant
17 before I did this.

18 I was in a position to be out in the community
19 where every time I heard something like that
20 presentation or every time I saw somebody's face on
21 T.V., I thought, "There it is. That's the person who
22 did it. Why would the government say that they did it
23 if they didn't?"

24 As we should all know, one of --- one of the
25 bases and one of the reasons for our positions as

1 people in this world is because we don't trust the
2 government. We don't trust the government with all
3 this power. Military power, sure. National security
4 power, sure, but going into people's house or taking
5 away people's liberty, we don't. We have safeguards
6 in place for that, and this is the safeguard.

7 You are the buffer between the government and
8 these accusations and Mr. Wallace, this citizen over
9 here. The court informed you that he's innocent until
10 proven guilty. And throughout --- you must keep this
11 in mind throughout this process simply because if you
12 don't, this system is going to break down.

13 If the system breaks down for one individual
14 citizen, that means it can break down for anybody. So
15 all that I can encourage you to do is to listen to the
16 evidence and to be skeptical of the evidence.

17 What's counterintuitive about this process is
18 that you're scrutinizing the government's evidence.
19 You're not scrutinizing the individual citizen. That
20 is way the system is set up to protect all of us.

21 I thank you for your time and your consideration,
22 and we'll be talking --- I will be talking later.
23 Thank you.

24 THE HONORABLE CLIFTON NEWMAN: All right. I
25 think we'll take about five minutes, give you a chance

1 to stretch. We'll come back and hear from the first
2 witness. Please go to the jury room and do not
3 discuss the case.

4 (WHEREUPON, the jury left open court at
5 approximately 11:07 a.m.)

6 THE HONORABLE CLIFTON NEWMAN: We'll take about
7 five minutes, five minutes only.

8 (WHEREUPON, a short break was taken.)

9 (WHEREUPON, State's Exhibits Nos. 2 - 367 were
10 marked for identification only.)

11 THE HONORABLE CLIFTON NEWMAN: Is there anything
12 before the jury comes?

13 MS. CAMPBELL: Nothing from the State, Your Honor.

14 MR. SUTHERLAND: Nothing from the defense, Your
15 Honor.

16 THE HONORABLE CLIFTON NEWMAN: All right. Bring
17 them on.

18 (WHEREUPON, the jury came into open court at
19 approximately 11:14 a.m.)

20 THE BAILIFF: Your Honor, the jury is present.

21 THE HONORABLE CLIFTON NEWMAN: Thank you, sir.
22 Your first witness, please.

23 MS. CAMPBELL: May it please the Court.

24 THE HONORABLE CLIFTON NEWMAN: Yes.

25 MS. CAMPBELL: The State would call Modell

1 Blizzard.

2 MODELL BLIZZARD,

3 after being duly sworn, testified as follows:

4 THE CLERK: Please have a seat, speak into that
5 microphone, state your full name for the record.

6 THE BAILIFF: Kind of scoot your chair up a
7 little bit, ma'am.

8 DIRECT EXAMINATION:

9 BY MS. CAMPBELL:

10 Q Okay. Can you say your name for the record?

11 A Modell C. Blizzard.

12 Q Ms. Blizzard, where do you live?

13 A I live at Milbourne Avenue out in Denny
14 Terrace.

15 Q Is that in Denny Terrace?

16 A Yes, ma'am.

17 Q And how long have you been living in the Denny
18 Terrace community?

19 A Ever since '58.

20 Q Since '58?

21 A Uh-huh.

22 Q Who lives with you at your address in Denny
23 Terrace?

24 A My husband.

25 Q Your husband?

1 A Uh-huh.

2 Q And is he here today?

3 A Oh no. He's --- he can't --- he can't hardly
4 walk. He has a lot of problems. He had some problems
5 in the hospital-related, and he has got degenerative
6 --- three degenerative --- severe degenerative discs.
7 He's got a stomach aneurysm. He has blood pressure.
8 He has blood sugar.

9 Now, he's really confused. We don't know
10 what's --- what's going on, but we got an appointment
11 Thursday. I don't know what's going on with him, but
12 he's real confused. I had to leave him at home. I
13 called my daughter, and she is going to go stay with
14 him some, but...

15 Q You need to get out of here.

16 A I need to, thank you.

17 Q To take care of him.

18 A Yes.

19 Q And you don't work outside the home, do you?

20 A No. I retired from General Electric in 1990.

21 Q In 1990?

22 A Uh-huh.

23 Q And now you take care of your husband?

24 A I take care of my husband.

25 Q I want to --- do you know a young woman named

1 Carolyn Webb?

2 A Oh, yes.

3 Q And how do you know Ms. Webb?

4 A Well, first, we've been friends for years.

5 Q Uh-huh.

6 A She was an out --- she belonged in our church.

7 She was in our church. She was very active in our

8 church, Denny Terrace Baptist ---

9 Q Okay.

10 A --- and her mom also. I took care of her mom.

11 She had --- I had to take her to dialysis ---

12 Q Uh-huh.

13 A --- three times a week, to the beauty shop on
14 Thursdays for about three years before she passed away,

15 but just --- just thinking about her and what Carolyn

16 went through, it's just --- I just can't imagine.

17 Q Okay.

18 A I just can't.

19 Q Okay. Are you a little bit nervous here today?

20 A Yes, I am, honey.

21 Q Okay.

22 A First time I've ever been....

23 Q I understand.

24 And you said you helped take care of Ms. Webb?

25 A Ms. Webb's mother.

1 Q And did Ms. Webb's mother live in your community,
2 in Denny Terrace?

3 A She --- she lived --- Carolyn lived on Denny Road.

4 Q Uh-huh.

5 A When her mom got sick, she sold her house and
6 moved in with her mom to take care of her.

7 Q And then it was basically the two of y'all taking
8 care of her?

9 A Right.

10 Q And did Carolyn's mom die shortly before all of
11 this happened?

12 A Yeah, uh-huh.

13 Q I want to turn your attention back two-and-a-half
14 years ago to a Friday afternoon on January 30th. Were
15 you over helping Ms. Webb that day?

16 A Yes, I was.

17 Q And what time of day was it, do you remember?

18 A I'm thinking it was probably between two and
19 three o'clock in the afternoon.

20 Q You aren't sure of the exact time?

21 A I'm not exactly sure what time it was.

22 Q But it was daylight.

23 A We were busy. Yeah, it was daylight. We were
24 busy packing her things, getting things...

25 Q And why were you packing up things?

1 A Because it was her --- her mom had passed away,
2 and I was helping her get --- pack her things.

3 Q And get them in order?

4 A Getting them in order.

5 Q And while you were there that afternoon, did
6 somebody come to the door?

7 A Yes.

8 Q And did you actually go to the door or what
9 happened? Tell the jury.

10 A We were in the living room, and there was a knock
11 on the side door. Carolyn's house faces Winyah Drive,
12 and she has long driveway.

13 Nobody ever goes to the front door. They usually
14 come to the side door. There was a knock, and I told
15 Carolyn, I said, "I'll go."

16 Well, I started, and she came behind me, and this
17 tall black guy was standing there ---

18 Q Uh-huh.

19 A --- and he said, "Are you the lady of the house?"
20 I said, "No."

21 He said, "I want to speak to the lady of the
22 house."

23 So I said okay. So Carolyn was right behind me,
24 and I stepped aside. She stepped into the door.

25 Q Okay. And do you recall any of the conversation

1 that took place that day?

2 A Some. He said he needed some money; that his
3 wife and kids was stranded on the interstate, and that
4 he had --- he needed some money to get them off the
5 interstate. He asked for \$13.

6 Q \$13?

7 A Thirteen dollars. I was standing --- as I say, I
8 wasn't ---

9 Q You weren't face-to-face?

10 A No. I was right next to Carolyn over here.

11 Q Okay.

12 A She was in the door. So Carolyn said, "Just a
13 minute." So she went over to her --- to her purse.

14 Q Well, let me stop you for a second. Do you
15 remember him mentioning anybody's name?

16 A Yes. He said April had sent him to her because
17 she said she was a good Christian lady and very nice
18 and would be --- probably would let him have money
19 that she didn't have.

20 Evidently, he had asked her for the money. I
21 don't know. That's all he said.

22 Q That's what he said.

23 A That April had sent him there, and I don't think
24 Carolyn knew April, but I did.

25 Q You knew April?

1 A Yeah. She --- she attended our church several
2 times with her --- with her two children, but he said
3 that she was a good Christian lady and would help, if
4 she could.

5 Q And when she --- he asked her for the \$13, what
6 did Ms. Webb do?

7 A She went over to the corner over there where her
8 purse was on the table.

9 Q Was that in the same room?

10 A Yeah, right.

11 Q And where was he standing right at this point?

12 A Right in --- he's still outside on the little
13 porch.

14 Q In the doorway?

15 A No. We had the door closed.

16 Q The --- okay.

17 A But she --- she told --- she took out \$15 and
18 handed it to me. She said, "Give this to him." So I
19 handed it to him, and she come back. He showed her an
20 I.D. Now, I didn't see the I.D.

21 Q Okay.

22 A But he handed it to her, and she looked at it.
23 He thanked her and he left.

24 Q And you didn't see that person anymore that day,
25 did you?

1 A I never did seen him anymore.

2 Q And had you ever seen him before?

3 A I --- I don't think so.

4 Q Okay. And other than that interaction when you
5 were there that day --- and did you get a real good
6 look at his face or not?

7 A No, I didn't, because he was kind of standing a
8 little sideways. It seemed like he didn't want to
9 look me in the face, and --- but I didn't get a real
10 good look at him.

11 Q And other than what you told the jury, do you
12 remember him saying anything about coming to pay her
13 back or anything?

14 A Yes. He said he was --- he was going back to
15 where he worked. He didn't say where he worked. He
16 said, "I'm going back to my job. I've got to pick up
17 my check at four o'clock, and I'll come back and I'll
18 pay you the money back."

19 Q After he left that day, after he said that in
20 your presence, did you ever see him anymore that day?

21 A I never did see him anymore.

22 Q And did you leave Ms. Webb's house sometime
23 before dark?

24 A I left about five o'clock.

25 Q About five o'clock?

1 A Uh-huh.

2 Q And you never saw him come back or anything like
3 that?

4 A No, huh-uh. I called her about nine, somewhere
5 like that, later on. I said, "Did he come and pay you
6 your money back?"

7 She said, "No. He come, but he said he couldn't
8 get his check cashed, and he would bring --- he would
9 bring it later."

10 Q And that's all you know about this case?

11 A That's all I know.

12 Q And you need to get back to your husband?

13 A Yes, I do.

14 MS. CAMPBELL: Thank you, ma'am.

15 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

16 MR. SUTHERLAND: May it please the Court, sir. I
17 have no questions for this witness.

18 THE HONORABLE CLIFTON NEWMAN: All right. Thank
19 you.

20 THE BAILIFF: Watch your steps. Let me assist
21 the you.

22 MS. CAMPBELL: Watch that --- yeah. I don't want
23 you to trip. Thank you.

24 THE HONORABLE CLIFTON NEWMAN: Next witness.

25 MS. SIMPSON: The State calls Dr. Richardson.

1 THE HONORABLE CLIFTON NEWMAN: Dr. Richardson.

2 THE BAILIFF: Place your left hand on the
3 Bible, raise your right.

4 WILLIAM RICHARDSON,
5 after being duly sworn, testified as follows:

6 THE CLERK: Have a seat there, sir. Speak into
7 the microphone. State your full name for the record.

8 THE WITNESS: William Harrington Richardson.

9 DIRECT EXAMINATION:

10 BY MS. SIMPSON:

11 Q Good morning, Dr. Richardson.

12 A Good morning.

13 Q Can you tell us, what is your occupation?

14 A I'm an emergency medicine physician and medical
15 toxicologist.

16 Q And are you licensed to practice in this state?

17 A Yes.

18 Q And tell us a little bit about your educational
19 background.

20 A I went to Clemson University as an undergraduate,
21 the Medical University of South Carolina in Charleston
22 for medical school. I did a three-year residency in
23 emergency medicine, Richland, at Palmetto Richland
24 here in Columbia.

25 I did a two-year fellowship in medical toxicology

1 at the University of California, San Diego Medical
2 Center. I returned here in 2004.

3 Q And where are you currently working?

4 A I work at two locations, Palmetto Health Richland
5 Department of Emergency Medicine, and I work for the
6 Palmetto Poison Center that's run out of the
7 University of South Carolina for this state.

8 Q And how long have you been with Palmetto Health?

9 A Both of those positions, since about August ---
10 August of 2004.

11 Q And what is the nature of your practice? What do
12 you do?

13 A I practice emergency medicine. We have a level
14 one trauma center there, and we see about 85 to 90,000
15 patients a year through that emergency department. I
16 also practice as medical toxicologist as a director of
17 the Palmetto Poison Center for the state, so I do both
18 of those.

19 Q And were you currently working in that --- were
20 you working in that capacity back on January 31, 2009?

21 A Yes.

22 Q And since that time, how many patients would you
23 say you've treated?

24 A Several thousand a year.

25 Q And did you have an occasion to see Carolyn Webb

1 professionally?

2 A From the records I did, yes.

3 Q And did you have a chance to review her medical
4 records in preparation for this trial?

5 A I did.

6 Q And would it assist you in your testimony if you
7 could have a copy at the stand?

8 A It would because it's been some time.

9 MR. SUTHERLAND: No objection.

10 MS. SIMPSON: Your Honor, at this time the State
11 would seek to qualify Dr. Richardson as an expert in
12 emergency medicine.

13 THE HONORABLE CLIFTON NEWMAN: Mr. Sutherland.

14 MR. SUTHERLAND: No objection for the purposes of
15 that.

16 THE HONORABLE CLIFTON NEWMAN: He's qualified as
17 an expert.

18 Ladies and gentlemen, witnesses are generally
19 limited in what they can testify to as it relates to
20 offering opinions.

21 A different rule applies to witnesses who are
22 qualified as expert witnesses. Expert witnesses are
23 witnesses who by virtue of their training, experience
24 or education have gained some specialized knowledge.

25 They generally can offer opinions concerning

1 matters, provided that it complies with other Rules of
2 Evidence. This witness is a witness in the field of
3 emergency medicine?

4 MS. SIMPSON: Correct, Your Honor.

5 THE HONORABLE CLIFTON NEWMAN: You may proceed.

6 BY MS. SIMPSON:

7 Q Doctor, where and when was Ms. Webb admitted to
8 the emergency room?

9 A She was seen --- it appears she arrived
10 approximately 1:30, shortly thereafter, in the morning
11 of January 31st, 2009.

12 Q And do you know how she arrived?

13 A From the records, she was brought in by EMS, the
14 Emergency Medical Services ambulance.

15 Q Okay. When she was transported, what type of
16 call did she come in under?

17 A We have different trauma designations depending
18 upon the expected or anticipated severity out in the
19 field. These decisions are made by some of the
20 paramedics transferring information in.

21 We gauge them on their severity. She was a level
22 of trauma, an 8-1-1. We have one tier higher of
23 trauma 8-1-1, and the trauma 9-1-1 are both very
24 serious designations, at least for the potential for
25 very serious injury to be present when they arrived.

1 Q And under what circumstances did she present to
2 the emergency room?

3 A From the record, she --- either she or a
4 combination of the paramedics who we would have
5 obtained this information from said that she had been
6 assaulted.

7 MR. SUTHERLAND: I'm sorry, Your Honor. That's
8 hearsay, sir.

9 MS. SIMPSON: Your Honor, I believe this
10 qualifies as an exception under the rule for purposes
11 of medical diagnosis. I'll be happy to lay a little
12 more foundation.

13 THE HONORABLE CLIFTON NEWMAN: All right. You
14 may proceed.

15 BY MS. SIMPSON:

16 Q Okay.

17 Doctor, when people present to the emergency room,
18 is it beneficial to you at all in your treatment of
19 that patient to have some information about why
20 they're there?

21 A Sure.

22 Q And what could have possibly caused those
23 injuries?

24 A And usually, that's a part of the history is to
25 obtain the process of initiating an evaluation.

1 MS. SIMPSON: Your Honor, at this point, I would
2 seek to introduce the rest of this testimony.

3 THE HONORABLE CLIFTON NEWMAN: Restate the
4 question that was objected to.

5 MS. SIMPSON: I believe I said, "Under what
6 circumstances did she present to the emergency room?"

7 THE HONORABLE CLIFTON NEWMAN: All right. That's
8 what you object to?

9 MR. SUTHERLAND: It was --- the answer was
10 heading in the direction that she had said "x" and...

11 THE HONORABLE CLIFTON NEWMAN: All right. I
12 overrule the objection.

13 MR. SUTHERLAND: Thank you, sir.

14 THE HONORABLE CLIFTON NEWMAN: You may proceed.

15 MS. SIMPSON: Thank you.

16 BY MS. SIMPSON:

17 Q Again, under what circumstances did she present
18 to the emergency room based on your view?

19 A We were told that she had been assaulted in an
20 apparent robbery into her home, and she had some stab
21 injuries. That's why she was brought to the emergency
22 room in our trauma bay.

23 Q And when she arrived, can you describe for the
24 jury any examinations that you might have done or what
25 type of examinations that you did?

1 A Sure. We --- we do a very thorough examination.
2 So I won't go into all of that unless you guys want
3 more detail, but the pertinent positive of this would
4 be that she was awake and talking to us.

5 She had a laceration of the right side of her
6 scalp approximately one to two centimeters. She had
7 some abrasions, from the record, as well, in that area.
8 She had some swelling of her nasal bridge. She had a
9 laceration on her left arm that was approximately 12
10 centimeters. She had a laceration on her left thigh
11 of approximately two centimeters.

12 Q Now a laceration, can you just explain to the
13 jury what a laceration is?

14 A It's ---

15 Q Or what can cause it.

16 A Well, that's a cut, and it can be caused by
17 anything sharp, a knife is one example, but of course,
18 anything --- many of us have had that happen for
19 whatever reason. So it can be something that can be
20 superficial or it could be something that can be very
21 serious with a deeper cut.

22 Q So stab wounds could potentially be life
23 threatening?

24 A Those are some of the most concerning, because of
25 the potential of the depth of injury of the knife.

1 Q And did she have any complaints regard pain or
2 anything when she presented?

3 A Well, I think in summarizing her injuries that we
4 found, I believe that's where her complaints primarily
5 were located.

6 I don't see from the record that --- that she had
7 any others at the time other than reporting that she
8 was hit in the face and had pain over her nose and at
9 the areas of the --- of the lacerations on her arm,
10 her left arm, left leg and her scalp.

11 Q And were you able to determine the next course of
12 action with respect to her medical care?

13 A Yes. We --- depending on the types of injuries,
14 we do various types of work ups. As you can imagine,
15 in this particular case, she received some laboratory
16 work.

17 She also received a CAT scan of her --- the bones
18 in her face, which was done, and then the lacerations
19 were cleaned and repaired by the trauma team at
20 Palmetto Richland.

21 Q And who would have been responsible for her
22 discharge at that point?

23 A It appears from the record that ultimately, the
24 trauma team --- we do this in conjunction. When a
25 major trauma potentially arrives, we have emergency

1 physicians like myself there, as well as trauma
2 doctors, and depending upon the type of condition the
3 patient is in and what they require treatment-wise, we
4 work together.

5 Initially, in this situation --- ultimately, the
6 trauma doctors repaired these lacerations and
7 discharged the patient, two or three hours,
8 approximately two or three hours or so later.

9 MS. SIMPSON: No further questions for this
10 witness. Thank you, Doctor.

11 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

12 MR. SUTHERLAND: May it please the Court.

13 CROSS-EXAMINATION:

14 BY MR. SUTHERLAND:

15 Q Briefly, sir, what time did Ms. Webb arrive?

16 A From the records on the chart, again, I'm reading
17 off the records, the time --- the admit date was
18 January 31st, 2009, at 1:34 a.m. is when it --- is
19 what is on the record here.

20 Q All right. What time was she discharged?

21 A The discharge time is documented at 3:57 a.m.

22 Q 3:57 a.m. Okay. Thank you, sir.

23 No further questions, Your Honor.

24 THE HONORABLE CLIFTON NEWMAN: Anything further?

25 MS. SIMPSON: None from the State.

1 THE HONORABLE CLIFTON NEWMAN: All right. Thank
2 you, Doctor. You're excused.

3 MS. CAMPBELL: The State would call Carolyn Webb.
4 (WHEREUPON, State's Exhibit No. 368 was marked
5 for identification only.)

6 CAROLYN WEBB,
7 after being duly sworn, testified as follows:

8 THE CLERK: Have a seat in the witness box and
9 state your name for the record, please.

10 MR. SUTHERLAND: I'm sorry, Your Honor. May we
11 approach briefly?

12 THE HONORABLE CLIFTON NEWMAN: Okay.
13 (WHEREUPON, a bench conference was held in the
14 presence, but not within hearing of the jury.)

15 BY MS. CAMPBELL:

16 Q Hi, Ms. Webb. Are you currently employed?

17 A I'm retired.

18 Q And where did you retire from, ma'am?

19 A Lexington High School.

20 Q What did you do at Lexington High School?

21 A I was a guidance counselor.

22 Q And how long did you work there?

23 A Twenty-three years.

24 Q And how long were you actually in the education
25 field?

1 A Thirty years.

2 Q Okay. What area of town do you live in?

3 A Denny Terrace.

4 Q And how long have you been living in the Denny
5 Terrace area?

6 A Off and on since 1947.

7 Q And were you raised there?

8 A We moved here when I was five years old.

9 Q Okay. And did your parents actually live in
10 Denny Terrace?

11 A Yes, they did.

12 Q And at what address did your parent live?

13 A Winyah Drive.

14 Q And is that where you currently reside?

15 A That's correct.

16 Q And how long have you been living at Winyah
17 Drive?

18 A Since 2003, perhaps.

19 Q And why did you move to that address? Did you
20 live somewhere else in Denny Terrace for a period of
21 time?

22 A Yes, I did.

23 Q On what --- where was that, ma'am?

24 A On Denny Road.

25 Q Was that your own house?

- 1 A Yes.
- 2 Q But you ended up moving to Winyah Drive?
- 3 A Yes, when I moved back in with my mother.
- 4 Q And why did you move back in with your mother?
- 5 A She needed some help.
- 6 Q And over the next several years, up until I
- 7 believe late 2008, early 2009 perhaps, did you take
- 8 care of your mother?
- 9 A 2007, she died.
- 10 Q 2007. And do you know Ms. Blizzard?
- 11 A I do.
- 12 Q How do you know Ms. Blizzard?
- 13 A From our church.
- 14 Q From your church.
- 15 A The church that I attended at the time.
- 16 Q Was it unusual for Ms. Blizzard to come over and
- 17 visit?
- 18 A No, not at all.
- 19 Q I'm going to turn your attention to that Friday
- 20 January 30th, were you at your home that day?
- 21 A I was.
- 22 Q And who else was there with you?
- 23 A Modell Blizzard.
- 24 Q What were y'all doing that day?
- 25 A I had things that I had --- I was trying to move

1 things from my old house. I had it in storage, and so
2 when my mother died, I was trying to replace things
3 and rearrange things and so we were packing.

4 Q And that day while you were there, either that
5 morning or afternoon, did something catch your
6 attention from outside?

7 A A man came to my house.

8 Q Okay. And can you tell the jury what happened?

9 A He knocked at the door and Modell went to the
10 door, and I could hear --- I had moved to the kitchen
11 by that time.

12 I could hear him talking, and he said he needed
13 money. So I went to my pocketbook and got the money
14 from my pocketbook and came to the door and just as I
15 came to the door, he was trying to tell Ms. Blizzard
16 --- show her the ID card, and she stepped aside. He
17 handed it to me.

18 Q Okay.

19 A He was trying to say that he lived in the
20 community.

21 Q Okay. Let me back up a little bit. You said he
22 came to the door. Is there a certain door off the den
23 in your house?

24 A Yes.

25 Q And is that the door he came to that day?

1 A He came to the front door first, and --- and
2 because I had things in front of the door, I couldn't
3 get to it. I asked him to come to the back door.

4 Q And that's when he knocked on the back door?

5 A That's correct.

6 Q And that's when Ms. Blizzard answered the door?

7 A That's correct.

8 Q And at that point, he first made contact with
9 Ms. Blizzard?

10 A Yes.

11 Q And when you said you heard him having a
12 conversation with Ms. Blizzard, do you remember what
13 he was saying to her or to y'all?

14 A He was saying that his family was broken down on
15 the interstate and that he needed --- he knew exactly
16 what he needed to fix the car, and it cost him \$13 for
17 the part.

18 Q Did he say why he had come to your house?

19 A He said something about a lady up the street had
20 referred me to him.

21 Q Okay. Did you know who he was talking about?

22 A I did not.

23 Q And specifically, he was asking you for money?

24 A Yes.

25 Q When he asked you for money, what did you do?

1 A I went to my pocketbook, got some money, came
2 back to the door.

3 Q So you were going to give him the money?

4 A Yes.

5 Q And how much money did you get out of your purse
6 at that point?

7 A Fifteen dollars.

8 Q Where was your purse located when you left the
9 doorway to go get it?

10 A It was in the den.

11 Q Same area?

12 A Yes.

13 Q And would you be able to see where you were going
14 in that den area from the doorway?

15 A I don't know the ---

16 Q Is it a large room?

17 A Not extremely large. I don't know that he could
18 have seen where I went to.

19 Q But you came back with the money?

20 A Yes, I did.

21 Q And when you gave him the money, how much money
22 did you actually give him?

23 A Fifteen dollars.

24 Q What, if anything, was said at that point?

25 A He said he would return it to me that afternoon

1 after he got his check cashed.

2 Q You mentioned also something about prior to your
3 giving him the money, that he actually handed you a
4 document?

5 A His ID.

6 Q And why was he handing you the document? Was it
7 something ---

8 A He was trying to show me where he lived in the
9 community or to show who he was, I assume.

10 Q And did you look at the --- was it an ID or a
11 driver's license?

12 A Yes, I did.

13 Q And when you looked at it, did you remember
14 anything about it?

15 A I remembered commenting on the fact that Truman
16 Street was not in our neighborhood.

17 Q And was that the address on the license?

18 A Yes. He said that was an old address.

19 Q And do you remember anything about the name on
20 the license?

21 A Yes, I did; that it reminded me of someone else I
22 had known in the past, and that person's name was
23 Albert. I knew it was something similar to that, and
24 his last name started with the letter "W".

25 Q When you gave him the money, did you ever expect

1 to get it back?

2 A No. I don't worry about it.

3 Q And is it unusual for you to give money to people
4 that come to your door?

5 A Not really.

6 Q What time of day was this when he first came to
7 the door that day?

8 A I'm not sure. It was ---

9 Q Was it daylight?

10 A Yes, it was daylight, somewhere around
11 twelve o'clock, noon.

12 Q Something in that neighborhood. Did you and
13 Ms. Blizzard then continue to try to pack things up?

14 A We did.

15 Q Later that day, did she leave?

16 A Yes.

17 Q What happened next that evening?

18 A He came back to my house.

19 Q And who all was in your house when he came back
20 the second time?

21 A No one.

22 Q Which --- how did --- what happened when he came
23 to your house? Tell the jury.

24 A He knocked at the door and he said that he did
25 not have the money, wasn't able to get his check

1 cashed in time, and he would bring it to me the next
2 day.

3 Q And at that point, were you alone in your house?

4 A Yes, I was.

5 Q And which door did he come to?

6 A The same back --- I called it the back door, but
7 it's the side, rear door.

8 Q At that point, what did you tell about him paying
9 back the money?

10 A I said don't worry about it. Monday would be
11 fine.

12 Q About what time of day was that, do you remember?

13 A I would say after six o'clock.

14 Q That evening, did you talk to some of your
15 friends, including Ms. Blizzard?

16 A I don't recall, ma'am. I may have, very likely.

17 Q And later on that night, sometime after midnight,
18 were you still awake?

19 A I was.

20 Q Were the lights still on in your house?

21 A They were.

22 Q Is that unusual for you to stay up that late?

23 A No, it wasn't.

24 Q You're a night owl?

25 A Yes, I am.

1 Q Shortly around --- right around one o'clock in
2 the morning, tell this jury what happened.

3 A Someone knocked at the door, and I thought it was
4 my yardman.

5 Q And explain that to the jury. Why did you think
6 it was your yardman?

7 A He comes at odd hours. Whenever he needs money,
8 he would come at odd hours, and I had been telling him
9 not to come late at night. There was no work he could
10 do for me, but he would still persist in coming.

11 I got up and went to the door. I thought it was
12 him. I opened the main door, and I had forgotten to
13 lock the storm door. This same man that had come that
14 morning was standing in my doorway, and as soon as I
15 opened --- he had the storm door already open. As
16 soon as I opened the door, he hit me.

17 Q Where did he hit you?

18 A In the forehead.

19 Q Had you said anything at that point?

20 A No, nothing was said at all. He just hit me. I
21 threw up my arm to block it. I saw it coming and
22 threw up my arm to block it and shielded my glasses,
23 at least, and he hit me somewhere around in here.

24 (indicating)

25 Then I stepped backwards when I saw it coming,

1 too. Then he stepped forward and hit me three or four
2 more times until I hit the edge of the couch, and I
3 sat down on the couch.

4 Q At this point, is he in your house?

5 A Yes.

6 Q And this is a stupid question. Did he have
7 permission to come in your house at that point?

8 A No, he did not.

9 Q What was going through your mind when you opened
10 the door as you got hit?

11 A Well, my immediate reaction, "Hey, this is not
12 Curtis."

13 Q And ---

14 A And I was in trouble.

15 Q And you were in trouble?

16 A (Nods in the affirmative.)

17 Q You said that you backed up. I believe you said
18 to the couch.

19 A Yes.

20 Q And actually sat down to the couch?

21 A Right. My foot hit the edge of it, and I kind of
22 lost my balance and sat down.

23 Q And at this point, was he still hitting you?

24 A No, he stopped.

25 Q How much times did he hit you before you went

1 down?

2 A About three or four times.

3 Q And what part of your body was he hitting you on?

4 A In the forehead. I still had my arm up and
5 shielded my face.

6 Q What happened next?

7 A He asked me who else was in the house, and I said,
8 "My husband."

9 He said, "You're lying," and he started to hit me
10 again.

11 Q Where was he hitting you now?

12 A On top of the head. I kind of shrunk down.

13 Q Okay.

14 A I think I threw my right arm up at that point,
15 and he was hitting me on the top of the head. Somehow,
16 my glasses got pushed up, and my glasses, I think, cut
17 the top of my head.

18 Q All right.

19 A And they eventually fell off on the floor.

20 Q Did you have anything with you?

21 A I had my cell phone in my hand when I went to the
22 door, and I put it down by my leg and was --- had
23 flipped it open, was trying to dial 9-1-1.

24 Q Were you able to?

25 A No, I wasn't.

1 Q Why not?

2 A He saw it and snatched it out of my hand and
3 broke it half in two.

4 Q At this point, you're still on the couch?

5 A Yes.

6 Q What happened next?

7 A He stepped in front of me when he took the phone
8 out of my hand. I pushed him with my foot, and he
9 fell across the room. When he stood up, he had knife
10 in his hand.

11 Q Was that the first time you had seen the knife?

12 A Yes.

13 Q Do you know where it came from?

14 A I assume out of his coat somewhere. I don't know.
15 All of the sudden, he had it in his hand. He did not
16 have it in his hand when he came in.

17 Q When you pushed him across the room and he fell
18 down, were you able to get away?

19 A No.

20 Q What happened next, once he pulled the knife out?

21 A He came toward me again with a knife, and I threw
22 up my arm again. He cut me on the arm here.

23 Q And is that the scar on your arm?

24 A Yes.

25 Q It's still there?

1 A Yes.

2 Q What was going through your mind at this point?

3 A "Am I going to survive this?"

4 Q What happened next?

5 A He stepped in front of me and cut me in the leg,
6 stabbed me in the leg. I thought he was going to
7 really stab me hard, but he came down and kind of
8 stopped. Then he did a little twist with his hand and
9 stabbed me in the leg.

10 And then he --- I started to kick him, and he was
11 standing in front of me again. I started to kick him,
12 and he realized what I was getting ready to do, and he
13 backed up.

14 I said to him, "Tell me what you want, and I'll
15 give it to you."

16 He said, "I want money."

17 Then he backed on up a little bit more until I
18 felt comfortable. You know, I reached down and got my
19 glasses, and he allowed me to get my pocketbook. I
20 took some more money out, \$16 out of the side pocket,
21 and I gave that to him. Then he turned around and
22 left.

23 I then crawled --- it was easier to crawl to the
24 phone than to try to stand up, and I used the house
25 phone to call 9-1-1.

1 Q During the time that this was going on, how long
2 did it last? How long was he actually in your house,
3 do you know?

4 A I'm not sure, probably 15 minutes or so.

5 Q Did you --- and this is going to sound stupid,
6 too. Did you get a good look at his face?

7 A I did.

8 Q And at one point, I believe your glasses were
9 knocked off?

10 A Yes. But I had --- when he stopped and asked me
11 who else was in the house, I was looking at him then.

12 Q Okay. And did you get your glasses back on
13 before he left?

14 A Yes, I did.

15 Q Did you get several opportunities to look at him,
16 get a good look at him?

17 A Yes.

18 Q Were the lights on in your room?

19 A Yes, they were.

20 Q Was anything obstructing your view?

21 A No.

22 Q Were you able to see him?

23 A Yes.

24 Q And this is really stupid. Were you paying
25 attention to what he looked like?

1 A Very much so at that point. I was trying to very
2 consciously make a --- look at him so I could get a
3 description of him that I could identify him later.

4 Q You said that you called after the assault. You
5 had been stabbed. Where were you stabbed?

6 A In the leg.

7 Q The leg?

8 A Upper leg.

9 Q And also, I believe, you had a stab wound to
10 your...

11 A More of a cut than a stab.

12 Q More of a cut?

13 A Uh-huh.

14 Q And is that actually --- does it have the scar
15 still on it?

16 A Yes.

17 Q Can you show it to the jury?

18 A It starts --- well, it came from this way. It
19 comes up to about right there. (indicating)

20 Q Did the police respond?

21 A Yes, they did. They were there in short order.

22 Q And did EMS come?

23 A Yes.

24 Q Did you actually get transported to the hospital?

25 A I did.

1 Q And there at the hospital, I believe you talked
2 to the doctors and everything?

3 A Yes.

4 Q And you were actually treated by trauma surgeons?

5 A Right. They were waiting on me when I got there.

6 Q You were there for several hours?

7 A I know it was after three.

8 Q Did they treat your wounds in any way?

9 A Yes, they did. I had staples in my head and
10 stitches in my leg and arm. It took probably twice as
11 long to do my leg as it did my arm.

12 Q And that's where he twisted it?

13 A Yes.

14 Q Did the police come? Did you give them a
15 description of the man that had assaulted you?

16 A Yeah. I tried at that point. I was still on the
17 table, you know, the surgical table at that time. I
18 said he was slightly taller than I was, and it was
19 difficult to tell at that point from --- you know,
20 that he had on a --- I think I said a jacket, but he
21 was wearing a coat like an overcoat.

22 Q Did you have an approximate estimate as far as
23 his age, around?

24 A I said his late 30s.

25 Q Once you were treated at the hospital, which took

1 at least a few hours ---

2 A Yes.

3 Q --- where did you go to?

4 A I called some friends. I had tried to call my
5 brother, and for some reason, they couldn't reach him.
6 I don't know whether I switched numbers or did what,
7 but they couldn't get ahold of him.

8 I called another set of friends, and they came
9 and got me and took me back to my house. I called for
10 a deputy to come and meet me because I didn't want to
11 go in the house by myself.

12 Q Okay. And did a deputy come and meet you at your
13 house?

14 A He did.

15 Q And when you got back to your house, what did you
16 do?

17 A I have got some clothes and left again.

18 Q Where were you going?

19 A I went with one of my friends.

20 Q You didn't want to stay in your house?

21 A Right.

22 Q That next day, did you stay with your friends?

23 A I had called my sister, and she came and --- sent
24 her son-in-law to get me and one of his friends.

25 Q And ---

1 A I went back to the house and got some more
2 clothes to stay for a longer period of time of time.
3 When I went in at this time, I found that there was a
4 concrete block on my couch that was not there when I
5 left.

6 Q Okay.

7 A Then someone discovered that the side door ---
8 the --- I called it the front side door, was opened.

9 Q So ---

10 A So he had come in the back door that he had
11 knocked on and someone had gone out the front side
12 door.

13 My friend said that that block was there when we
14 came back the first time, but it was covered over by
15 an afghan or something, half-covered, and I didn't
16 notice it.

17 Q Did you then leave town?

18 A I did.

19 Q And where were you going?

20 A I went to my sister's house in North Augusta.

21 Q And that would have been on that Saturday?

22 A Saturday, yeah.

23 Q Until Sunday?

24 A Right.

25 Q And that Sunday, did the police make contact with

1 you again?

2 A They did.

3 Q What did they ask you to do?

4 A Come back and look at a lineup.

5 Q And did you come back to Columbia from North
6 Augusta on that Sunday afternoon?

7 A I did.

8 Q And did you meet with certain investigators from
9 the sheriff's department?

10 A I did.

11 Q Including Major Smith?

12 A Yeah. I called him Captain Smith at the time.

13 Q Captain?

14 A Yeah.

15 Q And when you made contact with him, did he show
16 you some photographs?

17 A He did.

18 Q I'm going to show you what's been marked as
19 State's Exhibit Number 1 and ask do you recognize this?

20 A I do.

21 Q And yesterday when I asked you if you recognized
22 it, you said you thought it had four pictures on it?

23 A Yeah. I thought I had remembered four on the
24 bottom, but ---

25 Q But it has actually got three?

1 A Yeah, three.

2 Q But as far as the pictures in there, are those
3 the same pictures that were shown to you?

4 A Yes, they were.

5 Q And when they showed you those pictures, what if
6 anything did they say to you? Did they ---

7 A They just said look at it carefully, take my time
8 and look at it very carefully and --- and see if I
9 could identify the person that had...

10 Q Did they tell you which one to pick?

11 A No.

12 Q Did they influence you in any way?

13 A No, they did not.

14 Q Did anyone try to hint around which one to pick
15 out?

16 A No.

17 Q And when you looked at those pictures, you said
18 you looked at each one of them carefully?

19 A Right.

20 Q Tell the jury exactly how you went about it in
21 making sure before you said anything?

22 A Well, I looked at the four of them, and I
23 immediately dismissed those four. Then I was looking
24 at the other two. I had to look at those a long time,
25 but I finally decided, you know, that it was one in

1 the photo number three on here.

2 Q Did you want to make sure you didn't make a
3 mistake?

4 A That's correct.

5 Q So you were very deliberate and careful?

6 A Yes.

7 Q And you studied the pictures to make sure you
8 were right?

9 A Yes.

10 Q And when you studied those pictures, did you
11 recognize the person that assaulted you?

12 A Yes, I did.

13 Q And that was --- as far as you getting a good
14 look at his face that night, how close did he get to
15 you?

16 A Probably about as close as you are to me.

17 Q And were you able to see his face clearly?

18 A Probably a little closer even.

19 Q A little closer?

20 A Yes, because he hit me, so he had to be a little
21 closer.

22 Q Good point, and when you looked at those pictures,
23 which one did you recognize?

24 A Photo number three.

25 Q Did you tell the officers which one had assaulted

1 you?

2 A Yes, I did.

3 Q And nobody told you who to pick or anything like
4 that, right?

5 A No.

6 Q And after that, did you then initial next to it?

7 A I did, that's my initial.

8 Q And once they filled out this part, you signed it?

9 A Yes.

10 Q But when they showed you this State's Exhibit No.
11 1, it didn't have any of this writing on it.

12 A No.

13 Q It just had the pictures?

14 A That's correct.

15 Q And when you recognized photo number three where
16 your initials are, is there any doubt in your mind
17 that's the person who assaulted you?

18 A No.

19 Q And that day when you came back, too, on that
20 Sunday, I believe that would be February 1st, did you
21 also give them a statement ---

22 A Yes, I did.

23 Q --- about what had happened to you?

24 A Yes.

25 Q When you came back to the sheriff's department,

1 did they also take some photographs of you?

2 A Yes.

3 Q And I show you what's been marked as State's
4 Exhibit Number 368. Do you recognize that photograph?

5 A I do.

6 Q And was that taken that day when you came back to
7 give your statement?

8 A Yes.

9 MS. CAMPBELL: Your Honor, at this time, we'd
10 offer State's Exhibit Number 1 and State's Exhibit
11 Number 368 into evidence.

12 MR. SUTHERLAND: Object to the color photographs,
13 Your Honor.

14 THE HONORABLE CLIFTON NEWMAN: All right.
15 They're admitted over objection.

16 MS. CAMPBELL: Thank you.

17 (WHEREUPON, State's Exhibits Nos. 1, 368 were
18 admitted into evidence.)

19 BY MS. CAMPBELL:

20 Q This looks like it was taken in front of a filing
21 cabinet or something. What does this show in that
22 picture? What was --- who is that?

23 A That's me.

24 Q And is that how you looked about a day-and-a-half
25 or two days after this incident?

1 A Yes.

2 Q Ms. Webb, the man that assaulted you, did you
3 even know him?

4 A No, I did not.

5 Q And you actually, the first time he came to your
6 house, gave him money when he asked for it?

7 A That's correct.

8 Q The man that assaulted you that night, do you see
9 him here in the courtroom?

10 A He's sitting at the defense table in the middle.

11 Q In the middle?

12 A Yes.

13 MS. CAMPBELL: Your Honor, may the record reflect
14 she has identified the defendant?

15 THE HONORABLE CLIFTON NEWMAN: It does.

16 BY MS. CAMPBELL:

17 Q Is there any doubt that's the man that assaulted
18 you that night?

19 A No.

20 MS. CAMPBELL: Thank you, Ms. Webb.

21 THE HONORABLE CLIFTON NEWMAN: Mr. Sutherland.

22 MR. SUTHERLAND: May it please the Court.

23 CROSS-EXAMINATION:

24 BY MR. SUTHERLAND:

25 Q Ma'am, how are you?

1 A (There was no response.)

2 Q Doing okay?

3 A I'm doing all right.

4 Q All rightie. This will be pretty much the same
5 as yesterday.

6 A Okay.

7 Q Ma'am, do you remember telling deputies that
8 arrived on the scene that you were 80 percent sure
9 that the person that assaulted you was the same person
10 that had been there that day?

11 A I don't remember saying it, but I may have.

12 Q Yes, ma'am, okay. Thank you.

13 All right. Okay. And you had testified earlier
14 that you --- and you're wearing them now. You do wear
15 glasses?

16 A I do.

17 Q And the glasses were damaged during the assault.

18 Is that --- is that --- they were damaged ---

19 A Right. They were damaged beyond repair.

20 Q Sorry. I'll try not to talk when you do.

21 Do you remember telling Investigator Travis
22 Holdorf that when you opened the door, you did not
23 recognize the person at the door so you tried to close
24 it?

25 A I don't know who that person is by that name. I

1 mean, I may know.

2 Q If you saw him?

3 A Possibly.

4 Q But --- and I think you testified earlier that

5 there were a number of investigators that were

6 around ---

7 A That's correct.

8 Q --- during this thing?

9 A That's correct.

10 Q Do you remember investigators that came out --- I

11 know that you were certainly under duress, but you

12 remember the investigators that came out to the

13 hospital?

14 A One of them came out to the hospital and asked me

15 questions.

16 Q And do you remember, there were maybe two, three

17 or more when you were talking to Major Smith?

18 A Yes.

19 Q Okay. Okay. And you had testified that the

20 person that came earlier during the day had handed you

21 a driver's license?

22 A That's correct.

23 Q Yes, ma'am. And that you had examined the

24 driver's license, because the person had told you that

25 they were a person from the neighborhood?

1 A Right.

2 Q Okay. And that you examined the driver's license,
3 and that you were maybe skeptical because of the
4 address?

5 A Right.

6 Q And that --- did ---

7 A It was just a comment.

8 Q Did ---

9 A I didn't care. At that point, I didn't care one
10 way or the other.

11 Q Oh, so ---

12 A Yeah.

13 Q But you did --- you did mention, "Well, Truman
14 Street is not in Denny Terrace"?

15 A That's correct.

16 Q Okay. When you were examining the driver's
17 license, did you look at that person that you were
18 talking to at that time?

19 A I did.

20 Q Okay. Okay. All right. I don't have too much
21 here.

22 (Pause)

23 I do recall --- well, do you recall. I'm sorry.
24 Yesterday when you were first testifying about the
25 lineup ---

1 A Uh-huh.

2 Q --- do you recall Ms. Campbell handing you the
3 photo lineup?

4 A Yes, I do.

5 Q And do you recall saying that's not it?

6 A Well, I was thinking there were four pictures on
7 the bottom row for some reason.

8 Q Yes, ma'am. And so after some time --- it's
9 just --- you sounded --- did you --- you seemed
10 certain yesterday that no, that's not it?

11 MS. CAMPBELL: Objection to him testifying.

12 THE HONORABLE CLIFTON NEWMAN: The objection is
13 sustained.

14 MR. SUTHERLAND: Okay.

15 BY MR. SUTHERLAND:

16 Q How did you describe your reaction, I guess ---
17 when you first saw the lineup, your reaction was that
18 it wasn't the lineup?

19 A I didn't remember it as being that particular
20 sheet of paper, no.

21 Q Yes, ma'am, okay.

22 A The pictures were the same.

23 Q Okay. I think...

24 Oh, oh, one more thing: You testified yesterday
25 about --- is it Curtis?

1 A Yes.

2 Q And that he comes knocking all the time or at all
3 hours fairly regularly?

4 A Yes.

5 Q And just asking?

6 A Begging for money.

7 MR. SUTHERLAND: Yes, ma'am, okay.

8 Thank you. I have no further questions at this
9 time, Your Honor.

10 THE HONORABLE CLIFTON NEWMAN: Redirect?

11 MS. CAMPBELL: Just a couple, Your Honor.

12 REDIRECT EXAMINATION:

13 BY MS. CAMPBELL:

14 Q He asked you about recognizing the person at the
15 door, from what you said. Who did you expect to see
16 at the door, knocking on your door at one o'clock at
17 night?

18 A I thought it was going to be Curtis.

19 Q So you didn't recognize the person because it
20 wasn't Curtis?

21 A That's right.

22 MR. SUTHERLAND: That's --- well...

23 BY MS. CAMPBELL:

24 Q And he asked you about this lineup. When did
25 you --- when you --- you were shown this lineup back

1 when?

2 A On February 1st.

3 Q On that Sunday?

4 A Right.

5 Q And when you were shown this lineup, you actually
6 initialed off on the person you recognized?

7 A That's correct.

8 Q And that was within 36 hours or so of being
9 attacked, less than 48?

10 A Yes.

11 Q And the person that you picked out ---

12 A The man ---

13 Q --- has the picture changed in any way?

14 A The man that I picked out was the man that
15 attacked me on Friday night.

16 Q No doubt in your mind?

17 A That's right.

18 Q Nothing has changed about that?

19 A No.

20 Q From then or now?

21 A No.

22 THE HONORABLE CLIFTON NEWMAN: Anything further?

23 RECROSS-EXAMINATION:

24 BY MR. SUTHERLAND:

25 Q Just briefly.

1 And, ma'am, you took some time in response to her
2 question about the lineup. It did take you a while.
3 You had testified that you --- there were four, and
4 then there were two that you were considering before
5 you picked the one; is that correct?

6 A That's correct.

7 Q And that it took some time, and I believe that
8 she ---

9 A Well, within a couple of minutes.

10 Q Okay.

11 A It wasn't...

12 MR. SUTHERLAND: All right. Thank you.

13 No further questions, Your Honor.

14 THE HONORABLE CLIFTON NEWMAN: Thank you. You
15 may step down.

16 Your next witness?

17 MS. McDUFFIE: If it pleases the court, Your
18 Honor, the State would call Deputy Alexander.

19 CHRIS ALEXANDER,
20 after being duly sworn, testified as follows:

21 THE WITNESS: My name is Chris Alexander. I'm a
22 Corporal with the Richland County sheriff's department.

23 DIRECT EXAMINATION:

24 BY MS. McDUFFIE:

25 Q Corporal Alexander, would you please tell the

1 jury your duties with the Richland County Sheriff's
2 Department?

3 A I am a uniformed patrol. At the time of this
4 incident, I was a master deputy in the Region 3, Denny
5 Terrace Community.

6 Q And currently, what are your duties?

7 A I'm a corporal in the Region four, which is the
8 Broad River area at this time.

9 Q And in the end of January 2009, you were assigned
10 to Region 3?

11 A Yes, ma'am.

12 Q Can you please tell the jury where Region 3 is?

13 A It is the Monticello Road, Fairfield, North Main
14 and Farrow Road area consisting of everything that
15 joins in with the city and runs out to the Region 6
16 area, which is borderline with the county line.

17 Q And what were your duties as a master deputy in
18 Region 3?

19 A I was an assistant supervisor and responsible for
20 training officers and responding to calls for service
21 and patrolling the area.

22 Q And on January 31, 2009, do you recall what shift
23 you were working?

24 A I was on the night shift.

25 Q And can you tell the jury when that runs from,

1 what hours?

2 A 7:00 p.m. to 7:00 a.m.

3 Q And as a master deputy on night shift, what are
4 your duties?

5 A It is to patrol the --- my assigned area and
6 prevent any crimes and respond to any calls for
7 service.

8 Q And shortly after one o'clock in the morning on
9 January 31, 2009, were you called out to Winyah
10 Drive?

11 A Yes, ma'am.

12 Q And can you please tell the jury what that was in
13 references to?

14 A We got what was known as a tone out where they
15 tone out over all channels, so the closest unit to the
16 location of the incident responds. It went out as a
17 home invasion.

18 Q And did you respond to Winyah Drive?

19 A Yes, I did.

20 Q Who was present when you arrived there?

21 A Deputy Bobby Scott got there just seconds before
22 I did, and Ms. Webb was there in the house on the
23 floor next to the couch.

24 Q And please tell the jury what you observed when
25 you arrived at Winyah Drive?

1 A I observed her having multiple lacerations. She
2 had a towel, I believe, compressed on one of them
3 trying to slow the bleeding, and that it appeared that
4 there had been an altercation, a fight took place in
5 the room that she was in, which was from --- as she
6 said, the back door, which was on the side of the
7 house into that first room back there.

8 Q I'm going to show you what's been marked as
9 State's Exhibit 11 through 17. Have you had the
10 opportunity to review these?

11 A Well, yes. These were the ones we went over.

12 Q And do those fairly and accurately depict what
13 you observed at Winyah Drive on January 31, 2009?

14 A Yes, ma'am.

15 Q Your Honor, at this time, we'd offer State's
16 Exhibits 11 through 17.

17 THE HONORABLE CLIFTON NEWMAN: Any objection?

18 MR. SUTHERLAND: If I may briefly take a look and
19 make sure.

20 (Pause)

21 No objection, sir.

22 THE HONORABLE CLIFTON NEWMAN: They're admitted.

23 (WHEREUPON, State's Exhibits Nos. 11 - 17 were
24 admitted into evidence.)

25 BY MS. McDUFFIE:

1 Q Please tell the jury what is depicted in State's
2 Exhibit 12.

3 A That is the house I observed at Winyah Drive.

4 Q And when you responded to this house, which door
5 did you go to?

6 A Initially, I went to the side door.

7 Q And is that what's depicted in State's Exhibit 15?

8 A Yes, it is.

9 Q And when you got there, it was just you and
10 Deputy Scott?

11 A Yes, ma'am.

12 Q Had Deputy Scott entered the residence when you
13 got there?

14 A He had, and he was inside checking on Ms. Webb.
15 At that time, we began to call for EMS, and she began
16 calling for initial investigators on the crime scene
17 due to what we had.

18 Q And did EMS arrive?

19 A Just a couple of moments later.

20 Q And did they remove Ms. Webb from her home?

21 A Yes, ma'am. They prepared her for --- to be
22 transported, got her on the stretcher, got her in the
23 ambulance and they took her straight to Richland
24 Memorial Hospital.

25 Q And after Ms. Webb was taken to Richland Memorial,

1 what were your duties at Winyah Drive?

2 A Maintain the scene until the lab unit arrived to
3 process it.

4 Q And what do you mean by maintain the scene?

5 A It means no one went in or out other than I stood
6 at the door and waited on the lab to get there. When
7 the lab unit arrived, I told him what we had arrived
8 on, what we had seen and that we had only went as far
9 as into the house as the couch, other than doing a
10 safety sweep to make sure there was no one else hiding
11 in the house or any other possible victims.

12 Q And did you keep what's commonly referred to as a
13 crime scene log?

14 A There was no crime scene log on this due to ---
15 it was myself and Deputy Scott there. Once we got the
16 scene --- knew the scene was under control, Deputy
17 Scott had responded to the hospital to gather further
18 information.

19 Q And so you were the only person left at the
20 residence until crime scene arrived?

21 A Yes, ma'am.

22 Q And crime scene did arrive at Winyah Drive?

23 A Yes, ma'am.

24 Q And they took over in processing the scene?

25 A Yes, ma'am.

1 Q Once they took over processing the scene, what
2 did you then do?

3 A I assisted the K-9 with the track as a back up
4 unit or a cover unit that commonly occurred ---
5 referred to.

6 Q What do you mean you assisted the K-9 unit? Well,
7 tell the jury what you did that night.

8 A My primary job with the K-9 was like an officer
9 is focused on the dog and watching his reactions. My
10 job was to scan the area, watch the --- basically,
11 watch the deputy's back and cover all sides.

12 Q I'm going to show you what's been marked as
13 State's Exhibit 363 and ask if you recognize this.

14 A That is an aerial view of the Denny Terrace
15 subdivision with Ms. Webb's house marked.

16 MS. McDUFFIE: Your Honor, at this time we'd
17 offer State's Exhibit 363 into evidence.

18 MR. SUTHERLAND: No objection.

19 THE HONORABLE CLIFTON NEWMAN: It's in evidence
20 without objection.

21 (WHEREUPON, State's Exhibit No. 363 was admitted
22 into evidence.)

23 BY MS. McDUFFIE:

24 Q If you could show the jury Ms. Webb's house,
25 please, on State's Exhibit 363.

1 A It is this residence right here. (indicating)

2 Q And you said you ran a track with the K-9 unit?

3 A Yes, ma'am.

4 Q And please show the jury where you went.

5 A The K-9 arrived. We established the track going
6 around the back of the house, and it proceeded through
7 the wood line. It brought us out at the church over
8 here, at what time we lost the track in the parking
9 lot area.

10 As the K-9 officer doubled back to try to
11 re-establish the track to see if he might have gotten
12 off-line, we found broken glass, at what time we found
13 an entry point and cleared the church.

14 Q And did you actually enter the church itself that
15 evening?

16 A We did a safety sweep to see if anyone was in
17 there.

18 Q And when you --- did you begin to process that
19 scene as a potential crime scene at that time?

20 A I requested Deputy Fairbanks to come to the
21 church and take over that scene because we were still
22 trying to establish if the K-9 could re-establish the
23 track.

24 Q And at that point, could the K-9 re-establish the
25 track?

1 A No, ma'am.

2 Q And are you aware if investigators were called
3 out to the church that evening?

4 A I do know we notified the lab. Since we could
5 not find a key holder at that point, we had lab come
6 out to see if there was anything they could process.

7 Q And what do you mean by you couldn't find a key
8 holder at that point?

9 A The telephone number that we had on record with
10 our dispatch as far as who was the key holder, someone
11 that can open doors and lock doors back up behind them,
12 they --- they didn't have a proper one on record.

13 Q And so you couldn't find anyone to let you into
14 the building in order to ---

15 A Or re-secure it.

16 Q Or re-secure the building ---

17 A Yes.

18 Q --- so at that point in time, you assisted the
19 K-9 in tracking --- trying to attempt to track?

20 A Yes, ma'am.

21 Q And was the K-9 able to track to anywhere else at
22 that point in time?

23 A No, ma'am. Pretty much, for the lack of a better
24 way to put it, the track went cold in the parking lot.

25 Q And the church was located at Winyah Drive?

1 A Yes, ma'am.

2 Q Is that located in Richland County?

3 A Yes, ma'am.

4 Q As well as Ms. Webb's home at Winyah Drive?

5 A Yes, ma'am, it is.

6 Q Now, you went off the night shift at some point?

7 A 7:00 a.m.

8 Q And then you went --- came back onto call at

9 7:00 p.m. that same day?

10 A Yes, ma'am.

11 Q And at some point on January 31, 2009, did you

12 respond to Winyah Drive?

13 A At approximately 21:21, which is 9:21 p.m. in the

14 evening, we were dispatched to Winyah Drive.

15 Q And you were dispatched to that residence the

16 same day, January 31, 2009?

17 A Yes, ma'am.

18 Q And what was that in reference to?

19 A That was in reference to a suspicious death.

20 Q And when you arrived on the scene, who else was

21 present?

22 A There was a family member who I believe was the
23 son-in-law that was --- that met me in the front yard,
24 as well as a Columbia Fire Department representative.

25 They explained to me what they observed. I

1 entered the house, saw a female on the floor. At that
2 time, I backed everybody out, did a safety sweep of
3 the house, and then I backed out and maintained until
4 the lab investigators could get on the scene.

5 Q And how was entry made into the house at that
6 point?

7 A It was through the front door that the son-in-law,
8 I believe, had stated that he had used the spare key
9 to get access to. The key was still in the doorknob.

10 Q And there was no forced entry that you observed?

11 A None that we could find at the time.

12 Q And you said you cleared the house. What does
13 that mean?

14 A I did quick clearing to make sure there was no
15 other victims or other possible suspects that were
16 hiding inside.

17 Q And once you had cleared the house or secured the
18 house, what did you then do?

19 A We pulled back and started a crime scene log.
20 Due to the circumstances, we knew there was going to
21 several people in and out of this, and it had to be
22 documented.

23 Q And I show you what's been marked as State's
24 Exhibit 362 and ask if you recognize this.

25 A It's an aerial shot of the Denny Terrace

1 subdivision, with Ms. Derrick's residence marked.

2 MS. McDUFFIE: Your Honor, at this time we'd
3 offer State's Exhibit 362 into evidence.

4 MR. SUTHERLAND: No objection.

5 THE HONORABLE CLIFTON NEWMAN: It's admitted.

6 (WHEREUPON, State's Exhibit No. 362 was admitted
7 into evidence.)

8 BY MS. McDUFFIE:

9 Q If you could, again, show the jury Ms. Webb's
10 residence at Winyah Drive?

11 A It is located here. (indicating)

12 Q I'm sorry, if you could do Ms. Webb's residence,
13

14 A Ms. Webb's house is located right here.
15 (indicating)

16 Q And the church?

17 A That is right here. (indicating)

18 Q And Ms. Derrick's residence at Winyah Drive?

19 A That is right here. (indicating)

20 Q And this is the Denny Terrace neighborhood?

21 A Yes, ma'am.

22 Q And all three of these addresses are in Richland
23 County?

24 A Yes, ma'am, they are.

25 Q And so once you started a crime scene log at this

1 location, what were your duties at that point?

2 A The duties were to maintain the scene and its
3 integrity until the lab arrived and the investigators
4 arrived and basically took over the scene for
5 processing.

6 Q Did that happen?

7 A Yes, ma'am, it did.

8 Q And once you turned the scene over to
9 investigators, did you have any further role in the
10 investigation of this case?

11 A That was pretty much the extent of my involvement
12 at that point as far as crime scene security or
13 anything.

14 Q Beg the Court's indulgence.

15 (Pause)

16 When you did the protective sweep of Ms. Webb's
17 house, there was no one else present besides Ms. Webb?

18 A There was no one in the house.

19 Q And when you did the protective sweep of the
20 church, was there anyone present in the church?

21 A There was no one present in the church.

22 Q And when you did the protective sweep of
23 Ms. Derrick's house, was there anyone besides Ms.
24 Derrick in the home --- or Ms. Derrick's body in the
25 home?

1 A Not at that time because I had had everyone, the
2 fire personnel and the --- I believe there was EMS
3 inside, and I had the family members step out.

4 We cleared the house. I pulled my weapon out in
5 case I ran into a hostile, and then I fell out,
6 secured the house.

7 MS. McDUFFIE: Thank you. No further questions,
8 Your Honor.

9 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

10 MR. SUTHERLAND: May it please the Court.

11 CROSS-EXAMINATION:

12 BY MR. SUTHERLAND:

13 Q Sir, let me see, is it Corporal?

14 A Yes.

15 Q Corporal Alexander, I'm Tivis. How are you?

16 A How are you doing?

17 Q I wanted to ask you a couple of questions. I've
18 got a report here that's got your name on it, and
19 there's a Cucurullo, is that how you pronounce it, or
20 Coocurillo?

21 A Cucurullo.

22 Q Okay. Gerard. This is with respect to
23 Ms. Derrick's --- the incident at Ms. Derrick's house.

24 A Uh-huh.

25 Q Did you write a report with respect to what

1 happened at Ms. Webb's place and the K-9 track and
2 everything?

3 A Initially, since I was on the scene and Deputy
4 Cucurullo arrived just behind me, he initially started
5 the report while I maintained the scene and started
6 contacting headquarters to get the investigators en
7 route and also to notify my command staff of the
8 incident.

9 Q And this is the --- this is the Derrick incident
10 that you're speaking of?

11 A No. You asked about ---

12 Q Okay.

13 A If you could.

14 Q If you could ---

15 (Talking over each other.)

16 A The Derrick incident with Deputy Cucurullo.

17 Q And I was just asking, did you --- did you write
18 a report about the incident over at the Webb incident?

19 A Deputy Bobby Scott had written that report.

20 Q Okay. Because it's been two-and-a-half or more
21 years?

22 A Uh-huh.

23 Q Did you use Deputy Scott's report to prepare your
24 testimony today?

25 A I have a copy of it right here.

1 MR. SUTHERLAND: Okay. Your Honor, may I
2 question the witness about the report that he used to
3 prepare for testimony today? I'm concerned they may
4 not call the other officer.

5 THE HONORABLE CLIFTON NEWMAN: You can ask him
6 whatever you'd like to ask him.

7 MR. SUTHERLAND: All right. Thank you, sir.

8 BY MR. SUTHERLAND:

9 Q I'm going to go get that report. I'm sorry.
10 (Pause)

11 While I'm --- while I'm looking for this thing,
12 if you would, sir, I believe the last page of that
13 report is what I'm --- particularly --- I have it
14 right here.

15 (Pause)

16 Okay. So this is --- this is what you used to
17 refresh your recollection?

18 A Yes, sir.

19 Q Okay. And really, I just have a couple of
20 questions about the dog track to sort of --- sort of
21 clarify something.

22 A Okay.

23 Q But on the last page of this report that you used
24 to prepare for your testimony today, there's a line,
25 and if you've got it, it's right there, "C.B. stated

1 that she would give an eight to it being the same
2 guy."

3 Do you see that on the report? And this is ---
4 okay.

5 A I'm looking at it. I'm reading the sentence.
6 I've got it right here. That's the one you're talking
7 about?

8 Q That's it.

9 A All right.

10 Q And that's in there?

11 A Yes, sir.

12 Q Okay. And the words that you're reading say that
13 eight would be eight of ten, or you really don't have
14 a way of knowing that?

15 A I don't have a way to know that.

16 Q But I mean, while you were reading that --- is
17 that pretty much how you put it down?

18 MS. McDUFFIE: Objection, Your Honor. The
19 witness just testified he has no independent knowledge
20 of this.

21 THE HONORABLE CLIFTON NEWMAN: State the question,
22 please.

23 BY MR. SUTHERLAND:

24 Q Okay. If you would, just read the sentence into
25 the record, please.

1 MS. McDUFFIE: Your Honor, I object. The witness
2 just testified he was not present when that statement
3 was made, and he has no independent knowledge of it.

4 THE HONORABLE CLIFTON NEWMAN: All right. The
5 objection is sustained.

6 BY MR. SUTHERLAND:

7 Q Okay. Well, it's already in there.

8 You talked about the dog track.

9 A Yes, sir.

10 Q And you had gone along. You said that it broke
11 off at some point. Is that ---

12 A Around the --- around the church parking lot.

13 Q Okay. So it broke off around the church parking
14 lot.

15 And then at some point a track was reacquired.

16 Is...

17 A No, sir.

18 Q Okay. So it just stopped around the --- around
19 the church parking lot, and then y'all proceeded from
20 there to do your investigation of the scene?

21 A No. We --- the K-9 started backtracking to see
22 if he could re-establish the track. What's when we
23 discovered the force entry into the church, the broken
24 window.

25 Q Okay. So just to be clear, the track had broken

1 off, and then it reacquired a track. And --- or when
2 it was looking for the other, that's when you
3 discovered ---

4 A When the K-9 was trying to re-establish, the K-9
5 lead us to the broken window where the point of entry
6 had been gained into the church.

7 MR. SUTHERLAND: Okay. All right. No further
8 questions. Thank you.

9 MS. McDUFFIE: No further questions. We'd ask
10 that this witness be excused, Your Honor.

11 THE HONORABLE CLIFTON NEWMAN: All right. Thank
12 you. You're excused.

13 Your next witness.

14 MS. CAMPBELL: The State would call Ms. Edna
15 Wheeler.

16 THE HONORABLE CLIFTON NEWMAN: Let's stand for a
17 moment as we wait for this next witness, everyone.

18 (Complies)

19 THE HONORABLE CLIFTON NEWMAN: All right. Be
20 seated.

21 EDNA WHEELER,
22 after being duly sworn, testified as follows:

23 THE CLERK: Have a seat in the witness box, and
24 state your name for the record, please.

25 THE BAILIFF: Be aware of those high steps.

1 THE WITNESS: Thank you.

2 THE BAILIFF: Scoot your chair up just a little
3 bit. That's good.

4 THE WITNESS: Okay.

5 DIRECT EXAMINATION:

6 BY MS. CAMPBELL:

7 Q Ms. Wheeler, do you live here in the Columbia
8 area?

9 A Yes, I do.

10 Q And how long have you been living in Columbia?

11 A All my life.

12 Q And what part of town do you live in, ma'am?

13 A I live in Denny Terrace off of Monticello Road.

14 Q Off of Monticello Road?

15 A Yes.

16 Q And how long have you been living in the Denny
17 Terrace area, specifically?

18 A Since I was three years old.

19 Q Since you were three years old?

20 A Yes.

21 Q Are you currently employed?

22 A Retired.

23 Q And where did you retire from, ma'am?

24 A South Carolina National Bank.

25 THE HONORABLE CLIFTON NEWMAN: Can you set the

1 mic a little closer to her?

2 BY MS. CAMPBELL:

3 Q Yes, sir.

4 Get a little closer.

5 A South Carolina National Bank.

6 Q And how long did you work for South Carolina
7 National Bank?

8 A Thirty years.

9 Q Do you currently do some volunteer work with the
10 church?

11 A Yes, I do.

12 Q And what church are you active with, ma'am?

13 A Christ Lutheran Church.

14 Q And where is that located at, ma'am?

15 A On Winyah Drive.

16 Q On Winyah Drive?

17 A Yes.

18 Q And is that in Denny Terrace also?

19 A Yes, ma'am.

20 Q And who is the pastor for that church right now?

21 A We don't have a pastor right now.

22 Q Okay.

23 A So they're rotating pastors that come in and do
24 the service.

25 Q Okay. Are you familiar with a woman named Anne

1 Christianson?

2 A Yes, I am.

3 Q And who is Ms. Christianson?

4 A She was our former pastor.

5 Q Back when this happened?

6 A Yes.

7 Q In January of 2009?

8 A Yes.

9 Q And was she --- would be considered the main key
10 holder for the church?

11 A Yes.

12 Q And did she actually have an office in the church
13 at that time?

14 A Yes, she did.

15 Q What were your duties at the church back in
16 January of 2009?

17 A I was on the church council.

18 Q Church council?

19 A And I worked with the different --- different
20 projects, mainly faith and fellowship.

21 Q I want to turn your attention ---

22 A And outreach, the Christ Closet.

23 Q The Christ Closet?

24 A Uh-huh.

25 Q So you're involved with several programs in the

1 church?

2 A Yes.

3 Q And I want to turn your attention back to that
4 weekend, that Saturday and Sunday. Did it come to
5 your attention that the church had been broken into?

6 A Yes.

7 Q And when did you actually go to the church that
8 weekend?

9 A I went --- it must have been --- I don't know ---
10 I don't remember the date, but it was either --- well,
11 I think it was on Saturday.

12 Q Saturday morning?

13 A Yes.

14 Q And did it come to your attention when you got to
15 that church that morning that there had been a break
16 in the night before?

17 A Yes.

18 MR. SUTHERLAND: Your Honor, this is hearsay that
19 she is asking about, sir.

20 THE HONORABLE CLIFTON NEWMAN: All right. The
21 objection is sustained.

22 BY MS. CAMPBELL:

23 Q What came to your --- what did you observe when
24 you got to the church that Saturday morning?

25 A When we walked in ---

1 Q And who are you with?

2 A Pastor Anne.

3 Q Pastor Anne?

4 A Yes.

5 Q Okay.

6 A As we started into the kitchen area where we were
7 going to have a brief meeting, we noticed there was
8 blood spots on the floor, and then as we walked on
9 into the kitchen, the kitchen window over the sink,
10 the center pane had been broken out, and there was
11 glass on the inside and outside of that window.

12 Q And when you had last been in the church, like
13 the day prior to that, had that --- that window hadn't
14 been broken?

15 A No, it was not.

16 Q And this was on that Saturday, I believe you ---
17 and what was the purpose of you going to the church
18 that morning?

19 A We went down for a meeting to --- just to discuss
20 how we were going to do the next year's faith and
21 fellowship luncheons and the Christ Closet information.

22 Q Okay. And this was you and Pastor Anne, I
23 believe, that were walking in first that morning?

24 A Yes. Well, we were the only two going to be
25 there.

1 Q You were the only two that were going to be there,
2 I'm sorry.

3 A Yes.

4 Q When you got inside, you said you observed that
5 the window was broken?

6 A Yes.

7 Q And that caught your attention?

8 A Yes, it did.

9 Q What went through your mind?

10 A Somebody had been in there.

11 Q And at that point, did you notice anything else
12 in the kitchen area that wasn't supposed to be there?

13 A There were blood spots all over the floor.

14 Q As well as did you notice anything about any
15 matches?

16 A There were some matches, and there were a few
17 strung around that had been struck, thrown down on the
18 floor.

19 Q You mentioned they had been struck, so they had
20 been burned?

21 A Yes.

22 Q And those were just located where in the church?

23 A They were --- they were just --- they weren't in
24 the church. They were in the recreational hall.

25 Q Recreational hall?

1 A Right.

2 Q And they were just randomly thrown down as far as
3 you can tell?

4 A Right.

5 Q And had --- did y'all keep a box of matches there
6 in the church?

7 A We did to light candles.

8 Q Did you recognize those matches to be the same
9 type of matches ---

10 A Yes.

11 Q --- used to light candles?

12 A Yes.

13 Q During your observations --- or just walk this
14 jury through, basically, as you went through the
15 recreational hall and what your observations were as
16 you went through and what you saw?

17 A Well, there was blood splatters down the hall,
18 down ---

19 Q Where it appeared to be?

20 A Down the middle of the recreational hall.

21 Q Uh-huh.

22 A And also down the hall going to the restrooms.

23 Q And the office area where Pastor Anne's office
24 was, did you go down into that area and observe
25 anything?

1 A Yes.

2 Q Tell the jury what.

3 A Pastor Anne's office had --- someone had been in
4 her chair, in her desk, and the --- she had some
5 strawberry Twizzlers in there, candy. When we opened
6 the drawer, they were gone, and there was a bloody
7 paper towel in that drawer.

8 Q Okay. During the time when you were in there,
9 were you able to --- other than the ones you saw burnt
10 strewn around, were the matches missing, the matchbox
11 itself?

12 A I don't remember seeing the matchbox.

13 Q But there were definitely the matches you
14 observed that had been burned?

15 A Yes.

16 Q But you didn't see the matchbox?

17 A No.

18 Q Did the police respond to the scene while you
19 were there, or was that after you left?

20 A No. They were responding while we were there.

21 Q And then they processed the scene?

22 A Yes, they did.

23 Q And other than your observations on that Saturday,
24 you don't know anything that went on, what had
25 happened the night before?

1 A No, I do not.

2 MS. CAMPBELL: Thank you, ma'am.

3 I don't have anything else.

4 MR. SUTHERLAND: May it please the Court.

5 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

6 CROSS-EXAMINATION:

7 BY MR. SUTHERLAND:

8 Q Briefly, ma'am, did any investigator, anybody
9 ever take a statement from you where you wrote all
10 these observations down?

11 A I believe a policeman did, but I don't remember
12 his name, because they were --- they were talking to
13 both of us. I think it was a joint statement.

14 Q Oh, okay. So they didn't have --- did they have
15 you sign anything that you recall?

16 A I do not remember.

17 Q Okay. You don't remember sitting --- basically
18 sitting down --- now, do you remember being asked
19 questions?

20 A Yes.

21 Q Okay. But you don't remember whether they had
22 you sign anything at all?

23 A I don't remember that part.

24 MR. SUTHERLAND: Okay. Thank you, ma'am.

25 No further questions, Your Honor.

1 THE HONORABLE CLIFTON NEWMAN: Anything further?

2 MS. CAMPBELL: No, sir.

3 THE HONORABLE CLIFTON NEWMAN: Thank you. You
4 may step down, ma'am.

5 THE WITNESS: Thank you.

6 THE HONORABLE CLIFTON NEWMAN: You may call your
7 next witness.

8 MS. McDUFFIE: May it please the Court, Your
9 Honor. The State calls Denise Gunderson.

10 DENISE GUNDERSON,
11 after being duly sworn, testified as follows:

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

14 THE WITNESS: Denise Gunderson.

15 DIRECT EXAMINATION:

16 BY MS. McDUFFIE:

17 Q Ms. Gunderson, do you know Linda Derrick --- did
18 you know Linda Derrick?

19 A Yes.

20 Q And please tell the jury how you knew Linda
21 Derrick.

22 A She was my mother.

23 Q And where did your mother, Linda Derrick, live?

24 A Winyah Drive, Denny Terrace.

25 Q And would you constantly or often have

1 communications with her?

2 A Oh, at least three or four times a day.

3 Q And on January 30th of 2009 and January 31st, did
4 you speak with your mother, Linda Derrick?

5 A I spoke with her on the 30th. That was that
6 Friday. I had spoke with her around eight o'clock.

7 Q And was that in reference to anything in
8 particular?

9 A She called to let me --- to remind me that she
10 had a meeting the next morning, a church function that
11 would last until 5:30ish; that she would call me
12 around six.

13 Q And so on January 31st of 2009, you were
14 expecting a phone call from her around six p.m.?

15 A Yes.

16 Q Did you receive one?

17 A No.

18 Q So what did you then do?

19 A When it got to be around 6:15, I started getting
20 a little concerned, so I called her cell phone. I
21 didn't get an answer. I called her house phone. I
22 didn't get an answer, and then I just kind of thought
23 maybe she stopped by the store for something she had
24 forgotten. So I was going to give her a few more
25 minutes.

1 Q And then what happened after that?

2 A I continued to call both numbers without any
3 response. I started getting pretty worried because...

4 Q Was this normal for her not to call when she said
5 she was not going to call or not to answer your phone
6 calls?

7 A No.

8 Q And so what did you do?

9 A At that time, my husband called me, and I stated
10 my concerns to him. And he just --- he was on
11 Monticello Road already. So he said, asked me did I
12 want him to go by and just see if everything was okay.
13 I told him to go by.

14 At that point, I was already on my way to her
15 house, because I was concerned. So I had already left
16 and was on my way.

17 Q And at some point in time, did you arrive at her
18 house?

19 A I did.

20 Q And please tell the jury what you observed when
21 you arrived there.

22 A By the time I got there, the fire trucks were
23 already there, a lot of police cars were there and an
24 ambulance was there. I --- well, we pulled into the
25 driveway and parked but, of course, they wouldn't let

1 me go in.

2 Q And did you ever see your mother again after
3 January 30th, 2009?

4 A No.

5 Q At some point in time later, did police ask you
6 to identify some jewelry?

7 A Yes.

8 Q And would your mother typically --- was there any
9 jewelry she wore all the time?

10 A She wore a gold ring.

11 Q Let me show you what's in State's Exhibit 175 and
12 the actual evidence, State's Exhibit 367, and ask if
13 you recognize those?

14 A Yes.

15 MS. McDUFFIE: Your Honor, at this time, we'd
16 offer 367 and 175 into evidence.

17 MR. SUTHERLAND: No objection, sir.

18 THE HONORABLE CLIFTON NEWMAN: They're admitted
19 without objection.

20 (WHEREUPON, State's Exhibits Nos. 367 and 175
21 were admitted into evidence.)

22 BY MS. McDUFFIE:

23 Q Please tell the jury what these are.

24 A It's a gold cross that my mother wore every day
25 and a gold ring.

1 Q She wore both of these items every day? Would
2 she take them off?

3 A She only took them off to go to bed at night.
4 She put them on her little jewelry thing.

5 Q But she did wear those every day and would take
6 them off at night?

7 A Yes.

8 Q And you were asked to identify those items by
9 investigators with the Richland County Sheriff's
10 Department?

11 A Yes.

12 Q And you did identify those as belonging to your
13 mother?

14 A I did.

15 Q Beg the Court's indulgence.

16 (Pause)

17 I'm going to show you what's been marked as
18 State's Exhibit 369. Do you recognize that photograph?

19 A Yes.

20 Q And is that a photograph of your mother wearing
21 the items of jewelry.

22 (WHEREUPON, State's Exhibit No. 369 at some point
23 previously was marked for identification only.)

24 MR. SUTHERLAND: I'm sorry, Your Honor. I'm
25 going to go ahead and object to the photo. They

1 didn't present this. I --- I object to the photo.
2 They have evidence they need in terms of the pictures.
3 It's upsetting the witness, sir.

4 (Pause)

5 It's just something that's calculated to inflame
6 the passions of everybody.

7 THE HONORABLE CLIFTON NEWMAN: The exhibit can be
8 used for identification purposes, 369.

9 MS. McDUFFIE: Thank you, Your Honor.

10 BY MS. McDUFFIE:

11 Q In State's Exhibit 369, is that a photograph of
12 your mother wearing the necklace that is contained in
13 State's 367?

14 A Yes.

15 MS. McDUFFIE: No further questions for this
16 witness, Your Honor.

17 THE HONORABLE CLIFTON NEWMAN: Cross-examination?

18 MR. SUTHERLAND: May it please the Court, sir. I
19 have no questions of this witness.

20 THE HONORABLE CLIFTON NEWMAN: You may step down.

21 THE BAILIFF: Watch your step.

22 THE HONORABLE CLIFTON NEWMAN: Next witness,
23 please.

24 MS. SIMPSON: The State calls Shawn Gunderson.

25 THE HONORABLE CLIFTON NEWMAN: Mr. Gunderson.

1 THE BAILIFF: Place your hand on the Bible, raise
2 your right.

3 SHAWN GUNDERSON,
4 after being duly sworn, testified as follows:

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

7 THE WITNESS: Shawn Gunderson.

8 DIRECT EXAMINATION:

9 BY MS. SIMPSON:

10 Q Mr. Gunderson, can you please introduce yourself
11 to the jury?

12 A I'm Shawn Gunderson, Linda Derrick's son-in-law.

13 Q Son-in-law. And what is your relationship to
14 Denise?

15 A I'm her husband.

16 Q And where were y'all currently living back on
17 January 31st, 2009?

18 A Pine Grove Road. That's in Blythewood.

19 Q And do you recall that day?

20 A Yes.

21 Q And why is that?

22 A Because that was the day that I found my
23 mother-in-law.

24 Q And I know this is difficult for you, but if you
25 could, just tell us a little bit about the time

1 leading up to that point before you even went over to
2 the house.

3 A I don't remember exactly what I was doing that
4 day, but I was going, and me and my wife had been
5 talking and she took a --- later that afternoon, I was
6 on my way home.

7 We were concerned because she had not been able
8 to get in touch with her, and I was on my way home. I
9 told her I would go by there and check on her.

10 I went by and her car was gone, so I called her
11 and said her car was gone. We tried to contact her,
12 so I got on the phone and started calling some other
13 people to see if they had heard from her or anything
14 like that.

15 Q And had anyone else heard from her that day?

16 A No.

17 Q And were you aware that she was supposed to be
18 somewhere else that morning?

19 A Yes, I was.

20 Q And where was that?

21 A She was supposed to be at a church function,
22 which she was the president of the organization.

23 Q Did she ever make that meeting?

24 A I found out no, she did not.

25 MR. SUTHERLAND: That's hearsay, sir. I'm sorry.

1 THE HONORABLE CLIFTON NEWMAN: You may proceed.

2 MS. SIMPSON: Thank you, Your Honor, Your Honor.

3 BY MS. SIMPSON:

4 Q Now, once you had been calling and realized that
5 no one had been in contact with her, what did you do?

6 A I called my wife and told her that I was going in
7 the house.

8 Q And then what happened?

9 A I used the key that was underneath the front door,
10 and I went in. I walked in the living room and turned
11 the light on, which was very out of place. She always
12 kept the porch light on and the living room light.
13 There was a lamp that was always on. It was never off.
14 And ---

15 Q So all the lights were off?

16 A Yes.

17 Q So what did you do?

18 A And I went inside, and I was calling for her. I
19 went to --- looked in the kitchen, because it was
20 straight. I went down the hallway, and I turned the
21 light on.

22 I went to her bedroom and looked. I turned the
23 light on in her bedroom. I found and seen --- there
24 was blood everywhere on the --- facing the left side
25 of her bed, and I turned around and turned another

1 light on. I found her in the bathroom floor.

2 Q And how did you find her? What condition was she
3 in?

4 A She was face down, and she was cold.

5 Q What did you do next?

6 A I called 9-1-1 and told them the address, and I
7 was --- I went outside to the neighbor's house and got
8 him. He came over with me and waited with me until
9 police and EMS got there.

10 Q And did you ever go back inside?

11 A That night?

12 Q Yes.

13 A Only --- only to --- when the investigator talked
14 to me to make sure everything was where it was.

15 Q And do you know the defendant at all?

16 A No, I do not.

17 Q And when was the last time that you recall
18 speaking with Linda?

19 A Friday morning sometime.

20 MS. SIMPSON: Nothing further from this witness.

21 THE HONORABLE CLIFTON NEWMAN: Mr. Sutherland?

22 MR. SUTHERLAND: May it please the Court, sir. I
23 have no questions of this witness.

24 THE HONORABLE CLIFTON NEWMAN: All right, sir.

25 You may step down.

1 Ladies and gentlemen, we're going to break for
2 lunch now. We plan to start back at two o'clock ---
3 make that 2:15. So we'll --- you'll have an
4 hour-and-a-half break. I need you back in the jury
5 room at 2:15.

6 Please do not discuss the case with anyone.
7 Please do not congregate at all in the area around the
8 front of the courtroom here, the entrance area of the
9 courtroom, so as to be in contact with anyone at all
10 involved with this case. We'll see you all later.

11 You may be excused to the jury room.

12 (WHEREUPON, the jury left open court at
13 approximately 12:46 p.m.)

14 THE HONORABLE CLIFTON NEWMAN: Is there anything
15 before we leave for lunch?

16 MS. CAMPBELL: No, sir.

17 MR. SUTHERLAND: Nothing from the defense, sir.

18 (WHEREUPON, a lunch break was taken.)

19 (WHEREUPON, State's Exhibits Nos. 370 - 396 were
20 marked for identification only.)

21 THE HONORABLE CLIFTON NEWMAN: Is there anything
22 else with regard to this case before the jury comes in?

23 MS. CAMPBELL: No, Your Honor.

24 MR. SUTHERLAND: No, Your Honor.

25 THE HONORABLE CLIFTON NEWMAN: All right. Bring

1 the jury.

2 (WHEREUPON, the jury came into open court at
3 approximately 2:27 p.m.)

4 THE BAILIFF: Your Honor, the jury is present.

5 THE HONORABLE CLIFTON NEWMAN: All right.

6 Welcome back, ladies and gentlemen.

7 You may call your next witness.

8 MS. McDUFFIE: If it pleases the Court, Your
9 Honor, the State would call Robin Haselden.

10 ROBIN HASELDEN,

11 after being duly sworn, testified as follows:

12 THE CLERK: Have a seat in the witness box.

13 State your name for the record, please.

14 THE WITNESS: Robin Haselden.

15 THE BAILIFF: Talk into the microphone.

16 DIRECT EXAMINATION:

17 BY MS. McDUFFIE:

18 Q Where are you currently employed?

19 A Richland County EMS

20 Q And what are your duties with the Richland County
21 EMS?

22 A I'm a paramedic. I'm a crew leader on the
23 ambulance.

24 Q As a crew leader for the ambulance, what do you
25 do when a call comes out?

1 A We respond and perform patient care, evaluate
2 patients and provide whatever they need.

3 Q And were you working in this capacity on January
4 31, 2009?

5 A Yes.

6 Q And did you respond to the home of Linda Derrick
7 on Winyah Drive on that day?

8 A Yes.

9 Q And please tell the jury what that was in
10 reference to.

11 A We were called for a patient down, and upon
12 arrival, we found her face down in the bathroom cold,
13 not breathing. We put a heart monitor on her, there
14 was no electric activity in her heart. We advised
15 dispatch that she was dead upon arrival.

16 Q And after you found the patient dead upon your
17 arrival, what, if anything, did you do at that point?

18 A Only we put the monitor on there. Other than
19 that, nothing else. We left.

20 Q So you left the body as it --- where it was?

21 A Right.

22 Q And you turned that over to Richland County and
23 the crime scene investigators?

24 A Yes.

25 Q And you took no further action from that point?

1 A Right.

2 Q And you said her body was cold to the touch when
3 you arrived?

4 A Yes.

5 MS. McDUFFIE: Thank you, Your Honor. No further
6 questions of this witness.

7 THE COURT: Cross-examination?

8 MR. SUTHERLAND: May it please the Court, Your
9 Honor. I have no questions for this witness.

10 THE HONORABLE CLIFTON NEWMAN: All right. Thank
11 you. Step down.

12 Next witness.

13 MS. SIMPSON: State calls Flora Huger.

14 THE HONORABLE CLIFTON NEWMAN: Come forward
15 please.

16 THE BAILIFF: Face that lady. Place your left
17 hand on the bible, raise your right.

18 FLORA HUGER,
19 after being duly sworn, testified as follows:

20 THE CLERK: Have a seat in the witness box.
21 State your name for the record please.

22 THE WITNESS: Flora Huger.

23 DIRECT EXAMINATION:

24 BY MS. SIMPSON:

25 Q Ms. Huger, can you tell the jury how old you are?

1 A Thirty-five.

2 Q And are you married?

3 A No, ma'am.

4 Q Do you work?

5 A I do.

6 Q Where do you work?

7 A Doctor's Care.

8 Q All right. And I want to take you back to
9 January and February of 2009. Where were you living
10 at the time?

11 A I moved into 901 Apache Drive in February, the
12 beginning of February.

13 Q The beginning of February?

14 A Yes, ma'am.

15 Q And do you recall January 31st --- or
16 February 1st of 2009?

17 A Yes, ma'am.

18 Q And January 31, 2009?

19 A Around that time, yes, ma'am.

20 Q Why are you able to remember that?

21 A Well, I know the day that we moved in, I remember
22 it was --- well, there was a car that was parked there.
23 So that kind of, you know, threw me. We figured that
24 the car must have ran out of gas.

25 Q And would that have been in the morning?

1 A It was that morning. It was early that morning.

2 Q About what time? Would you say it was as early
3 as nine o'clock?

4 A Yes, ma'am, somewhere around 8:30, nine o'clock.

5 MR. SUTHERLAND: Without objection.

6 THE HONORABLE CLIFTON NEWMAN: All right. It's
7 admitted.

8 BY MS. SIMPSON:

9 Q Ms. Huger, do you recognize this photo?

10 A Yes, ma'am, I do.

11 Q And does it fairly and accurately depict what you
12 saw on January 31, 2009?

13 A Yes, ma'am.

14 Q Your Honor, at this time, the State would seek to
15 introduce State's Exhibit 198 into evidence.

16 THE COURT: It's admitted.

17 MS. SIMPSON: Tell the jury ---

18 THE COURT REPORTER: Hold on one moment, please.
19 198?

20 MS. SIMPSON: 198.

21 THE COURT REPORTER: Okay, hold on.

22 (WHEREUPON, State's Exhibit No. 198 was admitted
23 into evidence.)

24 THE COURT REPORTER: Okay. Thank you.

25 BY MS. SIMPSON:

1 Q And tell the jury what this is.

2 A It's the vehicle that was parked --- the one
3 around the curve when you first come on Apache Drive.

4 Q All right. And do you remember talking to law
5 enforcement?

6 A Yes, ma'am, I do.

7 Q And did you relay that information to them about
8 what you had seen with the car?

9 A I did.

10 Q And is Apache Drive in the Denny Terrace
11 neighborhood?

12 A It is.

13 MS. SIMPSON: No further questions for this
14 witness.

15 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

16 MR. SUTHERLAND: Just briefly.

17 CROSS-EXAMINATION:

18 BY MR. SUTHERLAND:

19 Q May it please the Court, ma'am.

20 It's nine o'clock in the morning. Is it possible
21 that you might have told the investigator ten?

22 A It was early that morning. We moved around 8:30,
23 nine o'clock that morning.

24 MR. SUTHERLAND: Okay. Thank you, ma'am. No
25 further questions.

1 THE HONORABLE CLIFTON NEWMAN: You may step down,
2 ma'am.

3 THE WITNESS: Thank you.

4 THE HONORABLE CLIFTON NEWMAN: You're excused.
5 Next witness.

6 MS. SIMPSON: State calls Deputy Jimmy Walker.

7 JIMMY WALKER,

8 after being duly sworn, testified as follows:

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

11 MS. CAMPBELL: J.W. Walker, Richland County
12 Sheriff's Department.

13 DIRECT EXAMINATION:

14 BY MS. SIMPSON:

15 Q Good afternoon, Deputy Walker. I believe you
16 said you were with the Richland County Sheriff's
17 Department?

18 A Yes, ma'am.

19 Q How long have you been with the Richland County
20 Sheriff's Department?

21 A I've been with Richland County for just under ten
22 years.

23 Q Ten years. And what are your duties there?

24 A I'm a night shift corporal for Region 3, the
25 Denny Terrace area.

1 Q And what does that entail being the night shift
2 corporal?

3 A That --- it entails supervising my squad, which
4 our patrol units work the Denny Terrace area, and we
5 work in Region 3, which covers from Highway 215,
6 Monticello, all the way across to Highway 355, Farrow
7 Road, most of the Eau Claire area, the Denny Terrace
8 area, areas like that.

9 Q And were you employed in the same capacity back
10 on January 31, 2009?

11 A Yes, ma'am, I was.

12 Q And did you have occasion to become involved in
13 this case?

14 A Yes, ma'am. I had an occasion to become involved
15 in this case by answering another call.

16 Q Okay. Tell us a little more about that.

17 A It --- it was at night. I have believe it was
18 January 31st, but my involvement because more around
19 the morning of the 1st of February.

20 Q Do you recall about what time that is?

21 A Yes, ma'am, probably about 2:00, 2:06 in the
22 morning when I received a call for a suspicious person
23 report.

24 Q Okay. And that would have been with respect to
25 the homicide location?

1 A Yes, ma'am.

2 Q Okay. Tell us what you did when you received
3 that call?

4 A That morning after my guys had gotten a call to
5 Winyah Drive in reference to a suspicious death
6 call, they responded there, and at the same time while
7 there were there on call, I received a call for a
8 suspicious person call somewhere around the same area,
9 around Denny Road and Apache is where the call came in
10 for a suspicious person report.

11 Q Okay. And what did you do as a result of that?

12 A Well, I went and answered the call in that area,
13 patrolled the area looking for a suspicious person.
14 As they put it out, there was really no description
15 put out for that individual, but you know, patrol
16 around the area looking for a person, anyone walking
17 the roadway at that time of the night that would maybe
18 not have a reason to be out at that time in the
19 morning other than just for whatever reason there is.

20 Q And this would have been late on January 31st,
21 the beginning of February 1st, 2009?

22 A Yes.

23 Q And once you cleared the suspicious person call,
24 were you still on patrol in that area?

25 A Yes, ma'am, I was.

1 Q And did you have a description? Were you looking
2 for anything?

3 A Other than the person themselves, no. There
4 wasn't really any particular description that was
5 given out for a suspicious person, but in the same
6 turn, while I was looking for that person and doing my
7 patrol as I was walk --- as I was patrolling down
8 Denny Road as I crossed Apache, other than seeing a
9 suspicious person, I noticed another vehicle sitting
10 up on top of a hill to my right as I was crossing the
11 intersection of that road.

12 So as I passed it, I actually stopped and backed
13 up to look up on the hill to see if I actually saw a
14 vehicle sitting up on the hill, which at the time I
15 did.

16 Q This was on Apache Road?

17 A This was on Apache, up on Denny Road.

18 Q And what did you do once you saw the vehicle?

19 A Once I saw the vehicle, I actually backed up and
20 turned up on Apache Road and went up to check the
21 vehicle out.

22 I remember that from an earlier call, actually
23 from the area over on Winyah that a vehicle had been
24 put out as a stolen vehicle in that area from that
25 location.

1 So I ran the tag number. As I ran the tag number,
2 it came back with that --- you know, with that vehicle
3 as being stolen. It came back with the address of
4 69 --- excuse me, Winyah Drive.

5 So at that time, I confirmed it. I called my ---
6 I actually called over the radio and asked my guys to
7 give me the description of the vehicle. They gave me
8 the description of the vehicle over the radio, which
9 matched the description of the vehicle that I saw
10 sitting there on Apache.

11 As I drove --- excuse me. As I drove up on the
12 vehicle, it was actually sitting on Apache Drive with
13 the back facing Denny Road. The tags were facing
14 Denny Road, so it was sitting on like a curve area on
15 Apache Road.

16 Q Let the record reflect that I'm showing the
17 witness what has been introduced as State's
18 Exhibit 198. Is this the car that you saw?

19 A That appears to be the car I saw, yes, ma'am.

20 Q And what type of car is that, do you recall? Do
21 you recall what kind of car it is from your report?

22 A That looks like a Ford of some type. I'd have to
23 look at my report to refer to it, but I really didn't,
24 you know ---

25 Q You just ran the tag?

1 A I just ran the tag. I don't really remember the
2 car itself.

3 Q And it came back as matching the ---
4 (Talking over each other.)

5 A It matched the description of the vehicle that
6 was off Denny Road --- excuse me, off Winyah Drive,
7 and as I ran that, it came back to that --- you know,
8 to that vehicle, to that address. My guys were out at
9 that address at that moment.

10 Q Okay. And this was at about 12:26 in the morning
11 on February 1st?

12 A No, ma'am. It was about 2:09, 2:06 in the
13 morning on the 1st. When I ran the car, that was the
14 time it was.

15 Q Okay.

16 A At the time that I went out, it may have been
17 earlier than that.

18 Q Okay. And did --- what did you observe, if
19 anything, about the car when you approached it?

20 A Well, when I drove --- when I got up to the car,
21 I actually noticed that the car was sort of just
22 like --- it had been like it had been sitting there
23 for a moment.

24 I didn't really pay attention to it. As I walked
25 around to the driver's side, I noticed that there was

1 something on the seat. As I looked closer and shined
2 the light on it, it appeared to be a glove of some
3 sort. It had been set on fire or attempted to be set
4 on fire or something of that nature.

5 At that point, I notified my guys around --- over
6 on the other side over there to let them know I had
7 found the vehicle.

8 When I did that, then I called the lab tech and
9 had them to come out and let them know which --- I
10 believe at the time, they were still over at the crime
11 scene area over there on Winyah Drive.

12 Q And how close would you say where the car was
13 located to the homicide location on Winyah Drive,
14 fairly close?

15 A Yes, ma'am.

16 Q And is that the extent of your involvement in
17 this case?

18 A Yes, ma'am, it is, other than just doing a
19 supplemental report to recover the car --- or to
20 recover the vehicle and take it out of the NCIC so it
21 wouldn't be reported stolen anymore, and then having
22 the vehicle towed to where it needed to be towed to
23 for the lab to do whatever they were doing it for.

24 MS. SIMPSON: Okay. Thank you.

25 MR. SUTHERLAND: May it please the Court, Your

1 Honor.

2 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

3 CROSS-EXAMINATION:

4 BY MR. SUTHERLAND:

5 Q Sir, briefly, just a couple of things. You were
6 in that area on a suspicious person call?

7 A Yes, sir.

8 Q She had mentioned the time of 12:26, and you had
9 said it was about 2:09 when you found that vehicle; is
10 that correct?

11 A That's what I said. Whatever I wrote in my
12 report is what was on my report.

13 Q Okay. And was --- is it possible that maybe you
14 got the suspicious person call earlier and were in the
15 neighborhood around that time looking?

16 A Yes, sir, it was.

17 Q This was all around the same time?

18 A Yes, sir.

19 Q Basically, you're looking for a suspicious person,
20 and here is the car?

21 A Yes, sir.

22 MR. SUTHERLAND: All right. I just had a few.

23 No further questions, Your Honor.

24 MS. SIMPSON: Briefly, Your Honor.

25 REDIRECT EXAMINATION:

1 BY MS. SIMPSON:

2 Q And, Officer, I'm going to refer to your report
3 just for a moment just so we're clear on the time. I
4 know we have late in the evening on the 31st, as well
5 as the beginning of February 1st of 2009.

6 According to your report, while you were on
7 patrol, at approximately what time were you in the
8 area?

9 A As part of my report here, it's approximately
10 00:12:26, and in parenthesis I have 12:26 a.m. is what
11 I put on the report.

12 Q Okay. And that was on February 1st?

13 A That was on February 1st, yes, ma'am.

14 Q And the vehicle actually came back and was
15 determined to be --- what does your report indicate?

16 A My report indicates that the vehicle was ---

17 MR. SUTHERLAND: I'm sorry, objection. That's
18 outside the scope of the cross-examination.

19 THE HONORABLE CLIFTON NEWMAN: Sustained.

20 MR. SUTHERLAND: Thank you, Your Honor.

21 MS. SIMPSON: No further questions.

22 THE WITNESS: All right.

23 THE HONORABLE CLIFTON NEWMAN: Anything further?

24 MR. SUTHERLAND: No.

25 THE HONORABLE CLIFTON NEWMAN: You may step down.

1 All right. Next witness.

2 MS. McDUFFIE: If it pleases the court, Your
3 Honor, the State calls Investigator Michael Beeler.

4 MICHAEL BEELER,

5 after being duly sworn, testified as follows:

6 THE CLERK: Have a seat in the witness box.
7 State your full name for the record, please.

8 THE WITNESS: My name is Michael Ray Beeler, Jr.

9 DIRECT EXAMINATION:

10 BY MS. McDUFFIE:

11 Q Investigator Beeler, where are you currently
12 employed?

13 A With the Richland County Sheriff's Department in
14 the Crime Scene Investigation Unit.

15 Q And how long have you been employed at the Crime
16 Scene Investigation Unit at the sheriff's department?

17 A About three-and-a-half years now.

18 Q And how long have you been with the sheriff's
19 department?

20 A With the sheriff's department, coming up on 11
21 years.

22 Q And as --- please tell the jury what your duties
23 as a crime scene analyst are.

24 A Crime scene investigation involves many different
25 disciplines, topography, documentation, fingerprinting,

1 logging for DNA, latent print comparison, footprint
2 examination, blood pattern analysis, many, many facets.

3 Q And please tell the jury a little bit about your
4 educational background, educational training and
5 background in the field of crime scene investigation.

6 A Lots of paperwork.

7 (Pause)

8 Sorry. I have attended the South Carolina
9 Criminal Justice Academy. While I've been in crime
10 scene, I've gone through the fundamentals of the crime
11 scene investigation, blood pattern analysis, DNA
12 forensic pathology overview, development and
13 documentation, recording fingerprints, crime scene
14 photography, footwear and tire track development and
15 documentation, expert witness testimony, advanced
16 blood pattern analysis, forensic anthropology and
17 archaeology, crime scene reconstruction, Scan Station
18 training, latent print examination. That's about it
19 so far.

20 Q And have you ever been qualified as an expert in
21 the fields of crime scene analysis in the courts of
22 this state?

23 A Yes, ma'am, I have.

24 MS. McDUFFIE: Your Honor, at this time we would
25 offer Investigator Beeler as an expert in the file of

1 crime scene analysis.

2 THE HONORABLE CLIFTON NEWMAN: What says the
3 defense?

4 MR. SUTHERLAND: Oh, no objection, sir.

5 THE HONORABLE CLIFTON NEWMAN: So admitted.

6 BY MS. McDUFFIE:

7 Q Investigator Beeler, on January 31st, 2009, were
8 you working at the Crime Scene Unit at the Richland
9 County Sheriff's Department?

10 A Yes, ma'am.

11 Q And did you respond to Winyah Drive on
12 January 31st, 2009?

13 A Yes, ma'am, I did.

14 Q Please tell the jury what that was in reference
15 to.

16 A That was in reference to a home invasion with a
17 possible stabbing.

18 Q And when you arrived on this scene --- or when
19 you arrive on any scene, what is the first thing you
20 like to do?

21 A The first thing I like to do is make sure the
22 scene is secure, take out everybody who isn't supposed
23 to be there, take over --- a quick walk through of the
24 scene, see if anything needs to be secured.

25 If anything is blatantly obvious, make sure

1 there's no suspects in the scene if the scene hasn't
2 been already cleared, and then I begin the crime scene
3 process.

4 Q And when you arrived at Winyah Drive, was
5 the scene secured?

6 A Yes, ma'am. There were at least two deputies on
7 the scene at the front of the house, and then there
8 were deputies in the area.

9 Q And to your knowledge, had anyone been in the
10 scene or tampered with the scene in any way since
11 deputies arrived?

12 A I believe EMS had been there and the victim, of
13 course, she had already been transported to the
14 hospital, but other than the deputies, no, ma'am.

15 Q And so you determined the scene was secured?

16 A Yes, ma'am.

17 Q And what did you do next?

18 A At that point, I started documenting the scene,
19 taking photographs. The --- there were a few items
20 that I placed --- we call them tent markers, the
21 markers with the letters on them.

22 I placed those on there, and then I processed the
23 scene, fingerprint powder, took swabs of a few things,
24 collected some evidence to be later processed at the
25 sheriff's department.

1 Q And so did you first examine the exterior of the
2 residence and then work your way in?

3 A Yes, ma'am.

4 Q And did you take photographs of the exterior of
5 the residence?

6 A Yes, ma'am.

7 Q And what were you looking for when you were
8 examining the exterior of the residence?

9 A Anything that could be dropped by a suspect,
10 victim, any evidence of blood, broken windows, just
11 normal things as you work your way toward the scene.

12 Q I show you what's already been admitted into
13 evidence as State's Exhibits 16 and 17 and ask if you
14 recognize those photographs.

15 A Yes, ma'am.

16 Q And can you please tell the jury what's depicted
17 in State's Exhibit 16 and 17?

18 A It appears to be --- I believe these are my
19 particular photographs, but they are of the side
20 entrance of the address at Winyah Drive, Winyah
21 Drive. There's to be some sort of standing markers,
22 measures.

23 Q So those are the kind of things that you're
24 looking for when you're looking at the exterior of the
25 house?

1 A Yes, ma'am.

2 Q State's Exhibit 16 and 17?

3 A Uh-huh.

4 Q And you documented these photographically, or
5 they were documented photographically?

6 A Those aren't my photographs, I don't believe.

7 Q And then you worked your way into the interior of
8 the home?

9 A Yes, ma'am.

10 Q And please tell the jury what you observed when
11 you entered Ms. Webb's residence at Winyah Drive.

12 A Inside the residence, as I already stated, the
13 victim had already been transported. I believe there
14 were a few remnants of EMS treating the victim.

15 There was broken cell phone parts that I put my
16 markers A, C, and E, and there was also a handkerchief
17 with reddish brown stains at marker B that I placed my
18 marker.

19 That was what appeared to be reddish brown stains,
20 blood, on the couch, there was a blue sweater with
21 reddish brown stains, appeared to be blood, possibly
22 blood, that I had been advised had been cut off the
23 victim with EMS.

24 Q And did you document all of that photographically?

25 A Yes, ma'am. There was also a couch, a purse on

1 the couch inside the residence that possibly had blood
2 on it.

3 Q I'm going to show you State's Exhibit 18 through
4 32 and ask if you recognize those.

5 A Yes, ma'am.

6 Q And do those fairly and accurately depict what
7 you observed on January 31st, 2009?

8 A Yes, ma'am, inside the residence.

9 MS. McDUFFIE: Your Honor, at this time, we would
10 offer State's Exhibits 18 through 32.

11 MR. SUTHERLAND: No objections.

12 THE HONORABLE CLIFTON NEWMAN: They're admitted
13 without objection.

14 (WHEREUPON, State's Exhibits Nos. 18 - 32 were
15 admitted into evidence.)

16 BY MS. McDUFFIE:

17 Q Investigator Beeler, can you please tell the jury
18 what's depicted in State's Exhibit 18 and 19.

19 A Exhibits 18 and 19, you can see her shoes on the
20 floor, appeared to be some EMS trash left over, couch
21 with stains on the front of it, the victim's blue
22 sweater and purse, and in 19 is the front of the couch
23 with the reddish brown stains on the couch.

24 MS. McDUFFIE: Your Honor, permission to publish
25 these to the jury.

1 THE HONORABLE CLIFTON NEWMAN: You can.

2 BY MS. MCDUFFIE:

3 Q State's Exhibit 21 and 22, can you please tell
4 the jury what's depicted in these.

5 A Yes, ma'am. That's going to be showing markers A
6 and B. B, being the handkerchief with the reddish
7 brown stains and part of the cell phone.

8 Q And the cell phone is in marker A?

9 A Yes, ma'am, broken cell phone parts.

10 Q And State's Exhibits 25 and 26.

11 A Yes, ma'am. That would be my marker C that I
12 placed with broken bits of cell phone.

13 Q And that is by marker C?

14 A Yes.

15 Q State's Exhibit 27, can you please tell the jury
16 what's depicted in this photograph.

17 A That's a similar picture to the one a minute ago
18 where I put down markers.

19 You took it away too quick.

20 Q Sorry.

21 A Marker D, my marker D, for the purse and marker E,
22 which would be also part of one of the cell phone
23 parts.

24 Q And these were all items of evidence that you
25 analyzed?

1 A Yes, ma'am. I collected the cell phone parts and
2 the handkerchief.

3 Q And State's Exhibits 28, 29 and 30, can you
4 please tell the jury what's depicted in these three
5 photographs?

6 A These show the purse with one of which ---
7 State's Exhibit 28 shows my marker D, which is --- I
8 placed by the purse and also State's Exhibit 30 shows
9 reddish brown stains that were on the front of the
10 purse.

11 Q And the reddish brown stains were going to be
12 possibly blood?

13 A Yes, ma'am, due to current requirements only our
14 DNA analyst who gets paid lots of money and who has
15 doctorate degrees can analyze something and say that
16 it's positively blood. So you will hear me say a lot
17 about reddish brown stains.

18 Q And that would be here on State's Exhibit 30?

19 A Yes, ma'am.

20 MS. McDUFFIE: Your Honor, permission to publish
21 this to the jury?

22 THE HONORABLE CLIFTON NEWMAN: You may.

23 BY MS. McDUFFIE:

24 Q And then finally, marker E in State's Exhibit 31
25 and 32, can you please tell jury what's depicted by

1 marker E?

2 A That's my marker E with the top of a broken cell
3 phone part.

4 Q And this was in the home of Carolyn Webb when you
5 arrived on January 31st, 2009?

6 A Yes, ma'am.

7 Q And after you photographed --- before you
8 photographed these items of evidence, did you move
9 them or touch them in any way?

10 A Typically, I --- I will try to photograph
11 something without moving it. The sweater --- I
12 believe I repositioned it, laying it out to photograph
13 it.

14 Q And then after you photographed these items of
15 evidence, did you do anything further with them?

16 A At the scene, no, ma'am. I did collect them and
17 take them back later for processing at our
18 headquarters lab.

19 Q And I'm going to show you State's Exhibit 345 and
20 342 and ask if you recognize those.

21 A Yes, ma'am. These are evidence labels with ---
22 this one being the handkerchief with the reddish brown
23 stains, possibly blood, and also the larger envelope,
24 State's Exhibit 345, is the broken cell phone parts.

25 Q And these are items that you collected

1 personally ---

2 A Yes.

3 Q --- on January 31st, 2009?

4 A Yes, ma'am.

5 MS. McDUFFIE: Your Honor, at this time we'd
6 offer State's 342 and 345.

7 MR. SUTHERLAND: No objection, sir.

8 THE HONORABLE CLIFTON NEWMAN: Admitted without
9 objection.

10 (WHEREUPON, State's Exhibits Nos. 342 and 345
11 were admitted into evidence.)

12 BY MS. McDUFFIE:

13 Q And you collected the three pieces of the broken
14 cell phone in State's 345 and also the handkerchief
15 with possible blood on it in State's 342?

16 A Yes, ma'am.

17 Q And after you collected these items, what did you
18 do with them?

19 A I took them back. Excuse me, I have several
20 different reports for this --- for this scene. I took
21 them back and processed them on the 31st, the broken
22 cell phone parts.

23 Stand by, please.

24 (Pause)

25 I'm sorry. It was on February 1st that I took

1 them back and processed them.

2 Q And between the 31st when you collected them into
3 February 1st, where were those items kept?

4 A That evening they were secured in my vehicle,
5 which only I have access to, and then they were placed
6 into my evidence locker at headquarters, which only
7 myself and crime scene supervisors have access to.

8 Q And were those items tampered with or changed in
9 any way while they were in your custody?

10 A No, ma'am.

11 Q And that night at Winyah Drive, did you also
12 collect some swabs of the door handles, the blood on
13 the purse, and the blood on the couch?

14 A Yes, ma'am, from the door handle.

15 Q I show you State's Exhibit 344 and ask if you
16 recognize those.

17 A Yes, ma'am. Those would be my swabs of the
18 screen door handle with the reddish brown stains on
19 the purse and the reddish brown stains.

20 MS. McDUFFIE: Your Honor, at this time we would
21 offer State's Exhibit 344 into evidence.

22 MR. SUTHERLAND: No objection, sir.

23 THE HONORABLE CLIFTON NEWMAN: Admitted without
24 objection.

25 (WHEREUPON, State's Exhibit No. 344 was admitted

1 into evidence.)

2 BY MS. McDUFFIE:

3 Q And these are the swabs that you collected that
4 evening?

5 A Yes, ma'am.

6 Q And these are stored in the same manner you
7 described previously?

8 A Yes, ma'am.

9 Q And they were not tampered with in any way?

10 A Yes, ma'am.

11 Q And then you said that you processed the property
12 when you got back to headquarters the next day?

13 A Yes, ma'am.

14 Q And describe for the jury what you did with the
15 cell phone and the handkerchief.

16 A The cell phone and the paperclips, it's a process
17 known as cyanoacrylate Superglue. We have a chamber
18 where the fumes are contained so they don't kill me,
19 and it will adhere to pores on the skin, left by the
20 skin on items. Then I will go back with some sort of
21 enhancing powder to make it visible. In this case, I
22 used black powder to process it.

23 Q And the reason you're processing these items is
24 for latent prints or fingerprints?

25 A Yes, ma'am.

1 Q And I'm going to show you State's Exhibits 3 ---
2 I'm sorry, 34 and 35 and ask if you recognize those.

3 A State's Exhibit 34 would be the handkerchief laid
4 out with the reddish brown stains on them, and State's
5 Exhibit 35 would be a picture of broken --- three
6 parts of a broken Nokia cell phone.

7 Q And these are photographs of you processing these
8 items at headquarters?

9 A Yes, ma'am.

10 MS. McDUFFIE: Your Honor, at this time, we'd
11 offer State's Exhibit 34 into 35.

12 MR. SUTHERLAND: No objection, sir.

13 THE HONORABLE CLIFTON NEWMAN: Admitted without
14 objection.

15 (WHEREUPON, State's Exhibits Nos. 34, 35 were
16 admitted into evidence.)

17 THE WITNESS: Now, correction. My only
18 processing of the handkerchief would have been to
19 photograph it and submit it to our DNA lab where they
20 processed it.

21 BY MS. McDUFFIE:

22 Q And that's what's depicted in State's Exhibit 34,
23 and this was found at the home of Ms. Carolyn Webb by
24 you on January 31st, 2009?

25 A Yes, ma'am.

1 Q And then you processed the cell phone depicted in
2 State's Exhibit 35, which was also found at the home
3 of Carolyn Webb, for fingerprints?

4 A Yes, ma'am.

5 Q And were you able to lift any prints from this
6 cell phone?

7 A I was able to lift one print from the cell phone
8 flip and also the key pad.

9 Q And describe for the jury what you mean by lift.
10 How do you lift a print?

11 A With the enhancing process that I spoke to you
12 just about following the Superglue and the application
13 of black powder, that just makes the print visible.
14 Then we use very expensive tape, just like --- almost
15 like you would have at the house to take that --- put
16 on the print, lift the print, the powder portion, and
17 place it on the glossy index card. Then that way, our
18 latent fingerprint examiners can compare it to other
19 prints for elimination and comparison.

20 Q And then that same day, January 31st, 2009, at
21 21:59, did you respond to Winyah Drive?

22 A Yes, ma'am, same day.

23 Q The same day, just about 12 hours later --- I
24 mean, 24 hours later, almost?

25 A Yes, ma'am. That would have been two shifts for

1 me, but it was the same day.

2 Q And please tell the jury why you responded to
3 Winyah Drive.

4 A I received a call that the scene officer,
5 Alexander, and Investigator Potash were there on a
6 death scene where a body that they found.

7 Q And when you arrived again, please tell the jury
8 what you observed and encountered.

9 A Okay. This being more of an elaborate scene
10 where we're going to spend more time over probably a
11 period of days, a crime scene log was kept in this ---
12 in this particular incident.

13 Q Let me interrupt you there. What is a crime
14 scene log? Explain that to the jury.

15 A A crime scene log is used on some of our larger
16 scenes where, as I was saying, we're going to be there
17 a while, where we're going to have multiple people
18 coming around.

19 Typically, on the smaller scenes, if I'm there in
20 the living room processing something, I'm going to see
21 everybody.

22 On a larger scene where I may have to leave to go
23 back to headquarters to get more --- get more evidence
24 where we're going to have to hold the scene for a
25 period of time where there's going to be other

1 deputies, other investigators coming to secure, help
2 process or walk through the scene, we use a crime
3 scene log. It's because we're going through it.

4 Q And the purpose of a crime scene log is to know
5 who comes in and out and when on the crime scene?

6 A That's correct, ma'am.

7 Q And that was done in the case of the home of
8 Linda Derrick at the home on Winyah Drive?

9 A Yes, ma'am.

10 Q Did you ---

11 MR. SUTHERLAND: I'm sorry, Your Honor. She is
12 starting to lead.

13 THE HONORABLE CLIFTON NEWMAN: Don't lead the
14 witness.

15 BY MS. McDUFFIE:

16 Q Did you keep one at Winyah Drive?

17 A No, ma'am. I did not.

18 Q And why not?

19 A As I was saying, due to it being a small scene
20 where I'm going to be there in the living room or at
21 the front door, I'm going to see everybody that comes
22 in the house, and I will tell them to get out. They
23 don't need to be in there.

24 Q And so the scene was secured at Winyah Drive?

25 A Yes, ma'am; yes, ma'am.

1 Q And once you entered the crime scene, what did
2 you then do, or what did you then observe?

3 A I walked around the scene and checked for the
4 signs of forced entry. In this particular scene,
5 there was --- there were no signs of the forced entry.
6 There was some damage to the door, but I believe it
7 was the victim's son-in-law said the damage was there
8 prior.

9 Q And I'm going to show you've State's Exhibits 151
10 to 162 and ask if you recognize those, and do they
11 fairly and accurately depict what you observed on
12 January 31st, 2009?

13 A (Pause)

14 I'm sorry. You're speaking faster than the
15 pictures.

16 (Pause)

17 Yes, ma'am.

18 MS. McDUFFIE: Your Honor, at this time we'd
19 offer State's Exhibit 151 to 162.

20 MR. SUTHERLAND: Without objection.

21 THE HONORABLE CLIFTON NEWMAN: They are admitted
22 without objection.

23 (WHEREUPON, State's Exhibits Nos. 151 - 162 were
24 admitted into evidence.)

25 BY MS. McDUFFIE:

1 Q State's Exhibits 157 and 158, can you please tell
2 the jury what he was depicted in these photographs?

3 A 157 would be the front of the house with the
4 truck in front of it enclosed in crime scene tape, and
5 in 158 is a similar picture, crime scene tape
6 enclosing the scene.

7 Q And why is there crime scene tape up?

8 A That's --- it's a visual reference to people
9 walking by that they shouldn't come inside the scene;
10 that it's being secured as --- as a crime scene.

11 Q And did you walk around the entire house and
12 photograph it?

13 A Yes, ma'am.

14 Q And State's Exhibit 161, can you please tell the
15 jury what is depicted in this photograph?

16 A That is the front door of the --- of the scene at
17 Winyah.

18 Q And this is what you observed on January 31st,
19 2009?

20 A Yes, ma'am.

21 Q And you said that there was no forced entry?

22 A No, ma'am.

23 Q How did you gain entry into the home?

24 A The scene was already secured by deputies, so
25 they signed me in on the crime scene log. They were

1 already there. The victim's son-in-law had --- had
2 apparently retrieved the key that was in one of the
3 pictures. I'm not sure which ---

4 Q I show you State's Exhibit 163 and 164 and ask if
5 you recognize those.

6 A Yes, ma'am. It's a picture of the front door
7 with a key in it, front door being opened, and then a
8 close --- close-up of the key in the door lock.

9 MS. McDUFFIE: Your Honor, at this time, we'd
10 offer State's Exhibit 163 and 164.

11 MR. SUTHERLAND: Without objection, sir.

12 THE HONORABLE CLIFTON NEWMAN: Admitted without
13 objection.

14 (WHEREUPON, State's Exhibits Nos. 163 and 164
15 were admitted into evidence.)

16 BY MS. McDUFFIE:

17 Q Can you please tell the jury what's depicted in
18 State's Exhibit 163 and 164?

19 A 163 would be the open door with the key in the
20 lock, and 164 would be a close-up of the key in the
21 lock, all of the front door.

22 Q And this is what you observed when you arrived on
23 January 31st, 2009?

24 A Yes, ma'am.

25 Q And then did you make entry into the home?

1 A Yes, ma'am, I did.

2 Q And please tell the jury what you observed once
3 you made entry into the home at Winyah Drive.

4 A Once I went inside, I noticed that there were ---
5 there were reddish brown stains on several surfaces
6 inside the house. There were stains on the floor in
7 the living room. There was reddish brown stains,
8 possibly blood, on the dining room table, the washing
9 machine, the dryer. The victim was unresponsive lying
10 face down in the bathroom.

11 There was reddish brown stains in the bathroom,
12 in the bedroom, on the bed, items on the bed and the
13 bedroom floor on multiple, multiple surfaces.

14 Q And did you notice anything besides reddish brown
15 stain on the bed in the master bedroom?

16 A Yes, ma'am. There was what appeared to be vomit.

17 Q And all of this was documented by other
18 investigators?

19 A I took overall photographs of the general blood
20 stains and also of the --- the vomit on the bed.

21 Q And other crime scene investigators were present
22 with you as you were going through this scene? There
23 were numerous other crime scene investigators present
24 at Winyah Drive?

25 A Yes, ma'am. They --- they came to assist me with

1 the scene, because it was going to be an elaborate
2 scene that was going to take us quite a while to
3 document.

4 Q And while you were present at the scene, the next
5 thing you found was Ms. Linda Derrick lying on the
6 bathroom floor?

7 A Yes, ma'am.

8 Q And did you observe anything around her body?

9 A She was clothed in a pink shirt and top that was
10 pulled up and pink and white pants, the bottom that
11 she --- that was pulled down, and then there were
12 stains around her on the floor on the walls, various
13 surfaces.

14 Q What kind of stains?

15 A Reddish brown stains, possible blood.

16 Q And were you present when Sergeant Richards was
17 on the scene?

18 A Yes, ma'am.

19 Q And please the tell who Sergeant Richards is?

20 A Sergeant Richards is the sergeant over the Crime
21 Scene Investigation Unit for the Richland County
22 Sheriff's Department.

23 Q And did Sergeant Richards manipulate the body or
24 do anything to the body while you were present?

25 A He placed --- typically in scenes were there may

1 have been some sort of assault, we will place paper
2 bags over the victim's hands to preserve any evidence
3 on the hands, the nails, anything like that for
4 autopsy.

5 During transport of the body, we don't want any
6 possible evidence to be knocked loose or lost.
7 Sergeant Richards, in this case, put bags over the
8 hands.

9 Q And did you also assist Sergeant Richards in
10 collecting swabs and clothing at that time?

11 A With --- with the stains, we didn't document all
12 of them right away. We didn't collect swabs of all of
13 them, but for the coroner's office to come in and
14 remove the victim, we needed to clean --- make a path
15 where they could get through where they wouldn't
16 disturb any of the possible blood stain evidence that
17 was on the floor.

18 So we processed, basically, the floor from the
19 front door to the --- to where the victim was
20 initially on that scene.

21 Q And at some point in time while you were
22 processing Winyah Drive, were you called away
23 from that scene?

24 A Yes, ma'am, I was.

25 Q And where were you called to?

1 A I was called to --- if it had been during the
2 daytime, I probably would have been able to see the
3 victim's house from the road behind, which was Apache.
4 I was --- I was called because a vehicle was located
5 on Apache.

6 Q And did you respond to the 900 block of Apache
7 Drive to the victim's vehicle?

8 A I have to go through my paperwork, I'm sorry.

9 (Pause)

10 I'd have to see the registration information, but
11 I was informed that it was a recovered vehicle from
12 this incident.

13 Q And is that a blue in color Pontiac with the
14 license plate ?

15 A Yes, ma'am, a 1999 Pontiac Sunfire.

16 Q I'm going to show you 196, 197, 199 and 200 and
17 ask if you recognize those.

18 A Yes, ma'am. This is the roughly 900 block of
19 Winyah Drive.

20 Q Of Winyah or Apache?

21 A I'm sorry, I'm sorry, Apache, which was behind
22 Winyah Drive.

23 MS. McDUFFIE: Your Honor, at this time, we'd
24 offer State's 196, 197, 199 and 200.

25 MR. SUTHERLAND: No objection, sir.

1 THE HONORABLE CLIFTON NEWMAN: They're admitted
2 without objection.

3 MS. McDUFFIE: Please tell the jury ---

4 THE COURT REPORTER: Hold on one second.

5 (WHEREUPON, State's Exhibits Nos. 196, 197, 199,
6 200 were admitted into evidence.)

7 THE COURT REPORTER: Okay. Thank you.

8 BY MS. McDUFFIE:

9 Q Please tell the jury what's depicted in State's
10 197.

11 A In 197, you see the rear of the Pontiac Sunfire
12 with the license plate visible, and in the reflection
13 further down, you can see where the road curve sign is.
14 I used that for one of the measurements.

15 Q And did you notice anything on the vehicle or in
16 the vehicle when you approached it?

17 A Yes, ma'am. There were reddish brown stains on
18 the driver's door that was possible blood. There was
19 also inside on the --- on the driver's seat, there was
20 what appeared to be a burnt fabric glove.

21 Q Let me stop you right there. I'm going to show
22 you State's 199. If you can please tell the jury
23 what's depicted in this photo.

24 A 199, there's a stain, reddish brown stain,
25 visible on the upper top corner of the driver's front

1 door.

2 MS. McDUFFIE: Your Honor, permission to publish
3 to the jury.

4 THE HONORABLE CLIFTON NEWMAN: You may.

5 BY MS. McDUFFIE:

6 Q And you said you saw what appeared to be a burned
7 glove in the vehicle?

8 A Yes, ma'am.

9 Q Did you enter the vehicle at that time on Apache
10 Drive?

11 A I did not.

12 Q How did you observe the glove?

13 A I looked through the --- the window of the
14 vehicle. It was difficult due to the vehicle being
15 quite dirty to get good photographs of what was in ---
16 of what was inside.

17 Q And at any point in time while you were present
18 with the vehicle on Apache Drive, did you or any other
19 person enter the vehicle?

20 A No, ma'am. We secured the vehicle and towed it
21 as is to our headquarters forensic garage, an enclosed
22 garage that's locked, to just preserve it pending
23 further processing.

24 Q And prior to having the vehicle towed, did you
25 search the area for anything that may be probative?

1 A Yes, ma'am, I did.

2 Q And tell the jury what, if anything, you found.

3 A There was a saw blade on the ground near the
4 vehicle. I used my marker A8 ---

5 Q And ---

6 A --- to indicate it.

7 Q --- is that what is depicted in State's
8 Exhibit 200?

9 A Yes, ma'am. 200 would be my marker A8 next to
10 the saw blade.

11 Q And this was found where?

12 A Near the vehicle.

13 Q And did you collect this saw blade?

14 A I did, ma'am. I did not process that on the
15 scene. I took it back to process it later on.

16 Q And you did process it later?

17 A Yes, ma'am.

18 Q I'm going to show you State's 347 and 348 and ask
19 if you recognize those.

20 A 348 would be the swab of the saw blade, and 347
21 would be the saw blade itself packaged in...

22 MS. McDUFFIE: Your Honor, at this time we would
23 offer State's 347 and 348.

24 MR. SUTHERLAND: Without objection.

25 THE COURT: Admitted without objection.

1 (WHEREUPON, State's Exhibits Nos. 347, 348 were
2 admitted into evidence.)

3 BY MS. McDUFFIE:

4 Q And you collected the saw blade in State's 347
5 that evening?

6 A Yes; yes, ma'am.

7 Q And then later processed it, took swabs of it and
8 submitted that to DNA?

9 A Yes, ma'am. That would have been on the 2nd,
10 February 2nd.

11 Q And you said that you had the vehicle towed?

12 A Yes, ma'am.

13 Q What --- describe that process for the jury.
14 What, if anything, you did.

15 A If there's any evidentiary value in a vehicle, we
16 maintain chain of custody. In this case, I followed
17 the vehicle back to our forensic garage, and it was
18 towed by...

19 Let me find in my notes what the name of tow
20 company was.

21 Q But you had a company tow the car to the forensic
22 garage?

23 A Yes, ma'am.

24 Q And was that car left in the custody of the tow
25 truck driver, or was there an officer with the car at

1 all times?

2 A I followed the vehicle and placed it in the
3 garage. I had the keys to the garage, so we --- we
4 placed it in there. The --- it wasn't entered by the
5 tow company. The log --- the vehicle and the tow
6 truck driver entered the forensic garage, and then it
7 was secured there.

8 Q And when you say ---

9 A Until it was later processed.

10 Q --- it's a secure enclosed facility protected
11 from the elements?

12 A Yes, ma'am.

13 Q And why did you do that?

14 A That evening, I did not have time to process it
15 with --- with the primary scene. It was towed back
16 there for our investigators to determine whether or
17 not we needed some sort of consent from the registered
18 owner of the vehicle, a search warrant or whatever,
19 and then it's processed in the garage.

20 Q And it was processed at a later date?

21 A Yes, ma'am. We did not have time that day to do
22 it.

23 Q Also, on February 1st, 2009, at approximately
24 7:30 p.m., were you requested by Major Smith and
25 Sergeant Kevin Isenhoward to take some photographs of

1 the defendant in this case, Elbert Wallace?

2 A Yes, ma'am.

3 Q And where was this done?

4 A I was at headquarters when they requested it.

5 They were at headquarters, as well.

6 Q And I'm going to show you State's Exhibits 2, 3,

7 4 and 5 and ask if you recognize those.

8 A Our headquarters, being Richland County Sheriff's

9 Department, off of Two Notch Road.

10 A Yes, ma'am.

11 MS. McDUFFIE: Your Honor, at this time, we'd

12 offer State's Exhibits 2 through 5.

13 MR. SUTHERLAND: Without objection.

14 THE HONORABLE CLIFTON NEWMAN: They're admitted

15 without objection.

16 (WHEREUPON, State's Exhibits Nos. 2 - 5 were

17 admitted into evidence.)

18 BY MS. McDUFFIE:

19 Q State's Exhibit 4, can you please tell the jury
20 what's depicted in this photograph?

21 A Yes, ma'am. That would be the suspect,
22 Mr. Wallace, and the clothes that I observed him at
23 headquarters.

24 Q And you took this photograph?

25 A Yes, ma'am.

1 Q And this was on February 1st of 2009?

2 A Yes, ma'am.

3 Q And these are the clothes that he came to
4 headquarters in?

5 A I'm not sure how he arrived at headquarters, but
6 that's --- those are ---

7 Q When you observed him ---

8 A --- the clothes that he ---

9 (Talking over each other.)

10 --- he was wearing.

11 Q And did you note any injury to Mr. Wallace when
12 you observed him?

13 A Yes, ma'am. He had a bandage on one of his
14 fingers.

15 Q And is that what's depicted in State's Exhibit 2
16 and 3?

17 A Yes, ma'am. That would be his right pinky finger.

18 Q And did you --- was that bandage removed at some
19 point?

20 A Yes, ma'am, to photograph the injury on his
21 finger.

22 Q And is that documented in State's Exhibit 5?

23 A Yes, ma'am.

24 Q And this was as you saw him on February 1st of
25 2009 at approximately 7:30 p.m.?

1 A Yes, ma'am.

2 MS. McDUFFIE: Your Honor, permission to publish
3 to the jury?

4 THE HONORABLE CLIFTON NEWMAN: You may.

5 BY MS. McDUFFIE:

6 Q When they called you out, did you just photograph
7 him at that time?

8 A I photographed and collected his clothes from him
9 at that time.

10 Q I show you what's been marked as State's
11 Exhibit 341 and ask if you recognize this.

12 A Yes, ma'am. That would be State's Exhibit 341,
13 it would be the box containing various clothes that he
14 had on: Blue jeans, belt, shirt, watch, hat, shoes,
15 bandage from his finger, six Newport cigarettes and 69
16 cents United States currency.

17 Q And this is the clothing he --- and the property
18 he had on when you encountered him on February 1st,
19 2009?

20 A Yes, ma'am. Also, after collecting it, I
21 photographed it and documented it, as well, the
22 clothing, the stains.

23 MS. McDUFFIE: Your Honor, at this time, we'd
24 offer State's 341.

25 MR. SUTHERLAND: Without objection, sir.

1 THE HONORABLE CLIFTON NEWMAN: It's admitted
2 without objection.

3 (WHEREUPON, State's Exhibit No. 341 was admitted
4 into evidence.)

5 BY MS. McDUFFIE:

6 Q Investigator Beeler, if I could ask you to step
7 down, please. If we could switch sides so the court
8 reporter could see.

9 In State's 341, can you please show the jury the
10 shoes the defendant was wearing on February 1st, 2009?

11 A Yes, ma'am.

12 (Pause)

13 These gloves are a little bit more difficult than
14 I'm used to dealing with.

15 Q And did you --- these are the shoes that you
16 processed?

17 A I photographed them, yes, ma'am.

18 Q And was there anything significant that you
19 noticed when you were photographing the shoes?

20 A Yes, ma'am. There were the various stains on
21 them, which appeared to have already been processed.
22 I would have to look back at my notes to see if I
23 could describe all the stains and locations that I saw.

24 Q But these are the shoes that you collected on
25 February 1st, 2009?

1 A Yes, ma'am.

2 Q This way.

3 (Complies.)

4 Thank you.

5 If you can put those back in the bag.

6 State's Exhibits 36 to 49, are these photographs
7 of the clothing you processed from the defendant,

8 Elbert Wallace?

9 A Yes, ma'am.

10 MS. McDUFFIE: Your Honor, at this time the State
11 would offer State's 36 to 49.

12 MR. SUTHERLAND: Without objection, sir.

13 THE HONORABLE CLIFTON NEWMAN: Admitted without
14 objection.

15 (WHEREUPON, State's Exhibits Nos. 36 - 49 were
16 admitted into evidence.)

17 BY MS. McDUFFIE:

18 Q State's Exhibits 40 and 41, can you please tell
19 the jury what's depicted in those?

20 A Forty-one would be the right shoe, and 40 would
21 be a close-up of the tread pattern with stains on it,
22 the reddish brown stains, possibly blood, on the tread
23 pattern.

24 Q And after you observed this, what, if anything,
25 did you do with the shoes?

1 A I --- in this instance, I just photographed and
2 packaged and submitted to evidence for our DNA analyst
3 to further process the shoes.

4 Q And so these were sent for further processing?

5 A Yes, ma'am. I didn't do any processing of the
6 clothing other than the documentation and photography.

7 Q And after you submitted --- from the time you
8 collected these items until you photographed them,
9 were these items kept in your custody the entire time?

10 A They were kept in my custody for my --- in the
11 secured locker I mentioned earlier.

12 Q And did anyone tamper with those items while they
13 were in your custody?

14 A No, ma'am.

15 Q Were those items manipulated in any way?

16 A No, ma'am.

17 Q And after you photographed and documented those
18 items, what did you do with them?

19 A After documenting and photographing them, I
20 submitted them into evidence for processing by our DNA
21 analyst.

22 Q And did you also take a buccal swab from the
23 defendant in this case, Elbert Wallace?

24 A Yes, ma'am, I did.

25 MR. SUTHERLAND: Your Honor, matter of law, sir.

1 THE HONORABLE CLIFTON NEWMAN: All right. It's
2 good time for a break, as well.

3 Ladies and gentlemen, I'll have you go to the
4 jury room for a break at this time while we discuss
5 the matter outside of your presence. Please do not
6 discuss the case.

7 (WHEREUPON, the jury left open court at
8 approximately 3:24 p.m.)

9 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

10 MR. SUTHERLAND: If it pleases the Court, there
11 is a consent to search for DNA evidence that was
12 obtained from my client, and this was obtained post
13 the Miranda violation that I had earlier spoke about
14 in pretrial.

15 It's the position of the defense that this is an
16 involuntary consent, sir. And, therefore, the
17 collection of the DNA swab is an unlawful seizure.

18 THE HONORABLE CLIFTON NEWMAN: What Miranda
19 violation did you speak of in pretrial?

20 MR. SUTHERLAND: When --- when my client was
21 taken into custody, we didn't get all the way there
22 because we weren't --- they just said they weren't
23 going to put any statements in, but when my client was
24 taken into custody, Investigators Isenhoward and Major
25 Smith had questioned him about the Webb case.

1 They questioned him for a while, and he denied
2 everything, all the allegations that they were making
3 against him.

4 Then he --- they both have in their reports that
5 he invoked his right to counsel. After he had invoked
6 his right to counsel, they accused him of the murder
7 of Linda Derrick.

8 Your Honor, that's a post-invocation
9 interrogation. He got emotional in his denials. They
10 put him in a D cell. They brought him back out, and
11 that's when they signed the consent to search for DNA,
12 sir.

13 This is why I was very deeply suspicious about
14 them not introducing any statements, because I thought
15 otherwise, how were they going to get this buccal swab
16 in.

17 THE HONORABLE CLIFTON NEWMAN: All right.

18 THE COURT: What says the State?

19 MS. McDUFFIE: Your Honor, when the defendant was
20 brought in for questioning, he was being questioned by
21 Major Smith and other investigators about attacking
22 Ms. Webb.

23 He did invoke his right to counsel. He also
24 signed a --- he also signed a consent to search for
25 DNA, Your Honor.

1 We would say that the evidence is admissible for
2 two reasons, Your Honor: Number one, that it's
3 non-testimonial. At no time was it interrogation.

4 He signed a consent to search, and the officers
5 took the evidence, which has been deemed by many
6 courts to be non-testimonial evidence and was not
7 interrogation, Your Honor, which would, you know,
8 violate his Miranda rights.

9 Further, Your Honor, just to be doubly safe, the
10 State did file a Schmerber motion. The Schmerber
11 motion was granted by the court and the defendant's
12 DNA sample was re-obtained that way.

13 THE HONORABLE CLIFTON NEWMAN: All right.

14 MR. SUTHERLAND: If I may, sir, I do have a
15 motion to accompany, that I thought I would be putting
16 in earlier. Also, I have exhibits.

17 I have --- I've got them listed as 237 and 238.
18 I have pages from Investigator Isenhoward and Major
19 Smith's report that I'd like submit as exhibits
20 showing where they both say that he invoked his right
21 to counsel, and they both say that they were telling
22 him that they suspected him of killing Ms. Derrick.

23 Just the accompanying case that I have ---

24 THE HONORABLE CLIFTON NEWMAN: Before you argue
25 that point ---

1 MR. SUTHERLAND: Yes.

2 THE HONORABLE CLIFTON NEWMAN: --- how about the
3 second point. She said they filed a Schmerber motion,
4 got his DNA sample through the Schmerber motion, as
5 well.

6 MR. SUTHERLAND: The DNA sample that was obtained
7 post --- and I should note that I had put in a request
8 for the transcript to the Schmerber hearing about a
9 month ago, and it hasn't arrived presently, but the
10 DNA they took was taken April 30th. The DNA that was
11 swabbed, that was used in the testing and all of
12 testing prior to that date, was the swab that was
13 unlawfully seized by them.

14 If they're going to argue inevitable discovery,
15 they didn't inevitably discover it. With respect to
16 several of the tested items in this case, they have
17 had two-and-a-half years to do the testing with the
18 court-ordered sample, and they have not done that, sir.

19 THE COURT: All right. Ms. McDuffie?

20 MS. MCDUFFIE: Your Honor, again, we would argue
21 the grounds that this was non-testimonial evidence.
22 It was not in response to custodial interrogation.

23 The defendant voluntarily consented to DNA. It
24 was obtained from him. A subsequent sample was
25 obtained. They had both been obtained from the same

1 person, Your Honor.

2 The testing was done on the sample that was
3 obtained originally. Your Honor, there is no reason
4 to believe that his DNA taken two years later is any
5 different from the DNA taken at the time, Your Honor.
6 Further, this motion probably should have been made
7 pretrial, Your Honor, a motion to suppress this
8 evidence.

9 THE HONORABLE CLIFTON NEWMAN: All right. Let me
10 take a break at this time, about 15 minutes.

11 MR. SUTHERLAND: Yes, sir. Might I submit my
12 motions, sir, or should I wait?

13 THE HONORABLE CLIFTON NEWMAN: If you want me to
14 read it, that would be a good idea.

15 MR. SUTHERLAND: Yes, sir.

16 THE HONORABLE CLIFTON NEWMAN: It will be 15
17 minutes.

18 (WHEREUPON, a short break was taken.)

19 THE COURT: All right. Who had the floor? You
20 had the floor.

21 MR. SUTHERLAND: Yes, sir. And if --- I notified
22 the solicitors that I had the reports, the pages from
23 the reports of each investigator that I'd like to
24 submit as Court's Exhibits where they both say he
25 invoked his right to counsel, and then we told him

1 that we suspected that he had killed this lady.

2 And, of course, the --- our side of what actually
3 happened is a little bit different, but just to show
4 that this is distinguishable, they had passed --- at
5 least to me, this United States vs. Dougall case over
6 --- and this actually --- the case I handed up was not
7 on point. It was just to provide the rule.

8 I actually could have handed this case up myself
9 because this is distinguishable. The finding was that
10 these were ---

11 THE COURT: Do you have any cases that are on
12 point? You said you handed up one that's not on point.

13 MR. SUTHERLAND: Yes, sir.

14 THE COURT: Do you have any that's on point?

15 MR. SUTHERLAND: Well, just for the --- I'll
16 argue off of the case they handed up to Your Honor,
17 because this is a case that involves no improper
18 interrogation techniques.

19 What they're saying in this case is that what the
20 police officers did at that time was not an improper
21 interrogation. The facts here are that he was accused
22 of murder, and it's our position that that is an
23 improper interrogation.

24 THE HONORABLE CLIFTON NEWMAN: What is? What is
25 an improper interrogation?

1 MR. SUTHERLAND: After someone invokes their
2 right to counsel for the officers to say, "We think
3 you killed this woman at this place," sir.

4 THE COURT: What was the interrogation? What was
5 the interrogation that you're referencing?

6 MR. SUTHERLAND: When he was initially in custody,
7 he was under arrest for the Webb offenses. I
8 understand it was Sunday or something, and they
9 couldn't get a warrant but they did.

10 They note that they made a warrantless arrest on
11 that Sunday. They started asking him questions about
12 the Webb incident slowly working their way up to
13 accusing him of things with respect to the Webb
14 incident. He was denying these things all along.

15 It's at that point that he invoked his right to
16 counsel, and then it is after that point that they
17 accused him of killing Ms. Derrick.

18 The reason --- I mean, the reason that I handed
19 that case up was just to show that words --- you know,
20 they reasonably --- it would have been unreasonable
21 for them to say that that wasn't to elicit an
22 incriminating response. I mean, those are the very
23 words ---

24 THE HONORABLE CLIFTON NEWMAN: Well --- well,
25 your --- your motion is to suppress some incriminating

1 response that he gave?

2 MR. SUTHERLAND: Well, the motion that I'm making
3 is that they're attempting to introduce this statement
4 that's a consent to search for DNA.

5 They did not in the pretrial have a hearing on
6 the voluntariness of the consent to search for DNA.
7 It would have been at that hearing where I would have
8 cross-examined Investigator --- Major Smith and
9 Investigator Isenhoward and would have also put my
10 client on the stand as to the circumstances.

11 In their reports, stunningly, it's in their
12 reports that he invoked, and that they accused him of
13 murder, sir. So I don't --- obviously, they would
14 have to put a statement in to show that the statement
15 was voluntary.

16 Our position all along has been that the
17 statement is involuntary. I said --- I said in
18 pretrial that I would hold them to that; that --- that
19 our position is that any statements made by my client
20 are involuntary, and if they seek to introduce the
21 statement, then I would seek to raise the issue at
22 that time.

23 THE HONORABLE CLIFTON NEWMAN: What statement are
24 you talking about?

25 MR. SUTHERLAND: Your Honor, I have the ---

1 THE HONORABLE CLIFTON NEWMAN: I said what
2 statement by your client? The statement being ---

3 MR. SUTHERLAND: It's a consent ---

4 THE HONORABLE CLIFTON NEWMAN: A consent ---

5 MR. SUTHERLAND: --- to search form, sir.

6 THE HONORABLE CLIFTON NEWMAN: Okay.

7 MR. SUTHERLAND: It's a consent to search for DNA
8 evidence. It's --- and I have it right here: I,
9 Elbert Wallace, hereby give consent to search my
10 person and ---

11 THE COURT: So your position is that he cannot
12 consent to give DNA after he has invoked his right to
13 counsel?

14 MR. SUTHERLAND: No. My position is that it's
15 presumptively involuntary where they continue the
16 interrogation and they accuse him of murder, sir.

17 THE HONORABLE CLIFTON NEWMAN: All right.
18 Anything else?

19 MR. SUTHERLAND: It's ---

20 THE HONORABLE CLIFTON NEWMAN: I thought you were
21 on one line, but you're on that line, so I --- I just
22 need to hear where you are. Then I'll hear where the
23 State is.

24 MR. SUTHERLAND: Well, with the consent to search
25 for DNA being involuntary, obviously, the swabs that

1 they obtained as a result of the involuntary consent.
2 are inadmissible evidence, the product of an unlawful
3 seizure, sir.

4 THE HONORABLE CLIFTON NEWMAN: All right. Okay.
5 What says the State?

6 MS. McDUFFIE: Your Honor, there is case law on
7 point that --- asking for defendant's buccal swab is
8 non-testimonial evidence, which is what the officers
9 did in this present case, Your Honor.

10 There is no statement that the State was trying
11 to elicit. Rather, what the State is trying to get in
12 through this investigator is the non-testimonial
13 evidence that was collected from the defendant.

14 Further, if Your Honor should find that there is
15 any violation, which the State does not think that
16 there is of this search of the defendant's person in
17 order to obtain a buccal swab, Your Honor, we would
18 argue that the State was acting --- the officers,
19 specifically, were acting in good faith when they did
20 this.

21 There is years of precedent that says that this
22 is non-testimonial evidence that the officers were
23 relying on. The Supreme Court most recently
24 recognized the officers, the good-faith exception to
25 the search requirement in State vs. Herring, Your

1 Honor.

2 THE HONORABLE CLIFTON NEWMAN: Tell me about that
3 again.

4 MS. McDUFFIE: Your Honor, the officers were
5 relying in good faith when they believed that asking
6 for a DNA swab was non-testimonial evidence.

7 There's, you know, years of precedence that say
8 that is non-testimonial evidence. It was not
9 interrogation. It's our position that was non
10 interrogation.

11 The officers did not believe that to be
12 interrogation, and they were acting in good faith on
13 current case law, Your Honor, and the good-faith
14 exception to the search rule was most recently exp ---
15 was most recently stated by the South Carolina Supreme
16 Court in State v. Herring.

17 THE HONORABLE CLIFTON NEWMAN: State v. Herring?

18 MS. McDUFFIE: Yes, Your Honor.

19 THE HONORABLE CLIFTON NEWMAN: H-E-R-R-I-N-G?

20 MS. McDUFFIE: Yes, Your Honor.

21 THE HONORABLE CLIFTON NEWMAN: All right.

22 MR. SUTHERLAND: If I might, sir, might I submit
23 the reports of the investigators, the pages, sir?

24 THE HONORABLE CLIFTON NEWMAN: And is that in
25 dispute? Is it in dispute that he invoked his 5th

1 amendment right to counsel?

2 MS. McDUFFIE: No, Your Honor.

3 THE HONORABLE CLIFTON NEWMAN: So whatever is in
4 the report that is being handed up, the State
5 stipulates to that; is that right?

6 MS. McDUFFIE: Your Honor, I don't stipulate to
7 Mr. Sutherland's characterization of what's in the
8 report, but we do agree that ---

9 THE HONORABLE CLIFTON NEWMAN: Well --- it says
10 I --- the words after he invoked --- I.O. advised ---
11 what does that mean?

12 MS. McDUFFIE: The investigating officer.

13 THE COURT: The investigating officer advised him
14 that he was also suspected of committing the robbery
15 and murder of Ms. Derrick, and that's in one report.

16 Another one, Wallace invoked his right to an
17 attorney at this time and the investigating officer
18 advised Wallace that he was being charged with the
19 crimes involving Ms. Webb and he was --- we suspected
20 that he also killed Ms. Derrick.

21 MS. McDUFFIE: Your Honor, our position on that
22 is that it's not interrogation. It did not elicit any
23 response from this defendant. This defendant did not
24 give any statements, nor was any further questioning
25 done of this defendant.

1 He was placed in the D cell at --- or the holding
2 cell at Richland County headquarters, and I believe
3 Major Smith noted that some 45 minutes later is when
4 Investigator Beeler then arrived to photograph the
5 defendant's clothing, collect the defendant's clothing,
6 photograph the defendant's injuries and also collected
7 the buccal swab at that time, which we maintain a
8 position that is non-testimonial, Your Honor.

9 THE HONORABLE CLIFTON NEWMAN: All right. On
10 that single issue, singular issue, counselor, the ---
11 in the case that the State handed up, U.S. v. Dougall,
12 which you --- you said that you adopt and you're
13 arguing, as well.

14 MR. SUTHERLAND: In that it's distinguishable,
15 yes, sir.

16 THE HONORABLE CLIFTON NEWMAN: The case that
17 says --- says in the case, "Hair samples, like
18 handwriting samples, and photographs are real and
19 physical evidence, non-testimonial in nature, and
20 compulsion to submit the samples would not violate
21 defendant's right against self-incrimination."

22 MR. SUTHERLAND: And what I would point out, sir,
23 is that they need a court order to intrude the
24 person's body to swab for DNA.

25 I mean, if they're arguing that Herring --- they

1 have to --- they need a court order or they need
2 consent, they can't get that consent after they have
3 violated his --- his right to counsel that he
4 expressed to them. They say ---

5 THE HONORABLE CLIFTON NEWMAN: At what point do
6 they violate his right to counsel?

7 MR. SUTHERLAND: Well, when he invokes his right
8 to counsel, they accused him of murder. That's
9 further interrogation.

10 They say because they put him in the D cell for
11 45 minutes that they could reinitiate contact with him,
12 sir. There's a 14-day rule under Maryland vs. Shatzer,
13 if there is a break in custody, then they can
14 reinitiate contact, but he was in custody the entire
15 time.

16 It's just the position of the defense is that ---
17 and the belief of the defense is that this was
18 produced; that this was presumptively involuntary
19 where they continued the question.

20 They didn't continue --- they didn't accuse
21 anybody of murder in the case that the State handed up.
22 They asked for the hair samples, and the Court had
23 ruled that wasn't the functional equivalent of
24 interrogation. But accusing somebody of murder, sir,
25 I do believe is interrogation.

1 THE HONORABLE CLIFTON NEWMAN: All right. Well,
2 it appears that --- and you're asking the court to
3 rule based on your interpretation of the sequence of
4 events, and the State is likewise asking --- asking
5 the same.

6 So I think that in order for the record to be
7 clear, there should be some examination by witnesses
8 to set out whatever the sequence of events are so that
9 the Court will have a basis in the record to rule as
10 opposed to ruling based on arguments of counsel.

11 MR. SUTHERLAND: Thank you, sir.

12 THE HONORABLE CLIFTON NEWMAN: All right. If you
13 will examine whatever witness.

14 MS. CAMPBELL: May this witness step down, Your
15 Honor?

16 THE HONORABLE CLIFTON NEWMAN: Yes.

17 MS. CAMPBELL: The State would call Major Stan
18 Smith.

19 THE CLERK: He's still under oath.

20 THE HONORABLE CLIFTON NEWMAN: I think we'll ---
21 let's see. Give the jury about a half-an-hour break,
22 if they want to leave, go some place, whatever.

23 THE HONORABLE CLIFTON NEWMAN: Okay. They can
24 give them a break, tell them to be back in half an
25 hour after you swear him in.

1 THE CLERK: Oh, you want to swear him in?

2 THE BAILIFF: Put him under oath?

3 THE COURT: Did someone swear him?

4 THE CLERK: He was sworn in yesterday.

5 THE HONORABLE CLIFTON NEWMAN: Okay. You can
6 swear him in again, and then you can go.

7 JAMES STANTON SMITH,
8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION:

10 BY MS. CAMPBELL:

11 Q Major Smith, where are you employed?

12 A The Richland County Sheriff's Department.

13 Q What do you do there, sir?

14 A I'm a supervisor in the criminal investigative
15 division.

16 Q I want to turn your attention back to January
17 31st, 2009. Did you become involved in the
18 investigation involving the victim, Linda Derrick?

19 A I did.

20 Q And were you also aware of the investigation
21 involving Carolyn Webb?

22 A I was.

23 Q And also, there was burglary at a church located
24 nearby?

25 A Yes.

1 Q During the course of that weekend, did you
2 develop a suspect in the case?

3 A We did.

4 Q And who was that?

5 A Elbert Wallace.

6 Q And when did you first make contact with
7 Mr. Wallace? Please tell the judge how far that came
8 about.

9 A We had secured a search warrant for his residence,
10 Your Honor, after the positive identification by
11 Ms. Webb. It was a Sunday.

12 It's very difficult to obtain actual arrest
13 warrants, so we relied on the felony, violent felony
14 rule about a warrantless arrest.

15 We went to his home around 6:15 p.m. that Sunday
16 evening. He was arrested without incident as he
17 emerged from the back of his sister's house.

18 He actually had a separate dwelling like a garage
19 apartment behind his sister's house. He came out the
20 back door where he was arrested without incident.

21 Myself and Sergeant Isenhoward actually took
22 custody of him, took him to a nearby vehicle. At
23 around 6:20, I actually advised him of his Miranda
24 rights from the card.

25 He indicated at that time he understood his

1 rights. He indicated he was cooperative. We drove to
2 the sheriff's department. There was no real
3 discussion about the case on the way to the sheriff's
4 department.

5 Once we got to the sheriff's department, we did
6 proceed with some interrogation about the Webb
7 incident. He made some statements denying that he
8 was --- even borrowed money from her on that preceding
9 Friday. He indicated he was at work. He denied, of
10 course, going back and assaulting her. He denied all
11 of that.

12 We sort of questioned him further about that at
13 some point. He invoked his attorney privilege. At
14 that time, the questioning ceased.

15 He actually --- at that point in time, we went
16 ahead and told him, of course, he was being charged
17 with the Webb incident, and that he was a suspect in
18 the murder of Ms. Derrick.

19 Q Did any other questioning go on by you at that
20 point?

21 A No.

22 Q Did you attempt to elicit any kind of responses
23 as far as verbal responses from him at that point
24 about either the Derrick or the Webb incident?

25 A No. He was not asked any other questions

1 whatsoever.

2 Q About 45 minutes later, did Investigator Beeler
3 show up to do some photographing for you and collect
4 some samples?

5 A Yes.

6 Q And at that point, explain to the judge what
7 happened.

8 A Well, it was my understanding and my practice
9 that a search --- a consent to search is not
10 considered a testimonial issue. It's not a Miranda
11 issue. That's been my understanding in my training.
12 So we asked him for consent. He gave consent to ---
13 for his buccal swab, for DNA, his clothing, his shoes.

14 Q Did he actually sign off on a form consenting to
15 give his DNA?

16 A He did.

17 Q I'm going to show you what hasn't been marked,
18 this form or a copy of it. Is this the actual form
19 you used that day?

20 A Yes.

21 Q At any time when you were obtaining consent to
22 get this non-testimonial evidence, did you ask him any
23 questions about either case?

24 A No.

25 Q Did you ask him to give you any information about

1 either case?

2 A No.

3 Q At any time, did you elicit to get anymore
4 information verbally from the defendant, testimonial
5 information from him?

6 A No.

7 MS. CAMPBELL: Your Honor, may I approach?

8 THE HONORABLE CLIFTON NEWMAN: Yes.

9 BY MS. CAMPBELL:

10 Q Did the defendant sign off and consent to give
11 you his DNA that day?

12 A He did.

13 Q You mentioned earlier that you advised him of his
14 Miranda rights. Specifically for the record, prior to
15 asking him a question when he told you about being at
16 work, prior to invoking, what rights did you
17 specifically go through with him?

18 A I advised him from the card, which I still have
19 with me. I used a card because sometimes you can omit
20 a right as you go through these things in the --- in
21 the heat of the moment.

22 I advised him he had the right to remain silent.
23 Anything he said could be used against him in court.
24 I advised him he had the right to talk to an attorney,
25 to have him present when he was being questioned. If

1 he could not afford an attorney, one would be
2 appointed to him before any questioning, if he wished.

3 I advised him that he had the right to stop
4 answering at any time and quit making any sort of
5 statements or commentary. I asked him if he had
6 understood the rights, and he indicated that he did.
7 He was cooperative.

8 Q During the time period when you were talking to
9 him prior to invoking his right to an attorney, at any
10 point in the statements prior to invoking, did he tell
11 you he wanted to stop?

12 A No.

13 Q At any point prior to that, did he tell you he
14 wanted an attorney?

15 A He did not.

16 Q And when he told you he wanted an attorney, did
17 you ask him any more questions about either case or
18 either of the three cases we're here about today ---

19 A No.

20 Q --- or any case?

21 A No, ma'am. He made additional comments himself,
22 but not as a result of any sort of interrogation.

23 Q At any point during the time period when you were
24 talking to him, did you promise him anything to make
25 him talk to you?

1 A No.

2 Q Did you threaten him in any way?

3 A No.

4 Q Did you make any offers of leniency to get him to
5 talk to you?

6 A No.

7 Q Did you deny him any creature comforts or hurt
8 him in any way?

9 A No, ma'am.

10 Q Did he appear to understand the questions you
11 were asking him? In other words, were his answers
12 coherent and appeared to be lucid?

13 A Yes. He specifically talked about working that
14 Friday. He knew which day we were talking about. He
15 denied any involvement with Ms. Webb whatsoever.

16 Q Did he appear to be under the influence of any
17 alcohol or drugs that would impair his ability to
18 understand what was going on?

19 A He did not.

20 Q And in the time period after he invoked, did you
21 inform him of what he was being arrested for and that
22 he was a suspect in another case? During that time
23 period, did he still appear to be coherent and
24 cognitive of what was going on?

25 A Yes.

1 Q And when he signed off consenting to give you ---
2 he had already been advised of his rights?

3 A Yes.

4 Q And he was cooperative with you to that extent?

5 A He was.

6 Q But he wasn't giving you any additional verbal
7 information about any case?

8 A That's correct.

9 MS. CAMPBELL: Your Honor, that's all the
10 questions I have. I didn't know if the court wanted
11 to supplement.

12 THE HONORABLE CLIFTON NEWMAN: All right. Go
13 ahead.

14 MR. SUTHERLAND: May it please the Court, sir.

15 CROSS-EXAMINATION:

16 BY MR. SUTHERLAND:

17 Q Major Smith, you testified something --- help me
18 out if this is right, that DNA is non-testimonial.
19 Was that your testimony or that's your training, that
20 DNA is non-testimonial?

21 A Consent is non-testimonial.

22 Q Consent.

23 A Right.

24 Q Well, let me ask you something. If you were to
25 take someone's DNA without their consent and without a

1 court order, would it be admissible in court?

2 A I wouldn't think so.

3 Q Okay. You wouldn't think so.

4 THE HONORABLE CLIFTON NEWMAN: Well, you're not
5 --- you want his legal conclusions concerning that?

6 MR. SUTHERLAND: Oh, oh, I'm sorry, sir. I'll go
7 ahead and ---

8 THE WITNESS: There are some evidence situations
9 where if there's an exigent circumstance that's
10 presented, I believe you can do it without a court
11 order or consent.

12 MR. SUTHERLAND: Okay.

13 THE WITNESS: I don't believe that DNA would fall
14 in that category, because I believe it's --- you can't
15 alter your DNA.

16 BY MR. SUTHERLAND:

17 Q Okay. Well, let me --- let me ask you about what
18 you wrote here. "Wallace invoked his attorney
19 privilege." Is that in your report?

20 A Yes.

21 Q After he invoked --- "After he invoked, I.O.
22 advised him that he was also suspected of committing
23 the robbery, murder of Ms. Derrick. He became upset
24 and demonstrative in his denials."

25 So you testified earlier that he added additional

1 commentary himself and that commentary was denial that
2 he had killed Ms. Derrick.

3 A Well, it wasn't as a result of a question on my
4 part. It was just a statement that he was a suspect
5 in that crime.

6 Q If you accuse someone of killing someone, you
7 are --- is that --- well, I'm not going to ask your
8 opinion. You accused him of murder.

9 A I advised him that he was a suspect in that crime,
10 yes, sir.

11 Q Okay. And he denied your allegation.

12 A He became upset yes, sir, about that. There was
13 no questioning that took place at that time on that
14 statement.

15 Q Well, he ---

16 A That's a statement.

17 Q Well, that's --- that's your interpretation of it.
18 I do understand that.

19 A Well, I was there.

20 Q Well ---

21 A It's more than an interpretation. I was present.

22 Q Well, maybe with respect to the application of
23 the case law, the answer might be different.

24 MS. CAMPBELL: Objection, Your Honor.

25 MR. SUTHERLAND: But --- and I have no further

1 questions for this witness at this time, sir.

2 THE HONORABLE CLIFTON NEWMAN: All right.

3 Anything else from the State from this witness?

4 MS. CAMPBELL: No, sir.

5 THE HONORABLE CLIFTON NEWMAN: All right. You
6 may step down.

7 Do you have any additional witnesses?

8 MS. CAMPBELL: No, sir. I think that clears up
9 the records.

10 THE HONORABLE CLIFTON NEWMAN: All right. Do you
11 have witnesses?

12 MR. SUTHERLAND: Yes, sir. I'd like to call
13 Investigator Isenhoward.

14 THE HONORABLE CLIFTON NEWMAN: All right.

15 KEVIN ISENHOWARD,
16 after being duly sworn, testified as follows:

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

19 THE WITNESS: Kevin Isenhoward.

20 DIRECT EXAMINATION:

21 BY MR. SUTHERLAND:

22 Q Sir?

23 A Yes.

24 Q Do you have your report in front of you, sir?

25 A I do.

1 Q Okay. I'd like to direct your attention to ---
2 it's --- I have page 237, but a particular page of the
3 report. First --- that's it. That's the page right
4 there.

5 A Okay.

6 Q I was wondering if you could begin reading there
7 to the end of that paragraph, "He again denied going
8 to..."

9 A Okay. "He again denied ever going to her home or
10 asking for money. He denied assaulting her after the
11 investigating officers told him that he had been
12 identified as her assailant.

13 "Wallace invoked his right to an attorney at this
14 time. The investigating officer advised Wallace that
15 he was being charged with the crimes involving
16 Ms. Webb, and that he was suspected --- that it was
17 suspected that he also killed Ms. Derrick.

18 "Wallace became extremely emotional and was very
19 animated as he continued to deny the allegations
20 unsolicited. Wallace was placed in the detaining
21 cell."

22 Q Okay. When you say that he continued to deny the
23 allegations unsolicited, that was following your
24 informing him that you suspected that he had robbed
25 and killed Ms. Derrick; is that correct?

1 A Well, I would like --- the way I observed things
2 and the way I took it. Our --- we took --- we
3 arrested a man.

4 Q Yes.

5 A It's our duty to tell him why he was under arrest,
6 and we suspected that he had committed another crime.
7 It's also, in my opinion, our duty to tell him that.

8 Our statements to him in telling him that in the
9 situation there were not designed to elicit any kind
10 of statement from him whatsoever. They were our duty
11 to tell him what's going on.

12 I mean, we've got him in our custody. We're
13 telling him what's going on. Once we told him that,
14 he reacted, obviously. There were no statements, and
15 there were no questions on our part. He was then
16 taken to a detainment cell where he was placed.

17 Q So your office has a policy that you inform ---
18 or is the policy that you cease interrogation
19 immediately when someone invokes their right to
20 counsel?

21 A Interrogation, yes.

22 Q Okay. You said that you have a duty to inform
23 him that you suspect that he was under arrest for one
24 crime, and you all interrogated him about that crime
25 thoroughly.

1 He invokes his right to counsel. Then you say,
2 "I felt that I had a duty to tell him that we
3 suspected that he killed and robbed Ms. Derrick."

4 A And explained the situation and the line of
5 questioning that we had previously provided to him.

6 MR. SUTHERLAND: Okay. Thank you.

7 No further questions of this witness, Your Honor.

8 THE HONORABLE CLIFTON NEWMAN: All right.

9 Anything else, Ms. McDuffie, of this witness?

10 MS. McDUFFIE: No, Your Honor.

11 THE HONORABLE CLIFTON NEWMAN: You can step down.

12 MR. SUTHERLAND: The defense would call Elbert
13 Wallace, sir.

14 THE HONORABLE CLIFTON NEWMAN: All right.

15 Mr. Wallace.

16 Mr. Wallace, we're going to swear you in.

17 ELBERT WALLACE,

18 after being duly sworn, testified as follows:

19 THE CLERK: Have a seat in the witness stand.

20 State your name for the record.

21 THE WITNESS: Elbert Wallace.

22 DIRECT EXAMINATION:

23 BY MR. SUTHERLAND:

24 Q Mr. Wallace, I'm fixing to ask you some questions.

25 I'm not asking you about the facts of the case. I'm

1 asking you about the circumstances surrounding your
2 invocation to your right of counsel. Do you
3 understand that?

4 A Yes, sir.

5 Q Okay. When --- did you invoke your right to
6 counsel when you were in custody of the sheriff's
7 department when you were being detained by
8 Investigator Isenhoward and Major Smith?

9 A Yes, sir.

10 Q When --- what was happening prior to the
11 invocation? Do you recall --- were you being
12 questioned?

13 A Yes, sir.

14 Q And were you being questioned about an incident
15 for which you were under arrest?

16 A Yes, sir.

17 Q What happened after you invoked your right to
18 counsel? What was said to you?

19 A Investigator Smith --- I mean, not investigator,
20 Captain Smith at that time, Major, he put his hand on
21 his head and he leaned back like this.

22 He said, "You killed that lady. You killed that
23 lady."

24 Isenhoward, he was a good officer. He was really
25 gentleman. He was like, "You know, just tell me what

1 happened." I mean, he was --- he was very, very
2 sincere.

3 Q When you say, "Just tell me what happened," this
4 was after your invocation of the right to counsel?

5 A At this time, I used some very harsh language. I
6 told them to --- "Either y'all charge me with
7 something or let me get the F out of here."

8 I told them I don't want to talk to them no more
9 without an attorney after they accused me of the
10 Derrick murder.

11 After I got quiet and I stopped talking to them,
12 they --- they still continued to talk and Mr. Smith,
13 he kept talking about, "You killed that lady. You
14 killed that lady."

15 Mr. Isenhoward, you know what I'm saying, he
16 pretty much eased up. He did ease up.

17 Q Okay. And if I may, I'm going, I think, to try
18 to write something up here. So first, you were being
19 questioned about the Webb matter.

20 A Yes, sir.

21 Q All right. Then you invoked your right to
22 counsel?

23 A After they accused me of murder.

24 Q Oh. They accused you of murder, and you invoked
25 your right to counsel. Did --- now, you heard the

1 testimony previously ---

2 MS. CAMPBELL: Objection, Your Honor. He can't
3 try to ---

4 MR. SUTHERLAND: All right. Okay. Well, you
5 invoked ---

6 THE HONORABLE CLIFTON NEWMAN: Just a moment,
7 counsel.

8 MR. SUTHERLAND: Yes, sir.

9 THE HONORABLE CLIFTON NEWMAN: You have to ask
10 questions, then have the witness answer your questions.

11 MR. SUTHERLAND: Yes, sir. Thank you.

12 THE HONORABLE CLIFTON NEWMAN: Do you have a
13 question on the floor at this point?

14 MR. SUTHERLAND: I --- I will rephrase the
15 question.

16 THE HONORABLE CLIFTON NEWMAN: Okay.

17 BY MR. SUTHERLAND:

18 Q Okay. So you were accused of murder?

19 A Yes, sir.

20 Q You invoked your right to counsel; is that
21 correct?

22 A Yes, sir.

23 Q And what happened next?

24 A Mr. Smith kept insinuating that I killed that
25 lady. He kept making that statement, "You killed that

1 lady. You killed that lady."

2 Q Okay.

3 A And at the same time, Mr. Isenhoward ---

4 Q Okay.

5 A --- he was like sitting on my left side, and he
6 was like, "I mean, just tell me what --- just tell us
7 what happened." You know, this --- I mean, he was
8 being real easy. I mean, he was real --- he wasn't
9 putting no pressure on me or anything like that, but
10 you know what I'm saying.

11 Q Just tell us what happened.

12 A Yeah. Just tell us what --- just tell us what
13 happened. This was after I had done told him that I
14 wasn't going to talk to him no more.

15 MR. SUTHERLAND: Okay. Thank you. No further
16 questions at this time, Your Honor.

17 CROSS-EXAMINATION:

18 BY MS. CAMPBELL:

19 Q You understood your right?

20 A Yes, ma'am.

21 Q And either you invoked or you didn't.

22 A Yes, ma'am.

23 Q And after they accused you of murder is when you
24 said you invoked your right to an attorney.

25 A After they accused me, I told them --- I told

1 them I didn't want to talk to them no more without an
2 attorney.

3 Q Okay. You understood what your rights were that
4 day?

5 A Yes, ma'am.

6 Q And then you said Mr. Isenhoward was a real
7 gentleman to you?

8 A Yes, ma'am.

9 Q And he didn't ask you any more questions?

10 A No. He just kept asking me to tell him what
11 happened and stuff like that, you know what I'm saying,
12 but Mr. Smith kept saying, "You killed that lady. You
13 killed that lady."

14 Q Okay.

15 A I knew what they was doing. No matter what I
16 said, they were going to put that on me.

17 Q Okay. And you didn't tell them anything more
18 about what happened?

19 A No, ma'am. I stopped talking to them when they
20 put me in the holding cell.

21 Q So you didn't give them any more information
22 after you invoked your right?

23 A I didn't have no information to give them.

24 Q Okay. And then they came back a little while
25 later. Do you recognize this document?

1 A Yes, ma'am.

2 Q Is this your signature?

3 A Yes, ma'am, that is.

4 Q And you can read and write. You seem pretty
5 intelligent.

6 A Well, thank you.

7 Q Yes, sir.

8 You can read and write?

9 A Yes, ma'am.

10 Q And you understood what you were signing there?

11 A They told me it was a formality; that about the
12 DNA thing, and they took the pictures of my finger.

13 Q Uh-huh.

14 A They said it was formality.

15 Q But you gave them consent to do that because you
16 signed this, and you would have signed this.

17 A Yeah, I did sign it, but after they said that it
18 was formality.

19 Q But you understood you were giving consent?

20 A Right.

21 MS. CAMPBELL: Thank you sir.

22 That's all I have, Your Honor.

23 THE HONORABLE CLIFTON NEWMAN: Any redirect of
24 this gentleman?

25 MR. SUTHERLAND: No, sir.

1 THE HONORABLE CLIFTON NEWMAN: You may step down.
2 Any additional witnesses by the defense?

3 MR. SUTHERLAND: That's all from the defense.

4 THE HONORABLE CLIFTON NEWMAN: All right. Brief
5 arguments.

6 MR. SUTHERLAND: Yes, sir. However the sequence
7 of events occurred, whether they are correct that he
8 invoked his right to counsel and then they accused him
9 of murder or Mr. Wallace is correct, and they accused
10 him of murder and then he invoked his right to counsel,
11 they continued to ask him questions and continued to
12 accuse him of murder in tandem. They still are
13 interrogating him unlawfully, and it's --- this
14 consent is just presumptively involuntary.

15 You cannot consent to something you can't make a
16 statement. You can't --- once --- once they ---
17 they're supposed to leave you alone, walk away. If
18 they want ---

19 THE COURT: Stop working on the case or what?

20 MR. SUTHERLAND: Well, if they want --- certainly
21 --- if I may, according to the new case law under
22 Maryland vs. Shatzer, if you're not in custody, they
23 can come back to you 14 days later, and certainly not
24 45 ---

25 THE HONORABLE CLIFTON NEWMAN: What happens after

1 14 days? They stop working on the case?

2 MR. SUTHERLAND: Oh, well, no, sir. They can't
3 --- they ---

4 THE HONORABLE CLIFTON NEWMAN: Well, they can't
5 say anything to --- to the defendant?

6 MR. SUTHERLAND: They have got to stop working on
7 the defendant, sir. They can't accuse him of murder.

8 THE HONORABLE CLIFTON NEWMAN: They can't deal
9 with him in any way?

10 MR. SUTHERLAND: They can deal --- they can deal
11 with him in terms of, "Would you like some water?"
12 Questions that are not the functional equivalent of
13 interrogation. The defense believes wholeheartedly
14 that if you ---

15 THE HONORABLE CLIFTON NEWMAN: Well, the defense
16 believes that, but what authority do you have to
17 support what you believe?

18 MR. SUTHERLAND: Well, I do --- the case --- the
19 functional equivalent, the case they handed up to Your
20 Honor. If I may, I can ---

21 THE HONORABLE CLIFTON NEWMAN: Well, this says
22 it's not --- it's non-testimonial.

23 MR. SUTHERLAND: But what the case --- this case
24 doesn't involve an accusation of murder and questions
25 about that murder. This involves the asking for the

1 consent to take a hair sample, not to intrude and to
2 take DNA, sir.

3 It's imminently distinguishable, and beg the
4 Court's indulgence. I will look through their case.

5 (Pause)

6 Interrogation includes words or action that the
7 authorities should note are reasonably likely to
8 elicit an incriminating response from the suspect. I
9 cited Rhode Island vs. Guinness.

10 THE HONORABLE CLIFTON NEWMAN: Well, receiving a
11 blood --- I mean, a DNA sample, how is that an
12 incriminating response? To say, "I want your DNA. I
13 want a sample of your DNA." How is that an
14 incriminating response such as, "Yes, I killed the
15 woman"?

16 MR. SUTHERLAND: Well, sir, what is --- what it
17 is, is they --- the consent itself is involuntary.
18 The consent is involuntary due to the actions of the
19 officers, sir.

20 So they would need a court order otherwise in
21 that instance, and that was the testimony of the
22 investigators. So the consent is being presumptively
23 involuntary. Then obviously, the fruit of the consent,
24 which is the DNA swabs, would be inadmissible.

25 THE HONORABLE CLIFTON NEWMAN: All right. What

1 do you say about than, Ms. McDuffie?

2 MS. McDUFFIE: Your Honor, we would just argue
3 that this evidence was non-testimonial. The officers
4 asked the defendant for evidence that was
5 non-testimonial, which the defendant voluntarily gave.

6 There was no testimony on the record that this
7 was anything but voluntarily giving of non-testimonial
8 evidence.

9 If Your Honor doesn't believe that it was
10 non-testimonial evidence, the --- we would argue
11 inevitable discovery. The State did receive a court
12 order for the defendant's buccal swab on April 29th of
13 2009, if I may hand that up.

14 It was ordered by Judge L. Casey Manning, Your
15 Honor. Furthermore, Your Honor, we'd also argue that
16 there is a good faith exception that the officers
17 believed, based on years of precedent that this type
18 of evidence was non-testimonial; it was not subject to
19 the same custodial interrogation requirement have to
20 cease after invoking his rights, Your Honor, and the
21 officers acted in good faith is trying to obtain this
22 evidence that it's non-testimonial evidence from the
23 defendant.

24 THE COURT: Yes, sir.

25 MR. SUTHERLAND: If I may sir, good faith, bad

1 faith is not an issue. It's a Miranda violation. The
2 language, words or actions that the authorities should
3 know are reasonably likely to elicit an incriminating
4 response.

5 Accusing someone of murder is that prescription.
6 To whether they were acting in good faith or not in
7 good faith based on their training about certain types
8 of evidence being testimonial or non-testimonial, they
9 got a statement. They got a consent form.

10 If they did not have that consent form, they
11 would have had to get a court order. I anticipated
12 earlier they were going to argue inevitable discovery.

13 They have had this evidence in their custody for
14 two-and-a-half years, and they have not tested it
15 against the swabs that they got at the Schmerber
16 hearing on April the 30th of 2009.

17 In that light, I would point out when does
18 inevitable discovery end? They had two-and-a-half
19 years of an opportunity to do this testing, and they
20 have not done this testing.

21 Just with respect to Maryland vs. Shatzer where
22 they finally took the Edwards vs. Arizona and they put
23 a time limit, a 14-day period with a break in custody,
24 how long do they have the option to do this testing,
25 which is sitting there waiting for them?

1 If they are arguing it's inevitable, why didn't
2 they do it, sir?

3 THE HONORABLE CLIFTON NEWMAN: All right. Well,
4 I find that the Court is --- that I am more impressed
5 with the State's position in this case.

6 I think that the defense's position takes the
7 meaning of custodial interrogation to an illogical
8 extreme.

9 I agree with the --- and I am more impressed with
10 the language used by the court in the case of U.S. v.
11 Mitchell, a case, Federal Supplement case, from the
12 State of Kansas cited in the Westlaw 324-69-15, which
13 says that an officer's request for a DNA sample did
14 not constitute interrogation under Miranda.

15 Miranda's protection of a defendant's right ---
16 of a person's 5th amendment right against
17 self-incrimination only protects against compelled
18 testimonial communications, compelled testimony ---
19 testimonial communications.

20 The Court has further held, indicates, that it
21 was passed up in U.S. v. Dougall that hair samples,
22 handwriting samples, photographs, et cetera, are real
23 and physical evidence, non-testimonial in nature and
24 compulsion to submit the samples would not violate the
25 defendant's right against self-incrimination.

1 Again, the self-incrimination as protected
2 against in Miranda is against compelled testimonial
3 communications, not actions by the defendant in
4 giving --- in consenting to give a DNA sample or a
5 buccal swab.

6 In addition to that, I find that the good faith
7 exception would apply in the sense that the State, as
8 they later did in getting a buccal swab, there is
9 certainly any defendant who is on trial or accused of
10 murder and who has left a trail of blood or something
11 that would entitle the --- and who has been identified
12 by a --- an alleged victim would give any court
13 probable cause to grant any Schmerber motion.

14 And though there is a later Schmerber order on
15 file here, I think all of that would give rise to a
16 good faith action by law enforcement, but I do not
17 believe that we need get to that level, because there
18 is no compelled testimonial communication at issue
19 here that --- I certainly understand the defense's
20 argument that once Miranda has --- once a defendant
21 claims a protection under Miranda, the defendant
22 argues that you can't say anything to the defendant.

23 You can't ask him anything. You can't do
24 anything. You can't say, "Give me your shoes. Give
25 me your clothes. Give me this" or "give me that." I

1 don't believe the law supports that contention,
2 because I do not believe Miranda goes in that
3 direction. So I deny the motion.

4 MR. SUTHERLAND: Thank you, sir.

5 THE HONORABLE CLIFTON NEWMAN: All right. We'll
6 take a few more minutes, and that half an hour is
7 right at hand. We'll freshen up for a second or two
8 and then press on a little more.

9 (WHEREUPON, a short break was taken.)

10 If you will resume the stand, Mr. Witness.

11 THE HONORABLE CLIFTON NEWMAN: All right. Let's
12 bring them on.

13 THE BAILIFF: Oh, are we ready for the jury?

14 THE COURT: Sir?

15 THE BAILIFF: Are we ready for the jury?

16 THE HONORABLE CLIFTON NEWMAN: Yes. We spent a
17 long time.

18 My goodness.

19 (WHEREUPON, the jury came into open court at
20 approximately 4:51 p.m.)

21 THE BAILIFF: Your Honor, the jury is present.

22 THE HONORABLE CLIFTON NEWMAN: All right. Thank
23 you, ladies and gentlemen. Ms. McDuffie, you may
24 proceed.

25 MS. McDUFFIE: Thank you, Your Honor.

1 THE HONORABLE CLIFTON NEWMAN: The objection is
2 overruled.

3 Direct Examination (continued):

4 BY MS. McDUFFIE:

5 Q Investigator Beeler, we were talking about item
6 343, the defendant's buccal swab.

7 A Yes, ma'am.

8 Q Is that the item of evidence you took from the
9 defendant's person?

10 A Yes, ma'am.

11 MS. McDUFFIE: Your Honor, we'd offer State's
12 Exhibit 343 into evidence.

13 THE HONORABLE CLIFTON NEWMAN: And it's admitted
14 over objection.

15 (WHEREUPON, State's Exhibit No. 343 was admitted
16 into evidence.)

17 MR. SUTHERLAND: Sorry, Your Honor. No objection.

18 THE COURT: No objection?

19 MR. SUTHERLAND: Oh, oh, this is the swab. I
20 thought it was a picture.

21 Well, the objection was just noted vociferously,
22 Your Honor.

23 THE HONORABLE CLIFTON NEWMAN: Okay. It was
24 admitted over objection.

25 MR. SUTHERLAND: Sorry.

1 BY MS. McDUFFIE:

2 Q Please describe for the jury what a buccal swab
3 is and how you obtain it.

4 A To clarify, a buccal swab is an oral swab, a big
5 Q-tip. The only thing you see original C.S.I. that's
6 real is when they swab the inside of your mouth with a
7 big Q-tip.

8 I don't know if you're experts of C.S.I. Vegas.
9 I don't know if you watch that show, but that's one of
10 the things that's real.

11 We obtained a consent to search for DNA and
12 provided him with a cotton swab, Q-Tip, on the end of
13 the stick, and we swab the inside of your mouth and
14 that's it. It's turned into evidence. From there,
15 they test it and compare it to other DNA.

16 Q And I'm going to show you what's been marked for
17 identification as State's 398.

18 THE COURT: Shift the microphone some.

19 THE WITNESS: Sorry. I was talking to the jury.

20 THE COURT: All right.

21 THE WITNESS: Talking in the wrong direction.

22 398 would be the consent to search for DNA that I
23 filled out that was signed by Mr. Wallace.

24 (WHEREUPON, State's Exhibit No. 398 at some point
25 previously was marked for identification only.)

1 MS. McDUFFIE: Your Honor, at this time we'd
2 offer State's 398 into evidence.

3 MR. SUTHERLAND: Same objection, Your Honor.

4 THE COURT: Okay. It's admitted.

5 (WHEREUPON, State's Exhibit No. 398 was admitted
6 into evidence.)

7 THE COURT REPORTER: You marked 397?

8 MS. McDUFFIE: I have no idea.

9 THE COURT REPORTER: I don't have 397.

10 BY MS. McDUFFIE:

11 Q And State's 398 is where he consented to have
12 samples of DNA obtained?

13 A Yes, ma'am.

14 Q And that was done through a Q-Tip to his cheek?

15 A Yes, ma'am.

16 Q Called a buccal swab?

17 A Yes, ma'am.

18 Q As we were talking about the shoes that you
19 collected, you showed the jury both shoes?

20 A Yes, ma'am. My pictures are --- are pretty poor.
21 Looking back at them, it was the --- in my notes, it
22 was the right shoe that had the stain on the bottom.
23 The left shoe was the one that had the stain on the
24 top.

25 Q So there --- you photographed the right and left

1 shoe?

2 A Yes, ma'am.

3 Q And those both had stains in different locations?

4 A Yes, ma'am.

5 Q And those were submitted to DNA for processing?

6 A Correct, ma'am.

7 Q And the individual who signed the consent to
8 search for DNA in State's 398, do you see him in the
9 courtroom today?

10 A Yes, ma'am.

11 Q Please point him out for the jury.

12 A The defendant at the defendant's table.

13 Q Can you please describe what he's wearing, for
14 the record?

15 A Nice three-quarter length jacket, white shirt,
16 glasses.

17 MS. McDUFFIE: Your Honor, please let the record
18 reflect he has identified the defendant.

19 THE HONORABLE CLIFTON NEWMAN: It does.

20 MS. McDUFFIE: No further questions for this
21 witness.

22 MR. SUTHERLAND: May it please the Court, Your
23 Honor.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION:

1 BY MR. SUTHERLAND:

2 Q Sir, how are you.

3 A I'm doing good, sir. How about yourself?

4 Q Doing well, doing well. This actually shouldn't
5 take too long. It's just there's so many reports ---

6 A Yes, sir.

7 Q --- if I need to refer to them.

8 Your duties in any of these cases is effectively
9 you need to show up. You need to make sure the place
10 is secure.

11 A Yes, sir.

12 Q You need to identify things that you may be
13 interested in collecting.

14 A Yes, sir.

15 Q Your --- I mean, you don't have anything to add
16 with respect to, you know, what happened here or what
17 have you. You strictly go in. You follow these
18 procedures. You collect the evidence. You turn that
19 evidence in through the chain of custody.

20 A Yes, sir.

21 Q And then it gets further processed on down the
22 road?

23 A It depends on the type of evidence. I handle
24 things that may be processed for fingerprints ---

25 Q Oh, but you ---

1 A --- but as far as testing for DNA, I'm not a
2 chemist.

3 Q Okay.

4 A There are people who do all of that. I collect
5 and submit to them.

6 Q Did you ever --- you had testified earlier that
7 you had done that Superglue ---

8 A Yes, sir.

9 Q --- thing?

10 A Cyanoacrylate.

11 Q Now, when you get results from that, do you pass
12 that on to somebody else, or do you do that analysis
13 yourself?

14 A The processing part, I will dust, lift what I can
15 and photograph. Sometimes, in some situations, if I
16 cannot lift the print but it's visible, I will
17 actually submit that to the latent fingerprint
18 examiners. I did not in this case; I submitted swabs,
19 I mean fingerprint ---

20 Q Okay. Briefly, we'll go back to you made a
21 distinction between the Derrick crime scene and the
22 Webb crime scene ---

23 A Yes, sir.

24 Q --- with respect to the crime scene logs?

25 A Yes, sir.

1 Q Were you the keeper of the crime scene log for
2 the Derrick crime scene, or did you just talk --- you
3 had signed in or...

4 A I signed in. There's a deputy posted. With a
5 smaller scene, I can be there and see who comes in.
6 With a larger scene, I'm not able to stand there by
7 the roadway and document everybody that comes in.

8 There are keepers of the log, as you say. That's
9 a good term. They have everybody sign in and document
10 the times they come in and the times they leave.

11 Q Okay. And, again, I understand the explanation,
12 but there was no crime scene log kept by the
13 responding officers or anybody at the Webb scene?

14 A At the home invasion stabbing, no, sir. That was
15 --- due to the limited size of it, I was able to
16 control the scene.

17 Q Okay. And you did have to return --- did --- was
18 it you that returned to the Webb scene after there had
19 been another apparent break in there?

20 A I'm not aware of any --- I responded to the
21 initial scene and processed the cell phone and such
22 after, but I did not respond back to the Webb scene.

23 MR. SUTHERLAND: Okay. Thank you, sir.

24 No further questions at this time, Your Honor.

25 THE HONORABLE CLIFTON NEWMAN: Okay. Anything

1 else?

2 MS. McDUFFIE: Nothing from the State, Your Honor.

3 THE HONORABLE CLIFTON NEWMAN: All right. You
4 may step down.

5 Your next witness.

6 MS. CAMPBELL: The State would call Lieutenant
7 Anna Elsey.

8 ANNA ELSEY,

9 after being duly sworn, testified as follows:

10 THE CLERK: Please have a seat. State your full
11 name for the record, please.

12 THE WITNESS: Anna Elsey, E-L-S-E-Y.

13 DIRECT EXAMINATION:

14 BY MS. CAMPBELL:

15 Q Where are you employed?

16 A The Richland County Sheriff's Department.

17 Q And what do you do there, ma'am?

18 A I supervise the crime scene, latent print section.

19 Q And when you're the supervisor of the crime scene
20 and latent print section, what do your duties include?

21 A Some of my duties as a supervisor are to --- a
22 lot of administrative duties, budget, scheduling,
23 ordering supplies and implementing and writing
24 policies and procedures for the unit. In addition to
25 that, I'm also on call for any major scenes to assist

1 and process some of those scenes.

2 Q Can you tell this jury a little bit about your
3 education and your training in the field of crime
4 scene investigation?

5 A I graduated with a bachelor of science in biology
6 and psychology. I have a masters in DNA and serology.
7 In 1996, I completed the South Carolina Criminal
8 Justice Academy.

9 I worked uniformed patrol for a little over two
10 years. I was then promoted to the crime scene section.
11 Since I've been in that section --- I'm just going to
12 list a couple of the training that I --- courses that
13 I've been to: I.D. tech, advanced palm print
14 identification, crime scene investigation, basic
15 fingerprint, blood pattern analysis, forensic
16 ridgeology, crime scene reconstruction, advanced blood
17 pattern analysis, complex latent print examination,
18 digital photography, forensic shooting scene
19 reconstruction.

20 I'm also a graduate of the FBI National Academy.
21 I am a member of the International Association for
22 Identification, the South Carolina division of the IAI
23 and the International Crime Scene Investigators
24 Association, and I am certified as a crime scene
25 investigator for the IAI.

1 Q And you've been qualified before as an expert in
2 crime scene investigation?

3 A Yes, ma'am.

4 MS. CAMPBELL: Your Honor, I'd offer her as an
5 expert in the field of crime scene investigation, as
6 well as the fields she named.

7 MR. SUTHERLAND: No objection.

8 THE HONORABLE CLIFTON NEWMAN: So ordered.

9 BY MS. CAMPBELL:

10 Q At the Richland County Sheriff's Department,
11 y'all actually have a crime lab there as part of that
12 laboratory; is that correct?

13 A Yes, ma'am.

14 Q And is your laboratory accredited in any way?

15 A They are. We are ASCLAD accredited.

16 Q What does ASCLAD accredited mean?

17 A It's international accreditation that monitors
18 the quality control of the laboratory. They do an
19 initial assessment of the laboratory, and then they do
20 an annual assessment to make sure that we maintain the
21 assurance procedures that we have put in place.

22 Q And you're currently qualified in those
23 procedures?

24 A Yes, ma'am.

25 Q I want to turn your attention back to January

1 31st of 2009. Did you initially been involved at
2 Winyah Drive in the actual processing of the scene
3 there?

4 A I did. I was notified by Investigator Beeler. I
5 arrived on the scene a little after 11:30, made
6 contact with Investigator Beeler and Sergeant Richards
7 that were already on the scene.

8 Q And when you say you arrived a little after 11:30,
9 is that 11:30 a.m. or p.m.?

10 A p.m.

11 Q So that would be shortly before midnight on the
12 evening of January 31st?

13 A That's correct.

14 Q And you were not involved in the earlier incident
15 at Ms. Webb's house or at the church; is that correct?

16 A That's correct.

17 Q At that point?

18 A Correct.

19 Q When you arrived on the scene, you mentioned that
20 Investigator Beeler was also there. Was anyone else
21 from your laboratory also there?

22 A Sergeant Richards, also a supervisor in the Crime
23 Scene Unit.

24 Q Upon arrival, what did you do initially?

25 A I made contact with Sergeant Richards, and he

1 completed a walk through with me to advise me of what
2 they had up to that point and where they were in the
3 processing.

4 Q So at that point, the evidence had not been
5 collected yet. You were still in an observation phase?

6 A Correct.

7 Q And explain to the jury why it's important for
8 y'all to observe and make sure that you photograph
9 and/or memorialize anything that may --- at that point,
10 you don't know what may not be significant; is that
11 correct?

12 A That's correct. Generally, when we get there,
13 our first --- as it's already been explained a little
14 bit is to make sure the scene is secure and to do an
15 initial interview with any deputies that were on the
16 scene or other crime scene investigators.

17 We're then going to start documenting the scene,
18 and that can include photographs, video, scene
19 sketches, notes.

20 Part of that assists us in our investigation and
21 allows us to then present it to you, if needed, in
22 court so that you can see the scene as we first saw it
23 when we first got there.

24 Q When you first did your initial walk through of
25 the scene, what did you observe?

1 A Sergeant Richards had already identified several
2 stains throughout the residence leading from the
3 living room area to a hallway and into the bedroom.
4 Additionally, I saw the victim was still in the
5 bathroom, face down on the bathroom floor.

6 Q Before we get to the victim, let me back up. You
7 said you observed several stains in the hallway
8 leading up to the bathroom area; is that correct?

9 A That's correct.

10 Q And what was the appearance of those stains?

11 A They were reddish stains that we identified to be
12 what we believed to be blood.

13 Q Okay.

14 A Based on the circumstances of the scene.

15 Q What appeared to be blood?

16 A Yes, ma'am.

17 Q And, of course, in a crime scene such as this,
18 that would be significant to your investigation or
19 could be?

20 A Yes, ma'am.

21 Q You mentioned that you also observed the victim.
22 Was she still present?

23 A She was.

24 Q Had EMS already responded prior to you getting
25 there?

1 A They had. They had already responded there prior
2 to my arrival.

3 Q And so the victim had already been declared dead
4 in this case?

5 A Yes, ma'am.

6 Q Once you got there and you observed the victim,
7 tell --- explain to the jury how the victim appeared
8 when you got there.

9 A Again, she was on the floor in the bathroom face
10 down. She had on a --- I believe it was a pink
11 sweatshirt, type shirt. It was pulled up a little bit
12 in the back, and what appeared to be pink pants --- I
13 believe they were pink and white --- pulled down to
14 just about her knees.

15 She was facing with her head towards the doorway
16 of the bathroom, and her feet were towards the toilet
17 area.

18 Q As you progressed around the house, did you
19 observe anything else that appeared to be blood?

20 A There were several areas in the bedroom, in the
21 hallway, dining area, and in the living room.

22 Q Were any photographs taken that evening of the
23 different areas in the house?

24 A They were.

25 Q I want to show you, as you walked into this house

1 from the front door, what room do you immediately
2 enter?

3 A What we identified as the living room area.

4 Q I want to show you these photographs, which is
5 121 --- some of these are out of order, so I want to
6 make sure I don't miss anything --- through 142 and
7 just ask you first if you recognize those.

8 A I do.

9 Q And what area of the house did those depict when
10 you arrived on the scene that night?

11 A This is the living room area right when you walk
12 in the front door.

13 Q And were those photographs taken that night?

14 A Yes, ma'am.

15 MS. CAMPBELL: Your Honor, at this time, we'd
16 offer these into evidence.

17 MR. SUTHERLAND: Did she take those photographs?

18 MS. CAMPBELL: She was there when the photographs
19 were taken. She can identify them. They fairly and
20 accurately depict the scene that night.

21 MR. SUTHERLAND: Well, I just would object to the
22 foundation, sir.

23 THE HONORABLE CLIFTON NEWMAN: All right. Well,
24 would you ask her some more questions on the
25 foundation?

1 BY MS. CAMPBELL:

2 Q As far as --- were you present when these
3 photographs taken that night?

4 A Yes, ma'am.

5 Q And do these fairly and accurately depict the
6 scene as it appeared when you were there that night?

7 A Yes, ma'am.

8 Q Has anything being altered or tampered with in
9 any way?

10 A Well, they were our general scene photographs
11 taken, and once we marked several stains, they were
12 re-photographed.

13 Q They were re-photographed with the markers in
14 them?

15 A Yes.

16 Q But other than that, it's a fair and accurate
17 representation of what appeared at first and then once
18 y'all marked things?

19 A Yes, ma'am.

20 MS. CAMPBELL: Your Honor, at this time, we'd
21 offer them.

22 THE HONORABLE CLIFTON NEWMAN: Anything further?
23 Any objection?

24 MR. SUTHERLAND: I would just continue with the
25 same objection. Of course, I'd want to look at them

1 if the Court ruled that they could be admitted.

2 MS. CAMPBELL: We've shown them to him, but we
3 can show them again.

4 MR. SUTHERLAND: Well, I've seen a 1,000 pictures.

5 (Pause)

6 Pending prior objection, no objection as --- at
7 this point, sir, after looking at them as far as
8 gruesome photos or anything like that.

9 THE HONORABLE CLIFTON NEWMAN: All right.
10 They're admitted.

11 MS. CAMPBELL: Thank you.

12 THE COURT REPORTER: That's 121 through 142?

13 MS. CAMPBELL: Yes, ma'am.

14 (WHEREUPON, State's Exhibits Nos. 121 - 142 were
15 admitted into evidence.)

16 BY MS. CAMPBELL:

17 Q I want to show you off of the hall area is the
18 kitchen area; is that correct?

19 A Off of dining room area.

20 Q And I show you State's Exhibit Number 171 through
21 173 and State's Exhibit 67. I just ask do you
22 recognize those?

23 A Yes, ma'am. That's the kitchen area and looking
24 from the kitchen area into the dining room area.

25 Q And were those photographs taken that night, and

1 do they fairly and accurately represent what the scene
2 was like when you were there?

3 A Yes, ma'am.

4 MS. CAMPBELL: Your Honor, at this time, we'd
5 offer these four into evidence.

6 MR. SUTHERLAND: Just same objection, Your Honor,
7 as to foundation.

8 THE HONORABLE CLIFTON NEWMAN: They're admitted.

9 MR. SUTHERLAND: Beyond that, no other objection
10 in any other regards.

11 THE COURT REPORTER: Can you repeat the numbers
12 again, please.

13 MS. CAMPBELL: Yes, ma'am. It's 171 through 173
14 and then number 67.

15 THE COURT REPORTER: Thank you.

16 (WHEREUPON, State's Exhibits Nos. 171, 172, 173,
17 and 67 were admitted into evidence.)

18 BY MS. CAMPBELL:

19 Q I'm trying to expedite it.

20 In the middle of the house, was there a hallway?

21 A There was.

22 Q And I want to show you what's been marked ---
23 you'll have to go through them individually. First,
24 I'll just ask if you recognize those photographs.

25 A This is the hallway area leading from the dining

1 room towards the bathroom and areas that were marked.

2 Q And do these photographs --- and I'll enumerate
3 them in a minute --- but do they fairly and accurately
4 represent that area of the house from that night?

5 A Yes, ma'am.

6 Q And they were taken that night?

7 A Yes, ma'am.

8 MR. SUTHERLAND: Same objection as to foundation,
9 but no objection in any other regard, Your Honor.

10 THE HONORABLE CLIFTON NEWMAN: All right.
11 They're admitted.

12 MS. CAMPBELL: Your Honor, that would be State's
13 Exhibits --- are you ready?

14 THE COURT REPORTER: Yes.

15 MS. CAMPBELL: 72, 71, 59, 60, 61, 143, 144, back
16 to 51, 145, 52, 53, 146, 54, 55, 56, 57, 58 and 50.

17 THE COURT REPORTER: Thank you.

18 MS. CAMPBELL: Thank you.

19 (WHEREUPON, State's Exhibits Nos. 72, 71, 59, 60,
20 61, 143, 144, 51, 145, 52, 53, 146, 54, 55, 56,
21 57, 58, 50 were admitted into evidence.)

22 BY MS. CAMPBELL:

23 Q Finally, also, off of the hallway, there were a
24 number of bedrooms?

25 A Yes, ma'am.

1 Q One was the master bedroom?

2 A Correct.

3 Q And then there were two other bedrooms; is that
4 correct?

5 A That's correct.

6 Q I want to show you these and first ask you if you
7 recognize those?

8 A These are the bedrooms, I believe, that I've
9 identified as one and two to the right of the bathroom.

10 Q And these are the secondary bedrooms?

11 A Correct.

12 Q And do these fairly and accurately depict the
13 bedrooms as they appeared that night?

14 A Yes, ma'am.

15 MR. SUTHERLAND: Is that 147 through 50?

16 MS. CAMPBELL: It's 149, 150, 147, and 148.

17 MR. SUTHERLAND: Same objection as to foundation,
18 but no objection in any other regard, Your Honor.

19 MS. CAMPBELL:

20 THE HONORABLE CLIFTON NEWMAN: All right.

21 They're admitted.

22 MS. CAMPBELL: And that ---

23 THE COURT REPORTER: I'm sorry, can you repeat
24 them again?

25 MS. CAMPBELL: Sure. 147, 148, 149 and 150.

1 (WHEREUPON, State's Exhibits Nos. 147 - 150 were
2 admitted into evidence.)

3 BY MS. CAMPBELL:

4 Q The majority of the work --- when two or more of
5 you are at the scene, do you kind of split up some of
6 the work that goes on in the house as far as
7 collecting evidence?

8 A We do.

9 Q And there was a lot of work focused on the
10 bathroom area, as well as the master bedroom?

11 A There was. Initially, our first focus was the
12 living room area and though the hallway to be able to
13 clear a path for body removal, so that was our first
14 area of focus.

15 Q Okay. And Sergeant Richards, I believe, was also
16 there assisting you that night?

17 A Yes, Sergeant Richards ---

18 Q And he also took some of the photographs that
19 night, too?

20 A Yes, he did.

21 Q Based on your observations of the scene, did you
22 actually prepare some diagrams of the interior of the
23 house and some testing that y'all did?

24 A I did.

25 Q And I want to show you what's been marked as

1 State's Exhibit number 365, 366 and 364. Are these
2 blow-ups of the actual diagrams you prepared?

3 A They are.

4 Q And do of those fairly and accurately depict, not
5 to scale, your findings of what you tested that night?

6 A That's --- yes, areas that we documented that
7 night and stains that were identified, yes.

8 MS. CAMPBELL: Okay. Your Honor, at this time,
9 we'd offer those three into evidence.

10 MR. SUTHERLAND: Just those sketches?

11 MS. CAMPBELL: Yeah, just the sketches.

12 MR. SUTHERLAND: All right. Just, quick, let me
13 take a look at them.

14 (Pause)

15 Without objection, sir.

16 THE HONORABLE CLIFTON NEWMAN: They're admitted
17 without objection.

18 (WHEREUPON, State's Exhibits Nos. 364 - 366 were
19 admitted into evidence.)

20 MS. CAMPBELL: Your Honor, may the witness step
21 down?

22 THE HONORABLE CLIFTON NEWMAN: Yes.

23 BY MS. CAMPBELL:

24 Q If you will come over on this side so the court
25 reporter can hear you.

1 This is one of those laser pointers, so don't
2 shine it in somebody's eyes.

3 State's Exhibit Number --- what's the number up
4 there?

5 A 365.

6 Q 365. Can you see?

7 What does this represent, ma'am?

8 A This is an overview of the house itself, and this
9 is the front door as we walked in. This is that den
10 and living room area I spoke of, the dining room area
11 with a kitchen off of it, the hallway area leading to
12 the bathroom, master bedroom, and the other bedrooms
13 one and two.

14 Q Okay. And I want to show you, as you're going
15 through the photographs, if you can just correlate
16 them into the area, State's Exhibits Number 121 and
17 122, where would that be looking in from?

18 A That's looking from the front door into this
19 living room den area here.

20 Q And that's how it appeared when you got there
21 that night?

22 A Yes, ma'am.

23 Q Or when you got there?

24 A Yes, ma'am.

25 Q And before actually doing any testing or

1 collecting any evidence, do you go through and do a
2 general photographing of the entire area?

3 A That's correct.

4 Q And that was done in this case?

5 A Yes, ma'am.

6 Q State's Exhibit Number 123 and 124, how is that
7 oriented on that?

8 A Again, that's looking in the living room area
9 towards the front door, and then both of them are
10 towards the front door.

11 Q So you can actually see the front door?

12 A Correct.

13 Q And on the front of the house, that's the only
14 mode of entry; is that correct?

15 A I believe there were some windows, but that was
16 the area that was open.

17 Q That was opened when you got there?

18 A Yes.

19 Q Moving on as to other areas, State's Exhibit
20 Numbers 126 and 127, what areas does that show
21 delineated on your diagram?

22 A Okay. This is the living room area, again, with
23 the front door to the right area of the sofa.

24 Q Is the sofa actually depicted in your ---

25 A It's right here.

1 Q That's the sofa?

2 A Yes, ma'am.

3 Q You didn't color it, and it --- it's actually
4 shown --- and this is how it appeared that night?

5 A Yes, ma'am.

6 Q Moving on quickly into 128. What area does that
7 show?

8 A That's looking from the living room into the
9 dining room area.

10 Q Almost an open hallway between the two?

11 A Yes, an opening here.

12 Q An opening ---

13 A Depicted here.

14 Q State's Exhibit number 130 and 129.

15 A You can see the sofa here, and that's looking
16 towards this area here. And that is also in the
17 living room close to the dining area.

18 Q Once you did a general overview of this area, did
19 you then attempt to mark --- or make significance ---
20 some stains that could or could not be evidence in
21 this case?

22 A Correct.

23 Q I'm going show you State's Exhibit --- what's
24 that number?

25 A 366.

1 Q 366. What does this show?

2 A This is just a close-up view of the living room
3 area itself. Also depicted in here are several stains
4 that we numbered one through seven.

5 Q And number one through seven, do you go through
6 and pick which one got there first or anything like
7 that? What is the significance of the numbering
8 system?

9 A Those are just how we identified them with some
10 type of order from --- you know, from the front door
11 towards the dining area.

12 Q So you aren't here to tell this jury, in your
13 expert opinion, you can say which one hit the ground
14 first or anything of that nature?

15 A No, ma'am.

16 Q And I noticed that State's Exhibit number 131 and
17 132, is that actual photographs as you marked those
18 areas?

19 A Yes, ma'am.

20 Q And like --- just pick any number, but where
21 would the stain be next to the number?

22 A Here is number one here and also depicted here.
23 You can see also see two, three, and four in that
24 photograph.

25 Q And that's just so you can preserve it and have a

1 reference point at a later date?

2 A Yes, ma'am.

3 Q And differentiate between the stains?

4 A Correct.

5 Q Again, I show you State's Exhibit Number 133. Is
6 that a closer-up view of the one we just saw?

7 A Yes, ma'am.

8 Q And that actually has what numbers in it?

9 A One and two.

10 Q And the appearance of these stains, why did you
11 think they could or could not be significant in this
12 case?

13 A They were reddish brown in color, and considering
14 the type of scene we responded to, they --- they may
15 be important.

16 Q Okay. I want to show you State's Exhibit
17 Number 134 and then number 135 from two different
18 angles. Does it show basically the same thing?

19 A That does. That's two, three, and four.

20 Q Which is shown where on your diagram?

21 A Right here near the front door just on the other
22 side of the rug.

23 Q And when looking at stains that appear --- what
24 appears to be blood, are you looking at any type of
25 pattern, or if you can tell anything from the type of

1 stain it is or how it's on the floor?

2 A There are some that ---

3 Q It's just a close up of State's Exhibit 136?

4 A There are some stains that we can come to some
5 conclusions about. This appears to be a dropped stain,
6 a passive stain, maybe just from gravitational pull.

7 Q What does that all mean, what you just said?

8 A The blood just dropped down to the floor there.

9 Q And again in State's Exhibit 137, again?

10 A Yeah, that's number three.

11 Q Number three. State's Exhibit Number 138 shows a
12 different part of the room with some --- what appears
13 to be reddish stains on it.

14 A That's five and six here in front of the sofa.

15 Q In front of the sofa?

16 A Yes, ma'am.

17 Q And I show you State's Exhibit 139.

18 A That's a close up of number five.

19 Q And what type of blood? What's the word,
20 splatter or something?

21 A (Inaudible). That particular stain.

22 THE COURT REPORTER: I'm sorry, I didn't hear
23 your answer.

24 THE WITNESS: I was asking for clarification so I
25 could look at these.

1 It's hard to tell specifically with this type
2 of --- with this photograph.

3 BY MS. CAMPBELL:

4 Q And the fact of where it falls and what type of
5 surface it falls on ---

6 A Yes.

7 Q --- can also inhibit your abilities?

8 A Yes. Again, that's a close up of number six here
9 that's between the sofa and the rug.

10 Q And that's State's Exhibit number 140?

11 A Correct.

12 Q And then finally in this living room area, 141
13 and 142?

14 A That's number seven that's here.

15 Q Over next to the rocking chair in the corner?

16 A Yes, ma'am.

17 Q And, again, is that a separate stain from the
18 others?

19 A That's correct.

20 Q And you can't say with any certainty exactly how
21 these stains were delivered to these different areas?

22 A I cannot. I can say that they appear to be some
23 type of passive blood stain.

24 Q What does passive blood stain mean?

25 A Again, that's that gravitational pull that --- it

1 dropped there in that particular area.

2 Q Are you familiar with a transfer?

3 A As opposed to --- yeah, a transfer you could deal
4 with a swipe or a wipe, and with that you --- say you
5 have blood on your hand and you rub it across an area
6 or you touch an area, you're transferring the blood
7 from your hand, being an object, to another object.

8 Q Okay. In some of the other areas in the house
9 that you dealt with that night I believe were also ---
10 there were some photographs, general photographs,
11 taken of the kitchen area; is that correct?

12 A Yes, ma'am.

13 Q Where is the kitchen delineated on here?

14 A Right here.

15 Q And I show you State's Exhibit number 173. Does
16 that show just generally the kitchen area?

17 A That's looking from the dining room area into the
18 kitchen.

19 Q And did you find anything in the kitchen area
20 that was consistent with the type of reddish brown
21 stains that you have just been talking about in the
22 living room?

23 A We did not identify any in the kitchen, no.

24 Q Also, State's Exhibit Number 171, what does that
25 show?

1 A A photo of the back door leading from the kitchen
2 to the rear.

3 Q And does it show any type of forced entry?

4 A No, ma'am.

5 Q Did the front door show any type of forced entry?

6 A I --- I don't recall any. I believe there was
7 some old damage to the door, but we were advised that
8 it was secured.

9 Q State's Exhibit Number 67, is that looking from
10 what area out to what area?

11 A That's from the kitchen looking into the dining
12 room area.

13 Q And finally, State's Exhibit number 172, you took
14 a photograph of what?

15 A That's the phone that was on the counter area in
16 the kitchen.

17 Q And what was significant about what you saw in
18 there?

19 A There appeared to be six messages on the
20 answering machine.

21 Q You also mentioned some secondary bedrooms, not
22 the master bedroom but two other bedrooms. Those are
23 shown on this diagram, as well?

24 A One and two here.

25 Q And I want to show you what's been marked as

1 State's Exhibit 149 and then 150.

2 A This is this bedroom depicted here off of the
3 hallway.

4 Q Bedroom one?

5 A Yes, ma'am.

6 Q On your diagram?

7 A Yes, ma'am.

8 Q And when you were looking in those areas, did you
9 see anything of significance as far as stains in those
10 bedroom areas?

11 A We did not.

12 Q Again, it's protocol you would have looked at
13 every part of the house for any kind of evidence.

14 A They were searched additionally later.

15 Q And finally, State's Exhibit 147 and 148 show the
16 third bedroom, I believe?

17 A Correct, this bedroom here.

18 Q And, again, did you find anything significant as
19 far as reddish brown stains in those two bedrooms?

20 A We did not, no.

21 Q You also did a diagram, I believe, of the hallway
22 area; is that correct?

23 A The hallway area leading from the dining room
24 towards the bathroom here.

25 Q And the kitchen would be back up in here?

1 A That's correct.

2 Q And this is the dining room table?

3 A Yes, ma'am.

4 Q And this --- this is the hallway area?

5 A Yes.

6 Q These two squares here, what do those represent
7 as far as when we talk about these pictures?

8 A The washer and dryer that were to the left as you
9 come into the bathroom.

10 Q Taking these in order, the first one I want to
11 show you is State's Exhibit Number 72. Can you use
12 State's Exhibit 364 show the jury what part of the
13 house we're talking about in this photograph?

14 A That's looking from the dining room area down
15 this hallway to the washer and dryer at the end.

16 Q And, in fact, back here, I believe, is a bottle
17 of bleach in front of the washer and dryer?

18 A Yes.

19 Q And that washer and dryer was actually located in
20 the hallway area?

21 A Yes.

22 Q State's Exhibit Number 71, what does that show?

23 A Again, that's just another view down the hallway,
24 dining room door here with a washer and dryer down in
25 here.

1 Q State's Exhibit Number 59, what area does that
2 show?

3 A That's if your back was to the two bedrooms
4 looking with the bedroom, the bathroom to the right,
5 washer and dryer, master bedroom, straight ahead.

6 Q And you can actually see the corner of the
7 entrance into the bathroom there?

8 A Yes.

9 Q And, again, a closer up is number 60?

10 A Yes.

11 Q And is there anything of significance as far as
12 stains at that point?

13 A This is prior to our marking the stains, but this
14 is this area here where we identified several stains
15 in that area leading into that bathroom.

16 Q And then finally, State's Exhibit Number 61, what
17 area does that show in the hallway?

18 A That's the washer here, the front part of it.

19 Q And ---

20 A And a stain identified on the washer that we
21 thought was possible blood.

22 Q Starting with the markers, I want to show you
23 State's Exhibit Number 143. Do you recognize that?

24 A These are the stains that we identified as eight
25 and nine that ---

1 Q What part of the house are those in?

2 A That's in the dining room area.

3 Q Those are in the dining room area?

4 A Yes, leading just prior to getting in the hallway.

5 Q And those are actually, again, reddish brown
6 stains that appeared to be blood?

7 A Yes, ma'am.

8 Q Then State's Exhibit Number 144, this is item ---
9 it says zero, but it's actually a faint one you can
10 see next to it.

11 A Yes.

12 Q So what number should that be correlated on your
13 diagram?

14 A That's State's number 10 that we identified,
15 again, in the hallway.

16 Q From which area?

17 A Leading --- well, it's just out of the dining
18 room area into this hallway here.

19 Q And those little drops right there are just are
20 just what leads into that?

21 A Yes, ma'am.

22 Q Okay. Moving on to the next room, State's
23 Exhibit Number 51, which is item --- I think it's one.

24 A Eleven. Oh, yeah, 11 through 20 were located in
25 the hallway here, so that's a close up of number 11

1 that was on the floor there in the hallway.

2 Q Then State's Exhibit Number 145 and 1 --- and 52.

3 A Eleven and 12.

4 Q One is a closer up view, I believe, than the
5 other?

6 A Yes, ma'am.

7 Q State's Exhibit 58 and 146?

8 A That's 13. As you can see, a little bit of the
9 dryer there located here, and then another one closer
10 up.

11 Q State's Exhibit 54, 55 show which areas?

12 A That's 14, 15 and 19.

13 Q State's Exhibit 56 and 57?

14 A That's 16 and 17, just outside the bathroom.

15 Q And finally, 58 and 50 is an overview?

16 A Again, 20, is a close up of the stain marked as
17 20, and then the other one just shows you an overview
18 to show no matched relationship to each other and to
19 the scene itself.

20 Q Have a seat.

21 Once you documented the stains that you had seen
22 throughout those rooms, were any swabs collected?

23 A Sergeant Beeler --- I mean, Sergeant Richardson
24 --- Richards and Investigator Beeler collected samples
25 of each of the stains that we documented, one through

1 20.

2 Q And that was after you actually put the markers
3 down and photographed everything?

4 A Correct.

5 Q Because you wanted to photograph it in its
6 pristine condition before you do a swab that may alter
7 it in some way?

8 A Correct.

9 Q And what's the purpose of collecting swabs at a
10 crime scene such as this, like these stains?

11 A Well, we're identifying these stains as what we
12 believe to be potential evidence, so we are going to
13 --- we're going to collect it and submit it to
14 evidence for further analysis by our DNA unit.

15 Q And tell this jury how a swab is collected and
16 how y'all, by your protocol, collect it in order to
17 preserve its integrity?

18 A We use a sterile cotton swab. Each one of them
19 are individually wrapped. They are each placed in
20 their own separate carton labeled --- in this case,
21 for instance, stain number one would be stain number
22 one where it was located from, identified with the
23 case number. Those are then packaged, sealed, and
24 submitted to our evidence room.

25 Q Okay. During the time period when you or

1 Sergeant Richards or anyone in your laboratory would
2 have these in your possession, would anyone have a
3 chance to alter them, tamper with them or change them
4 in any way?

5 A No. We have a secure laboratory where limited
6 laboratory personnel have access to the lab itself.
7 In addition to that, we're each assigned a locker
8 where only that investigator or these supervisors have
9 access to that particular locker.

10 Q And with swabs such as this nature, where you
11 have multiple swabs collected at a crime scene, are
12 any --- do you take any steps to make sure there is no
13 cross-contamination or anything of that nature? How
14 are they packaged and sealed?

15 A They are packaged separately in their own
16 container, and then the package is sealed and
17 initialed by each investigator.

18 Q Once you take this evidence into your custody and
19 it's to be submitted for DNA testing during the time
20 period it's in your custody, no one can tamper with it
21 or alter with it in any way?

22 A That's correct.

23 Q Prior to your leaving that night, was a path
24 cleared so that Ms. Derrick's body could be removed?

25 A Yes, ma'am.

1 Q And who participated in that?

2 A The body removal?

3 Q Yes.

4 A Myself, Sergeant Richards and Investigator Beeler
5 did the documentation and the collection that night.

6 Once we were done, we notified body removal that there
7 was a distinct path that they could come in, retrieve
8 the body and go back out that same way.

9 Q And when you left that night, was the crime scene
10 actually secure when you left?

11 A It was. We maintained crime scene security,
12 which means we kept that officer there. We kept the
13 officer 24 hours a day in front of that scene to make
14 sure that no one can enter into the scene and that ---
15 again, that crime scene log documents who does and
16 doesn't come into the scene.

17 In addition to that, Investigator Beeler placed a
18 piece of crime scene tape across the door, initialed
19 and dated it, and it was sealed until we came back.

20 Q And people did actually go back to that scene, I
21 believe, the next day for further testing?

22 A Yes, ma'am.

23 Q You arrived around 21:50. What time is that in
24 real time? 23:10, excuse me.

25 A 11:10 that night.

1 Q What time did you seal the front door?

2 A I was completed at 4:40, about 4:40 that morning.

3 Q That morning?

4 A Of the 2nd.

5 Q I want to turn your attention to --- and that was
6 all on the evening of the 31st into the early morning
7 hours of the 1st?

8 A That's correct. Correction, it was --- I arrived
9 at 11:10 on the 31st, and at 4:40 on the 1st is when
10 we sealed it.

11 Q 4:40 a.m., in the morning?

12 A Correct.

13 Q That next day, did you respond back to the scene?

14 A I did. Myself, Sergeant Richards, Investigator
15 Bouknight, and Investigator Odom all met at the scene
16 to determine where we would go from here for
17 processing.

18 Sergeant Richards and Investigator Bouknight
19 stayed at the scene to do initial processing at the
20 residence, and myself and Investigator Odom responded
21 to our forensic garage to process the vehicle that had
22 been entered in there and secured.

23 Q And what vehicle was that, ma'am?

24 A It was a 1999 Pontiac Sunfire, blue in color.

25 Q What was --- you and Investigator Odom, I believe,

1 participated in that?

2 A That's correct.

3 Q And what was the purpose of you going to the
4 forensic garage?

5 A That was where the vehicle had been secured that
6 morning, early that morning, by Investigator Beeler.

7 We have a secure garage. Again, we have limited
8 access to the garage, and it keeps us in a --- it's in
9 a contained environment so that we can process it
10 outside of --- you know, away from the elements. We
11 also have additional equipment there that we needed to
12 do the processing.

13 Q And how did at the vehicle actually end up in the
14 garage?

15 A I believe ---

16 Q How did it get to where it was found? You
17 weren't there when it was found on Apache Drive?

18 A No, I was not.

19 Q Okay. But how would it have gotten from there to
20 the garage?

21 A Investigator Beeler actually left the scene on
22 Winyah Drive that night, documented the vehicle and
23 followed it to our headquarters where he opened it for
24 the towing service, which I believe was Happy Daddy.
25 They entered it into the garage, and then he would

1 have sealed the garage and secured it.

2 Q Is that unusual for you to tow a car prior to it
3 being processed?

4 A No. Again, especially when it's night, you don't
5 have the visual that you need to be able to do the
6 processing. Again, it keeps it out of the elements.

7 We can take our time to do the processing,
8 especially for something like this that may take
9 several days. It's a much better practice to put it
10 in a secured area, so that it could be done properly.

11 Q Once you got there to the forensic garage, what,
12 if anything, did you do?

13 A The first thing we would have done would be to
14 take general overall photographs of the vehicle.

15 Q And I want to show you some photographs, State's
16 Exhibits 201 through 219. First, I'll ask if you
17 recognize those.

18 A Yeah. These are an overview of the vehicle,
19 interior and exterior, prior to any processing.

20 Q And do those fairly and accurately depict the car
21 and the condition you found it on, I believe, it was
22 February 1st?

23 A It is.

24 MS. CAMPBELL: Your Honor, at this time, we would
25 offer 201 and 219 into evidence.

1 MR. SUTHERLAND: Because of the foundation, I
2 have no other objection, Your Honor.

3 THE HONORABLE CLIFTON NEWMAN: They're admitted.

4 MS. CAMPBELL: Thank you, Your Honor.

5 (WHEREUPON, State's Exhibits Nos. 201, 219 were
6 admitted into evidence.)

7 BY MS. CAMPBELL:

8 Q Once you had taken some general photographs of
9 the exterior and interior of the vehicle, did you then
10 mark any specific types of evidence on the car and
11 around the car?

12 A We did. Initially, Investigator Odom did some
13 processing of the driver's door and the rear driver's
14 side door. We then identified 19 stains labeled A
15 through S on the exterior of the driver's side of the
16 vehicle.

17 Q I want to show you a series of photographs,
18 State's Exhibit 220, I believe through 243, and ask
19 you to look at those. First, do you recognize them?

20 A Yeah. These are the stains labeled A through S,
21 overview, and then each individual stain.

22 Q And do these fairly and accurately depict the
23 stains and the markers you placed on the car that
24 night?

25 A They do.

1 MS. CAMPBELL: Your Honor, at this time, we'd
2 offer them into evidence.

3 MR. SUTHERLAND: Outside of foundation, no
4 objection, Your Honor.

5 THE HONORABLE CLIFTON NEWMAN: Okay. They're
6 admitted.

7 (WHEREUPON, State's Exhibits Nos. 220 - 243 were
8 admitted into evidence.)

9 BY MS. CAMPBELL:

10 Q And again, the types of stains --- I'll show you,
11 just for example, State's Exhibit 221. Does that show
12 the type of stains we're talking about?

13 A It does. It shows them labeled A through S.

14 Q And what was the appearance of the stains that
15 you --- and are there individual photographs of each
16 of those stains in there, so we don't belabor the
17 point?

18 A There are.

19 Q And ---

20 A They were reddish in color identified to be
21 possible blood.

22 Q And those were located mainly in what area of the
23 car?

24 A They were on the driver's side, the driver's door
25 and a couple on the rear passenger's driver's side.

1 Q You also photographed certain things on the
2 interior of this car. I show you State's Exhibit
3 Number 215.

4 A Yes, ma'am.

5 Q And is that something that appeared in the car
6 when you all got into it that day?

7 A It did. That was in the driver's seat. It was
8 what I identified as a multicolored glove that
9 appeared to be burned.

10 Q A multicolored glove that appeared to be burned?

11 A Yes, ma'am.

12 Q And that's how it appeared when you opened the
13 car that day?

14 A That's correct.

15 Q And that's the same condition. I'll get to this
16 in a minute, but did you collect the glove and
17 everything for further testing?

18 A I did.

19 Q And finally, State's Exhibit Number 217, close
20 ups, 218 and 219, I believe, depict the same thing.
21 Do you recognize the interior of that car?

22 A I do. This is under the driver's seat and what
23 we've identified as two matches that were under the
24 seat.

25 Q And again, this is better. Those are what type

1 of matches?

2 A Wooden matches.

3 Q And you didn't actually work on any of the
4 burglary cases at the church, did you?

5 A I did not.

6 Q And those were located where in the car?

7 A They were under the driver's seat close to the
8 door area.

9 MS. CAMPBELL: Your Honor, permission to publish
10 these four?

11 THE HONORABLE CLIFTON NEWMAN: All right. You
12 may.

13 MS. CAMPBELL: Thank you.

14 BY MS. CAMPBELL:

15 Q And in these other photographs, these are close
16 ups of the stains?

17 A Labeled A through S.

18 Q Such as depicted in State's Exhibit Number 236?

19 A That's correct. That's a close up of letter M.

20 Q Just use, for example, letter M?

21 A Yes, ma'am.

22 Q Once all these items were photographed, did you
23 then do any swabs on the exterior of the car?

24 A I did. I collected a swab from each of the
25 stains that were identified.

1 Q And were those --- and while --- you collected
2 those?

3 A I did.

4 Q You actually submitted those into evidence?

5 A I did.

6 Q While they were in your care, did anyone alter
7 them, change them or tamper with them in any way?

8 A They did not.

9 Q And is that the extent of the processing that you
10 did on that day?

11 A It is.

12 MS. CAMPBELL: Your Honor, may we approach?

13 THE HONORABLE CLIFTON NEWMAN: Yes.

14 (WHEREUPON, there was a bench conference in the
15 presence, but not within hearing of the jury.)

16 THE HONORABLE CLIFTON NEWMAN: Ladies and
17 gentlemen, I believe this is a good stopping point,
18 so we'll recess and start back at 9:30 tomorrow
19 morning, 9:30 tomorrow morning.

20 If you all will leave all exhibits in the
21 courtroom. Please do not discuss the case with anyone.
22 I'll see you back tomorrow morning at 9:30.

23 (WHEREUPON, the jury left open court at
24 approximately 5:44 p.m.)

25 THE HONORABLE CLIFTON NEWMAN: All right.

1 Anything else before we leave for the day?

2 MS. CAMPBELL: No, sir.

3 MR. SUTHERLAND: Nothing from the defense, Your
4 Honor.

5 THE HONORABLE CLIFTON NEWMAN: Okay, 9:30
6 tomorrow morning.

7 (WHEREUPON, Court's Exhibit No. 2 was marked for
8 identification only.)

9 (WHEREUPON, State's Exhibit No. 397 was marked
10 for identification only.)

11 (WHEREUPON, court was adjourned for the day).

12 THE HONORABLE CLIFTON NEWMAN: We got a note from
13 the jury this morning. It says, we --- "There's some
14 members of the jury, females, were harassed yesterday
15 leaving the courtroom." This is a note from juror
16 number 53.

17 Any reaction by the State or the defense?

18 MR. SUTHERLAND: Well, Your Honor, I'd hope that
19 we might be able to explore the specifics of what went
20 on and with which jurors.

21 THE HONORABLE CLIFTON NEWMAN: All right.
22 Explore it in what way?

23 MR. SUTHERLAND: To see how it might affect ---
24 what happened, A, and to see if it might have any
25 impact on --- on their role here, sir.

1 THE HONORABLE CLIFTON NEWMAN: What do you want
2 me to do is the question.

3 MR. SUTHERLAND: I would hope the court might
4 voir dire the witnesses just to find out exactly what
5 it is that they're talking about with respect to
6 harassment. How does it --- you know, how does that
7 make them feel about what they're doing here, and you
8 know, do they think they could remain fair.

9 THE HONORABLE CLIFTON NEWMAN: Do you want me to
10 call all jurors individually, all female members of
11 the jury individually?

12 MR. SUTHERLAND: I ---

13 THE HONORABLE CLIFTON NEWMAN: Do you want me to
14 speak with the person who wrote the note?

15 MR. SUTHERLAND: It ---

16 THE HONORABLE CLIFTON NEWMAN: What do you want
17 me to do?

18 MR. SUTHERLAND: Well, sir, I would hope that it
19 could start with the person who wrote the note, just
20 so we could narrow it down from there.

21 THE HONORABLE CLIFTON NEWMAN: All right. What
22 says the State?

23 MR. SUTHERLAND: Thank you, Your Honor.

24 MS. CAMPBELL: Whatever you think is appropriate,
25 Your Honor.

1 (A cell phone rang.)

2 THE BAILIFF: Shut your phones off.

3 THE HONORABLE CLIFTON NEWMAN: All right. Well
4 --- well, I think what I'll do is go in chambers
5 with --- with counsel and the court reporter, and
6 there aren't many women on the jury. So we'll just
7 speak with them and see.

8 MR. SUTHERLAND: Thank you, sir.

9 THE HONORABLE CLIFTON NEWMAN: What it is they're
10 talking about and who ---

11 MR. SUTHERLAND: Yes, sir.

12 THE HONORABLE CLIFTON NEWMAN: --- might have
13 been harassed.

14 Of course, with respect to the general public, if
15 anyone should attempt to interfere with a juror in ---
16 on jury duty or to obstruct the court process, two
17 things: First, they're in contempt of court and can
18 be sentenced --- and will be sentenced to six months
19 in jail without the benefit of a jury. It will be
20 done by me and Judge McDonald.

21 Secondly, they could be indicted for obstruction
22 of justice and receive five years in prison. I don't
23 know who the culprits are or may be.

24 Let those people come in. I want them to hear
25 what I'm saying instead of sending them in the other

1 direction.

2 (Pause)

3 I want to reiterate that I received a note from
4 the jury, juror number 53, that some members of the
5 jury, females, were harassed yesterday leaving the
6 courthouse.

7 Should anyone in this courtroom or anyone this in
8 county attempt to harass a juror, to make contact with
9 a juror, or in any way interfere with the court
10 process in this trial, I will sentence them to six
11 months in jail without the benefit of a jury.

12 They further can be indicted for obstruction of
13 justice and receive a prison sentence of up to five
14 years for obstruction of justice.

15 It's --- I don't know who would be silly enough
16 to attempt to annoy or harass a juror during the
17 course of a trial, but for that silly person or
18 individuals, if it is made known to me and the
19 individuals identified by a juror or by law
20 enforcement, they will be brought before the court and
21 dealt with very sternly.

22 So as a result of this contact reported by the
23 jury, we'll have to take a recess and inquire further
24 of the jurors as to what happened yesterday. So we'll
25 be in recess.

1 (Pause)

2 (The following was heard in chambers out of the
3 courtroom.)

4 THE HONORABLE CLIFTON NEWMAN: All right. I need
5 juror 195 to come in.

6 (Juror 195 was brought into chambers.)

7 Good morning.

8 THE JUROR: Good morning.

9 THE HONORABLE CLIFTON NEWMAN: Good morning. How
10 are you? You're number 195?

11 THE JUROR: Yes, sir.

12 THE HONORABLE CLIFTON NEWMAN: All right. I just
13 want to ask you, on your way from court, did anyone
14 attempt to contact you or bother you in any way?

15 THE JUROR: Yes, sir.

16 THE HONORABLE CLIFTON NEWMAN: All right. And
17 who? What happened?

18 THE JUROR: I don't know who it was. They was
19 just yelling stuff about stuff that he didn't do, and
20 he would never do something to somebody, or he would
21 never kill somebody or something.

22 THE HONORABLE CLIFTON NEWMAN: And who ---

23 THE JUROR: Kind of like motioned for them to
24 walk up, speed it up.

25 THE HONORABLE CLIFTON NEWMAN: All right. And

1 who were the people?

2 THE JUROR: Me and --- I don't know the names.

3 THE HONORABLE CLIFTON NEWMAN: I mean, the other
4 juror you were with?

5 THE JUROR: Yes, sir.

6 THE HONORABLE CLIFTON NEWMAN: You don't know?

7 THE JUROR: One of them's number is 18. She is
8 an alternate juror.

9 THE HONORABLE CLIFTON NEWMAN: Number 18, an
10 alternate.

11 THE JUROR: I don't know the other one.

12 THE HONORABLE CLIFTON NEWMAN: Black female,
13 white female?

14 THE JUROR: Yes, sir, she was.

15 THE HONORABLE CLIFTON NEWMAN: How many black
16 females are on the jury, three, two?

17 THE JUROR: Two.

18 THE HONORABLE CLIFTON NEWMAN: So...

19 THE JUROR: The other one left. I don't know
20 where she was.

21 THE HONORABLE CLIFTON NEWMAN: All right, the
22 other one, all right.

23 And who were the people who --- did you know them?
24 Had you ever seen them before?

25 THE JUROR: I don't remember what they looked

1 like.

2 THE HONORABLE CLIFTON NEWMAN: Okay. And --- and
3 does that affect your ability to be a fair and
4 impartial juror in this case?

5 THE JUROR: No, sir.

6 THE HONORABLE CLIFTON NEWMAN: You just blew them
7 off?

8 THE JUROR: I did.

9 THE HONORABLE CLIFTON NEWMAN: All right. If
10 you'll stand right outside that door just for one
11 second.

12 THE JUROR: Yes, sir.

13 THE HONORABLE CLIFTON NEWMAN: Right there.

14 All right. Anything further?

15 MR. SUTHERLAND: No, sir.

16 If --- I guess if we could just sort of try to
17 continue down the line and figure out the rest of it.

18 THE HONORABLE CLIFTON NEWMAN: All right. Ask
19 her to come back in.

20 MS. CAMPBELL: Can you get a description, what
21 they generally looked like?

22 THE HONORABLE CLIFTON NEWMAN: Okay.

23 MS. CAMPBELL: Just so maybe we could be more
24 vigilant.

25 THE CLERK: Can you come back in?

1 (Juror 195 returns to chambers.)

2 THE HONORABLE CLIFTON NEWMAN: And well, first, I
3 want to emphasize that you should not have any
4 discussion with any other juror concerning this issue.

5 Secondly, did you get a description of the people
6 or the persons?

7 THE JUROR: I could say this: There is a young
8 lady that sits at the defense table. I think she
9 walked out with them, maybe, because they was in the
10 lobby at first.

11 She --- the lady that sits at the defense table
12 was talking to the police officer about going out and
13 coming back in to get some suits or something.

14 THE HONORABLE CLIFTON NEWMAN: Uh-huh.

15 THE JUROR: And when we walked out the door, I
16 don't know if they was with her or what. They walked
17 out behind her.

18 THE HONORABLE CLIFTON NEWMAN: They walked out.
19 They were in the courtroom yesterday?

20 THE JUROR: I think so.

21 THE HONORABLE CLIFTON NEWMAN: And they walked
22 out with the lady who sits at the defense table?

23 (Nods in the affirmative.)

24 THE HONORABLE CLIFTON NEWMAN: All right. What
25 was the other thing you --- other subject?

1 MR. SUTHERLAND: Just with respect to narrowing
2 it down to who the others might be, sir.

3 THE HONORABLE CLIFTON NEWMAN: Oh, the other
4 jurors.

5 MR. SUTHERLAND: Right, yes, sir.

6 THE HONORABLE CLIFTON NEWMAN: Okay. I think
7 we've done that.

8 All right. You're not in any trouble.

9 THE JUROR: Oh. Okay.

10 THE HONORABLE CLIFTON NEWMAN: I just wanted to
11 inquire since, you know, a juror sent note ---

12 THE JUROR: Okay.

13 THE HONORABLE CLIFTON NEWMAN: --- saying jurors
14 were being --- someone bothered you jurors or jury.

15 I wanted to first make sure what it was, and then
16 secondly, that it doesn't affect your ability to be a
17 fair and impartial juror and that you were not unduly
18 influenced or influenced by whatever someone might
19 have said.

20 THE JUROR: Yes, sir.

21 THE HONORABLE CLIFTON NEWMAN: Anything from the
22 State?

23 MS. CAMPBELL: Just men or women or does she know
24 that.

25 THE JUROR: Women.

1 THE HONORABLE CLIFTON NEWMAN: All right. Jheri
2 curls?

3 THE JUROR: Huh?

4 THE HONORABLE CLIFTON NEWMAN: Jheri curls,
5 straight hair?

6 THE JUROR: Oh, oh gosh.

7 THE HONORABLE CLIFTON NEWMAN: Hair with gold
8 streaks?

9 THE JUROR: I don't know.

10 THE HONORABLE CLIFTON NEWMAN: All right. Okay.
11 Thank you.

12 THE JUROR: Thank you.

13 THE HONORABLE CLIFTON NEWMAN: Black, white?

14 THE JUROR: Black.

15 THE HONORABLE CLIFTON NEWMAN: Black. Okay. All
16 right.

17 THE HONORABLE STEPHANIE McDONALD: Thank you.

18 THE JUROR: You're welcome.

19 THE CLERK: Who do you want?

20 THE HONORABLE CLIFTON NEWMAN: The next female,
21 the other black female that's on the jury. What's her
22 jury number?

23 THE CLERK: 187.

24 (Pause)

25 THE HONORABLE CLIFTON NEWMAN: All right.

1 Which one is she getting now?

2 MS.McDUFFIE: She is getting 187.

3 THE COURT REPORTER: What was the name and number
4 of the other juror?

5 THE HONORABLE CLIFTON NEWMAN: That was number
6 195, Taneshia Patterson.

7 This one that she is getting now, which one is
8 that?

9 MS. McDUFFIE: That is 187.

10 THE HONORABLE CLIFTON NEWMAN: Latasha D. Moye.

11 MS. CAMPBELL: And I think she said the other one
12 was the alternate.

13 MS. McDUFFIE: She said number 18.

14 THE CLERK: Are we ready?

15 (Juror 187 was brought into chambers.)

16 THE HONORABLE CLIFTON NEWMAN: Hello there.

17 THE JUROR: Hello.

18 THE HONORABLE CLIFTON NEWMAN: All right. I just
19 want to ask you, we got a note that some members of
20 the jury panel were harassed ---

21 THE JUROR: Yeah.

22 THE HONORABLE CLIFTON NEWMAN: --- on the way out
23 yesterday. What happened?

24 THE JUROR: Well, I went to make --- to use the
25 phone in the General Assembly room, and we were

1 leaving --- like used the phone, then walked out.

2 The ladies that were sitting to the far left ---

3 THE HONORABLE CLIFTON NEWMAN: Uh-huh.

4 THE JUROR: --- in the front, I think they came
5 down with one of the --- a lady that was sitting at
6 that table.

7 THE HONORABLE CLIFTON NEWMAN: Okay.

8 THE JUROR: They were just making comments like,
9 "He's innocent," and just kind of yelling things as we
10 were walking out.

11 THE HONORABLE CLIFTON NEWMAN: All right. And
12 the fact that they did that, does that --- did that
13 influence you in any way?

14 THE JUROR: No.

15 THE HONORABLE CLIFTON NEWMAN: Do you feel
16 intimidated in any way?

17 THE JUROR: I don't feel intimidated, but I'm
18 concerned like if we're leaving and they're right
19 behind us, I mean --- you know, if we were walking out
20 alone...

21 THE HONORABLE CLIFTON NEWMAN: All right. Well,
22 of course, we'll have security or bailiffs or someone
23 walk out with the jury from now on, but did that
24 influence your ability in any way to continue serving
25 as a fair and impartial juror?

1 THE JUROR: No.

2 THE HONORABLE CLIFTON NEWMAN: All right. And
3 are you the...

4 THE JUROR: 187.

5 THE HONORABLE CLIFTON NEWMAN: Yeah. The ---
6 what --- who are the jurors who were with you when
7 this was done?

8 THE JUROR: I don't know her number.

9 THE HONORABLE CLIFTON NEWMAN: All right.

10 THE JUROR: Longer hair, glasses.

11 THE HONORABLE CLIFTON NEWMAN: Longer hair and
12 glasses.

13 THE JUROR: Yes, gray hair. Like, I know who she
14 is.

15 THE HONORABLE CLIFTON NEWMAN: All right. Black
16 female, white female?

17 THE JUROR: White female.

18 THE HONORABLE CLIFTON NEWMAN: All right. Longer
19 hair and glasses.

20 THE JUROR: Uh-huh.

21 THE HONORABLE CLIFTON NEWMAN: Is she the
22 alternate or a regular juror?

23 THE JUROR: An alternate.

24 THE HONORABLE CLIFTON NEWMAN: An alternate juror.
25 All right. If you'll stand right outside that

1 door for one second.

2 THE JUROR: Okay.

3 THE HONORABLE CLIFTON NEWMAN: All right.
4 Anything else from this juror?

5 MR. SUTHERLAND: No, sir. I mean, so far they
6 seem to be okay. Ultimately, I believe out of an
7 abundance of caution, I'll have to make a mistrial
8 motion.

9 THE HONORABLE CLIFTON NEWMAN: Well, it sounds
10 like your folks are --- the family of your client is
11 the one who is seeking to create the mistrial motion.

12 MR. SUTHERLAND: Well, this is what I was trying
13 to understand.

14 THE HONORABLE CLIFTON NEWMAN: Yeah, all right.
15 All right. Well, that juror can go back in, and
16 then --- we'll have her come back in here for just a
17 second.

18 THE CLERK: 187.

19 THE HONORABLE CLIFTON NEWMAN: All right. Well,
20 thank you very much.

21 The fact of your coming in and me discussing this
22 with you should not be discussed in the jury room at
23 all with anyone else, and we'll ensure that no one
24 else bothers you.

25 THE JUROR: Okay.

1 THE HONORABLE CLIFTON NEWMAN: All right.

2 THE JUROR: Thank you.

3 THE HONORABLE CLIFTON NEWMAN: Thank you very
4 much.

5 THE CLERK: Judge Newman, the next female is 170.
6 She has long hair.

7 THE HONORABLE CLIFTON NEWMAN: All right. She
8 can --- let's bring her in. Before you --- go ahead,
9 Teckla.

10 Before I went in the courtroom, the bailiff ---
11 the security officer came in and told me he was having
12 trouble with --- those three women that this lady just
13 described ---

14 MR. SUTHERLAND: Yes, sir.

15 THE HONORABLE CLIFTON NEWMAN: --- making faces
16 and just not being cooperative as people sitting in
17 the courtroom are required to.

18 So he's had some interaction with them already,
19 and so it wasn't surprising to me who they are.
20 That's why I had the bailiff to let them in when I was
21 going through my talk.

22 THE CLERK: She is ready.

23 THE HONORABLE CLIFTON NEWMAN: All right. She
24 can come in.

25 Good morning.

1 (Juror 170 was brought into chambers.)

2 THE JUROR: Good morning.

3 THE HONORABLE CLIFTON NEWMAN: I received a note
4 from the --- a juror that some members of the jury
5 pool were harassed.

6 THE JUROR: It was not me. I walked with some of
7 the other men the other way that the other females
8 went.

9 THE HONORABLE CLIFTON NEWMAN: Okay. And are you
10 on the regular panel or alternate?

11 THE JUROR: Regular.

12 THE HONORABLE CLIFTON NEWMAN: All right. So no
13 one --- no one has bothered you?

14 THE JUROR: No, sir.

15 THE HONORABLE CLIFTON NEWMAN: And none of this
16 affects your ability to continue as a fair and
17 impartial juror?

18 THE JUROR: No, sir.

19 THE HONORABLE CLIFTON NEWMAN: All right. Thank
20 you very much. Please do not discuss this
21 conversation with any other juror.

22 THE JUROR: Thank you.

23 THE HONORABLE CLIFTON NEWMAN: All right.

24 Did you ask for the alternate?

25 THE CLERK: They already had her coming out.

1 They're bringing all the females.

2 THE HONORABLE CLIFTON NEWMAN: Well, the bailiffs
3 don't decide who the judge talks to. I've given you
4 information as to who we want to talk to.

5 THE CLERK: I'll bring the alternate out.

6 THE HONORABLE CLIFTON NEWMAN: Yeah.

7 MR. SUTHERLAND: It does appear, possibly, that
8 there might have been more jurors that at least
9 witnessed this from --- was it juror 170 that was just
10 in here?

11 THE HONORABLE CLIFTON NEWMAN: Well, she said it
12 wasn't her. They were just ---

13 MS. CAMPBELL: But she is aware of it.

14 MR. SUTHERLAND: And some of the other men
15 walking out there.

16 (Pause)

17 And, Judge, I mean, I'm an officer of the court.
18 I had no idea --- and I have no idea that these people
19 are not nice people from my interactions with them.

20 MS. CAMPBELL: Can you find out if your
21 co-counsel or whatever she is witnessed all of this?
22 Because apparently, she was right there.

23 THE HONORABLE CLIFTON NEWMAN: Yeah.

24 MR. SUTHERLAND: She --- when I was asking her
25 about this, she said that she was --- that they were

1 walking out --- that the ladies that were in the
2 courtroom ---

3 MS. CAMPBELL: Because as an officer of the court,
4 she needs to report that.

5 MR. SUTHERLAND: Well, she ---

6 THE HONORABLE CLIFTON NEWMAN: She what?

7 MS. CAMPBELL: Regardless.

8 MR. SUTHERLAND: She didn't --- she didn't ---
9 she said there was nothing with the jury is what she
10 told me. She didn't ---

11 THE HONORABLE CLIFTON NEWMAN: Is she a lawyer?

12 MR. SUTHERLAND: She went ---

13 THE HONORABLE CLIFTON NEWMAN: The person at your
14 table, is she a lawyer?

15 MR. SUTHERLAND: She's clerk with the Public
16 Defender's office that they let me borrow.

17 THE HONORABLE CLIFTON NEWMAN: She is not a
18 lawyer?

19 MR. SUTHERLAND: I...

20 THE HONORABLE CLIFTON NEWMAN: You don't know.

21 MR. SUTHERLAND: She is just helping me copying
22 and everything, sir.

23 THE HONORABLE CLIFTON NEWMAN: Well, either she
24 is a lawyer or she is not a lawyer or you don't know.

25 MR. SUTHERLAND: I don't know.

1 THE HONORABLE CLIFTON NEWMAN: Okay.

2 MR. SUTHERLAND: But I can look it up.

3 THE HONORABLE CLIFTON NEWMAN: We need to find
4 out because ---

5 MR. SUTHERLAND: All right.

6 THE HONORABLE CLIFTON NEWMAN: --- people ---
7 lawyers have professional responsibility, and --- and
8 it extends to people who are involved.

9 MR. SUTHERLAND: And I have responsibilities for
10 people that are helping me, I understand that.

11 THE HONORABLE CLIFTON NEWMAN: Absolutely.

12 Do you have the other juror right there?

13 THE CLERK: Number 18, the alternate.

14 THE HONORABLE CLIFTON NEWMAN: All right.

15 THE CLERK: You can come in.

16 (Juror 18 was brought into chambers.)

17 THE HONORABLE CLIFTON NEWMAN: Good morning.

18 THE JUROR: Good morning.

19 THE HONORABLE CLIFTON NEWMAN: All right. You
20 can stand right there.

21 THE JUROR: Okay.

22 THE HONORABLE CLIFTON NEWMAN: This won't take
23 long.

24 We received a note that the --- some members of
25 the jury, some female members of the jury panel, were

1 harassed yesterday leaving the courthouse.

2 THE JUROR: Yes.

3 THE HONORABLE CLIFTON NEWMAN: Were you in that
4 number?

5 THE JUROR: Yes, I was.

6 THE HONORABLE CLIFTON NEWMAN: Okay. And what
7 happened?

8 THE JUROR: We came down the stairs, and one of
9 the other jury members had to call her husband. So we
10 went into the jury room downstairs to use that phone,
11 and when we came out, we saw two young girls there and
12 the ---

13 THE HONORABLE CLIFTON NEWMAN: Describe who they
14 were.

15 THE JUROR: They were African American, long hair.

16 THE HONORABLE CLIFTON NEWMAN: Okay.

17 THE JUROR: I know they were sitting in the
18 courtroom in the front row.

19 THE HONORABLE CLIFTON NEWMAN: All right.

20 THE JUROR: The two of them and the lady who is
21 sitting next to the defendant were standing there.

22 We kind of stopped for a second. I said okay,
23 well, they're not going to say anything. So we
24 started walking, and then another lady, an older woman
25 came down.

1 I don't know if she came out of an elevator or
2 came down the stairs, I'm not real sure, but they came
3 down right behind us and started saying, "How dare
4 they say he murdered somebody? He's innocent, he's
5 innocent. He wouldn't hurt a fly. Albert is
6 innocent."

7 So all just kind of took hands and took off and
8 went around the corner, and then they didn't bother us
9 again.

10 THE HONORABLE CLIFTON NEWMAN: And the fact that
11 that occurred, does that --- did that influence you in
12 any way?

13 THE JUROR: No, sir.

14 THE HONORABLE CLIFTON NEWMAN: And does it affect
15 your ability to continue as fair and impartial juror?

16 THE JUROR: No, sir.

17 THE HONORABLE CLIFTON NEWMAN: Anything further
18 that anyone wants me to inquire?

19 MR. SUTHERLAND: Possibly just with respect to
20 identifying who else might have been around.

21 THE HONORABLE CLIFTON NEWMAN: And who else was
22 present?

23 THE JUROR: Who else was present?

24 THE HONORABLE CLIFTON NEWMAN: With you.

25 THE JUROR: With me? The two other jurors.

1 THE HONORABLE CLIFTON NEWMAN: The two other
2 jurors who came in here already?

3 THE JUROR: Yes.

4 THE HONORABLE CLIFTON NEWMAN: The two black
5 females?

6 THE JUROR: Yes.

7 THE HONORABLE CLIFTON NEWMAN: All right. Okay,
8 and --- okay. Anything else?

9 (There was no response.)

10 Okay. All right. Well, thank you.

11 THE JUROR: Thank you.

12 THE HONORABLE STEPHANIE McDONALD: Could you wait
13 just one second outside? I want to ask Judge Newman
14 something. Thank you so much. I appreciate it ---

15 THE HONORABLE CLIFTON NEWMAN: If you'll stand
16 there right by the door.

17 (Complies.)

18 THE HONORABLE STEPHANIE McDONALD: I'd like to
19 know from her if the young lady sitting at counsel
20 table witnessed all of that or if she was saying in
21 there when they were --- I think that's significant,
22 but I didn't ask it.

23 THE HONORABLE CLIFTON NEWMAN: All right. Well,
24 I'll ask her that, sure.

25 (The juror returned to chambers.)

1 And did anyone who --- did any of the
2 participants or anyone inside the rail from any of the
3 counsel tables, lawyers, law enforcement, anyone
4 witness this?

5 THE JUROR: I don't know, sir. I mean, we just
6 took off, so I didn't --- we didn't stay around to
7 look to see who else was around.

8 THE HONORABLE CLIFTON NEWMAN: All right. You
9 didn't notice who they were with?

10 THE JUROR: No. There was just a large group of
11 women.

12 THE HONORABLE CLIFTON NEWMAN: Okay. All right.
13 Well, thank you.

14 THE HONORABLE STEPHANIE McDONALD: Thank you.

15 THE HONORABLE CLIFTON NEWMAN: Ma'am, one final
16 thing.

17 THE JUROR: Oh, I'm sorry.

18 THE HONORABLE CLIFTON NEWMAN: When you go back
19 in the jury room, please just do not discuss this
20 discussion with any other juror.

21 THE JUROR: Okay.

22 THE HONORABLE CLIFTON NEWMAN: All right. Thank
23 you.

24 THE CLERK: That will be all.

25 THE HONORABLE CLIFTON NEWMAN: You can close the

1 door.

2 Do you want me to inquire anything else of anyone
3 else?

4 MR. SUTHERLAND: Well, sir, if it was Ms. 187
5 that --- and I hate calling people numbers, but the
6 young lady with the longer hair who was the regular
7 juror who was talking about some of the other men who
8 were around, I'd just like to try to isolate the ---
9 everybody who was exposed to it, if we could, sir.

10 THE HONORABLE CLIFTON NEWMAN: Well, I can ---
11 you know, I don't want to just bring --- do you want
12 me to bring every juror in here and ask them did they
13 hear this? You know, you're just trying to like ---
14 sort of like putting gasoline on a fire.

15 MS. CAMPBELL: On a fire.

16 THE HONORABLE CLIFTON NEWMAN: Or you're trying
17 to start a fire, one of the two.

18 MS. McDUFFIE: I think out of an abundance of
19 caution, since number 53 wrote the note.

20 THE HONORABLE CLIFTON NEWMAN: All right.

21 MS. McDUFFIE: It would be ---

22 THE HONORABLE CLIFTON NEWMAN: We'll bring Juror
23 number 53 in. Juror number 53 only.

24 THE CLERK: Yes, sir.

25 MR. SUTHERLAND: I'm at the South Carolina Bar

1 website right now. Things are a little slow.

2 THE HONORABLE CLIFTON NEWMAN: She is not working
3 with you anymore?

4 MS. CAMPBELL: Inquire of her what she saw.

5 MR. SUTHERLAND: Oh, sure, sure, to see if she's
6 a lawyer, but I asked them if somebody could help me
7 make copies and stuff this week and he agreed.

8 MS. CAMPBELL: Regardless, if she's a lawyer.

9 MR. SUTHERLAND: Well, that's what I was trying
10 to find out, if it was a law student or an attorney,
11 but I can --- I can tell the court that she said when
12 she went out to get the suits from the car to take
13 downstairs that she didn't notice anything out of the
14 ordinary.

15 THE CLERK: He's here. Are we ready?

16 THE HONORABLE CLIFTON NEWMAN: Yeah.

17 THE CLERK: You can come in.

18 (Juror 53 was brought into chambers.)

19 THE HONORABLE CLIFTON NEWMAN: All right. Good
20 morning.

21 THE JUROR: Good morning. How are you?

22 THE HONORABLE CLIFTON NEWMAN: Fine. I guess you
23 sent the note in saying ---

24 THE JUROR: Yes, sir.

25 THE HONORABLE CLIFTON NEWMAN: --- some members

1 of the jury were harassed yesterday leaving the
2 courtroom and ---

3 THE JUROR: Yes.

4 THE HONORABLE CLIFTON NEWMAN: --- what did you
5 mean by that?

6 THE JUROR: When I was --- we were downstairs in
7 the jury room and walked out. They were talking about
8 people yelling at them yesterday.

9 The girl behind the glass when I walked out, she
10 said, "Who is your judge?" She said, "Is that Judge
11 Newman?" I said yes it was. She goes, "I'll take
12 care of it."

13 So then I asked them questions. They said people
14 were speaking to them when they were leaving, you know,
15 saying, "He's not guilty."

16 They were kind of visibly shaken. They seemed to
17 be upset.

18 THE HONORABLE CLIFTON NEWMAN: All right.

19 THE JUROR: You need to know about it. Somebody
20 needs to know about it. I asked the bailiff what to
21 do. He said that I needed to write a note.

22 THE HONORABLE CLIFTON NEWMAN: All right. And
23 --- and does --- does this fact influence you in any
24 way ---

25 THE JUROR: No.

1 THE HONORABLE CLIFTON NEWMAN: --- in your
2 service as juror?

3 THE JUROR: I didn't see it. I wasn't there, but
4 I could tell they were upset.

5 THE HONORABLE CLIFTON NEWMAN: All right.

6 THE JUROR: So it --- just whether they need an
7 escort out of here or whatever, I think that would
8 make them feel safer.

9 THE HONORABLE CLIFTON NEWMAN: All right.

10 THE JUROR: No, it's not going to affect me; no,
11 sir.

12 THE HONORABLE CLIFTON NEWMAN: All right. Well,
13 very good, and this discussion should not be discussed
14 in the jury room. Thank you for coming in.

15 THE JUROR: Thank you.

16 THE HONORABLE CLIFTON NEWMAN: Anything else from
17 this juror?

18 MS. CAMPBELL: No, sir.

19 THE HONORABLE CLIFTON NEWMAN: All right.

20 MR. SUTHERLAND: I'm wondering, sir, do you ---
21 were there any other male or female jurors around that
22 witnessed this that you can recall?

23 THE JUROR: Well, I didn't witness it.

24 MR. SUTHERLAND: All right.

25 THE JUROR: So I mean, what actually happened

1 yesterday, I did not witness that.

2 MR. SUTHERLAND: Oh, you were talking about the
3 discussion earlier today or...

4 THE JUROR: Right.

5 MR. SUTHERLAND: Okay. And ---

6 THE JUROR: I don't --- I don't think anybody
7 else.

8 MR. SUTHERLAND: And, again, with whom had you
9 discussed this issue?

10 THE JUROR: No, just overheard them talking
11 amongst themselves, the three girls that were ---

12 MR. SUTHERLAND: Okay. So they discussed it with
13 each other?

14 THE JUROR: Yes.

15 MR. SUTHERLAND: Okay. Thank you, sir.

16 THE HONORABLE CLIFTON NEWMAN: All right. Thank
17 you, sir.

18 All right. Anything else?

19 MR. SUTHERLAND: Well, I guess we need to call
20 Brie. Do you want me to go get Brie or...

21 MS. CAMPBELL: I want those people held in
22 contempt.

23 MR. SUTHERLAND: Well, I can't --- I mean, I
24 don't have any input on that. I mean, I don't ---

25 MS. CAMPBELL: I know.

1 MR. SUTHERLAND: --- represent them or anything.

2 MS. CAMPBELL: Whatever the judge thinks about
3 inquiring of her.

4 If I can just have five minutes to go talk to the
5 solicitor about it because this puts us in somewhat of
6 a quandary. I mean, the jurors have been threatened.

7 MR. SUTHERLAND: And I can say, again ---

8 MS. CAMPBELL: By people that are the defendant's
9 family.

10 MR. SUTHERLAND: But I can say, again, when I
11 told Brie what was going on this morning, she said, "I
12 didn't --- that's not possible. I didn't see anything.
13 I went out to get the suits."

14 Because we were trying to deduce what had
15 happened, and we were speaking about it, and
16 Ms. Campbell was certain that it was my people. I
17 thought, well, those are kind of nice people. Why
18 would they do that, but ultimately, you know, we're
19 coming to those conclusions.

20 MS. CAMPBELL: And then, Judge, whatever we could
21 do to minimize, you know, any exposure by those people.

22 Their presence in the courtroom now is even --- I
23 mean, I understand their rights, but my gosh, they've
24 now threatened the jury.

25 THE HONORABLE CLIFTON NEWMAN: Well, of course,

1 they didn't say that they were threatened. You just
2 said that.

3 MS. CAMPBELL: Or harassed --- what --- but
4 obviously, according to everyone, it had an affect on
5 them.

6 MR. SUTHERLAND: Well...

7 MS. CAMPBELL: You know, intimidation.

8 THE HONORABLE CLIFTON NEWMAN: Well, they all ---
9 no. Each one said that it did not have an effect.
10 They were upset that somebody would do that, but ---

11 MS. CAMPBELL: But it wouldn't affect ---

12 THE HONORABLE CLIFTON NEWMAN: Each one said ---
13 (Talking over each other.)

14 MS. CAMPBELL: --- I understand the fair and
15 impartial part.

16 THE HONORABLE CLIFTON NEWMAN: --- wouldn't
17 affect their jury service.

18 All right.

19 MS. CAMPBELL: That's just a concern I'm
20 expressing.

21 THE HONORABLE CLIFTON NEWMAN: I understand. So
22 the lady, your cohort, where is she?

23 MR. SUTHERLAND: Cohort. I can go get her, Judge.

24 THE HONORABLE CLIFTON NEWMAN: All right.

25 (Pause)

1 MR. SUTHERLAND: It's just us, sir.

2 (The intern was brought into chambers.)

3 THE HONORABLE CLIFTON NEWMAN: All right.

4 INTERN: Hi.

5 THE HONORABLE CLIFTON NEWMAN: Good morning.

6 INTERN: I walked out with them yesterday. He ---
7 one of the daughters had ---

8 THE HONORABLE CLIFTON NEWMAN: Let me --- before
9 you start your spiel, let me ask you some questions.

10 INTERN: Sure.

11 THE HONORABLE CLIFTON NEWMAN: Tell me your name.

12 INTERN: My name is Brie Rust. I am a rising 3-L
13 at Charleston Law.

14 THE HONORABLE CLIFTON NEWMAN: And your role in
15 this case is...

16 INTERN: To assist Tivis in any way that I can.

17 THE HONORABLE CLIFTON NEWMAN: And who do you
18 work for?

19 INTERN: The Public Defender's Office.

20 THE HONORABLE CLIFTON NEWMAN: You're Richland
21 County Public Defender's Office?

22 INTERN: Yes, sir.

23 THE HONORABLE CLIFTON NEWMAN: All right. Now go
24 ahead.

25 INTERN: We walked out yesterday. She had two

1 suits in the car for her dad. The four of us walked
2 down the stairs together.

3 The victim's family was on the elevators. We
4 walked down the stairs, went right out to her car.
5 They got the suits. They got in the car and left. I
6 came back inside with the suits.

7 I didn't see them encounter anybody, especially
8 not jurors. It's my understanding the jurors park in
9 that parking lot on Taylor Street anyway. I didn't
10 see them have any contact with anyone other than me.

11 THE HONORABLE CLIFTON NEWMAN: What's the
12 location of the contact? Wasn't it downstairs as they
13 were --- before going outside?

14 INTERN: Huh-uh.

15 THE HONORABLE CLIFTON NEWMAN: Did you walk
16 outside with them?

17 INTERN: Well, actually, I stood at the door and
18 held the door because they had already locked the
19 front doors.

20 One of the daughters stayed with me. The other
21 three walked up the hill to the car and brought ---
22 and the younger daughter brought his suits back down,
23 but I was the only person that they talked to from the
24 courtroom to the door.

25 Like I said, we used the stairs, not the elevator.

1 We didn't come in contact with anyone.

2 THE HONORABLE CLIFTON NEWMAN: Well, the three
3 jurors said that they were contacted while one of them
4 stopped to make a phone call in the jury assembly room,
5 and as they were leaving the jury assembly room.

6 Each of the three jurors said that they were
7 harassed by these ladies saying that he is not guilty;
8 how can he --- how can they accuse him of this, and he
9 is innocent. Those type of things. You didn't hear
10 any of that?

11 INTERN: One of the daughters was talking to me
12 on the way down the stairs. She said, "My dad never
13 spanked me. He was never mean to me. We always had
14 discussions."

15 It was directed directly at me and her
16 astonishment, I guess, at these charges, but I didn't
17 --- I mean, they didn't speak to anyone other than me.

18 I mean, there were four of them and one of me, so
19 they were --- I guess the other people were talking
20 amongst themselves, but we walked down the stairs in a
21 little huddle, I guess you would say.

22 THE HONORABLE CLIFTON NEWMAN: All right.

23 MS. CAMPBELL: Can I ask a couple of questions?

24 THE HONORABLE CLIFTON NEWMAN: Yes.

25 MS. CAMPBELL: Were you with this them the entire

1 time they were in the lobby?

2 INTERN: We went straight from the courtroom,
3 around the thing, down the stairs and out the door.

4 MS. CAMPBELL: Did you walk them out the door?
5 Do you remember seeing three jurors walking in front
6 of you?

7 INTERN: No, ma'am.

8 MS. CAMPBELL: Out the door? And do you remember
9 anyone raising their voice when they were talking to
10 you?

11 INTERN: No, ma'am.

12 MS. CAMPBELL: Do you remember anyone yelling,
13 "He's innocent"?

14 INTERN: No, ma'am.

15 MS. CAMPBELL: And you were with them the entire
16 time they were down in the lobby area until when they
17 walked out of the courthouse?

18 INTERN: Yes, ma'am.

19 THE HONORABLE CLIFTON NEWMAN: All right.
20 Mr. Sutherland?

21 MR. SUTHERLAND: Certainly, I mean, we talked
22 about it this morning. She said she didn't see
23 anything, Your Honor. So I mean, I ---

24 THE HONORABLE CLIFTON NEWMAN: You --- you talked
25 about it before --- when did you --- when did you all

1 talk about it?

2 MR. SUTHERLAND: One of the deputies came out and
3 said that, listen --- informed myself and Ms. Campbell
4 that there may be some sort of issue with respect to
5 threats to the jury, and it's at that point that I
6 went ---

7 THE HONORABLE CLIFTON NEWMAN: Was this before I
8 took the bench or afterwards?

9 MR. SUTHERLAND: Yes, sir, before you took the
10 bench.

11 INTERN: And I was the person that mentioned that
12 I had walked out to the car with them to get the suits
13 yesterday, because it was his understanding that they
14 were going to drop the suits off at his office. I
15 just walked out to the car to save them a trip.

16 THE HONORABLE CLIFTON NEWMAN: All right.
17 Anything else?

18 MS. CAMPBELL: No, sir.

19 THE HONORABLE CLIFTON NEWMAN: All right.

20 INTERN: Thank you.

21 THE HONORABLE CLIFTON NEWMAN: All right. What
22 else?

23 MR. SUTHERLAND: I'm just starting to get a
24 little flabbergasted, Your Honor.

25 I mean, one of the --- you know, juror 53 had

1 heard the three young ladies talking this morning, and
2 he said that they looked visibly shaken. And --- and
3 I don't know if they were talking around the jury or
4 what.

5 I mean, as far as Brie, she is wonderful. You
6 know, if she didn't notice whatever, she just didn't
7 notice, but with respect ---

8 THE HONORABLE CLIFTON NEWMAN: That's a
9 credibility call on your part.

10 MR. SUTHERLAND: Well, yes, sir. I mean, it's
11 not like me or anybody associated with me would do
12 anything underhanded.

13 THE HONORABLE CLIFTON NEWMAN: Well, that's
14 contrary to what the jurors said.

15 MR. SUTHERLAND: Well, they --- they had said
16 that they ---

17 THE HONORABLE CLIFTON NEWMAN: They can't ---

18 MR. SUTHERLAND: --- saw her just when they were
19 walking out or something.

20 THE HONORABLE CLIFTON NEWMAN: Well.

21 MR. SUTHERLAND: But I mean, ultimately, you know,
22 if some --- if --- if she doesn't --- there's no
23 reason for her to be or do anything like that. I mean,
24 I ---

25 THE HONORABLE CLIFTON NEWMAN: Well, I'm sure

1 that --- it wasn't a question of --- no one said she
2 did anything. They just said she was there.

3 MR. SUTHERLAND: Yes, sir.

4 THE HONORABLE CLIFTON NEWMAN: She said she
5 wasn't there and she didn't hear anything.

6 MR. SUTHERLAND: But it's --- if juror 53 heard
7 the other three discussing this, it must have been
8 where the jury was gathered or something.

9 THE HONORABLE CLIFTON NEWMAN: Well, they're in
10 the jury room. Of course, their gathered.

11 MR. SUTHERLAND: Yes, sir.

12 THE HONORABLE CLIFTON NEWMAN: That's where they
13 are, in the jury room.

14 MR. SUTHERLAND: And just with respect to the
15 contamination that appears to be evident, and that
16 appears to be possible, I mean, I'm not sure that
17 we've heard from everyone, you know, who has heard
18 something or who has potentially discussed this issue.

19 At this point just sitting here, from what I'm
20 hearing from people about, you know, I didn't know
21 that they had ---

22 THE HONORABLE CLIFTON NEWMAN: Yeah. Well, I can
23 address all of the jurors as a group as to whether or
24 not they're --- anyone --- any comments by anyone ---
25 made concerning this case on their way from the

1 courthouse, whether it affects their ability to be
2 fair and impartial.

3 I mean, it seems apparent from the --- juror
4 number 53 that the jurors who were annoyed mentioned
5 it to the other jurors, and that's why he sent me a
6 note.

7 MR. SUTHERLAND: Yes, sir.

8 THE HONORABLE CLIFTON NEWMAN: That's not a ---
9 that seems apparent, and so the question is does that
10 affect the right of the State and the defense to have
11 a fair and impartial trial? Does it affect the rights
12 of --- the ability of those jurors to fairly and
13 impartially serve, but the...

14 MR. SUTHERLAND: It just seems like too much of a
15 mess to me, sir, honestly.

16 THE HONORABLE CLIFTON NEWMAN: Well, that's what
17 it seems to you.

18 What else?

19 MS. CAMPBELL: Your Honor, my concern at this
20 point would be making sure that the jurors don't feel
21 any further intimidation or anything from these people.

22 They have ---

23 THE HONORABLE CLIFTON NEWMAN: Well, I don't ---

24 MS. CAMPBELL: --- violated the rules of the
25 court at this point. I think that they would --- it

1 would be --- it could be proper to hold them in
2 contempt or some type of sanction to keep them, or
3 their presence, from further intimidating or causing
4 any concern for this jury.

5 This jury, you know, I mean, I think, you know,
6 inherently, whenever you're on a murder case, it's a
7 hard thing to do. Then when they feel like their
8 safety may have been compromised, they still say they
9 can be fair and impartial and are sticking to that,
10 but at this point, that would be my concern.

11 Obviously, the deputy informed you that there had
12 been some --- he had some dealings with them already,
13 and then for them to go as far as to do that, we would
14 be very concerned that their continued presence just
15 here in the courthouse and in the courtroom,
16 especially, is kind of an implicit intimidation factor,
17 threat, however you want to phrase it.

18 That would be my biggest concern at this point is
19 to make sure that this jury understands, you know,
20 that whenever any type of implicit threat or any type
21 of intimidation goes on, that that will be eliminated
22 from factoring in on their deliberations or their
23 further service on this case.

24 THE HONORABLE CLIFTON NEWMAN: All right. What
25 else?

1 MR. SUTHERLAND: I'm going to be moving for a
2 mistrial, obviously, sir.

3 THE HONORABLE CLIFTON NEWMAN: Do you want to do
4 it in the courtroom, or right here, in the presence of
5 your client? Do you want to confer with your client,
6 or just --- or you think it's your right to make that
7 motion without conferring with your client?

8 MR. SUTHERLAND: Well, I surely will go talk to
9 him, yes, sir.

10 THE HONORABLE CLIFTON NEWMAN: I would think so.
11 So it would need to be done in the courtroom, so
12 everything else will be addressed in the courtroom.

13 MS. CAMPBELL: Your Honor, if we could have just
14 five minutes to run upstairs and discuss something?

15 THE HONORABLE CLIFTON NEWMAN: Sir.

16 MS. CAMPBELL: As far as where we're going.

17 THE HONORABLE CLIFTON NEWMAN: Sure.

18 MS. CAMPBELL: And then I would like to be able
19 to just put this on the record. Well, it's on the
20 record.

21 THE HONORABLE CLIFTON NEWMAN: Yeah, well.

22 MS. CAMPBELL: Sorry. I was talking.

23 THE HONORABLE CLIFTON NEWMAN: Whatever else
24 could be said in the courtroom. We just need to talk
25 to the jurors.

1 MR. SUTHERLAND: All right.

2 MS. CAMPBELL: Your Honor, we'll be making a
3 motion for just some type of --- Tivis, just so you
4 know, we'll be making a motion for some type of
5 sanction and/or prohibitive ---

6 THE HONORABLE CLIFTON NEWMAN: Against you and
7 the other lady.

8 MR. SUTHERLAND: What?

9 MS. CAMPBELL: No, no. Not against you or the
10 lady.

11 MR. SUTHERLAND: I would never think you would do
12 anything like that.

13 MS. CAMPBELL: I would never do that.

14 MR. SUTHERLAND: Oh, my gosh.

15 MS. CAMPBELL: Just against the family members.

16 THE HONORABLE STEPHANIE McDONALD: Ms. Campbell,
17 while y'all meet and confer --- while you meet and
18 confer, I'm going to look at some law.

19 MS. CAMPBELL: Thank you.

20 THE HONORABLE STEPHANIE McDONALD: When we get on
21 the bench about what parameters we have, because I
22 think somebody needs to be sanctioned. I mean, we
23 wasted a bunch of court time now that we could have
24 been on the bench. That costs everybody money.

25 MS. CAMPBELL: Thank you.

1 THE HONORABLE STEPHANIE McDONALD: But that will,
2 obviously, be left up to Judge Newman, but I am --- I
3 do want to look at the law on that before we make a
4 decision.

5 MR. SUTHERLAND: Thank you, Your Honor.

6 MS. CAMPBELL: We appreciate that.

7 MS. SIMPSON: Thank you, Your Honor.

8 THE HONORABLE CLIFTON NEWMAN: All right.

9 (The following was heard in the courtroom.)

10 THE BAILIFF: Make sure all cell phones are
11 turned off. I don't want to hear them going off this
12 time.

13 Thank you.

14 THE HONORABLE CLIFTON NEWMAN: All right. We had
15 a colloquy with the jury, various jurors in chambers.

16 What says the State or the defense?

17 MS. CAMPBELL: I ---

18 THE HONORABLE CLIFTON NEWMAN: We need the
19 defendant here.

20 THE BAILIFF: He's on the way.

21 THE HONORABLE CLIFTON NEWMAN: Sir?

22 THE BAILIFF: He's on the way, Your Honor.

23 (Pause)

24 (The defendant entered the courtroom.)

25 THE HONORABLE CLIFTON NEWMAN: All right.

1 Ms. Campbell?

2 MS. CAMPBELL: May it please the Court, Your
3 Honor. At this time, we have no motions other than a
4 possible --- once the defense makes his motion, which
5 I'm assuming he's going to make on the record for a
6 mistrial, we would then have a further motion after
7 that's dealt with.

8 THE HONORABLE CLIFTON NEWMAN: All right. Yes,
9 sir.

10 MR. SUTHERLAND: If it pleases the court, with
11 the information that's now available --- that's now
12 available with respect to the degree to which I
13 believe the jury has been compromised, I'll admit we
14 know of at least five with which --- with whom we've
15 spoken, and there really is no telling the degree to
16 which this has tainted the jury.

17 It's --- I do believe that it's not possible at
18 this point to receive a fair --- a fair trial, sir.

19 THE HONORABLE CLIFTON NEWMAN: Based on what
20 comments to the jury or based on specifically what?

21 MR. SUTHERLAND: Specifically that three of --- I
22 believe juror number 53 had said that three of the
23 young ladies were together discussing this in front of
24 the other jurors, and that they appeared visibly
25 shaken.

1 THE HONORABLE CLIFTON NEWMAN: They were
2 discussing what?

3 MR. SUTHERLAND: That they were discussing a
4 matter of potentially being harassed or threatened,
5 and in interviewing the jurors, they had their
6 distinct recollections about it.

7 The impression of juror 53, who was not involved
8 in the conversation, was that they were visibly shaken.
9 He heard what they said.

10 There's no way to really determine who heard what
11 or what their understanding of it is, and I just
12 believe it's impossible to receive a fair trial under
13 the circumstances where the jurors themselves are ---
14 at least as it appears to other jurors, having been
15 threatened or intimidated or frightened, sir.

16 THE HONORABLE CLIFTON NEWMAN: All right.

17 MR. SUTHERLAND: Thank you, Your Honor.

18 THE HONORABLE CLIFTON NEWMAN: What says the
19 State?

20 MS. CAMPBELL: May it please the Court. We've
21 talked to the three people that were present when the
22 threats and/or intimidation took place.

23 They all indicated that they were the only three
24 together at that point. We individually voir dired
25 each one of them as far as their ability to be fair

1 and impartial.

2 Based on their responses, in addition, you
3 actually talked to two other jurors just out of an
4 abundance of caution. Everyone said they could be
5 fair and impartial, and we'd like to go forward with
6 the case.

7 Plus, it would be highly --- the intimidation
8 and/or threats came from family members of the
9 defendant himself. For him to benefit from that would
10 be unjust.

11 MR. SUTHERLAND: And if I may, sir, just with
12 respect to the last part about some sort of benefit or
13 something, I mean, Mr. Wallace doesn't have any
14 control over people and whether they attend or they
15 don't attend --- or whether they do something foolish
16 or crazy, there is no way that that sort of thing
17 could be policed in any manner by anybody sitting at
18 this table.

19 So I would --- I strongly disagree with the
20 characterizations of a mistrial as being some sort of
21 benefit. All it means is that we just do it all over
22 again, sir.

23 (Pause)

24 THE HONORABLE CLIFTON NEWMAN: All right. Well,
25 the jurors basically said that when they were

1 downstairs leaving yesterday, three of them, that the
2 --- some women who they described hollered to them
3 that the defendant is innocent and he would never do
4 such a thing, and they should find --- the effect of
5 which is that they should find him not guilty.

6 I don't think they used those particular words,
7 but the jurors said that the people were saying he
8 would never hurt anyone, that type all of thing. That
9 is clearly improper and contemptuous conduct by anyone
10 who would do such after the court has been careful
11 during the course of this trial to --- instructing the
12 jury to avoid contact --- gathering in places, being
13 in places, where they might overhear, inadvertently
14 overhear something from the public, but then to have
15 someone from the public deliberately attempt to bother
16 or harass or intimidate the jury, it's clearly
17 improper.

18 That having been said, however, each juror
19 indicated that they were not influenced by that, those
20 comments in any way; that it does not affect their
21 ability to be fair and impartial jurors, and they
22 simply requested that they not be annoyed further or
23 harassed or bothered further by anyone.

24 I do not find, based on the inquiry that the
25 court has made to the --- that the four or five jurors