

VOLUME I OF III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Beaufort County

Honorable Perry M. Buckner, Circuit Court Judge

ALFONZO J. HOWARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002269

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on
Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

RUSTON W. NEELY
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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 2 COUNTY OF BEAUFORT) COURT OF GENERAL SESSIONS
 3) No. 2006 GS 07 1093, 1094,
 4) 1095, 1096, 1097, 1098, 1099
 5)
 6 versus) TRANSCRIPT OF RECORD
 7)
 8 ALFONZO HOWARD)
 9 Defendant)
 10 Beaufort, South Carolina
 11 February 23 / February 27,
 2009

12 B E F O R E :
 13 HONORABLE CARMEN T. MULLEN, Judge, and a Jury

14 A P P E A R A N C E S :
 15 For the State: ANGELA TANNER, Esq.
 16 Solicitor
 17 For the Defendant: JIM BROWN, Esq.
 18 Reporter: RONDA CUMMINGS
 19
 20

21 HARRIET P. BENNETT
 22 Reporter, South Carolina Court Administration
 23 P. O. Box 86
 24 Ladson, S. C. 29456
 25

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1 (The within matter came before the Court on February
2 23, 2009, at approximately 11:55 A.M.)

3 (Following general qualification of jury panel as
4 a whole, the Courtroom was cleared and the Defendant was
5 brought into the Courtroom.)

6 THE COURT: All right, we're just going to take
7 about thirty seconds before we bring the jury panel back
8 in.

9 MR. BROWN: Your Honor, there are two motions I've
10 got and for one of them I have a witness here. One of
11 them is not really related to the jury selection, and
12 the other one is about the prosecution of the case.

13 THE COURT: Let's do this. We'll go ahead and pull
14 the jury and then once I excuse them we can take those
15 matters up.

16 MR. BROWN: Okay, and maybe if I could -- I do not
17 want to waive my concerns over that . .

18 THE COURT: I understand. You are absolutely pro-
19 tected for the record.

20 ALL right. So we'll take literally thirty seconds.

21 (Brief pause in the proceeding)

22 THE COURT: Is the State ready?

23 SOLICITOR: The State is ready, Your Honor.

24 THE COURT: Is the Defense ready?

25 MR. BROWN: Subject to my earlier objections I've

1 made during the last couple of weeks and the ones I
2 made regarding my motions that are pending, we are.

3 THE COURT: Okay. Are you all ready for me to
4 bring the jury panel back in?

5 SOLICITOR: The State's ready, Your Honor.

6 THE COURT: Is Defense ready for me to bring the
7 jury panel back in?

8 MR. BROWN: Yes, maam.

9 THE COURT: Bring them in, please.

10 (Jury panel entering Courtroom)

11 THE COURT: Would you approach for a minute?

12 (Colloquy between the Court and counsel at the
13 bench off the record)

14 THE COURT: Ladies and gentlemen of the jury panel,
15 if you'd give me your attention at this time?

16 We are about to begin the trial of a case that is
17 entitled the State of South Carolina versus Mr. Alfonzo
18 Howard, who is charged in these indictments by the Grand
19 Jury of Beaufort County with the offenses of two counts
20 of armed robbery, two counts of kidnapping, one count of
21 carjacking, one count of criminal sexual conduct, first
22 degree, and one count of possession of a weapon during a
23 violent crime.

24 Ladies and gentlemen, this incident allegedly oc-
25 curred back in May of 2006 at the Waterfront Park in

1 Beaufort behind the Salter's Grill.

2 Ladies and gentlemen, at this time I respectfully
3 would ask the attorneys to introduce themselves to you.

4 The State in this case is being represented by Ms.
5 Angela Tanner. Ms. Tanner, if you would stand and face
6 the jury, please?

7 MS. TANNER: (Standing) Good morning.

8 THE COURT: Thank you, Ms. Tanner. The Defendant
9 in this case, Mr. Howard, is represented in this case
10 by Jim Brown of the Beaufort Bar. Sir?

11 MR. BROWN: (Standing) Good morning. I'm Jim
12 Brown, and I practice law in Beaufort.

13 THE COURT: Mr. Brown, respectfully, would you
14 have Mr. Howard stand and face the jury panel as well.

15 (Defendant standing)

16 MR. BROWN: I represent Mr. Howard, and assisting
17 me is Investigator Gene Rowell, Jared Brown of my office,
18 and I also have a freelance journalist here who is Ms.
19 Teresa White on the front row over there.

20 THE COURT: Thank you. You may all be seated,
21 please.

22 Ladies and gentlemen of the jury panel, my question
23 is this, is there any member of the jury panel who is
24 related by blood or connected by marriage with the De-
25 fendant in this case, Alfonzo Howard? If so, will you

1 please stand?

2 (No response from jury panel)

3 Is there any member of the jury panel who is a
4 close personal friend or shares a special relationship
5 with the Defendant, Mr. Howard? If so, please stand.

6 (No response)

7 Ladies and gentlemen, the alleged victims in this
8 case are Amy Davidson and Phillip Davidson, and the
9 question is the same.

10 Is there any member of the jury panel that is re-
11 lated by blood or connected by marriage to the Davidsons?
12 If so, please stand.

13 (No response)

14 Is there any member of the jury panel who is a
15 close personal friend or who shares a special relation-
16 ship with the Davidsons? If so, please stand.

17 (No response)

18 Also, ladies and gentlemen, you have been intro-
19 duced to the attorneys in this case, and the question
20 again is the same.

21 Is there any member of the jury panel that is re-
22 lated by blood or connected by marriage to either of
23 the attorneys in this case? If so, please stand.

24 (No response)

25 Is there any member of the jury panel that is a

1 close personal friend or shares a special relationship
2 with either of the attorneys in this case, Ms. Tanner
3 or Mr. Brown? If so, please stand.

4 (No response)

5 Now, lastly, is there any member of the jury panel
6 who has been represented by either of the attorneys in
7 this case; that is, Ms. Tanner or Mr. Brown? If so,
8 please stand.

9 (No response)

10 Ladies and gentlemen, I am going to read to you a
11 potential witness list. Now, keep in mind -- and my
12 question is the same.

13 Is there any member of the jury panel who is re-
14 lated by blood or connected by marriage, or a close
15 personal friend or shares a special relationship with
16 any of the potential witnesses in the case?

17 These witnesses are as follows: Seth Berezney,
18 Aimee Bradley, Robert Carson, Matt Clancy, Bill Clements,
19 Heather Clingon, Ramona Cooper.

20 Amy Davidson, Phillip Davidson, Keith Gregg,
21 Darryl Gruel, Lorenzo Hicks, Jodi Hiers, Eddie Howard,
22 John Kelleher, Billy Lewis.

23 Daniel McKinney, Laura Mills, Steve Murphy, John
24 O'Neill, David Ott, Merle Paige, Donald Rentz, Edward
25 Rhodes, Patti Ruff, Carl Schultz.

1 Chad Seronka, Charles Squires, Jeff Vortisch,
2 Kathy Wilson, Scott Worsham, Gene Hood, Ian Deysach,
3 Stephanie Smart.

4 Neal Gentry, Jay Davidson, Investigator Roate,
5 Officer Brandeburg, Lieutenant McGordon, Sergeant Townsend,
6 Sergeant Videtta, Ron Breckenmin.

7 Murdaugh Walker, Everett Cullen, Shelly Dayron,
8 Eric Cornac, Ramona Cooper, Jeff Dowling, John Teal,
9 Amy Stevens, Melissa Skipper.

10 Edward Quarter, Shana Sorrels, Ida Jeffcoat, Dr.
11 Shahid Raymond, Dr. Michelle Keith Smith, Mr. Mustard,
12 Clark Pinson, Shawn Shentac, Robin Taylor, Jeff Purdy,
13 Matt Averill, Jeff Olenslet, Steve Lamon and Roger
14 Morrison.

15 Again, ladies and gentlemen, my question is this,
16 is there any member of the jury panel who is related
17 by blood or connected by marriage, or shares a close
18 personal or has a special relationship with any of these
19 potential witnesses? If so, please stand.

20 (Jurors standing)

21 THE COURT: Yes, maam, if you would continue stand-
22 ing, state your full name and give me your juror num-
23 ber which is on your badge?

24 JUROR: Sandi Engler, Number 51. I used to work
25 for Dr. Raymond.

1 THE COURT: How long ago did you work for Dr.
2 Raymond?

3 JUROR: It's been probably three years.

4 THE COURT: What did you do for his office?

5 JUROR: I was a P.A. I worked directly under him.

6 THE COURT: Is any further inquiry requested of the
7 juror?

8 SOLICITOR: None from the State.

9 MR. BROWN: I think it would be too pointed to go
10 into here and now, Your Honor.

11 THE COURT: Respectfully, maam, this doctor may
12 or may not be a witness in the trial of this case.

13 Would the fact that he were a witness in the case,
14 would you be able to be fair and impartial, weighing
15 all the evidence in the case, and not give any prefer-
16 ence to this potential witness' testimony as opposed
17 to others?

18 JUROR: Yes, I can.

19 THE COURT: You are positive you can do that, con-
20 sidering that you did work for him in the past. Is
21 that correct?

22 JUROR: Yes, maam.

23 THE COURT: All right. Mr. Brown, is there any
24 further inquiry . .

25 MR. BROWN: If you could find out if she was

1 working on May 26, 2006, or after for the Doctor?

2 THE COURT: Maam, did you work for Dr. Raymond
3 on May 6, 2006, or after?

4 JUROR: I'm trying to think of the dates that I
5 worked -- I believe I left in February of 2006.

6 THE COURT: Maam, I appreciate it. You may be
7 seated. Thank you.

8 (Juror seated)

9 THE COURT: Anyone further?

10 (Juror standing)

11 THE COURT: Yes, maam. Your name and juror num-
12 ber?

13 JUROR: Nila Michalski, Juror 112. I know . .

14 THE COURT: Yes, maam?

15 JUROR: . . a couple of the deputies that are wit-
16 nesses.

17 THE COURT: Okay, how do you know them?

18 JUROR: My husband is a deputy sheriff.

19 THE COURT: With Beaufort County?

20 JUROR: Yes, maam.

21 THE COURT: All right, which deputies do you know,
22 maam?

23 JUROR: Townsend and O'Neill, and Investigator
24 Kelly -- yes.

25 MR. BROWN: Kelleher?

1 JUROR: Yes, Kelleher.

2 THE COURT: The fact that your husband is a deputy
3 sheriff and it appears you know some of the potential
4 witnesses in this case -- do you socialize with them?

5 JUROR: No, not on a regular basis..

6 THE COURT: Do you at all?

7 JUROR: No.

8 THE COURT: Okay, the fact that you know some of
9 the potential witnesses who are deputies, would that
10 affect your ability to be fair and impartial during the
11 trial of this case?

12 JUROR: I don't think so, no.

13 THE COURT: Are you confident of that, maam?

14 JUROR: Yes.

15 THE COURT: In addition, with your husband being a
16 deputy sheriff as well?

17 JUROR: Yes.

18 THE COURT: You seem to have hesitated a moment.

19 JUROR: Yeah.

20 THE COURT: I need to be absolutely sure, and, maam,
21 there are no right or wrong answers to any of these
22 questions, and I tell that to the entire jury panel.

23 I need you to fairly and honestly tell me what you
24 can and cannot do. So, respectfully, maam, can you be
25 fair and impartial?

1 JUROR: I believe I could, yes.

2 THE COURT: Do you have any hesitation whatsoever?

3 JUROR: I probably would hesitate.

4 THE COURT: All right. Respectfully, I'm going to
5 go ahead and remove you from the trial of this case,
6 maam, and I appreciate your candor.

7 I'm going to go ahead and excuse you but I'm going
8 to ask you to stay with us because we may or we may not
9 pull another jury today.

10 If you'll stay with us, I can just tell you re-
11 spectfully, that you don't need to respond to any fur-
12 ther questions that I'll be asking in regards to this
13 case.

14 Thank you, maam. I appreciate it.

15 (Juror taking her seat but excused from the trial
16 of the within case)

17 THE COURT: All right, anyone else? Please remain
18 standing and I'll call on you.

19 (Other jurors standing)

20 THE COURT: Yes, maam. May I have your name and
21 juror number?

22 JUROR: Number 58.

23 THE COURT: Ms. Gibson, who do you know?

24 JUROR: My husband and Mr. Hood are friends.

25 THE COURT: Okay.

1 JUROR: And I worked alongside but not closely with
2 Dr. Raymond when I was volunteer director at Beaufort
3 Memorial, but it's been . .

4 THE COURT: What are the dates?

5 JUROR: I've been retired for six years.

6 THE COURT: Mr. Hood isn't involved in the trial
7 of this case.

8 JUROR: His name was on that list.

9 THE COURT: You're exactly right. The fact that
10 you know Mr. Hood and additionally that you have had
11 dealings with Dr. Raymond in the past at the Beaufort
12 Memorial Hospital, would that affect your ability to be
13 fair and impartial in the trial of this case?

14 JUROR: No, it would not.

15 THE COURT: All right. I appreciate it. I'm
16 going to ask you to stay with us. Thank you, maam.

17 (Juror being seated)

18 (Another juror standing)

19 THE COURT: What is your name and juror number?

20 JUROR: Ronda O'Connell, Number 120.

21 THE COURT: Who do you know?

22 JUROR: Dr. Raymond.

23 THE COURT: How do you know Dr. Raymond?

24 JUROR: A professional relationship. I worked in
25 the emergency department with him. I did leave the

1 emergency room in 1997 though.

2 THE COURT: The fact that Dr. Raymond may be a wit-
3 ness in the trial of this case, would that affect your
4 ability to be fair and impartial to both sides in weigh-
5 ing the evidence in this case?

6 JUROR: No, it would not.

7 THE COURT: Are you sure of that?

8 JUROR: Yes, positive.

9 THE COURT: Thank you, maam. I appreciate it.

10 (Juror taking her seat)

11 THE COURT: Anyone else?

12 MR. BROWN: Your Honor, I believe there was one
13 more name.

14 THE COURT: Yes, sir.

15 MR. BROWN: At the bottom of the list, Leonard
16 Barnes.

17 THE COURT: I'm sorry. I apologize. I did leave
18 one name off. Is any member of the jury panel related
19 by blood or marriage, or who has a close personal or
20 social relationship with a counselor, Leonard Barnes?
21 If so, please stand.

22 (No response)

23 Thank you. Ladies and gentlemen, I know I've told
24 you jurors very little about this case. My question to
25 you is is there any member of the jury panel who has

1 seen, heard or read anything about this case or has any
2 outside knowledge about this case whatsoever, and that
3 would include in the newspaper or possibly word on the
4 street where someone is talking -- anything about this
5 case? If so, please stand.

6 (Jurors standing)

7 THE COURT: All right, what I'm going to do is
8 this. I'm going to ask you your name and your juror
9 number for the record, and what I want you to tell me
10 is whether or not you learned this information either
11 by a newspaper or by personal conversation.

12 If it is by personal conversation or something out-
13 side, I'm going to ask that you not tell me what the
14 content of that conversation is but I'm going to ask
15 that you approach me. All right?

16 Let me have your name and juror number.

17 JUROR: Louise Gibson, Number 58.

18 THE COURT: Ms. Gibson, . .

19 JUROR: From the newspaper.

20 THE COURT: Okay, and do you remember approximately
21 when you read about this in the newspaper?

22 JUROR: I just know it was a while back.

23 THE COURT: Maam, having read something about
24 this a while back in the newspaper, would that affect
25 your ability to be fair and impartial in the trial of

1 this case?

2 JUROR: No.

3 THE COURT: Are you positive you could confine
4 your deliberations and consideration in this case to what
5 you hear in this Courtroom?

6 JUROR: Yes.

7 THE COURT: Thank you. I appreciate it. You may
8 be seated.

9 (Juror taking her seat)

10 (Another juror standing)

11 THE COURT: Mr. Kelly?

12 JUROR: Yes.

13 THE COURT: Yes, sir.

14 JUROR: Read it in the newspaper. I want to say
15 it was four weeks ago now, and to answer any question,
16 no, I don't think there is any information in there
17 that you haven't already talked about.

18 THE COURT: Okay. Just so I'm comfortable, you are
19 sure that you can confine your consideration in this case
20 to what is presented in this Courtroom, is that correct?

21 JUROR: That's correct.

22 THE COURT: Uninfluenced by anything else you may
23 have heard, is that correct, Mr. Kelly?

24 MR. KELLY: That's correct.

25 THE COURT: Thank you, sir. I appreciate it.

(Juror taking his seat)

1 (Another juror standing)

2 THE COURT: Your name and juror number, please.

3 JUROR: Number 136.

4 THE COURT: Maam, I need your last name.

5 JUROR: Price.

6 THE COURT: Ms. Price, thank you, maam.

7 JUROR: My son owns Salter's.

8 THE COURT: I appreciate that respectfully. Would
9 you come forward to speak to me?

10 (Juror coming to the bench with counsel for the
11 State and Defense for colloquy outside the presence of
12 the jury)

13 THE COURT: Thank you. So you have information
14 about this case?

15 JUROR: Absolutely, and I could not be impartial.

16 THE COURT: I'm going to take you off this jury
17 and I appreciate it. Do me a favor though and stay with
18 us although you don't have to respond to any more ques-
19 tions that I ask.

20 At the end of this process, I'm going to excuse
21 you all for the day and you may or may not be called for
22 another trial.

23 You may take your seat.

24 (Juror returning to seat)

25 THE COURT: Ms. Price has been excused from this
case.

1 (Another juror standing)

2 THE COURT: Yes, maam. Your name and juror number?

3 JUROR: Frances Tuttle, 184. I just recall read-
4 ing it in the newspaper several years ago.

5 THE COURT: The fact that you read something about
6 the alleged incident several years ago in the newspaper,
7 would that affect your ability to be fair and impartial
8 in the trial of this case?

9 JUROR: No, not at all.

10 THE COURT: Are you confident that you could con-
11 sider and confine your deliberations to what you hear
12 in this Courtroom?

13 JUROR: Absolutely.

14 THE COURT: Thank you, maam. I appreciate that.
15 You may be seated.

16 (Juror taking seat in Courtroom)

17 (Another juror standing)

18 THE COURT: Yes, maam, your name and juror number,
19 please?

20 JUROR: Mary Harkins, Juror Number 68. I read it a
21 week ago Saturday. I remember the exact date because I
22 was getting on a plane and I saw the article about this
23 case in the Island Packet.

24 THE COURT: Okay. Maam, the fact that you read an
25 article about the alleged incident in the Island Packet,

1 would that affect your ability to be fair and impartial
2 in the trial of this case?

3 JUROR: No, it wouldn't.

4 THE COURT: Are you confident -- the question again
5 I asked before -- are you confident you could confine
6 your deliberations to what you hear here in this
7 Courtroom?

8 JUROR: Yes.

9 THE COURT: Thank you, maam. I appreciate that.

10 (Juror taking her seat)

11 (Another juror standing)

12 THE COURT: Yes, maam, your name and juror number?

13 JUROR: Andrew Gibble, Number 57.

14 THE COURT: Yes, sir.

15 JUROR: I read something about it.

16 THE COURT: In the newspaper?

17 JUROR: I think so, more than once.

18 THE COURT: The Island Packet or the Beaufort
19 Gazette?

20 JUROR: The Packet.

21 THE COURT: The fact that you think you read it,
22 you believe, more than once, or something about the al-
23 leged incident, in the Island Packet, would that affect
24 your ability to be fair and impartial in the trial of
25 this case?

1 JUROR: A little bit, yes. I'm sure it might.

2 THE COURT: Well, respectfully, in light of your
3 answer, I'm going to go ahead and excuse you from the
4 trial of this case. Please stay with us.

5 (Juror taking seat)

6 THE COURT: Anyone else?

7 (No response)

8 THE COURT: Is there any member of the jury panel
9 -- again, anyone who knows anything whatsoever about
10 this case?

11 (No response)

12 THE COURT: Is there any member of the jury panel,
13 a family member, or a close personal friend who has ever
14 been accused of or a victim of a sexual assault? If
15 so, please stand.

16 (Juror standing)

17 THE COURT: Now, I understand this is a personal
18 question, so if you would like to approach, please stand
19 and give your name and juror number.

20 JUROR: Sandra Brooks, Number 17.

21 THE COURT: Approach.

22 (Juror coming to the bench for colloquy in the
23 presence of counsel, outside of the hearing of the jury)

24 THE COURT: Yes, ma'am.

25 JUROR: I was married to an alcoholic abuser who

1 sexually assaulted me and beat me.

2 THE COURT: Okay, and would that affect your abil-
3 ity to be fair and impartial in the trial of this case?

4 JUROR: Yes, it might.

5 THE COURT: Okay, I'm going to excuse you. I appre-
6 ciate your being here and I would ask that you wait un-
7 til I release the panel today, but you don't have to
8 answer any further questions.

9 Thank you for your time.

10 (Juror returning to seat)

11 (Another juror standing)

12 THE COURT: She's excused. Your name and juror
13 number?

14 JUROR: Number 122.

15 THE COURT: How do you pronounce that?

16 JUROR: Zukes.

17 THE COURT: Okay.

18 JUROR: I was part of some domestic violence in a
19 situation with my husband.

20 THE COURT: Were there any allegations of anything
21 sexual?

22 JUROR: No.

23 THE COURT: Okay. Were you charged with it?

24 JUROR: I was the victim.

25 THE COURT: And would that affect your ability to

1 be fair and impartial in the trial of this case?

2 JUROR: No.

3 THE COURT: Are you confident about that?

4 JUROR: Uh huh.

5 THE COURT: I need you to be absolutely sure.

6 JUROR: I'm sure. I'm sure.

7 THE COURT: I appreciate it, Ms. Zukes. You may
8 take your seat and stay with us.

9 (Juror returning to seat in Courtroom)

10 (Another juror standing)

11 THE COURT: Your name and juror number?

12 JUROR: Baker, Number 7.

13 THE COURT: All right.

14 JUROR: My dad is in prison for a sexual assault.
15 I just wanted to let you know.

16 THE COURT: Would that affect your ability to be
17 fair and impartial in the trial of this case?

18 JUROR: No. I don't think so.

19 THE COURT: Are you confident that would not af-
20 fect your ability to be fair and impartial in the trial
21 of this case?

22 JUROR: Yes, I'm confident.

23 THE COURT: Thank you.

24 (Juror returning to seat)

25 (Another juror standing)

1 THE COURT: Ms. Baker will stay with us.

2 (Another juror coming forward to the bench with
3 counsel)

4 JUROR: Juror Number 14. My uncle was involved
5 in a rape case back in 1963.

6 THE COURT: Okay.

7 JUROR: Do you think that would affect your ability
8 to be fair and impartial in the trial of this case?

9 JUROR: It probably would, yes.

10 THE COURT: You think it might affect you?

11 JUROR: Yes.

12 THE COURT: Okay, Ms. Bernardo, I'll excuse you from
13 this case, but I would ask that you stay with us until
14 the jurors are excused today.

15 You don't have to respond to any further questions.

16 JUROR: Okay.

17 (Returning to seat in Courtroom)

18 MR. BROWN: Could I try to rehabilitate her?

19 THE COURT: No, she was pretty confident she could
20 not be fair and impartial.

21 MR. BROWN: If I could just ask on the record for
22 an opportunity to rehabilitate her?

23 THE COURT: You can note that on the record.

24 (Another juror approaching the bench with counsel
25 for colloquy with the Court)

1 THE COURT: Your name and number?

2 JUROR: Number 83, Hornsey. My mother was raped
3 about forty years ago.

4 THE COURT: Would that affect your ability to be
5 fair and impartial in the trial of this case?

6 JUROR: No.

7 THE COURT: Are you sure?

8 JUROR: Yes.

9 THE COURT: Without question, you could confine your
10 consideration to what you hear in this Courtroom?

11 JUROR: Absolutely.

12 THE COURT: All right. I appreciate it.

13 (Juror returning to seat in Courtroom)

14 MR. BROWN: And I would appreciate being able to
15 explore that further for purposes of a challenge.

16 THE COURT: Is there any member of the jury who has
17 any moral or religious opposition to the consumption of
18 alcohol beverages? If so, please stand.

19 (No response)

20 THE COURT: Is there any member of the jury panel
21 who has a family member or a close personal friend who
22 suffers from a mental illness? If so, please stand.

23 Again, this could be you or any close personal
24 friend or a family member.

25 (No response)

1 THE COURT: Is there any member of the jury panel
2 who is related by blood or marriage or is a close per-
3 sonal friend of a law enforcement officer? If so,
4 please stand.

5 I'll repeat the question. Is there any member of
6 the jury panel who is related by blood or connected by
7 marriage or a close personal friend of a law enforce-
8 ment officer?

9 (Juror standing)

10 THE COURT: Maam, your name and juror number?

11 JUROR: Jackie Veins, 186. My daughter is a de-
12 tective with the Sheriff's Department.

13 THE COURT: Currently?

14 JUROR: Uh hm.

15 THE COURT: Beaufort County?

16 JUROR: Uh hm.

17 THE COURT: The fact that your daughter currently
18 is a detective for the Beaufort County Sheriff's Depart-
19 ment, would that affect your ability to be fair and
20 impartial in this trial?

21 JUROR: No.

22 THE COURT: Did she discuss this case with you in
23 any way?

24 JUROR: No.

25 MR. BROWN: May we approach?

1 THE COURT: Yes.

2 (Conference at the bench between counsel and the
3 Court out of the hearing of the jury)

4 MR. BROWN: Thank you. Ms. Tanner's husband is
5 her daughter's boss.

6 MS. TANNER: Her daughter works on the south end
7 and has had no participation in the investigation of the
8 case at all. She had no participation in the investi-
9 gation. I know that for a fact.

10 MR. BROWN: I can believe that. I mean, I agree
11 with that, but . .

12 THE COURT: The question is whether she can be
13 fair and impartial.

14 MR. BROWN: I agree but I think there is a separate
15 issue about whether or not she would be inclined to be-
16 lieve law enforcement because her daughter is a member
17 of it.

18 Ms. Tanner's husband controls her daughter's bud-
19 get and . .

20 THE COURT: The same could be true with every one
21 of these deputies.

22 MR. BROWN: I understand that. Actually, I think
23 it's called bias, if you are more inclined to . .

24 MS. TANNER: There are two county officers. One
25 is a first responding officer, Officer Gregg, and then

1 you have Investigator Kelleher.

2 THE COURT: Ms. Veins, I'm going to go ahead and
3 excuse you from the trial of this case, respectfully.
4 I'm going to ask that you stay with us but you do not
5 need to respond to any further questions.

6 All right, maam. I appreciate it.

7 (Juror taking her seat)

8 (Another juror standing)

9 THE COURT: Maam, your name and juror number?

10 JUROR: Judith Johnson, Number 85. I have several
11 friends who are retired from the FBI.

12 THE COURT: Maam, the fact that you have several
13 friends who are retired from law enforcement, would that
14 affect your ability to be fair and impartial in the
15 trial of this case?

16 JUROR: No.

17 THE COURT: Thank you, maam. I appreciate it.

18 (Juror being seated)

19 (Another juror standing)

20 THE COURT: Your name and juror number?

21 JUROR: Steinberg, Number 166.

22 THE COURT: Yes, Ms. Steinberg.

23 JUROR: My brother in law works for D.E.A.

24 THE COURT: The fact that your brother in law
25 works for DEA, would that affect your ability to be

1 fair and impartial in the trial of this case?

2 JUROR: No, maam.

3 THE COURT: Are you confident of that?

4 JUROR: Yes.

5 THE COURT: Thank you, maam. I appreciate it.

6 (Juror being seated)

7 (Another juror standing)

8 THE COURT: Yes, sir.

9 Cory Terrill, 176. I am a close friend of Toby
10 McSwain.

11 THE COURT: The fact that you are a close friend
12 of Toby McSwain, would that affect your ability to be
13 fair and impartial in the trial of this case?

14 JUROR: No, it wouldn't.

15 THE COURT: I appreciate your staying with us.

16 (Juror being seated)

17 (Another juror standing)

18 THE COURT: Your name and juror number?

19 JUROR: Christine Powers, 135. My son was a San
20 Diego police officer. He's retired now.

21 THE COURT: Retired now?

22 JUROR: That's right.

23 THE COURT: The fact that your son was a police
24 officer with San Diego Police, would that affect your
25 ability to be fair and impartial in the trial of this

1 case?

2 JUROR: No, maam.

3 THE COURT: You may be seated. Please stay with
4 us.

5 (Juror being seated)

6 (Another juror standing)

7 THE COURT: Sir, your name and juror number?

8 JUROR: Number 48, Jeff Duncan.

9 THE COURT: All right.

10 JUROR: I have a close friend who was with the
11 City of Port Royal, and I have a first cousin on the
12 Sheriff's Department.

13 THE COURT: Sir, the fact that you have a close
14 friend who was with the City of Port Royal Police and
15 also a first cousin with the Sheriff's Department,
16 would that affect your ability to be fair and impartial
17 in the trial of this case?

18 JUROR: No.

19 THE COURT: Are you sure, sir?

20 JUROR: Yes, maam. Definitely.

21 MR. BROWN: Could we ask who they are?

22 THE COURT: Sir, who is your first cousin?

23 JUROR: Jared Spencer.

24 THE COURT: And your close friend?

25 JUROR: Joab Dowling.

1 THE COURT: And are you confident of that?

2 JUROR: I'm confident.

3 THE COURT: I appreciate it. I'm going to ask
4 you to stay with us, Mr. Duncan.

5 (Juror returning to seat)

6 (Another juror standing)

7 THE COURT: Sir, your name and juror number?

8 JUROR: Robert Ross, 145.

9 THE COURT: All right.

10 JUROR: My son is an Assistant District Attorney
11 for Alameda County, California.

12 THE COURT: All right, sir. The fact that your
13 son is a D.A. out in California, would that affect your
14 ability to be fair and impartial in the trial of this
15 case?

16 JUROR: Not in the least.

17 THE COURT: Thank you, sir. I appreciate it.

18 (Juror returning to seat)

19 (Another juror standing)

20 THE COURT: Sir, your name and juror number?

21 JUROR: Brian Baxley, Number 11. The whole time
22 I was growing up, my father was a police officer.

23 THE COURT: Where was he a police officer?

24 JUROR: Alabama.

25 THE COURT: The fact that your father was a police

1 officer, would that affect your ability to be fair and
2 impartial in the trial of this case?

3 JUROR: Not a bit.

4 THE COURT: Thank you, sir. Stay with us.

5 (Juror being seated)

6 (Another juror standing)

7 THE COURT: Your name and juror number?

8 JUROR: Amy Engler, Number 51. I have a cousin
9 who is a secret service agent, and another cousin who
10 is a North Charleston police officer and some friends
11 with North Charleston.

12 THE COURT: The fact that you have some friends it
13 sounds like as well as family who are with law enforce-
14 ment, would that affect your ability to be fair and im-
15 partial in the trial of this case?

16 JUROR: No, maam.

17 THE COURT: Are you sure of that?

18 JUROR: Yes, maam.

19 THE COURT: Thank you, maam. You may be seated
20 and stay with us.

21 (Juror seated)

22 (Another juror standing)

23 THE COURT: Your name and juror number?

24 JUROR: Mary Bailey, Number 6. I'm a widow to
25 Robert Allison, who was a police officer here in Beaufort

1 and Port Royal, and Chief of Police at Bluffton, South
2 Carolina.

3 THE COURT: Maam, would that affect your ability
4 to be fair and impartial in the trial of this case?

5 JUROR: No, maam. Not at all.

6 THE COURT: Thank you, maam. Please stay with us.

7 (Juror being seated)

8 THE COURT: Ladies and gentlemen, is there any mem-
9 ber of the jury panel who has seen or heard any media
10 reports, including newspapers, television, radio, in-
11 volving any aspect of this case, and this is for people
12 who didn't respond to the question earlier?

13 Again, is there any juror who is aware that you
14 have heard, seen any TV reports, media reports on radio
15 or television with regards to this case? If so, please
16 stand, if you didn't respond earlier.

17 (No response)

18 THE COURT: Is there any member of the jury panel
19 who has ever visited the Salter's Bar and Grill? If so,
20 please stand.

21 (Jurors standing)

22 THE COURT: All right, for purposes of the ques-
23 tion, ladies and gentlemen -- maam, your name and juror
24 number?

25 JUROR: Gibson, Number 58.

1 THE COURT: Ms. Gibson, when is the last time you
2 have been inside Salter's Grill?

3 JUROR: A couple of months probably. We've been
4 there quite a bit.

5 THE COURT: Okay. You frequent it, is that cor-
6 rect?

7 JUROR: I guess you could say that.

8 THE COURT: Okay. Have you heard at Salter's Grill
9 anything about this alleged incident?

10 JUROR: No, I have not.

11 THE COURT: Ms. Gibson, thank you. You may be
12 seated.

13 (Juror seated)

14 THE COURT: Your name and juror number?

15 JUROR: Amy Zukes, 172. We've had our office
16 Christmas party -- a Christmas party there in December,
17 and I was there probably July-August of last year.

18 THE COURT: Okay. Did you hear anything with re-
19 gard to this incident?

20 JUROR: No.

21 THE COURT: All right, Ms. Zukes. Thank you.

22 (Juror seated)

23 THE COURT: Yes, maam?

24 JUROR: Mary Ellen Harkins, Juror Number 68.

25 This last October for the Shrimp Festival.

1 THE COURT: Okay. Thank you, maam.

2 JUROR: I did not hear anything about this.

3 THE COURT: I appreciate that.

4 (Juror seated)

5 THE COURT: Yes, maam, your name and juror number,
6 please?

7 JUROR: Joan Heavey, Number 69. I have heard no-
8 thing. It's been several months.

9 THE COURT: Thank you. I appreciate it.

10 (Juror seated)

11 THE COURT: Yes, sir, your name and juror number?

12 JUROR: Purcell, 137. I have been there three or
13 four times the last couple of years, but I haven't heard
14 anything about the case.

15 THE COURT: Thank you. I appreciate that, sir.

16 (Juror seated)

17 THE COURT: Yes, maam, your name and number?

18 JUROR: Frances Tuttle, 184. I was last there
19 about eight or nine months ago, and I didn't hear or
20 see anything.

21 THE COURT: Thank you, maam.

22 MR. BROWN: Her number one more time.

23 THE COURT: Ms. Tuttle, what is your number again,
24 maam?

25 JUROR: One eighty-four.

1 MR. BROWN: Thank you, Your Honor.

2 (Juror seated)

3 THE COURT: Maam, your name and juror number?

4 JUROR: Linda O'Connell, 120. I have been there
5 several times. It's been a while, and I have not seen
6 or heard anything.

7 THE COURT: Thank you.

8 (Juror seated)

9 THE COURT: Maam, your name and jury number again?

10 JUROR: Mary Bailey, Number 6. I was there sev-
11 eral times after their opening.

12 THE COURT: When was the last time approximately?

13 JUROR: It's been years since their opening.

14 THE COURT: Thank you, maam.

15 (Juror seated)

16 THE COURT: Your name and juror number again?

17 JUROR: Ross, 145. I was there once about a year
18 ago to have lunch with my son.

19 THE COURT: Thank you, sir.

20 JUROR: I heard nothing about this case.

21 THE COURT: Thank you, Mr. Ross.

22 (Juror seated)

23 THE COURT: Yes, maam?

24 JUROR: Amy Engler, Number 51. I've been there
25 a couple of times for dinner but I haven't heard or
seen anything.

1 THE COURT: Thank you. Is there any member of the
2 jury panel who is a member of or a contributor to any
3 organization which has as its primary function the pro-
4 motion of law enforcement or victim's rights?

5 These would include Citizens Against Violent Crime
6 or CAVE; Mothers Against Drunk Driving or MADD.

7 Again, the question was, is there any member of
8 the jury panel who is a member of or contributor to
9 any of these types of organizations? If so, please stand.

10 (Juror standing)

11 THE COURT: Yes, maam, your name and juror number?

12 JUROR: Number 85, Johnson. I have contributed to
13 MADD before.

14 THE COURT: Thank you, maam. Anyone else?

15 (No response)

16 THE COURT: Is there any member of the jury panel
17 who has formed or expressed any opinion as to the guilt
18 or innocence of the Defendant, Mr. Howard, in this
19 case? If so, please stand.

20 (No response)

21 THE COURT: Is there any member of the jury panel
22 who is conscious of any interest, any bias or any pre-
23 judice for or against the Defendant, Mr. Howard, in this
24 case, or for or against the State in this case? If
25 so, please stand.

1 (No response)

2 THE COURT: Is there any reason, ladies and gentle-
3 men, that you cannot give both the State and the Defen-
4 dant, Mr. Howard, a fair and impartial trial in this
5 matter?

6 (No response)

7 THE COURT: Any further inquiry requested of the
8 petit jury panel by the State?

9 SOLICITOR: Not from the State, Your Honor.

10 THE COURT: From the Defendant?

11 MR. BROWN: Nothing from the Defense, Your Honor.
12 There are one or two issues . .

13 THE COURT: Yes, sir.

14 MR. BROWN: . . I would like to take up on the
15 record at the appropriate time.

16 THE COURT: Yes, sir. Ladies and gentlemen, what
17 we are going to do now is that all of you who have been
18 found to be qualified for this trial, your names will
19 be randomly pulled and the attorneys will have an op-
20 portunity to look at those people that are on the panel
21 and they are allowed to exercise strikes.

22 That is going to take a few minutes to give the
23 attorneys an opportunity to review those lists.

24 What I'm going to ask you to do is this, I'm going
25 to respectfully ask that you return to the Courtroom by

1 one o'clock and we will strike this panel. I assure you
2 that I will then send you all home for the remainder of
3 the day.

4 So with that, ladies and gentlemen, be back by one
5 o'clock when we will go ahead and strike the panel.

6 (Whereupon, the Court stood in recess from 12:41
7 P.M. until 1:00 P.M., when the matter was resumed)

8 CLERK: May I approach?

9 THE COURT: Yes, sir.

10 CLERK: This lady failed to mention that she has
11 contributed to MADD.

12 THE COURT: Ms. Burch, Number 23, failed to men-
13 tion that she has contributed to MADD.

14 JUROR: I'm sorry.

15 THE COURT: Thank you, maam.

16 Thank you. Will you please be seated.

17 Is the State ready?

18 SOLICITOR: State's ready, Your Honor.

19 THE COURT: Is the Defense ready?

20 MR. BROWN: Yes, maam, we are.

21 THE COURT: Ladies and gentlemen, I will tell you
22 that your name was put in the computer and you were re-
23 assigned a number, so if you think you hear your number
24 struck, it isn't, respectfully.

25 Respectfully, ladies and gentlemen, when your

1 name is called, would you come forward and stop here
2 in front of the bar and just turn around. Don't say
3 anything, but just come forward and stand right there.

4 With that said, . . .

5 (Whereupon, a jury was struck as shown on the at-
6 tached random strike sheet.

7 John W. Barton, Juror 10, seated.

8 Melissa Bardo, Juror Number 9, called.

9 MR. BROWN: May we approach?

10 THE COURT: Yes.

11 (Colloquy at the bench between counsel and the
12 Court)

13 MR. BROWN: I understand that her brother and my
14 client were cellmates in the jail.

15 SOLICITOR: I appreciate your telling me. If I
16 had known, I would have struck her. She was asked if
17 she knew anything about this case.

18 (Juror Bardo coming to bench)

19 THE COURT: Ms. Bardo, do you know anything about
20 this case?

21 JUROR: No, maam.

22 THE COURT: Do you know the Defendant in any way?

23 JUROR: No.

24 THE COURT: I appreciate that, thank you.

25 Mr. Brown.

1 MR. BROWN: Please seat Ms. Bardo.
2 Debra D. Lucas, Juror 102, seated.
3 David M. Sarno, Juror 148, struck by the Defense.
4 Jeffrey L. Duncan, Juror 48, struck by the Defense.
5 Inaki Balzola, Number 8, struck by the Defense.
6 Stacey Steinberg, Juror 166, struck by the Defense.
7 James E. Disario, Juror 43, seated.
8 Ingrid J. Burch, Juror 23, struck by the Defense.
9 Frances Tuttle, Juror 184, struck by Defense.
10 Redelle M. Smalls, Juror Number 158, seated.
11 Robert L. Hamilton, Juror Number 66, struck by the
12 State.
13 Patricia A. Powers, Juror Number 135, seated.
14 Annie G. Gregory, Juror Number 63, seated.
15 David A. Gonsalves, Juror Number 60, seated.
16 Brian E. Baxter, Juror Number 11, seated.
17 Willie Singleton, Jr., Juror 155, seated.
18 Brien E. Kelly, Juror Number 86, struck by Defense.
19 Janet S. Trimm, Juror Number 181, struck by the
20 Defense.
21 Dominique M. Perrin, Juror Number 130, struck by
22 the Defense.
23 Rosa L. Green, Juror Number 62, struck by the State.
24 Ricardo R. Pecora, seated.
25 Mary E. Boston, Juror 15, seated.

RANDOM STRIKE SHEET

2/23/09

JUDGE NAME : Mullen, Carmen T

Sorted by: Random Nb

TRIAL TYPE : Criminal

PANEL ID : 2006GS0701093

DESCRIPTION : STATE v ALFONSO HOWARD

Trial

COURTROOM CTR

NAME	JUROR NBR	RACE	SEX	STATE/ PLAINTIFF		DEFENDANT		REMARKS
				Chal	Strk	Court		
1 Barton, John W	10	W	M	()	()	()		1
2 Bardo, Mellissa M	9	W	F	()	()	()	bc	2 <i>Δ says b.n. should call</i>
3 Lucas, Debra D	102	W	F	()	()	()		3
~~Δ 4 Sarno, David M~~	148	W	M	()	(1)	()		
~~Δ 5 Duncan, Jeffrey L~~	48	W	M	()	(2)	()		
~~Δ 6 Balzola, Inaki~~	8	W	M	()	(3)	()		
~~Δ 7 Steinberg, Stacey~~	166	W	F	()	(4)	()		
8 Disario, James E	43	W	M	()	()	()		4
~~Δ 9 Burch, Ingrid J~~	23	W	F	()	(5)	()		
~~Δ 10 Tuttle, Frances P~~	184	W	F	()	(6)	()		
~~Δ 11 Smith, Redelle M~~	158	B	F	()	()	()		5
~~Δ 12 Hamilton, Robert L~~	66	B	M	(1)	()	()		
13 Powers, Patricia A	135	B	F	()	()	()		6
14 Gregory, Annie G	63	W	F	()	()	()		7
15 Gonsalves, David A	60	W	M	()	()	()		8
16 Baxter, Brian E	11	W	M	()	()	()		9
17 Singleton, Willie JR	155	B	M	()	()	()		10
18 Kelly, Brian E	86	W	M	()	(7)	()		
19 Trimm, Janet S	181	W	F	()	(8)	()		
20 Perrin, Dominique M	130	W	F	()	(9)	()		
21 Green, Rosa L	62	B	F	(2)	()	()		
~~22 Bernardo, Mary S~~	14	B	F	()	()	()		<i>erke pres by TC</i>
23 Pecora, Ricardo R	129	W	M	()	()	()		11
24 Boston, Mary E	15	W	F	()	()	()		12

OFFICE OF THE CLERK OF COURT
RANDOM STRIKE SHEET

JUDGE NAME : Mullen, Carmen T

TRIAL TYPE : Criminal

PANEL ID : 2006GS0701093

COURTROOM CTR

DESCRIPTION : STATE v ALFONSO HOWARD

Sorted by: Random Nb

Trial

NAME	JUROR NBR	RACE	SEX	STATE/ PLAINTIFF		DEFENDANT		REMARKS
				Chal	Strk	Court		
~~Δ~~ 25 Powers, Carolyn	134	W	F	()	(1)	()		
~~Δ~~ 26 Hollingsworth, Carrie A	80	W	F	()	(2)	()		
27 Bailey, Mary J	6	W	F	()	()	()		~~Δ~~ 1 ACT BCon record - denied m
~~Δ~~ 28 O'connell, Ronda I	120	W	F	()	(1)	()		
29 Griffin, Stephanie C	64	W	F	()	()	()		2 ACT
30 Raggi, Leonora	139	W	F	()	()	()		
31 Harkins, Debra L	67	W	F	()	()	()		
32 Beringhause, Elaine R	12	W	F	()	()	()		
33 Harris, Kyong S	69	A	F	()	()	()		
34 Walker, James L	187	B	M	()	()	()		
35 Baker, Catherine M	7	H	F	()	()	()		
36 Bryan, Prince R	19	B	M	()	()	()		
37 Albany, Joe L JR	1	B	M	()	()	()		
38 Hopkins, Donald M JR	81	W	M	()	()	()		
39 Hornsby, Travis L	82	W	M	()	()	()		
40 Olesh, Michelle J	121	W	F	()	()	()		

Total Number of Jurors:

40

** END OF REPORT **

1 (As to Alternate Jurors, the following selection
2 was made)

3 MR. BROWN: Two and one, Your Honor.

4 THE COURT: Yes.

5 Carolyn Powers, Juror 134, struck by the De-
6 fense.

7 Carrie A. Hollingsworth, Juror Number 80, struck
8 by the Defense.

9 Mary J. Bailey, Juror Number 6, called.

10 MR. BROWN: Your Honor, I would challenge for
11 cause.

12 THE COURT: Approach.

13 (Colloquy at the bench between counsel and the
14 Court)

15 MR. BROWN: It's a broad challenge because there
16 is cause under the law enforcement question, because
17 she has a relative who is chief of police, and she fre-
18 quented Salter's Restaurant. We believe separately and
19 especially together those two things raise cause.

20 She is female, and the female in the case -- the CSC,
21 being an aggravated charge, coupled with the fact that
22 she frequents that restaurant, and coupled with the
23 relative in law enforcement -- we believe that gives
24 cause to strike her.

25 MS. TANNER: She said she hadn't been there in

1 years.

2 THE COURT: Maam, you may be seated, up there.

3 Thank you.

4 (Juror Bailey seated as the first alternate)

5 Ronda I. O'Connell, Juror Number 120, struck by
6 the Defense.

7 Stephanie Griffin, Juror Number 64, seated as the
8 second alternate juror.

9 THE COURT: Are there any matters of law we need
10 to take up regarding jury selection?

11 SOLICITOR: Nothing from the State?

12 THE COURT: From the Defense? Would you like to
13 approach?

14 (Counsel coming to the bench)

15 THE COURT: Mr. Brown, other than your wishing to
16 rehabilitate those two jurors, anything other than
17 that?

18 MR. BROWN: I wish to raise a Batson motion.

19 THE COURT: Okay. Ladies and gentlemen of the po-
20 tential jury, at this time there are some matters of
21 law I need to take up with the attorneys.

22 Respectfully what I'm going to ask is that you
23 just go back in the jury room very shortly.

24 Again, ladies and gentlemen, I will tell you not
25 to begin discussing this case. It would not be proper

1 for you to do so at this time because you haven't heard
2 the arguments of the lawyers, you haven't heard any of
3 evidence in the case, nor my instruction on the law.

4 So please go back to the jury room and acquaint
5 yourselves, introduce yourselves, and we'll be back with
6 you shortly.

7 (Jury excused from Courtroom at 1:35 P.M.)

8 BAILIFF: The jury is clear, Your Honor.

9 THE COURT: Thank you. Ladies and gentlemen of
10 the jury panel, I will be able hopefully to release you
11 shortly, but there is a matter of law I need to take up
12 with the attorneys, and it may be that I'll need you
13 but I won't be able to tell you until you return.

14 So respectfully what I'm going to ask you to do --
15 and it won't take too terribly long, I assure you --
16 is to go out of the Courtroom, and again my hope is I
17 can get this jury chosen and I can release you for the
18 balance of the afternoon. I will let you know as soon
19 as you come back in.

20 (Jurors not selected for the trial of the case
21 excused from Courtroom)

22 THE COURT: Please let me know when the Courtroom
23 is cleared.

24 BAILIFF: They are all out, Your Honor.

25 THE COURT: Thank you.

1 Mr. Brown, your motions?

2 MR. BROWN: Yes, maam. I don't know if you want
3 me at some point to also address the issue about the two
4 jurors.

5 THE COURT: You told me you have a Batson motion,
6 so let's take that up first.

7 MR. BROWN: Yes, maam. The State struck two jurors
8 who were both African-Americans.

9 THE COURT: Okay. Solicitor, can you give me a
10 race-neutral reason for striking those two jurors?

11 SOLICITOR: Your Honor, the first juror the State
12 struck was Number 66, Robert Hamilton, and he was pre-
13 viously brought up to the bench and the State had pro-
14 vided a rap sheet for multiple arrests and convictions.

15 Mr. Hamilton said that was not him. However, I've
16 been a prosecutor here in Beaufort County for ten years
17 now, and Mr. Hamilton is from the Bluffton area. I'm
18 very familiar with the Hamilton family from Bluffton.
19 We prosecute them frequently.

20 There is an area of Bluffton called Hamilton Hill
21 which is a high crime area.

22 The State struck Mr. Hamilton for that reason.

23 THE COURT: And the next one?

24 SOLICITOR: Secondly, Your Honor, Number 62.

25 During the qualification process, when Madam Clerk

1 was asking everyone where they were employed and all of
2 that, and I had a very hard time understanding Ms. Rosa
3 Green.

4 She was very incoherent. She had to be asked three
5 times what her place of employment was. On one vers-
6 ion it sounded like she said she sold fruit, and I think
7 by the third version it sounded like she was selling
8 seafood out of a truck. That's the best I could get
9 out of it.

10 I had some issues thinking she had some difficulty
11 understanding or communicating, and then when she was
12 brought up to the bar she was the only juror that did
13 not make eye contact. She would not look up.

14 She had her head down, and for those reasons I
15 struck her.

16 MR. BROWN: May it please the Court, Your Honor?

17 THE COURT: Yes, sir.

18 MR. BROWN: In reply, as to Number 66, as I heard
19 it, she struck him for the fact that he comes from a
20 family of criminals according to the prosecutor's of-
21 fice, or something of that nature.

22 I have to say that my mother in law is a Hamilton.
23 and so -- not related to these, I don't believe.

24 THE COURT: Your mother is a Hamilton?

25 MR. BROWN: From Alabama.

1 THE COURT: It is quite a common name, and I'm
2 sure there are many others.

3 MR. BROWN: I would agree with Your Honor's assess-
4 ment, and, besides that, what else I heard her say was
5 he was called up because of the rap sheet which accused
6 him of crimes which he did not commit.

7 So he was more or less, I guess, falsely accused
8 of possibly a burglary first charge from what I hear
9 in her strike reasons.

10 That's the same thing that happened to Juror 102,
11 the third juror seated. That is not race-neutral be-
12 cause that is a white juror that was seated who was in
13 fact called up with a rap sheet who it wasn't, and this
14 was an African-American who was called up with a rap
15 sheet and it wasn't. He was treated differently.

16 THE COURT: Well, respectfully, Solicitor, you did
17 seat an African-American woman, is that correct?

18 SOLICITOR: I seated two African-American women
19 and an African-American man on the jury. That's correct.

20 There are three African-Americans on the jury the
21 State did seat, but for clarification the race-neutral
22 reason for striking Mr. Hamilton was not because he was
23 brought up to the Bar and it did
24 turn out not to be him, or he says it's not him. I'm
25 not convinced it's not him because he says it's not

1 him, but that's not the reason I'm striking him.

2 I'm striking him because of familiarity with his
3 family and concerns over that issue, Your Honor.

4 THE COURT: All right.

5 MR. BROWN: She has twice mentioned that he was
6 brought up on the rap sheet, and the second time she
7 said she was not convinced it's not him.

8 I mean, to me that needs to be fleshed out for sure.
9 I don't have the power to run a rap sheet so there is
10 nothing I can do.

11 I've got an investigator who is no longer with law
12 enforcement, but I think when this goes up there is
13 going to be this question of whether or not he lied
14 about whether it's him or not, and I don't believe --
15 I can't prove it but someone out there can find out
16 if that's him by pulling a print card to see if he has
17 told the truth.

18 THE COURT: Well, respectfully, you all, looking
19 at the totality of the circumstances of your own chal-
20 lenge, sir, I do think the State has met their burden
21 of a race-neutral reason for striking Mr. Hamilton.

22 Let's go on to the next one, which is Ms. Green.
23 Is that correct?

24 MR. BROWN: Yes, Your Honor. I can't dispute whe-
25 ther or not there was eye contact made with the prose-
cutor's office.

1 I mean, I'll be honest with you. It sounds like
2 fishing to me.

3 What I really heard is that she was shy during
4 jury qualification.

5 SOLICITOR: That is his interpretation, but we
6 believe it is a race-neutral reason. Additionally, the
7 fact that the State did in fact put on two female Afri-
8 can-Americans plus one male African-American. . .

9 THE COURT: I think that does show that there is
10 a broad-based reason for her striking someone, and re-
11 spectfully for the record I would deny that motion as
12 well.

13 MR. BROWN: Briefly, our objection is not that they
14 didn't seat any African-Americans, if I may, but that
15 their strikes were against African-Americans.

16 THE COURT: I believe the State has given a race-
17 neutral reason for striking Ms. Green.

18 All right, go ahead, Mr. Brown, and put on the re-
19 cord -- well, actually, we can do that after we bring
20 the jury back and send them home.

21 Then you can put your other reasons for wanting to
22 rehabilitate the other witnesses.

23 MR. BROWN: And, Your Honor, I have a witness here
24 regarding that issue that we -- Mr. Morrison in the
25 front row.

1 It is a very important issue that we brought him
2 at the State's expense from the State of Alabama to be
3 heard.

4 THE COURT: The more you talk, the more time you
5 are taking. Bring the jury in and I can let them go as
6 quickly as I can.

7 Bring the jury.

8 (Jury panel brought into Courtroom at 1:45 P.M.,
9 being jurors not chosen for the trial of this case)

10 THE COURT: Welcome back, ladies and gentlemen.
11 I have some good news, that I'm going to send you all
12 home for the afternoon, but before I do I just need to
13 tell you a few things.

14 Obviously you have not been chosen as jurors on
15 this first case. However, we do have to my understand-
16 ing two further cases that we may or may not try this
17 week.

18 Rather than keeping you here for another hour and
19 a half, I'm going to go ahead and send you home. We
20 really don't know if the next case will be called, so
21 what I would ask you to do, ladies and gentlemen, is
22 to call after six o'clock tonight the number you were
23 provided to determine whether or not you need to come
24 tomorrow.

25 So, respectfully, whatever it tells you to do,

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1 do that. If it tells you to call after six o'clock on
2 Wednesday night, do that. If it says be here, fine.
3 Do that.

4 Ladies and gentlemen, if anyone needs a work ex-
5 cuse, they will give you one at the back. If you will
6 take off your jury badges, please give it back to the
7 bailiff as you walk out of the Courtroom.

8 Again, I appreciate your being here, ladies and
9 gentlemen. You are excused for the remainder of the
10 day.

11 (Jury panel released for the day at 1:48 P.M.)

12 THE COURT: All right, go on and bring our jury
13 back in.

14 (Selected jury brought into Courtroom at 1:50
15 P.M.)

16 THE COURT: Is there any problem with starting
17 with them at ten o'clock tomorrow?

18 MR. BROWN: No, but I do have a request to ask for
19 tomorrow afternoon. I coach baseball and need to be
20 out of here by seven o'clock or I need to be out at six
21 thirty or six forty.

22 THE COURT: No problem with that.

23 MR. BROWN: Thank you so much.

24 BAILIFF: The jury is entering, Your Honor.

25 THE COURT: Thank you.

1 BAILIFF: Your Honor, the jury is seated.

2 THE COURT: Thank you. Welcome, ladies and gen-
3 tlemen.

4 As you all know, I'm Carmen Mullen. I am a Resi-
5 dent Circuit Court Judge here, and you have been chosen
6 as the jury in the trial we are going to hear this
7 week.

8 I'm going to go ahead and release you for the re-
9 mainder of the afternoon, but I need to tell you a few
10 things before we begin this trial and certainly as we
11 part -- and you're going to hear me say this every time
12 we part company -- there are a few rules we have in the
13 Courtroom, and for starters there must be no cel phones
14 in the Courtroom. I heard one go off over here.

15 Again, ladies and gentlemen, obviously we treat
16 the Courtroom like a church or synagogue and we use it
17 accordingly and respectfully.

18 Additionally, now-days with cel phones, there are
19 so many ways you can get information, and it would be
20 inappropriate to use it in any way.

21 What I'm going to have to ask you to do is leave
22 them out in your car. If you do manage to get them in
23 the Courthouse, our bailiffs are required to take them
24 from you while you are serving as jurors.

25 So they will take them in the morning and give them

1 back to you at the end of the day. To avoid that, just
2 don't bring in your cel phones.

3 Additionally, ladies and gentlemen, there may or
4 may not be some press coverage or TV coverage in regards
5 to this case.

6 It would be inappropriate for you to read or see
7 anything on the news in regards to this case. You will
8 be given all the evidence you need right here in this
9 Courtroom to determine this case.

10 Therefore, ladies and gentlemen, I am ordering you
11 that you do not read any news reports or listen by ra-
12 dio or on the TV or see anything in regards to this
13 case.

14 Respectfully, if you are watching the news at
15 night, you are to turn it off or turn to another chan-
16 nel and disregard it, and, ladies and gentlemen, I will
17 tell you that each morning I'm going to ask you
18 if you have read anything or seen or heard anything with
19 regard to this case.

20 Additionally, ladies and gentlemen, we are the era
21 of the Internet, and I know you can garner a lot of in-
22 formation from the Internet.

23 Again, you are not to do any independent research.
24 It would be inappropriate for you to do so. Again, you
25 are going to have everything you need to decide this

1 case in this Courtroom.

2 So, ladies and gentlemen, your only orders are to
3 go home tonight and get a good night's sleep.

4 I am also allowed to tell you this, that you are
5 not to begin discussing this case until you have heard
6 all of the evidence, you've heard the arguments of the
7 lawyers, and you've heard my charge on the law because,
8 again, it simply wouldn't be appropriate to do so.

9 With that said, when you go home and you see your
10 spouse or loved ones or family members or neighbors to-
11 night, the only thing you may say is that you have been
12 chosen on a criminal jury, and that is all.

13 You can't even say what it involves or anything
14 that you may know about it from sitting in this Court-
15 room today.

16 It would not be appropriate to do so, and parti-
17 cularly since family members or friends always have a
18 habit of asking questions or wanting to give you their
19 information or two cents worth of what they know, and
20 they aren't going to be sitting in this Courtroom.

21 They are not going to hear this case, and it would
22 be inappropriate for you to get any of this outside in-
23 formation.

24 Lastly, ladies and gentlemen, the parties and the
25 witnesses in this case have been instructed that they

1 are not to speak to you as you are coming or going
2 in the Courtroom, and the reason why is this. It would
3 be inappropriate for them to do so.

4 Even an innocent smile or hello in the hallways
5 of the Courthouse would be inappropriate as it could be
6 misconstrued.

7 So, please, if you pass anyone coming or going in
8 this Courthouse that may be in any way involved with
9 this case, whether a party or a potential witness and
10 they don't even say hello, don't be offended. They
11 are just following my orders. All right?

12 With that said, ladies and gentlemen, I will tell
13 you that our plan for tomorrow is to begin promptly at
14 ten A.M.

15 You are going to be taken back to your jury room
16 as you are leaving, and they are going to show you a
17 little bit different route to get back to the Courtroom
18 tomorrow.

19 Respectfully, I cannot start until all fourteen of
20 you are here, so, again, I need all of you to be present
21 here for us to begin the trial of this case, which we
22 intend on doing tomorrow morning. Okay?

23 Tomorrow I intend that we are going to run to between
24 probably five or six. I can't give you an exact time.
25 It just depends on how the testimony of witnesses go in

1 the natural progression and it depends on how tired
2 you are as well. Okay?

3 With that said, I ask you to plan on being here
4 during that time. I will say that we will have a lunch
5 break somewhere around one or one thirty -- somewhere
6 around there for at least an hour, when you can go out
7 and do whatever you want to do, get a little fresh air
8 before you come on back. Okay?

9 So with that said, ladies and gentlemen, I appre-
10 ciate your attention, and I look forward to seeing you
11 back tomorrow morning at ten A.M.

12 I apologize. There's one last thing I need to ask
13 of you. When you come back in the morning, I need you
14 to select a Foreperson.

15 The Foreperson doesn't have any more say than any-
16 one else. It is simply the person who at the time of
17 deliberations facilitates the conversation among the
18 jury, and additionally it is the person that I communi-
19 cate with during the trial of the case regarding sche-
20 duling or any needs that you may have.

21 With that said, you all can come and go and sit
22 in any seat you want when you come and go from the
23 Courtroom. I just respectfully ask that the Foreperson
24 keep this very top seat up here so I can communicate
25 with you.

1 With that said, I need my alternates to sit in those
2 same back two spaces, and the rest of you can move about
3 at will.

4 All right. With that said, ladies and gentlemen,
5 I'm going ahead and excuse you for the balance of the
6 day, and I will see you tomorrow at ten A.M.

7 Thank you.

8 (Jury excused at 1:56 P.M.)

9 BAILIFF: The jury is clear, Your Honor.

10 THE COURT: Thank you. All right.

11 Respectfully, Mr. Brown, I understand that you
12 have an issue to take up, and I know your expert needs
13 to be on the road.

14 (Colloquy between the Court and counsel concerning
15 other cases pending)

16 THE COURT: Mr. Brown?

17 MR. BROWN: May it please the Court, Your Honor?

18 THE COURT: Yes, sir.

19 MR. BROWN: We filed -- and I apologize for the
20 timing of the filing, except to say that it was filed
21 as soon as we could, given the disclosure of the in-
22 formation that we base the motion on.

23 The motion is to exclude unreliable DNA evidence,
24 and in that regard I am prepared to present expert
25 witness testimony from Roger Morrison, who is my expert

1 in the Courtroom, and I've got a copy of his CV which
2 I will hand up.

3 We'd call Mr. Morrison at this time to develop
4 some of those issues.

5 We did attach three items, three attachments, to
6 the motion we filed with the Court. It is sitting in
7 front of me. I can see it right there in the folder.

8 They were given to me by the State so I didn't
9 give them back to them.

10 They are the DNA information and reports and the
11 correspondence related to DNA.

12 So what I would like to do is present testimony
13 from Mr. Morrison related to the information that is
14 elicited in attachments A, B and C to my motion filed
15 with the Clerk's Office, and I would like to also make
16 those exhibits, the attachments to my motion, and I
17 don't know how you want to proceed to do that.

18 I would call Mr. Morrison.

19 THE COURT: Okay. Respectfully, Solicitor, . .

20 SOLICITOR: Your Honor, first I have to object to
21 putting all of this up. All of this information goes
22 to the weight of the evidence, not the admissibility.

23 If Mr. Brown wants to put this witness up after
24 the DNA expert testifies, to do whatever he wants to do
25 in his defense, I believe that would be the appropriate

1 time.

2 Again, the contamination issue will go to the
3 weight and not the admissibility. I think we can make
4 legal arguments with regard to that without putting on
5 all of this and move forward in this case.

6 THE COURT: Just so I'm clear, your DNA expert is
7 not here. Is that correct?

8 SOLICITOR: That's correct.

9 THE COURT: And she has been subpoenaed by Mr.
10 Brown?

11 SOLICITOR: That's what I have been told by her
12 supervisor.

13 THE COURT: So, respectfully, when do you intend
14 on calling her?

15 SOLICITOR: If we stay on the schedule that I
16 have in my head, I would say sometime late Wednesday.

17 THE COURT: It's my understanding that your expert,
18 Mr. Morrison, has flown in from Alabama, Mr. Brown,
19 and you have him here in Court today.

20 What you have told me prior is that, depending on
21 whether or not I exclude the State's DNA evidence, whe-
22 ther or not Mr. Morrison will have to come back.

23 MR. BROWN: Yes, maam. There's one other thing.

24 THE COURT: Yes.

25 MR. BROWN: I've got -- if they're going to be

1 allowed to introduce -- I disagree about it going to
2 the weight and not admissibility, but another issue is
3 concerning the timing.

4 There is DNA evidence they surely are going to
5 pull out at some point in the case, and I have got in
6 behalf of my client to try and neutralize that evidence
7 if it's going to come in through my opening statement
8 or through my examination of the witnesses.

9 I say that because waiting until a later point in
10 time doesn't give me guidance. I mean, I would be an
11 ineffective lawyer if I talked about DNA and we turn
12 around and exclude it tomorrow.

13 It's a huge problem. I can tell you right now
14 that I can't -- I'm not clairvoyant, so I don't know
15 what Your Honor is going to rule tomorrow.

16 So I have tried a long time -- my client gave us
17 a DNA sample in April of 2007, and they just gave us a
18 report regarding contamination last week.

19 I got the final report.

20 THE COURT: Well, let me ask you, is it possible
21 for you to have your DNA expert here tomorrow morning?

22 SOLICITOR: Yes, maam.

23 THE COURT: Okay. What I propose we do -- I un-
24 derstand Mr. Morrison has got to go so I propose that
25 we take Mr. Morrison's testimony and let him go when

1 he has to go, and, sir, if you have to come back because
2 it needs to be presented then you'll come back.

3 But I understand your schedule, and I am trying to
4 respect it.

5 So with that said, I suggest that that is what we
6 do at this time, sir. You put up Mr. Morrison at this
7 time, and you go ahead and have an opportunity to cross
8 examine him.

9 I suggest you bring your DNA expert in the morning
10 so we will be able to have this issue resolved prior
11 to opening statements.

12 SOLICITOR: What time would she need to be here,
13 Your Honor?

14 THE COURT: If the jury is coming in at ten, she
15 should be here at nine, and I understand I'm pushing it
16 with her coming from Columbia, but we need to go ahead
17 and get it resolved so we can continue with the trial.

18 All right? So with that said, go ahead and put Mr.
19 Morrison up.

20 MR. BROWN: May it please the Court, I call Roger
21 Morrison.

22 ROGER MORRISON, being duly
23 sworn, testified as follows, out of the presence of
24 the jury:

25 THE COURT: Solicitor, for purposes of this hearing,

1 do you stipulate that Mr. Morrison is an expert on DNA
2 analysis?

3 SOLICITOR: I've never heard of Mr. Morrison. I
4 would like to hear a little bit about what he does and
5 where he's from.

6 MR. BROWN: I'll keep it very brief.

7 THE COURT: Do you have a CV?

8 MR. BROWN: Yes.

9 SOLICITOR: Thank you.

10 MR. BROWN: I'll keep it very brief, if I can go
11 ahead and begin.

12 DIRECT EXAMINATION out of the presence of the jury

13 CLERK: State your first name and spell your last
14 name.

15 WITNESS: My name is Roger Morrison, M O R R I S
16 O N.

17 BY MR. BROWN:

18 Q. For the sake of brevity, I'm going to lead you on
19 through this a little bit.

20 Can you tell us about your experience working with
21 the forensic laboratory in Alabama, the State of
22 Alabama?

23 A. I have worked with the State of Alabama Department
24 of Forensic Sciences since 1978. I retired from that
25 Department in November of 2006.

MR. MORRISON IN CAMERA

1 Q. And . .

2 A. Or seven -- 2007, excuse me.

3 Q. And how does that employment relate to your
4 knowledge of DNA evidence?

5 A. I started working in the DNA evidence area from
6 serology when DNA technology first became available in
7 1989, and I have been in DNA technology since that
8 period of time.

9 I was the -- at one point the State Coordinator and
10 State Technical Leader -- Technical Leader at the Hunts-
11 ville Area Crime Laboratory.

12 I have trained several people in the DNA Section.

13 Q. And at some point in time did you run the DNA por-
14 tion of the Alabama Forensic -- Department of Forensic
15 Science?

16 A. Yes.

17 Q. Explain how that compares to the SLED DNA Lab,
18 because Alabama also has an agency called ABI?

19 A. We do. ABI is the Alabama Bureau of Investiga-
20 tion. They don't have a laboratory system. They have
21 -- they do fingerprint work, fingerprint comparisons,
22 but the forensic science is handled by the Alabama De-
23 partment of Forensic Science, which is a separate state
24 agency.

25 Q. So is that comparable to SLED?

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1 A. They are a state law enforcement organization,
2 yes.

3 Q. They do their own DNA work inside of that agency?

4 A. Yes.

5 Q. And in Alabama, it goes to the agency that you
6 serve as head of the DNA for?

7 A. Yes, with the exception of fingerprint comparison.

8 Q. And tell us -- and I don't want to skip anything
9 that the Judge may consider important, and obviously
10 we all have got your CV.

11 Let me ask you a little bit about the training you
12 got in DNA work. Can you tell us about ASCLD -- ASCLD?

13 A. ASCLD is a national organization that is involved
14 in the accreditation of forensic laboratories through-
15 out the United States, as well as in foreign countries.

16 I've been trained as an inspector by ASCLD to go
17 to various laboratories as part of a team of inspectors
18 to look at the processes that they have within the lab-
19 oratory system, and particularly in my field of expertise
20 in the DNA area.

21 We inspect -- as part of that lab inspection team,
22 we inspect various agencies, DNA laboratories, to see
23 if they are following the standards of the FBI.

24 Q. And tell me about FBI DNA training, audit training?

25 A. I was trained, I believe it was in 2001, as an

1 auditor for the DNA laboratories, which is -- at the
2 time it was not a part of ASCLD, but then it was accepted
3 by ASCLD.

4 So it was training to inspect DNA laboratories and
5 then additional training to comply to ASCLD labs state-
6 wide, laboratory-wide, for forensic analysis.

7 Q. So you were trained by ASCLD to inspect other labs
8 to see whether they are up to snuff?

9 A. Yes.

10 Q. And you were trained by the FBI to inspect other
11 labs to see if they're up to snuff?

12 A. Yes.

13 Q. And do you know anything about whether SLED is a
14 member of ASCLD?

15 A. I believe they are, yes.

16 Q. Have you inspected the SLED lab?

17 A. No, sir.

18 Q. You would be the type person who is qualified to
19 do such an inspection?

20 A. Yes.

21 Q. And that is not serving as a person working in a
22 lab, but is over-seeing whether they have a reputable
23 set-up?

24 A. Well, I go through their reports, I go through
25 policies and procedures to make sure that they meet all

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1 the standards; that they subscribe to the FBI standards
2 as well as ASCLD.

3 MR. BROWN: Your Honor, I don't want to forego
4 the ability to further develop his qualifications, but
5 I would offer him as an expert in DNA and, secondly, in
6 DNA lab inspections.

7 He has two qualifications, one from ASCLD and one
8 from the FBI.

9 SOLICITOR: Your Honor, I don't have any objection
10 to him.

11 THE COURT: He would be an expert, Solicitor, in
12 DNA. One of his qualifications is that -- or one of the
13 things he does is he in fact also inspects labs.

14 I would not qualify him as an expert in that speci-
15 fically unless we went through and did a lot more de-
16 tail.

17 SOLICITOR: I have not heard anything with regard
18 to DNA itself, whether or not he has ever performed any
19 analysis for DNA, so I would object to his expertise
20 in DNA itself.

21 It may be a procedural thing, but at this time I
22 would not admit that he is an expert in that as well.
23 I'm not trying to be difficult. I just don't think
24 we are at the point where I . . .

25 MR. BROWN: Well, Your Honor, I hate to . .

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1 THE COURT: What we can do is this, we can ask
2 him how many times or how many DNA analyses he has done.

3 We need to get to the heart of this, and we need
4 to talk about the contamination portion of this, and
5 why he believes that the expert testimony of the State's
6 DNA expert should be excluded.

7 So let's go ahead and get to that point.

8 MR. BROWN: Your Honor, we're trying to move his
9 flight back. I apologize. We're trying to move his
10 flight back right now, and we've been on hold -- I apolo-
11 gize for interjecting that.

12 (Brief pause in the proceeding)

13 THE COURT: All right. Go ahead and continue.

14 MR. BROWN: Continue with his qualifications or
15 . . .

16 THE COURT: I don't know what sort of DNA analysis
17 we are talking about. I don't know if we're talking
18 about fingerprints or we're talking about -- I'm not
19 sure where we're going with this, so somebody needs to
20 orient me as to what we're doing.

21 MR. BROWN: Let me lay it out. My motion -- and
22 I didn't file a written motion -- there was DNA analysis
23 performed on a number of items, and the report issued
24 in November of 2006. After that I got appointed to
25 represent Mr. Howard . . .

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1 THE COURT: Wait a minute, Mr. Brown. I'm not
2 trying to prohibit you from . .

3 MR. BROWN: I'm sorry.

4 THE COURT: . . making a statement on the record,
5 but let me just go ahead and note, number one, your
6 motion, which has been filed.

7 An issue has been brought out certainly in a pre-
8 vious hearing.

9 MR. BROWN: Yes, maam.

10 THE COURT: So I do know what your issues are.

11 Let's go straight to it.

12 It's my understanding that the contamination in
13 this case has to do -- and correct me if I'm wrong some-
14 one -- with the nail clippings, the victims' nail clip-
15 pings, is that correct?

16 SOLICITOR: That's correct, Your Honor. I believe
17 it was fingernail clippings from the victim, and then
18 one swab that was taken from somewhere on the victim's
19 vehicle.

20 THE COURT: Okay.

21 SOLICITOR: Or the -- from a vehicle.

22 THE COURT: Tell me the different DNA analyses
23 that were done in this case, other than the nail clip-
24 pings and the one swab from a vehicle?

25 SOLICITOR: Your Honor, there were over forty items

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1 there were submitted in this case of swabs and various
2 pieces of physical evidence. A SLED rape kit was sub-
3 mitted as well.

4 Those items were examined but all in all it was
5 over forty items tested. These two particular items
6 are the only ones involved in the contamination, being
7 the fingerprints and one of the swabs.

8 THE COURT: Fingerprints or . .

9 SOLICITOR: No, the fingernail clippings.

10 THE COURT: Correct me if I'm wrong, but they
11 actually clipped the nails or take the DNA contained
12 underneath them?

13 SOLICITOR: It's done both ways. I'm not sure in
14 this case without looking at the actual -- I believe
15 because she was a live victim they would have scraped
16 under the nails although . .

17 MR. BROWN: Your Honor, we believe . .

18 THE COURT: Mr. Brown, . .

19 MR. BROWN: Yes, maam.

20 THE COURT: . . I'm trying to -- if you can make
21 sure his flight is pushed off some, we can take a little
22 bit of break, and at that point you all can argue all
23 afternoon if you want.

24 I have attorneys from another case I need to talk
25 with.

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1 We're trying to accommodate your witness so he can
2 leave and come back later on if he needs to.

3 MR. BROWN: My only objection to -- there is a
4 lot of evidence that . . .

5 THE COURT: I just want an answer to a question I
6 have.

7 MR. BROWN: Yes, maam.

8 THE COURT: I want to be oriented so I know what
9 we're talking about. All right?

10 MR. BROWN: I understand, and I may be able to
11 assist because I filed three attachments and I would
12 ask that my witness be able to take a look at A, B and
13 C, which all came from the State, and there are attach-
14 ments in the Clerk's Office underneath the motion, but
15 I would also like them marked for this hearing.

16 I would ask the best way to do that from the Clerk
17 or the Court Reporter.

18 THE COURT: Go ahead and mark them for this hear-
19 ing, please.

20 (Items marked Defense Exhibits 1, 2 and 3 for pur-
21 poses of this hearing)

22 MR. BROWN: Your Honor, if I may approach the wit-
23 ness?

24 THE COURT: Okay.

25 BY MR. BROWN:

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1 Q. Mr. Morrison, I'm going to show you what has been
2 marked as Defendant's 1, Defendant's 2 and Defendant's
3 3, and ask if you are familiar -- let's start with the
4 one on top -- Defendant's 1, being a package of mate-
5 rials containing among other things two DNA reports
6 from the SLED Lab?

7 One is November of 2006 and one of July '08.

8 A. I'm familiar with Exhibits 1 and 2. There are some
9 items in Exhibit 3 which I have not seen before.

10 Q. And those items are what?

11 A. Letters to your office primarily.

12 Q. From the prosecutor?

13 A. Yes.

14 Q. And as far as the raw data contained in Number 1
15 -- well, let me back up.

16 Those items contain two SLED lab reports?

17 A. Yes.

18 Q. As well as some different base materials?

19 A. Yes.

20 Q. And did you have an opportunity to analyze all of
21 that information?

22 A. Yes, I did.

23 Q. And those are what you have up on the stand right
24 now?

25 A. Yes.

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1 Q. And you have been employed for some period of
2 time now on this case?

3 A. Yes.

4 Q. To assist me?

5 A. Yes.

6 Q. And when there was information about contamination
7 that came up, do you recall telling me about the C A R?

8 A. Yes.

9 Q. Would you explain to the Court what C A R is?

10 A. It is short for corrective action report.

11 Q. And can you tell me a little bit about your review
12 of that -- of the DNA in this case and the questions
13 that were raised before you got the CAR?

14 A. Would you repeat that?

15 Q. Sure. Did you look at that first batch of mate-
16 rial before you got the CAR?

17 A. Yes.

18 Q. And tell the Court a little bit about questions
19 that may have come up, given that the letter that says
20 there was contamination?

21 A. There was -- in the initial data analysis, there
22 was some issues that were noted, as well as data versus
23 what was in the report. There were some things in the
24 report which were somewhat mis-stated.

25 There were some mixtures which were identified as

1 being from more than two individuals, which the data
2 did not support that statement.

3 There was also some -- a number of samples in which
4 there were unknown profiles that were determined, and which
5 some of those eventually led to the identification of
6 contamination of the data.

7 Q. Can you tell the Court a little bit about the pro-
8 files that were listed that you just talked about?

9 Can you try to, for my education, dumb it down a
10 little bit, to understand . .

11 A. The mixtures profiles?

12 Q. Yes, sir.

13 A. There is a number of instances in the case where
14 there are mixtures. There are mixtures from one or both
15 of the vehicles. There's mixtures from gloves. There
16 is mixtures from several different things, where swab-
17 bings were taken, which is not really uncommon, but in
18 a mixture situation where you have a major component
19 and a minor component, a minor contributor so to speak,
20 you can pull out a profile of the major contributor and
21 use that to compare to the defendants or suspects in
22 the case.

23 That was done in this case, which is ultimately
24 what led to the identification of contamination in the
25 case.

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1 Q. Can you tell me a little bit about your concerns
2 about the codas run not being done before the report
3 was generated?

4 A. Well, the report states that basically the codas
5 -- the profiles from the major contributor on these mix-
6 tures was run through codas.

7 It turns out that that was not the case, and that
8 they weren't run through codas until eight days after
9 the report was issued.

10 It was then during the codas sorting that this
11 case was identified with another case which was then
12 later identified to a third case as a source of contam-
13 ination for these samples.

14 Q. And let me stop you. You are talking about the
15 November 20, 2006, report?

16 A. The November 2006 report doesn't -- there is no
17 knowledge of contamination because they haven't run the
18 codas yet.

19 Q. But does that report state it has been run through
20 codas when in fact it hasn't?

21 A. That's correct. It wasn't run through codas un-
22 til November 28th.

23 Q. And that November 20, 2006, report is contained
24 in what is now marked as Exhibit 1?

25 A. Yes.

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1 Q. On page 7 of 12 of that report when it discusses
2 a mixture of items, and it's got an item 1.8 R L?

3 A. ...

4 Q. Is that where you find that, on page 7 of 12 of
5 that report?

6 A. In -- about the middle of page 7 of that report,
7 it basically states that the mixtures from an unknown
8 male individual has been entered in the combined DNA in-
9 dex system or codas for comparison purposes.

10 Q. Now, codas is an index that has other DNA profiles
11 in it, like a data base. If that right?

12 A. Yes. There is well over four million profiles in
13 there.

14 Q. And that is certain to match someone whose profile
15 has already been put on codas?

16 A. Yes.

17 Q. Okay, and so they are saying that 1.8 -- items 1.8
18 L and R, left and right, were entered into codas as
19 of the report date, November 20, 2006?

20 A. That's the verbage, yes.

21 Q. Okay. Did you have information from SLED that
22 that is an incorrect statement?

23 A. Yes.

24 Q. Would you tell the Court where you got that in-
25 formation?

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1 A. The corrective action report states the correct
2 documentation to correct the report document.

3 Q. And so SLED's own reports contradict each other
4 on the date the codas was run?

5 A. Well, there is no contradiction as far as the data
6 is concerned. In the corrective action report, there
7 is a contradiction with the November 20th report.

8 Q. And after that, they did a corrective action re-
9 port, after the November 28th reported codas run?

10 A. Yes, after the codas run it was identified that
11 there was contamination, and they knew, of course, the
12 contamination was there and they initiated corrective
13 action procedures.

14 Q. And let's talk a little bit about the data gener-
15 ated by the run of 1.8 L and R. When you have a finger-
16 nail scrapping or fingernail clipping submitted that
17 came from a female victim or taken from a female, do
18 you normally expect to find the female's DNA there?

19 A. Generally, yes.

20 Q. And is that true with this case?

21 A. I'm not sure because there is also lab DNA pre-
22 sent.

23 Q. Can you explain that?

24 A. Well, the female has two X chromosomes, and the
25 male has an X and Y, so if you run a mixture you get

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1 an X and Y but it masks whether or not there is an
2 X X of a female. You know there is at least a male,
3 and there may be more males or there may be a female.
4 You can't tell that for certain.

5 Q. And explain what SLED's explanation is in the cor-
6 rective action report?

7 A. SLED's explanation?

8 Q. Yes, sir, because they actually -- the July 11th --
9 let me back up.

10 The July 11th, 2008, report -- they mark 1.8 L and
11 R as being inconclusive, and how does that compare to
12 the previous report?

13 A. They issued another report in July, 2008, in which
14 the fingernail scrappings are listed as inconclusive.

15 Q. And what is your opinion about that conclusion?

16 A. Well, there was data generated and there is noted
17 to be contamination, so the results are inconclusive
18 or wrong, yes.

19 Q. Okay.

20 THE COURT: What they reported on in the July 11
21 report?

22 A. Yes.

23 BY MR. BROWN:

24 Q. And tell me about the issues that come up, for
25 example, of two males that we have discussed, one tepox

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1 and one T 2151 or what is run at 1.8 L and R?

2 A. In the data, a tepox for example on 1.8 R is a
3 weak nine and eleven, and on 1.8 L is a weak six or
4 weak ten, eight and eleven.

5 Q. What is the significance of that as far as the in-
6 tegrity of the result of the report?

7 A. Well, first of all, the same answer. There is
8 different DNA on the fingernails from left to right,
9 and, secondly, there is a consistency in the major con-
10 tributor which is an eleven.

11 The minor component in R is a nine, and there is
12 no nine that shows up in the left.

13 There is a six^{and ten} in the left component which means
14 that it has to be from -- if eleven is the major con-
15 tributor, then there has to be two additional minor con-
16 tributors.

17 Q. Now, the explanation given in the CAR -- that's
18 not the best way to phrase that--how does the explana-
19 tion in the CAR jibe with the results that were coming
20 out of the tepox you just mentioned?

21 A. Well, the CAR says that contamination was a source
22 of DNA from their laboratory number L0514126, I believe
23 -- yes, 14126 -- and they identify it supposedly as
24 from item seven F as the source of that contamination.

25 We don't have the data for that particular sample,

1 so I can't really -- since it's from another case, I
2 can't really say whether it is or it isn't, but that
3 contamination was found to be another case which was
4 identified by laboratory number 065342, which resulted
5 in a codas hit or batch to the major contributor of the
6 fingernail scrappings.

7 So a double-link contamination issue -- for example,
8 there is at least two contamination events in this one
9 particular sample.

10 Q. Is there a possibility that the minor contributor
11 is not the L 065342?

12 A. That's possible.

13 Q. Explain to the Court what that would mean, the
14 double contamination? What could that other minor con-
15 tributor actually mean?

16 A. Well, it would be from an unknown individual.

17 Q. And so it could in fact mean there is another in-
18 dividual's DNA in that area that has clouded or -- I
19 don't know quite how to word it, but somehow or another
20 you can't . .

21 A. Yes, a minor contributor in a mixture -- you can
22 include them or exclude them, but you can't really say
23 that that's the one.

24 The major contributor masks some of the minor aliels
25 which may or may not be there. You don't really know

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1 if they are there or not.

2 You can exclude or include, but you can't say it
3 comes from that person. In the minor contributor area,
4 it may be a factor of 065342 or it could be from some-
5 one else.

6 Q. So that it could be this person who Ms. Davidson
7 in this case touched -- it could be their DNA got under
8 her fingernails and a contamination from case 0514126
9 masked that person's DNA?

10 A. Yes.

11 Q. And we can exclude Mr. Howard as being the source
12 of that DNA, can't we?

13 A. Yes.

14 Q. Now, what do we find out when we read the document
15 -- the corrective report which is different from the
16 CAR about a fourth case being involved?

17 A. Oh, there were essentially four cases which were
18 involved in this contamination in at least six samples.
19 There may be more samples but at least six samples in-
20 volved in the four different cases.

21 The main contamination was from L0514126 from item
22 seven F which would be the logical source of the con-
23 tamination since it was high amounts of DNA.

24 There was also -- that source of contamination was
25 found in L 06041 which was identified by Dr. Mills as

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1 being contamination which should have raised a huge red
2 flag to look at the other samples involved that were
3 being worked at the same time.

4 Apparently that didn't happen because she didn't
5 note it at that time, and so L 068041 was contaminated
6 by 14126. L 065342 was contaminated by L 014126, and
7 at least two samples in L 06760, which is this case,
8 were contaminated by L 0514126.

9 Then there was also an additional contamination
10 issue in this case where the -- where one of the samples,
11 item 19, was contaminated by the analyst's own DNA.

12 Q. And so we've according to their explanation four
13 more cases where the DNA somehow crossed paths in the
14 lab?

15 A. It's what they described or Ms. Mills described
16 as a cross-over of it. In other words, she does not
17 believe that she mixed up the tubes or mislabeled them
18 or that sort of thing, but that the DNA was inadvertently
19 transferred from one tube into another tube by some
20 mechanism that we're not a hundred percent sure how it
21 happened.

22 But there was some DNA from one tube that got into
23 another tube and caused contamination, and if there is
24 enough that it comes out as a single source as it was
25 in 5342, which identified the same person that 14126 was,

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1 or as mixtures, which is what was identified in this
2 case in the fingernail scrappings.

3 Also, on the fingernail scrappings, one of the
4 theories was that 14126 contaminated 6342, which in turn
5 contaminated the fingernail scrappings. That is another
6 equally reasonable scenario, would be that the finger-
7 nail scrappings were contaminated both by 14126 and then
8 by 5342.

9 So two separate contaminations -- as well as con-
10 taminating two, it contaminated a third item.

11 There are different ways of getting the same DNA
12 there. There is no way to tell how that actually did
13 occur.

14 Q. I'm going to ask you -- to go back to the red
15 flag, there is no way to know what happened in the
16 lab given the outcome that we have?

17 A. Well, there is a -- as part of the corrective
18 action report, the idea is to try and determine what
19 caused the contamination, so that it can be fixed. In
20 other words, not necessarily those samples can be fixed,
21 but the procedure itself can be fixed.

22 But someone is either not following procedure or
23 they are sloppy in their work and things like that, so
24 you have to identify as best you can how the contamina-
25 tion occurred.

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1 Then corrective action is based on that.

2 Q. Okay. In this case, which one does SLED suggest
3 it is? Did someone not follow procedure, or were
4 they slopping in their work?

5 What did they say?

6 A. Well, what their -- their procedure I think was
7 in essence followed. What they said was that Ms. Mills'
8 sterile technique needed work.

9 Sterile is not necessarily a good term to use be-
10 cause we're not talking about bacterial infections or
11 things like that, but the ability to transfer DNA from
12 one sample to another without contaminating other samp-
13 les that are present -- whether it be at the very be-
14 ginning of the extraction phase or in quantitation or
15 amplification -- there are fairly long procedures that
16 are involved, and they asked her to work on that, to
17 correct that problem.

18 She was also using tubes which -- I don't know if
19 it was in their procedures because they didn't give
20 their actual procedures, but she used tubes which have
21 a screw cap on them. The cap has to be taken off and
22 either held while you are getting reagents or DNA into
23 a tube and then screwed back on.

24 In this case, apparently what Ms. Mills was doing
25 was taking a cap off, laying it down ~~on a napkin~~ and then

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1 transferring reagents or DNA into a tube and then put-
2 ting the cap back on.

3 In this process when she was laying the cap down
4 after she removed it what she was apparently doing was
5 contaminating the napkin, and then the next cap she
6 laid down would pick up that DNA or combination of DNA
7 which was transferred onto that napkin.

8 That is where they put in corrective action as where
9 they think contamination occurred.

10 Q. When you inspect a lab and there is common napkins
11 used in this way, is that proper procedure?

12 A. Well, no. Typically, most people use what is called
13 a snap tube.

14 Q. Okay.

15 A. In other words, the top of the tube is attached
16 to the tube so that it stays with the tube. You can
17 open it and close it, but it doesn't, you know, sit
18 down anywhere because it is part of the tube.

19 That alleviates the problem of picking up the con-
20 tamination.

21 Q. And one of the procedures is to make sure whatever
22 surface you are putting something on, if you have to
23 put it down, would be so it would not be exposed to
24 another case?

25 A. Well, you -- if you do that, then the prudent thing

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1 to do would be to use a clean napkin for each tube so
2 that you again do not have the capability of transfer-
3 ring DNA.

4 Q. And by their own admission, they didn't do that?

5 A. That's correct.

6 Q. And to try to get to the end or cut to the chase,
7 do you have an opinion about whether the evidence gen-
8 erated by this analysis is reliable?

9 A. Yes, I do.

10 Q. And what is that opinion?

11 A. It is my opinion that it is unreliable.

12 Q. And what could have been done or one thing that
13 could be done to double check or to go back and review
14 Ms. Mills' or Dr. Mills' work?

15 A. What should be done is that it should be assigned
16 to another analyst to rework the whole case.

17 Q. And what do you base that opinion on?

18 A. I base that opinion on the fact that there are
19 multiple contamination issues in this set of samples
20 that were analyzed at this particular point in time and
21 there are many samples with multiple contamination is-
22 sues.

23 Not only in multiple cases, but in multiple samp-
24 les. There are multiple ways in which there was
25 contamination by transfer of DNA from one sample to

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1 another and by their own analyst's DNA in some of the
2 samples.

3 That number of transfers of contamination is terr-
4 ibly excessive. Having any one of those, the quality
5 control standards that were in place during this per-
6 iod of time -- there is negative control, there is pos-
7 itive control -- any one of those samples could have
8 received some of this contamination and if so all of
9 those samples would have had to be re-run.

10 Q. Okay. Was that done?

11 A. Well, what I'm saying is that even though those
12 particular quality controls were not contaminated, we
13 know that multiple samples were contaminated, and,
14 therefore, really within the same criteria the whole
15 network should be re-analyzed.

16 Q. You have characterized the number of transfers of
17 contamination as terribly excessive.

18 Give me some idea of what the range of contamina-
19 tion would it take to be excessive contamination?

20 If you could put this on a spectrum, considering
21 your experience inspecting other labs and being in a
22 DNA lab?

23 A. Well, of course, contamination is never good, and,
24 you know, if an analyst contaminates a sample with their
25 own DNA, it -- it is not really that rare. It occurs.

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1 But it is identifiable. They can run their own
2 through codas and what's called a staff index, so that
3 the analyst or anybody else within the laboratory sys-
4 tem -- or in some cases what we do is put in some of
5 our major contributors' samples to the laboratory, the
6 major crime scene people, who may contaminate evidence
7 and have those all on a staff index so we can eliminate
8 that possibility, and we don't record a profile
9 which is not an accurate profile.

10 We don't want to give out information that would
11 exclude a suspect from a case wrongfully.

12 Q. And that deals with contamination from Dr. Mills
13 herself?

14 A. Yes.

15 Q. How about the other contamination, the . .

16 A. Again, it does happen in any laboratory that has
17 been doing DNA for any long period of time, that there
18 is some type of contamination somewhere.

19 And we make up all kinds of procedural things to
20 eliminate that as much as possible, and there are pro-
21 cedural things here which, had they been in place, it
22 would have helped -- it wouldn't have reported out that
23 contamination may have occurred.

24 It wouldn't have reported it out . .

25 Q. But you would want the . .

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1 A. . . but the main thing is that typically you see
2 this contamination in a sample or maybe two samples, but
3 you don't see it across four different cases and in mul-
4 tiple samples as here.

5 This is what I consider excessive, and the main
6 reason for it is poor laboratory technique.

7 Q. What quality controls would have caught this -- can
8 you tell the Judge what are those controls again that
9 should have been followed that were not followed?

10 A. What should have occurred was that at a minimum
11 they should have been run through codas before the re-
12 port was issued. It would have caught the contamina-
13 tion before the report was issued-- the first report was
14 issued.

15 Q. The November 20, 2006, report?

16 A. It would have caught the contamination prior to
17 being reported out.

18 The report says it was run through codas and it
19 was not run through codas at that time. It was done
20 afterward.

21 It was not until eight days later that the contam-
22 ination issue was identified.

23 There was one sample from 068041 where contamina-
24 tion was identified but both the analyst and the tech-
25 nical reviewer failed to see the contamination of the

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1 other samples.

2 Q. Do you know why that failed, that oversight?

3 A. No, but, again, had it been run through codas it
4 would have been caught. It wouldn't change the fact
5 that the sample was contaminated, but it would have
6 changed the fact that they issued a report with the
7 wrong information.

8 THE COURT: Just so I'm clear, Mr. Morrison, they
9 did run it through codas after the report, as I under-
10 stand from this July 11th report.

11 They did in fact run it through codas, is that
12 correct?

13 A. It was run through codas eight days after the ini-
14 tial report.

15 THE COURT: Okay.

16 A. And it takes a year and a half for them to issue
17 a corrective report.

18 THE COURT: Okay. Let's go ahead and take about a
19 ten minute break, so we can figure out . .

20 MR. BROWN: His flight has been changed.

21 THE COURT: Wonderful.

22 MR. BROWN: Your Honor, he's been sworn as a wit-
23 ness, . .

24 THE COURT: Don't discuss this case as you have
25 been sworn as a witness.

1 (Whereupon, the Court stood in recess as to this
2 matter from 2:48 P.M. until 3:35 P.M., when the matter
3 was resumed)

4 (Witness, Mr. Morrison, resuming the witness stand)

5 THE COURT: All right, Mr. Morrison, I remind you
6 that you are still under oath.

7 All right, Mr. Brown. Do you have anything further
8 for Mr. Morrison?

9 MR. BROWN: Yes, maam.

10 DIRECT EXAMINATION CONTINUED, out of the presence of the
11 jury

12 BY MR. BROWN:

13 Q. Mr. Morrison, I think we left off when we were
14 talking about -- you had used the phrase terribly exces-
15 sive as far as the contamination.

16 A. Yes.

17 Q. You have already given an opinion about -- given
18 your opinion about the reliability or the lack thereof
19 of the DNA in the case.

20 I guess to kind of sum it up, we talked a little
21 bit about control procedures that could have been fol-
22 lowed like going through codas and having a sterile
23 place to transfer the cap if one is going to be used,
24 or using a device that did not have a removable cap.

25 Were there other quality control concerns that

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1 were raised in this case?

2 A. Yes.

3 Q. Can you tell the Court what those are?

4 A. Well, one of them I've briefly gone over, and
5 that is some of the quality control samples that are
6 analyzed along with the questioned samples.

7 The negative controls, the positive controls --
8 had any of those had one of these cross-over events where
9 DNA was transferred to all of the samples that were ana-
10 lyzed with that group, they would have had to be re-
11 examined.

12 So since we have a number of samples that have the
13 cross-over event, even though none of the controls were
14 contaminated -- the system itself has a lot of contami-
15 nation, so I think that all of those samples should
16 have to be re-examined.

17 Secondly, the corrective action . . .

18 THE COURT: Mr. Morrison, I'm sorry to interrupt
19 you, sir, but just so I can be clear since it is my de-
20 cision and determination -- when you say all of the
21 samples should be re-examined -- is that correct -- are
22 we talking about just the specific items submitted, or
23 are we talking about all the samples?

24 A. All the items that were analyzed at that single
25 given time.

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1 In other words, if all of the items that were quan-
2 titated together -- if one of those -- one of the qual-
3 ity controls in quantitation is contaminated, then all
4 of those would have to be re-examined.

5 If it occurred during amplification, then again all
6 of those that were amplified in that particular period
7 of time would have to be re-examined.

8 THE COURT: I'm just looking at the July 11 report,
9 and I'm seeing the items that were submitted. How
10 long would something like this take?

11 I mean, how long would it take you to do the work
12 that they did on this July 11th report?

13 A. In actual -- if that were the only case that was
14 being worked?

15 THE COURT: Right.

16 A. It could be done in two weeks.

17 THE COURT: You're talking about working every day
18 for two weeks? Is that what you're telling me?

19 A. Yes.

20 THE COURT: All right, Mr. Brown. Go ahead.

21 BY MR. BROWN:

22 Q. Are there any other concerns that you think should
23 be expressed to the Judge as she determines whether or
24 not the DNA analysis in this case is reliable?

25 A. Yes.

1 Q. Okay.

2 A. The next thing is that as part of the corrective
3 action process, what they do just to look for additional
4 contamination, and the process which they use to do
5 that, is to go through and look at any unknown profiles.

6 Unknown in that it didn't match either the victims
7 or the suspects in the case.

8 There was an unknown profile and they checked it
9 against all case work samples from other cases done at
10 the same time.

11 This is a perfectly good way to identify contamina-
12 tion from samples from other cases in this case. What
13 it doesn't do is look for the same type of cross-over
14 events or contamination within samples within this case
15 because if that occurred you would still have the so-
16 called profiles of either victims or suspects in the
17 case.

18 It wouldn't show up as an unknown person. It
19 would be someone who was known in that group. It is
20 sort of a biased approach. It is really the only thing
21 you have to look at.

22 You can't really know that without re-examining the
23 case, without re-running the samples, and looking for
24 more information or data in the case.

25 That is really the only way to be able to resolve

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1 whether or not you have any reliability or any compe-
2 tence in these results.

3 Q. Let me go back and make sure I understand.

4 They should go back and look at whether there was
5 any cross-contamination within the samples of the
6 case?

7 A. Yes.

8 Q. So . . .

9 A. Because we know that there was a lot of contamina-
10 tion from other cases, but we don't know whether there
11 was contamination within the case.

12 Q. And so just some different items here -- on the
13 fingernail scrappings -- and I think this came out
14 through your discussion with Dr. Mills -- they can say
15 the major contributor in that fingernail scrapping sample
16 is from another case, and they can say that that same
17 contributor did not commit because he was dead at the
18 time the crime allegedly occurred?

19 A. Yes.

20 Q. There was contamination in this case from samples
21 in this case -- if there were contamination in this case
22 from samples in this case, other samples in this case,
23 it would show up as what they may perceive as a normal
24 result and they never found out the other contamination
25 besides the ones we're talking about right now?

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1 A. Correct.

2 Q. And so the problem is they didn't re-run anything
3 else, to go back and see whether there was a cross-con-
4 tamination within the case besides the at least three
5 other cases that were cross-contaminated with this one
6 from outside samples?

7 A. According to the corrective action report, that's
8 correct.

9 THE COURT: Mr. Morrison, can you tell me that any
10 of these other samples have been contaminated? Within
11 your opinion, can you tell me that, to a reasonable
12 degree of DNA forensic certainty, that any of the other
13 samples have been contaminated?

14 A. No, I cannot tell you that, nor can I tell you that
15 they haven't been.

16 THE COURT: All right.

17 BY MR. BROWN:

18 Q. This is -- again, is there a way that they can go
19 back and answer the question that the Judge is asking?

20 A. Yes.

21 Q. Tell us how?

22 A. To re-analyze the samples. To go back and start
23 from the extraction process, and go through it with any
24 remaining samples where there is enough material to do
25 that.

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1 To do that, and if you have concordant data from
2 that analysis with the previous analysis, that should
3 be the report.

4 If it is not concordant or there is not enough
5 sample, then you just can't report it.

6 THE COURT: Mr. Morrison, has it ever occurred
7 where you have performed any DNA analysis that you have
8 had some type of cross-contamination?

9 A. Yes.

10 THE COURT: On how many occasions?

11 A. I can only think of one that I have done. Some
12 people who have worked with me and for me have -- there
13 were a couple of occasions where there was some cross-
14 contamination.

15 THE COURT: What caused that cross-contamination?

16 A. Poor technique.

17 THE COURT: When you say poor technique, are you
18 talking about human error in poor technique or . .

19 A. Yes. The technique used was not what it should
20 have been.

21 THE COURT: All right, sir.

22 BY MR. BROWN:

23 Q. And then, lastly, I want to ask you a little bit
24 on that. Can you give us some idea of, since you have
25 run a lab for a while, how many times -- you said like

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1 one other case where there was cross-contamination, and
2 was that in a one year period of -- I know it's hard to
3 compare apples and oranges, but you were in a lab that
4 ran DNA for a whole State.

5 Talk a little bit -- I don't really know the an-
6 swer, but in a year how many -- say in a year how many
7 times did you have cross-contamination?

8 A. I would say less than one per year.

9 Q. Less than one per year, and in this one we have
10 got four cases and one doctor?

11 A. Yes.

12 Q. And that doesn't count her own contamination which
13 took place. Correct?

14 A. Yes.

15 Q. And that's why you said it is terribly excessive
16 contamination?

17 A. I don't remember saying terribly but it is in my
18 opinion excessive.

19 MR. BROWN: And the last thing I would ask, Your
20 Honor, is that his CV be entered as well.

21 I don't have any further questions.

22 THE COURT: Ms. Tanner.

23 CROSS EXAMINATION out of the presence of the jury

24 BY SOLICITOR:

25 Q. Good afternoon, Mr. Morrison. You said that this

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1 was excessive contamination, and that's because it went
2 across more than the two cases involved?

3 A. . .

4 Q. Is that why you consider it excessive?

5 A. There were four cases and at least six samples.

6 Q. But we're talking about only one event?

7 A. . .

8 Q. This isn't something that happened four times in a
9 year? This was -- this contamination probably occurred
10 in the same day?

11 A. The contamination, cross contamination, apparently
12 occurred either in one day or two days. It was a quan-
13 titation procedure and an amplification procedure. It
14 could have occurred in either one or both. It could
15 have been more than one day.

16 The contamination by the analyst herself occurred
17 at a different point in time, contamination by her own DNA.

18 Q. Okay, and you said it is a common occurrence where
19 the lab person's DNA gets mixed into something?

20 A. Yes. More so than cross-contamination.

21 Q. So just . .

22 A. It's still not . .

23 Q. Without minimizing it.

24 A. I won't say it's common, but it is more common
25 than cross-contamination.

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1 Q. But the cross-contamination, would it be fair to
2 characterize it as an event versus an historical prob-
3 lem that went on for years?

4 A. . . .

5 Q. Or an event across cases?

6 A. Yes.

7 Q. And to clarify -- Mr. Brown had discussed page
8 seven of the report about codas. The language says, the
9 information was entered in the codas.

10 Isn't that different than actually running it which
11 does take some time to run the information?

12 A. . . .

13 Q. You have to enter information to do the procedure
14 to run it through and compare it to other items in codas.
15 Isn't that correct?

16 A. Yes. That's -- there is two separate steps.

17 Q. Right.

18 A. Again, that's part of the quality control process.

19 Q. Exactly, so just to clarify the codas, he's try-
20 ing to intimate that they are lying in the report, but
21 that they entered the evidence into codas in the report,
22 not run it.

23 I understand what you're saying is it is better to
24 run it before you print the report, but I want to be
25 clear that the report says they entered information in
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1 codas, not that they ran it.

2 That's what the report says?

3 A. It says -- I don't have any data. If they didn't
4 run it at the same time they entered it -- I don't have
5 any data as to that.

6 Q. But you do have information that at least eight
7 days later they ran it through codas and that's when
8 the contamination was discovered?

9 A. When part of it was discovered.

10 Q. The protocol that they had in place for catching
11 contamination actually did work? They discovered con-
12 tamination?

13 A. Yes.

14 Q. And also they've actually discovered that the con-
15 taminator in the fingernail scrappings is from a person
16 who was deceased at the time this crime occurred?

17 A. Major contributor, yes.

18 Q. And that was the contaminator in this case?

19 A. One of the contaminators, if we assume that 5342
20 is a minor contributor to that sample.

21 Q. All right. Well, you also talked about not being
22 able to tell if things in the case itself are cross-
23 contaminated.

24 At the time the contamination occurs, in November
25 of 2006, or at least when that report comes out

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1 contamination has occurred; a separate item which has
2 not been indicated as one that was contaminated contained
3 the sample was at a later date determined to have the
4 Defendant's DNA on it.

5 Now, if the Defendant's DNA was not even in the
6 lab at the time the contamination occurred, then you
7 can exclude that piece of evidence from something that
8 had been contaminated. Is that correct?

9 A. Yes.

10 Q. Thank you. No further questions.

11 REDIRECT EXAMINATION, out of the presence of the jury

12 BY MR. BROWN:

13 Q. Just very briefly. Tell me how entering some-
14 thing in the codas and running it through codas --
15 explain to the Court that process?

16 A. Entering just puts the data into the system. Run-
17 ning it is making comparisons of that sample and all
18 other samples.

19 Q. And what is it that you do to run it after the
20 data is entered?

21 A. You basically initiate a search outward.

22 Q. I hate to kind of . .

23 THE COURT: What does it take to enter the in-
24 formation?

25 A. It has to be entered twice, and it takes a minute.

1 THE COURT: And how long does it take to run it?

2 A. Just minutes.

3 THE COURT: Okay. Then it spits you out the in-
4 formation, is that correct, after that?

5 A. Yes.

6 THE COURT: Go ahead.

7 BY MR. BROWN:

8 Q. And the reason why I ask is that they in the No-
9 vember 20th report say that it has been entered in codas,
10 and they say on November 28th it has been run.

11 Is it normal to wait eight days and then run it
12 after you have entered the information?

13 A. I'm not sure what's normal with SLED, but that can
14 be the situation.

15 Q. And . .

16 A. I don't know what their normal wait would be.

17 Q. And tell me about issuing the report. After some-
18 thing has been entered before it has been run, is that
19 normal, for quality control purposes?

20 Q. It shouldn't be, and according to the corrective
21 action report it's not done that way, no.

22 Q. So they made some changes that you cannot issue a
23 report until it has been entered and run through codas,
24 is that . .

25 A. Yes, and particularly with unknown profiles.

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1 Q. No further questions.

2 THE COURT: Mr. Morrison, you have read the results
3 of the SLED lab of July 11th, 2008, is that correct?

4 A. Yes, maam.

5 THE COURT: Is there any difference in the result or -- th
6 call it results, I would call it conclusions -- between
7 that report and the corrective action report that was
8 issued?

9 Did the corrective action report that was issued
10 last week change anything in the July 11th report as
11 far as the results?

12 A. No.

13 THE COURT: Other than your question of the qual-
14 ity, and whether or not the samples were good. Is
15 that correct?

16 A. That's correct.

17 THE COURT: Okay.

18 MR. BROWN: If I may just follow up briefly on
19 that?

20 THE COURT: No, let me ask this. When you look at
21 the results, and I'm looking at page 7 of that report,
22 the SLED lab report of July 11th, 2008, what in here
23 implicates Mr. Howard?

24 Or could possibly? Let's just say DNA links to him.

25 A. The only DNA links to Mr. Howard is with the pair

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1 of gloves which is 48.1 through 48.4.

2 THE COURT: That's the only thing that links him,
3 is that correct? The gloves?

4 A. Yes.

5 THE COURT: So nothing in the fingernail scrappings,
6 swab from passenger door handle, behind the driver's
7 door of the Lexus, and I see I also have a blood stand-
8 ard for Mr. Howard -- does that affect in any way the
9 questions or affect the DNA analysis of what was found
10 on the gloves? Could it?

11 A. Mr. Howard's . .

12 THE COURT: Yes.

13 A. I'm not sure I understand the question.

14 THE COURT: I guess my question is this, Mr.
15 Morrison. I'm going over the report, and what I was
16 told before was that the items that were highlighted
17 were the ones that there was a problem with contamina-
18 tion.

19 That's what I've been told, and what I've seen as
20 far as the highlights is the fingernail scrappings, . .

21 A. Okay.

22 THE COURT: . . the fingernail scrappings you've
23 talked about, the left and the right, correct, and
24 these apply to Ms. Davidson.

25 So that would not affect what was found in the

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1 gloves, correct?

2 A. Not directly, no.

3 THE COURT: Not directly.

4 A. No.

5 THE COURT: Okay, and then the other one is the
6 swab from the outside passenger door handle behind the
7 driver's door in the Lexus.

8 Is that the one where it was actually the SLED ana-
9 lyzer's DNA?

10 A. Yes, maam.

11 THE COURT: And so that wouldn't affect what was
12 found in the gloves, the DNA found in the gloves, is
13 that correct?

14 A. Correct.

15 THE COURT: And, lastly, and I don't know if I you
16 could address this -- there's an item, number 54, and
17 I've got it highlighted on my copy, of a blood standard
18 from Alfonzo Howard, which -- help me out with the
19 blood standard.

20 A. There should not be any contamination with that.

21 THE COURT: Okay. I appreciate that.

22 Okay, Mr. Brown, a short follow-up. Go ahead.

23 BY MR. BROWN:

24 Q. Very briefly. The information -- the first in-
25 formation we got about contamination it was indicated

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1 in bold?

2 A. Yes.

3 Q. And the Alfonzo Howard blood standard is in bold?

4 A. Yes, it is.

5 Q. And so why would we not think that one was contam-
6 inated? Logically it would mean that was contaminated?

7 A. Well, if you want to take it literally, but what
8 is in bold applies to supplemental data that is in the
9 -- not only is what is in bold relevant to contamina-
10 tion but I think bold also applies to the supplemental
11 data that was in the report, which is a supplemental
12 and corrective report.

13 Q. Okay, and the statement that what is contaminated
14 -- the contaminated items are listed in bold is not tech-
15 nically accurate and some other items were mentioned in
16 bold for other reasons?

17 A. Yes.

18 THE COURT: I would just say that that is what was
19 represented to me last Thursday, so that is why I was
20 asking the question. I appreciate you clearing it up.

21 BY MR. BROWN:

22 Q. The last thing I wanted to ask you, you said it
23 was not directly implicating the results on these other
24 items.

25 How about indirectly? How would it play into that?

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1 A. Well, what I'm saying is that there is a documented
2 contamination issue in this case as well as other cases
3 by this analyst in that time frame, and because of that
4 I think it puts in question a lack of confidence to the
5 results in the case.

6 Q. Do you have confidence in these results?

7 A. No. The only way to rectify that is to re-analyze
8 it.

9 Q. And could that have been done between July 2008 and
10 now? Would that have been a problem?

11 A. No, not if they put someone on it. It shouldn't
12 be.

13 Q. Thank you.

14 THE COURT: Mr. Morrison, do you question the qual-
15 ity control procedures in this specific case?

16 A. Yes.

17 THE COURT: The quality control procedures that
18 were used to insure reliability in this case?

19 A. Yes.

20 THE COURT: What about in the lab in general?

21 A. No.

22 THE COURT: Anything further?

23 MR. BROWN: Nothing, Your Honor.

24 THE COURT: Do you have anything further of Mr.
25 Morrison?

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1 SOLICITOR: No, maam.

2 THE COURT: Mr. Morrison, you may step down, sir.

3 (Witness excused from stand)

4 THE COURT: I will tell you for the record, sir,
5 that obviously I'm not going to rule on this until I've
6 heard from the SLED DNA expert and any other testimony
7 we're going to have.

8 I understand, sir -- I know you're getting on a
9 plane and possibly you will be coming back, but I just
10 wanted to make sure we're on the record for that.

11 Is that correct?

12 MR. BROWN: Yes, maam.

13 THE COURT: Thank you, sir.

14 Is there anyone else you need to put up on your
15 behalf, Mr. Brown, on this issue?

16 MR. BROWN: No, maam.

17 THE COURT: Okay. Tomorrow Agent Mills is going
18 to come. Is that correct?

19 SOLICITOR: Yes, maam. She will be here, but
20 without belaboring the point and just based on the
21 defense expert he is actually able to distinguish be-
22 tween the items.

23 I think what Mr. Brown -- the basis of his motion
24 is he wants to exclude all the DNA testimony because
25 of the contamination of the fingernails scrappings.

1 His own expert has now distinguished that the one
2 item that has Mr. Howard's DNA on it he can actually
3 rule that out as being an item that was contaminated,
4 because contamination we know occurred before November
5 of 2006. We know that.

6 Mr. Howard's blood was not submitted to SLED until
7 April of 2007, so there is no way his sample is in any
8 way part of a contamination.

9 Therefore, it can be distinguished from any con-
10 tamination and, therefore, should not be thrown out be-
11 cause of what happened prior.

12 THE COURT: Do you agree that the results, at least
13 the ones that were contaminated, should be thrown out?

14 SOLICITOR: Of the fingernail scrappings?

15 We'll consent that that is not admissible. It is
16 contaminated.

17 If that is what . .

18 THE COURT: But he's going to want the ability to
19 cross examine your DNA expert on that though.

20 MR. BROWN: That's right.

21 THE COURT: Well, respectfully, I need to hear Dr.
22 Mills here in the morning to make a determination, so
23 I expect to see her at nine o'clock and anyone else you
24 want to put up that you feel is necessary.

25 We'll go forward with the remainder of the motions

1 at this time.

2 MR. BROWN: And I think the main motion I've got
3 outstanding right now deals with the use of the State's
4 witness -- now the State's witness, Lorenzo Hicks.

5 THE COURT: All right.

6 MR. BROWN: It's a motion to exclude his testimony
7 and ultimately accuse the Solicitor's Office -- there
8 is a little chain of events there.

9 So there are some witnesses. One is in jail and
10 some on stand-by -- actually two witnesses, one who
11 has records from the jail and a witness from the jail,
12 and actually Mr. Hicks himself to illuminate us about
13 some things.

14 I don't know where you'd like to begin, but I do
15 need to make at least a phone call to get them here, but
16 they are on telephone stand-by.

17 I can actually start without them.

18 THE COURT: Who would you start with?

19 MR. BROWN: Well, I can start with some documents
20 that may eliminate the need to bring in the person with
21 the jail records.

22 If I could start with that.

23 THE COURT: Okay.

24 MR. BROWN: My client was originally represented
25 by the Public Defender's Office, and that is the nature

1 of the conflict.

2 THE COURT: You're talking about the conflict issue
3 now, is that correct?

4 MR. BROWN: Yes, maam, if Your Honor wishes to go
5 to that.

6 THE COURT: That's what I wish to do.

7 MR. BROWN: Okay. Again, Mr. Hicks was represented
8 by the Public Defender Office, and, of course, Your
9 Honor took a plea from him with the assistance of his
10 Public Defender at that time.

11 Then there was a change in the actual Public De-
12 fender for Mr. Hicks, and I became the lawyer for Mr.
13 Howard.

14 Actually I didn't get the appointment Order until
15 March. I actually did get a letter from Ms. Tanner in
16 January, noticing me for a Schmerber Hearing, and, of
17 course, I wrote back and said I'm not his lawyer; I had
18 not been appointed.

19 And with that I got involved in a matter and went
20 over to Greenville.

21 THE COURT: Mr. Brown, . . .

22 MR. BROWN: To make a long story short, I became
23 his lawyer then and at that time I began to go through
24 things and it appears at this time that -- I have in-
25 formation, and I will hand this up -- Mr. Howard it

1 appears met with the Chief Public Defender and I hand
2 this up.

3 I'm not marking it. The original is copies that
4 came from the books that were brought over this morning
5 by the Custodian of Records. She is on telephone stand-
6 by at the Detention Center if there is a question
7 about the authenticity of the books.

8 I point this out because I also have some docu-
9 ments from Mr. Hicks, and that -- Mr. Hicks writes a
10 statement that says that his lawyer was Mr. Hood also,
11 and that Mr. Hood gave advice to him about exculpating
12 Mr. Howard after Mr. Hood had met with Mr. Howard.

13 And so the basis of my concern is that we've got
14 the possibility with some corroboration that there was
15 some meting out of culpability between two Defendants
16 by one lawyer or law firm, and I use that because gen-
17 erally the rules apply not only to a lawyer but to a
18 lawyer and his associates. That's the way the law
19 writes.

20 We don't have a contract public defender office
21 in Beaufort County, of course. I've been involved in
22 some conflict issues in other counties, most recently
23 in Dorchester County where they actually had conflict
24 offices.

25 So even if they were sending letters out to the

1 Dorchester County Public Defender for State's witnesses
2 and for Defendant at trial, they claimed they were sep-
3 arate offices with separate funding.

4 That is not the way it is in Beaufort. One office,
5 and I think, although it has changed now in the State-
6 wide surrogate system . .

7 THE COURT: Back up a second.

8 MR. BROWN: Yes, maam.

9 THE COURT: Where on this register are you talking
10 about?

11 MR. BROWN: On June 26th, Your Honor -- let me make
12 sure it's the right one.

13 THE COURT: Yeah. It does not have the 26th.

14 MR. BROWN: That's the one that has the 16th, and
15 on that one, Your Honor, the Public Defender investi-
16 gator goes out and meets with both Mr. Hicks and Mr. Howard.

17 THE COURT: June 26th? Okay.

18 MR. BROWN: And there is a gentleman's name on
19 there who appears by the name of William Taylor.

20 THE COURT: Hold on. Are you referring to the one
21 that seems to be crossed out?

22 MR. BROWN: It's not crossed out. What they did is
23 Mr. Hood on the 26th met with two people. I cannot
24 read or pronounce the top name, and then below it --
25 that's why Mr. Taylor's name was in a row -- because they

1 were -- the inmate or the person being visited and there
2 were two names, and somebody put Mr. Taylor on there --
3 Mr. Taylor is the elevator inspector.

4 THE COURT: Okay.

5 MR. BROWN: So on that date and time there was a
6 visit by the Chief Public Defender to Mr. Howard, and
7 then what we've got -- and I can establish this however
8 we need to establish it -- but I . .

9 THE COURT: What is your concern?

10 MR. BROWN: Well, I'm about to hand that up. This
11 is a copy of a letter and, Your Honor, we're telling you
12 this is the original with the raised seal. We would ask ac-
13 tually that this be marked.

14 It's pretty delicate but it has a raised notary
15 seal on it, and the notary is on telephone stand-by sub-
16 poena right now. That person is at the jail.

17 THE COURT: What is the significance of that?

18 MR. BROWN: Because in the letter it says he spoke
19 to his lawyer and it's got the name and about five or
20 six lines, and his lawyer told him he couldn't exculpate
21 my client.

22 THE COURT: His lawyer at the time -- and you are
23 saying Gene Hood . .

24 MR. BROWN: That's what he said, so Mr. Hicks says
25 Gene Hood is my lawyer and Gene Hood says that a

1 statement that says that Mr. Howard did not do this is
2 not worth anything.

3 Of course, now it is very important because that
4 is their star witness.

5 SOLICITOR: Your Honor, I'm not sure how he got
6 that original. The document has been analyzed by SLED
7 and been determined to be Alfonzo Howard's handwriting.
8 I'm not sure . .

9 MR. BROWN: That was not analyzed by SLED, and I
10 have a copy of the transcript. That one was not ana-
11 lyzed. There were four other letters that were analyzed.
12 That one was not.

13 Counselor Barnes is prepared to testify because I
14 have already asked him -- that he notarized and Mr.
15 Hicks signed that letter; that he would not notarize it
16 if Mr. Hicks did not sign it in person, in front of him.

17 I asked him that as an officer of the Court . .

18 THE COURT: Has it been analyzed by SLED or not?

19 SOLICITOR: Your Honor, I have it included as one
20 of the four that was analyzed, and it was determined to
21 be written by Alfonzo Howard.

22 MR. BROWN: Your Honor, that is not true. There
23 were four letters . .

24 THE COURT: Now, hold on a second.

25 MR. BROWN: Yes, maam.

1 THE COURT: Obviously the Solicitor's Office would
2 know whether or not SLED analyzed the letter. If it had
3 been analyzed by SLED, it would have been submitted by the
4 Sheriff's Department of the Police Department. They would
5 have had to submit it.

6 MR. BROWN: If I may, Your Honor?

7 THE COURT: Can you show whether or not it was submit-
8 ted, Solicitor, by going to the logs?

9 MR. BROWN: They are in the safe, Your Honor, at the
10 Clerk's Office right now, right down the hall.

11 I had them make copies last week for me. My investi-
12 gator, in fact, got the copies . .

13 THE COURT: Mr. Brown, stop for a minute.

14 (Colloquy off the record between counsel and the Court
15 at the bench)

16 THE COURT: Solicitor, can you point out what has been
17 analyzed?

18 SOLICITOR: Your Honor, in pulling out the ones that
19 have been returned from SLED, it was in the group that the
20 State -- we had the handwriting hearing that went on for
21 three hours, and the State was able to submit letters to
22 SLED.

23 They were analyzed and they were all determined to be
24 written by Mr. Howard and sent to Mr. Hicks, asking Mr.
25 Hicks would he write them in his own handwriting and then

1 pass them along.

2 This being one of them. Now, for some reason this
3 wasn't actually analyzed and a lay-person can tell it's
4 the same handwriting as the other four that were analyzed.

5 MR. BROWN: Your Honor, I have a copy of the tran-
6 script and a copy of the exhibits from this hearing. Here
7 is the transcript, here are the exhibits, a copy of the
8 SLED report.

9 THE COURT: That says what, Mr. Brown?

10 MR. BROWN: That says that that letter was entered
11 by me, and I asked them to analyze it.

12 They did not . .

13 THE COURT: That's what she just said. She just said
14 the first four were analyzed but this one wasn't analyzed.

15 MR. BROWN: I'm sorry, but it's very clear that I
16 submitted this letter . .

17 THE COURT: You will have to connect the dots for me,
18 because I am not following you. As to where your conflict
19 is at.

20 MR. BROWN: All right, let me stop. Despite the hand-
21 writing analysis and despite what was done on other letters,
22 Mr. Hicks -- assuming this is an authentic letter, he is
23 next door -- Mr. Barnes is next door . .

24 THE COURT: Okay, assuming all of that.

25 MR. BROWN: Then he says I wanted to exculpate Mr.

1 Howard, but my lawyer, Mr. Hood, told me not to.

2 Mr. Hood was Mr. Howard's lawyer.

3 THE COURT: Uh huh.

4 MR. BROWN: That is the quintessential conflict
5 as representing an adverse party. Actually at that
6 point in time not even adverse but now clearly adverse
7 because he's going to testify, testify against Mr.
8 Howard, my client.

9 And he said he wants -- in that letter he said he
10 wants to exculpate my client and that his lawyer told
11 he couldn't.

12 And there is certainly loyalty there that leads
13 to that intention, a loyalty that survived the attorney-
14 client -- it would survive death. We know that from
15 the White Water case. Even if your client dies you're
16 still loyal to him.

17 THE COURT: Where is the conflict now? What has
18 Mr. Hood done?

19 MR. BROWN: He supervises the attorney who coordi-
20 nated the State's use of Mr. Hicks.

21 THE COURT: In other words, Mr. Deysach, who has
22 been appointed to represent the Codefendant, you are now
23 saying he negotiated a plea deal for his client, be-
24 cause at some time he and Mr. Hood are consulting -- are
25 you saying? Is there privilege?

1 MR. BROWN: I don't know and I think it would
2 be fruitless, but I'd be glad to call him because I
3 would like to know what they talked about and what
4 they told Mr. Hicks.

5 I think there is a little privilege, but I think
6 it is broken at this point or will be soon broken.

7 Mr. Hicks is certainly going to be on the stand
8 and I am certainly going to ask him those questions,
9 and I certainly assume he is not going to assert privi-
10 lege.

11 I mean, we know they are going to try and impeach
12 him on this letter. I mean, if DNA on the gloves . .

13 THE COURT: Mr. Brown, what are you asking me to
14 do?

15 MR. BROWN: Exclude him because of the taint.

16 THE COURT: Exclude Mr. Hicks?

17 MR. BROWN: Yes.

18 THE COURT: And you are saying it is because of a
19 taint?

20 MR. BROWN: Yes, maam, because he . .

21 THE COURT: Because he was represented by the
22 Public Defender's Office and at one time Mr. Hood rep-
23 resented his Codefendant until he -- before he had
24 learned there was a conflict?

25 MR. BROWN: And Mr. Hood turned around and told

1 Mr. Hicks what he could and couldn't do with his inform-
2 ation. He could help the State but he couldn't help
3 Mr. Howard.

4 I'm taking that from the letter, but let me say
5 this . . .

6 THE COURT: Are you saying that Mr. Hood -- not the
7 Public Defender's Office but Mr. Hood specifically di-
8 rected Mr. Hicks . . .

9 MR. BROWN: I sent one to my lawyer, Gene Hood,
10 and I got no response, and I sent one to Howard White.
11 I got a response. My lawyer came and talked to me and
12 he, Gene Hood, told me the statement can't be used.

13 Now, this is just anticipating . . .

14 THE COURT: Let me ask you this.

15 MR. BROWN: Maybe Mr. Hicks is a liar.

16 THE COURT: Hold on a second.

17 MR. BROWN: I don't doubt that.

18 SOLICITOR: No, this letter was written by Mr.
19 Howard, not by Mr. Hicks.

20 THE COURT: Respectfully, though, you all, what
21 you are telling me is that Mr. Hood went and met with
22 Mr. Howard on June 26th . . .

23 MR. BROWN: That's 2006, by the way. It doesn't
24 have a year but that's . . .

25 THE COURT: When does it say Mr. Hood met with Mr.

1 Hicks?

2 MR. BROWN: I don't know. I didn't participate in
3 the meeting.

4 THE COURT: So where is it on the jail log?

5 MR. BROWN: I didn't pull it because I didn't
6 have a date on it -- no date on this letter.

7 We can get them over here but I have Mr. Barnes
8 ready.

9 THE COURT: And Mr. Barnes is who?

10 MR. BROWN: Mr. Barnes is the Notary on the letter
11 who is an officer of the Court and I'll proffer his
12 testimony.

13 THE COURT: Mr. Brown, you don't mean to tell me
14 he is going to come in here and say I notarized this
15 and I would have notarized it only if he was there?

16 The question is and you're going to ask him does
17 he have any independent recollection of Mr. Hicks act-
18 ually having signed it?

19 MR. BROWN: I will and actually I think he will.

20 THE COURT: Again, I don't see though where Mr. Hood
21 had any conversation with Mr. Hicks other than what
22 you say is in this letter.

23 Again, I can't question whether what is in this
24 letter is truthful or not. I have no way of knowing
25 that.

1 MR. BROWN: Let me start with this. I'd now have
2 that letter marked and entered so that I don't have to
3 carry around that piece of evidence any more. I've
4 had to be super-protective with that thing and I'd like
5 it entered in.

6 And the letter speaks for itself, and I'm sure
7 Mr. Hicks is being put forth as a truthful and compe-
8 tent witness.

9 I have challenged his competency or I sought to,
10 and I'm certainly going to challenge his truthfulness,
11 but I have to say this. If he . .

12 THE COURT: Okay, Mr. Brown. Stop.

13 MR. BROWN: Yes, maam.

14 THE COURT: Solicitor, are you seeking to stop
15 Mr. Brown from using this letter at trial?

16 SOLICITOR: Yes, Your Honor. Like I said, we had
17 a three hour handwriting hearing for Mr. Brown when
18 the State requested -- these are the letters that were
19 analyzed.

20 THE COURT: Those four letters but not that let-
21 ter?

22 SOLICITOR: Not that letter. That was a separate
23 letter, and I believe -- I'm going on memory, and I do
24 not have the transcript. Mr. Brown does, and I'm sure
25 he'll correct me if I'm wrong.

1 I believe there was a reason the State could not
2 have that one submitted, and I believe it was a chain
3 of custody issue about where it came from and all that
4 nonsense.

5 But now he's trying to come back and use it when
6 he objected to it at the original hearing. So, no, I
7 don't think he should use it and . .

8 MR. BROWN: Let me stop you there. The chain of
9 custody issue -- the four letters that they are going
10 to admit came from Stephanie Spartus in Japan.

11 I have stipulated to her chain so what's good
12 for the goose is good for the gander. If we've got a
13 chain problem, we've got a chain problem with all of
14 these letters.

15 SOLICITOR: If Mr. Brown will now consent, the
16 State can have that letter analyzed by a handwriting
17 expert, absolutely. We would love to find out that it
18 was written by Mr. Howard, just as these other four
19 were.

20 But he objected at the original handwriting hear-
21 ing which is why we did not have that letter examined
22 with the other four.

23 MR. BROWN: I did not object, Your Honor. I ob-
24 jected to the . .

25 THE COURT: What is the basis for the Judge keeping

1 this one out?

2 SOLICITOR: I don't remember. I . .

3 MR. BROWN: She didn't keep it out. I have the
4 transcript right here.

5 SOLICITOR: I don't remember why it wasn't sub-
6 mitted.

7 THE COURT: Why was it not submitted?

8 MR. BROWN: You mean the original?

9 THE COURT: Why was it not submitted for a hand-
10 writing analysis?

11 MR. BROWN: The original or the copy?

12 THE COURT: Did you have the original the whole time?

13 MR. BROWN: I can't reveal privilege.

14 SOLICITOR: There you go.

15 MR. BROWN: No, it wasn't submitted.

16 THE COURT: Mr. Brown, are you going to help me
17 along here with the actual finding on the letter, or
18 do you want me to go back and read the transcript of
19 the hearing?

20 MR. BROWN: I can tell you that they asked --
21 we submitted all these letters, all of them, and we
22 asked if he could analyze these, and he said he could.

23 I objected -- I objected to the handwriting analy-
24 sis as not valid expertise to testify at all.

25 That was one of my objections.

1 THE COURT: Why is it . .

2 (Mr. Brown and the Court speaking at the same time)

3 THE COURT: My question was, is there any reasonable
4 explanation for why this letter wasn't analyzed?

5 MR. BROWN: Because they don't do what I say. They
6 don't do what I say. They carry a badge, and they do what
7 they say, not what I say.

8 And that letter was given to me, that document.

9 THE COURT: All right, we'll mark it as an Exhibit
10 and let Ronda take hold of it, if you're so concerned about
11 its state.

12 MR. BROWN: I am, Your Honor.

13 I would like to put up the testimony of Mr. Barnes and
14 . . .

15 THE COURT: Mr. Brown, Mr. Brown.

16 MR. BROWN: Yes, maam.

17 THE COURT: Let me go through and let me read what you
18 actually have from Ronda.

19 MR. BROWN: Yes, maam.

20 THE COURT: I have no idea -- who was this hearing in
21 front of?

22 MR. BROWN: Judge Harrington.

23 SOLICITOR: Judge Harrington.

24 THE COURT: Okay.

25 MR. BROWN: And I have just received that transcript.

1 I just -- Ms. Cummings was in a long trial and so I

2 . .

3 THE COURT: Let me just -- hold on for a second.

4 Solicitor, is there anything that prohibits you from
5 having the original to give to your handwriting expert to
6 analyze?

7 SOLICITOR: I don't know where it -- where he got it.
8 I'm really not sure where it came from.

9 THE COURT: You have a copy of it? Is that what you're
10 telling me?

11 SOLICITOR: I know I've got a copy of it and I pulled
12 that out. That's why I had the reaction I had, because I
13 thought it was one of the ones that was submitted because
14 it was with the copies of the ones that were submitted.

15 It is clearly the same handwriting, and we would have
16 submitted it had we had the original or unless the Judge
17 had ruled for some reason that we could not, and, really, I
18 don't remember what happened with that and why they all
19 were not submitted.

20 Either we didn't have it or there was some objection
21 to it. We tried to get everything we had analyzed by the
22 handwriting sample expert, and we wouldn't have held one
23 back from the SLED handwriting sample expert.

24 THE COURT: And so I'm clear, is your handwriting
25 expert coming in this case?

1 SOLICITOR: Yes, maam.

2 THE COURT: Do you have a handwriting expert?

3 Why didn't you just say you would have had a handwrit-
4 ing expert look at it?

5 There were four other documents a handwriting expert
6 did look at, and . . .

7 MR. BROWN: Judge, I submitted a copy at that hearing.
8 I submitted a copy of that letter at that hearing.

9 THE COURT: But not the original?

10 MR. BROWN: No, maam.

11 SOLICITOR: He submitted copies of all them that I pro-
12 vided . . .

13 MR. BROWN: That's exactly right.

14 SOLICITOR: . . to him.

15 MR. BROWN: That's exactly right.

16 SOLICITOR: We didn't have the original and maybe it
17 was ruled that we couldn't submit a copy. I don't know.
18 I'm guessing. I shouldn't be doing that.

19 MR. BROWN: The record speaks for itself, and let me
20 suggest this.

21 There was no . . .

22 THE COURT: Do either one of you know what she ruled?

23 MR. BROWN: Oh, I know exactly what she ruled. I read
24 that transcript several times.

25 THE COURT: Then what did she rule?

1 MR. BROWN: She ruled that they get a sample from my
2 client, which they did.

3 THE COURT: Okay. The question was, again, why was
4 this not analyzed?

5 MR. BROWN: Because they didn't ask their expert to
6 do it.

7 SOLICITOR: We didn't have it.

8 MR. BROWN: They didn't have the original. You are
9 talking about a copy of it analyzed?

10 THE COURT: Does your expert analyze originals or cop-
11 ies?

12 SOLICITOR: Both.

13 THE COURT: And they did have the originals of the
14 other four letters?

15 SOLICITOR: Yes, and they are here.

16 MR. BROWN: But they actually substituted out --
17 the originals went back into evidence.

18 THE COURT: Let me ask this. Solicitor, have you
19 ever had the original of this document?

20 SOLICITOR: Not that I know of.

21 THE COURT: Mr. Brown didn't get it from you is what
22 you're telling me?

23 SOLICITOR: No, maam.

24 MR. BROWN: She had a copy of the document.

25 SOLICITOR: I had a copy of it, and how I got a

1 copy of it without having the original I have no idea.
2 I don't know where he got the original.. I really don't
3 know.

4 I don't know why an original would not have gone
5 to the other Court. I don't know the answer to that.

6 I do know that we submitted everything that the
7 Judge would allow us to submit after the end of that
8 hearing.

9 The four items were marked -- actually had exhibit
10 markers on them from the hearing.

11 MR. BROWN: And, Your Honor, . .

12 SOLICITOR: But the . .

13 MR. BROWN: There is one other . .

14 THE COURT: Let's get back to the issue.

15 MR. BROWN: There is one other original we'd like
16 marked also.

17 (Brief pause in the proceeding)

18 MR. BROWN: What are those numbers? Are they 4
19 and 5?

20 REPORTER: Defendant's Exhibits 5 and 6, Your Honor.

21 THE COURT: Defendant's 5 and 6.

22 THE COURT: I guess I'll have to read the tran-
23 script and see why Judge Harrington only had four or
24 allowed four of them to be submitted for handwriting
25 analysis.

1 (Defense Exhibits 4 and 5 marked by Reporter for
2 purposes of this hearing)

3 MR. BROWN: She didn't -- that was in the nature
4 of a Schmerber hearing.

5 THE COURT: Uh huh.

6 MR. BROWN: And the question was whether in order
7 to get a handwriting sample a known standard be taken
8 from my client.

9 THE COURT: Okay, and she ordered then that one
10 be given?

11 MR. BROWN: Yes.

12 THE COURT: Then why do you keep talking about the
13 submittal of four letters?

14 Solicitor, you submitted the four letters which you
15 have?

16 SOLICITOR: That's right.

17 THE COURT: Is there anything to prohibit the
18 Solicitor from taking that letter right now and having
19 her handwriting expert look at it before that expert
20 testifies?

21 MR. BROWN: I would say no.

22 THE COURT: Nothing prohibits that?

23 MR. BROWN: Nothing prohibits it from my end of
24 it.

25 I mean, I had the original and they had a copy.

1 In fact, I planned on impeaching him about why he
2 didn't . .

3 THE COURT: Well, Solicitor, I guess you can have
4 your expert look at it, and I don't know how long it
5 takes to analyze handwriting.

6 SOLICITOR: Like I said, Your Honor, I submitted
7 what we had, and for him to now try to introduce some-
8 thing that he withheld and we weren't allowed to ana-
9 lyze I would object to.

10 But I think that is so far off our original is-
11 sue, which was whether there was a conflict because of
12 Mr. Hood's representation -- if we could get back to
13 that for just one minute?

14 The Public Defender's Office was originally ap-
15 pointed to both Codefendants as they normally would
16 be in a jail case.

17 I believe Mr. Hood's office represented Mr.
18 Howard for approximately thirty days. I believe when
19 their investigator interviewed him, Mr. Howard informed
20 him that -- based on an interview with Mr. Hood -- he
21 told him his family was going to hire private counsel.

22 Mr. Hood then went to see him and he was told the
23 same thing. Then they conflicted it from the office,
24 keeping Mr. Hicks' case, and conflicting Mr. Howard's
25 case.

1 That is what they should have done. They did
2 exactly what they were supposed to do, and how that
3 creates a problem now I just -- I just can't fathom
4 this motion having any merit.

5 Mr. Hood tells me that there was absolutely no
6 substantive conversation with Mr. Howard about his case
7 and the only conversation was about representation,
8 whether it was going to be private counsel or the PD's
9 office, and it resulted in a conflict.

10 End of story.

11 THE COURT: What again is the nature of the con-
12 flict, Mr. Brown?

13 MR. BROWN: That Mr. Hood, according to the let-
14 ter, went to visit Mr. Howard and turns around and
15 gives advice against Mr. Howard to Mr. Hicks.

16 THE COURT: Okay, and the only thing you believe
17 is evidence that Mr. Hood gave advice to Mr. Hicks is
18 in the letter that you report that Mr. Hicks wrote. Is
19 that correct?

20 MR. BROWN: Mr. Hicks' own -- I'm going to say
21 truthful statement.

22 THE COURT: That Mr. Hicks wrote, Mr. Brown? What
23 I just said.

24 MR. BROWN: Yes, maam.

25 THE COURT: And it is your word that it's his

1 writing?

2 MR. BROWN: Oh, I can prove . .

3 THE COURT: Do you want to go ahead and get Mr.
4 Hood on the stand then? Is that what you are want-
5 ing me to do now, as to what he did or did not say to
6 Mr. Hicks?

7 MR. BROWN: I don't think no matter how sterile
8 the conversation was, I think it is already tainted.

9 THE COURT: There is no taint that I can see.
10 You'll have to show proof of taint.

11 You can put him up on the stand and show me that
12 there is some taint. Mr. Hood is here and has been
13 here.

14 MR. BROWN: And let me suggest this. I'd like to
15 put up Mr. Hicks first and ask him first of all the
16 question of whether he wrote that letter.

17 THE COURT: Actually, no, we're going to go to
18 Mr. Hood right now so he can testify whether or not he
19 had this substantive conversation with Mr. Hicks.

20 Then, again, where is the conflict?

21 MR. BROWN: Because you can't give advice to
22 parties who are adverse in the same action. I mean,
23 that is the golden conflict.

24 THE COURT: Mr. Brown, in every single case
25 where there is a Codefendant isn't it a fact that when

1 they are both represented by the Public Defender's Of-
2 fice that they are conflicted out?

3 I will give you a caveat, however. The Chief
4 Justice just sent out a notice stating that the Public
5 Defender's Office, just like most law firms, are split
6 up in what they termed to be a chinese wall so that
7 there is not as much conflict.

8 Based on your assertion you made earlier that
9 there is not enough money in LID to appoint outside
10 counsel . . .

11 MR. BROWN: No, no.

12 THE COURT: . . that is . .

13 MR. BROWN: Not enough money, but you can't vio-
14 late all the rules. There needs to be more money from
15 the Legislature.

16 That's the bottom line.

17 According to the Order . .

18 THE COURT: Mr. Brown.

19 MR. BROWN: . . of the General Assembly . .

20 THE COURT: Mr. Brown, Mr. Brown.

21 MR. BROWN: I'm sorry.

22 THE COURT: Do we need to call the witness up
23 here to testify whether he gave any advice to Mr. Hicks?

24 MR. BROWN: Well, if Your Honor wishes to hear
25 from him. That's not what I intended to put up.

1 I want to suggest that possibly Mr. Hicks needs
2 to explain the privilege of this conversation with Mr.
3 Hood.

4 But I'm not Mr. Hicks' lawyer. I would purport
5 to call Mr. Hicks now.

6 SOLICITOR: There is no evidence that there was
7 any conversation between Mr. Hicks and Mr. Hood. Mr.
8 Hicks . .

9 MR. BROWN: That letter.

10 SOLICITOR: Mr. Hicks was represented initially
11 by Ms. Smart. That was his lawyer.

12 Mr. Deysach was then hired by the Public Defender's
13 Office and took over the case. By then, this case had
14 been long conflicted -- Mr. Howard's case had been long
15 conflicted out.

16 Again, they only had it for about a month, and I
17 think they will tell you that during that month nothing
18 substantive occurred in Mr. Howard's case.

19 THE COURT: Okay. Well, respectfully, at this
20 point it's four thirty in the afternoon. What we will
21 do is -- I'm sure Mr. Hood would be available if we
22 needed to call him.

23 I understand that you don't wish to call Mr.
24 Hood, is that correct?

25 MR. BROWN: I believe it's established that Mr.

1 Hood met with my client, Mr. Howard, . . .

2 THE COURT: Mr. Brown.

3 MR. BROWN: No, I . . .

4 THE COURT: Mr. Brown, I asked you a simple ques-
5 tion. Do you intend to call Mr. Hood? Yes or no is
6 the answer.

7 MR. BROWN: It's according to what Mr. Hicks says.

8 THE COURT: Mr. Brown, do you intend to call Mr.
9 Hood?

10 MR. BROWN: It depends on what Mr. Hicks says.

11 THE COURT: Mr. Brown, do you intend to call Mr.
12 Hood?

13 MR. BROWN: I can't answer that.

14 THE COURT: Yes or not to the question I asked.
15 Again, Mr. Brown, . . .

16 MR. BROWN: I can't answer it that way, Your
17 Honor.

18 THE COURT: Mr. Brown, you need to listen. Lis-
19 ten to me.

20 MR. BROWN: Yes, maam.

21 THE COURT: Do you intend on calling Mr. Hood,
22 and the answer can be yes, no, or I don't know. Right
23 now, right here, do you want to call Mr. Hood?

24 MR. BROWN: He is under subpoena. I don't know
25 until I put up Mr. Hicks.

1 THE COURT: Yes or no. Do you intend to call
2 Mr. Hood?

3 MR. BROWN: I don't know until I put up Mr. Hicks.

4 THE COURT: All right. Respectfully, let's go
5 ahead and do this inquiry before Mr. Hicks testifies.
6 If for some reason the Solicitor discusses it in opening
7 statements or anything else and I end up ruling it out,
8 then we'll entertain motions in that regard later.

9 But I can tell you that we are not here for you
10 to undertake a fishing expedition. I know Mr. Hood is
11 here. Correct?

12 You are here, sir, if they do wish to call you at
13 some time this week?

14 MR. HOOD: It's fine with me.

15 MR. BROWN: Who is going to call him?

16 THE COURT: Who is going to call him?

17 SOLICITOR: The State would call Mr. Hood. Please
18 take the stand.

19 THE COURT: Come on forward.

20 GENE HOOD, being duly
21 sworn, testified as follows, out of the presence of
22 the jury:

23 CLERK: Please state your full name and spell
24 your last name.

25 WITNESS: Gene Graham Hood. H O O D.

1 DIRECT EXAMINATION

2 BY SOLICITOR:

3 Q. Mr. Hood, was your office appointed -- well, we
4 have already established that your office was appointed
5 to represent Alfonzo Howard and Lorenzo Hicks. Is
6 that correct?

7 A. That's correct.

8 Q. Did that change at any point?

9 A. Yes.

10 Q. And describe to the Court at what point that
11 changed and how that changed?

12 A. Mr. Howard and Mr. Hicks were initially interviewed
13 by one of my investigators. My investigator, after . .

14 MR. BROWN: Your Honor, I would ask that Mr.
15 Chapman be sequestered, the investigator.

16 THE COURT: Respectfully, who was it again?

17 MR. BROWN: Mr. Chapman.

18 THE COURT: Mr. Chapman, do you mind stepping out?

19 MR. CHAPMAN: Outside the door?

20 THE COURT: You've got it, until we call you.

21 (Prospective witness excused from Courtroom)

22 THE COURT: Okay. Go ahead, Mr. Hood.

23 A. You have to remember that this has been some three
24 years ago and a thousand cases and possibly several
25 hundred conflicts.

1 But our normal procedure was that the investiga-
2 tor would go over and talk with the client, and by that
3 he would determine, number one, was he represented;
4 did he want representation; things of that nature, and
5 to tell him who the attorney was who had their parti-
6 cular case.

7 I had already assigned these cases and Mr.
8 Chapman gets the cases, and he goes to the jail.

9 He tells them who their attorneys are. In this
10 case, I took Howard, based on information I had been
11 given by the investigating officers as to who they
12 thought was the most culpable of the two.

13 So I took the worst one and gave or assigned the
14 other one to Stephanie, if I recall.

15 The investigator stated that Mr. Howard was plan-
16 ning on or was going to hire private counsel. I went
17 over to see Mr. Howard to ascertain whether or not it
18 was true.

19 To the best of my knowledge, he said that he was,
20 and I also received a telephone call, if I'm not mis-
21 taken, from one of Mr. Howard's family members indicat-
22 ing that they were in fact going to retain private coun-
23 sel and they did not need my services.

24 I said, well and good, and signed the conflict
25 Order, because in the event that they did not follow

MR. HOOD IN CAMERA

1 through with hiring a private attorney that the con-
2 flict Order would be there and would give whoever got
3 the employment later on, months later, the opportunity
4 to get paid, based on the fact that I had conflicted
5 the case.

6 THE COURT: Mr. Hood, just so I'm clear, sir,
7 wouldn't the Public Defender's Office if there is a
8 conflict typically keep the most difficult case and
9 conflict out the less culpable person?

10 A. Yes, maam.

11 THE COURT: And in this case, you just testified
12 when you assigned it within the office you kept Mr.
13 Howard's case because as Chief Public Defender you con-
14 sidered it to be the most difficult case, so it was un-
15 usual that you would on just a straight conflict case
16 conflict out the more culpable client. Is that cor-
17 rect, sir?

18 A. Exactly. That is absolutely correct.

19 THE COURT: Okay. Anything further, Solicitor?

20 BY SOLICITOR:

21 Q. Mr. Hood, at any point did you have a substantive
22 conversation with Mr. Howard about the merits of his
23 case or his Codefendant, Lorenzo Hicks?

24 A. I never recall speaking to Mr. Hicks at all. I
25 would have had no reason to do that as I would not

MR. HOOD IN CAMERA

1 have interfered with his relationship with his attorney.

2 You know, we get hundreds and hundreds of these
3 inquiries in the jail signed by clients who think that
4 I'm their attorney because I run the office.

5 So, therefore, they are addressed to me, but I
6 have never to my knowledge ever spoken with Mr. Hicks
7 at all, and only on one occasion have I talked with
8 Mr. Howard.

9 That was on, I believe, the 26th, if I recall cor-
10 rectly.

11 Q. Thank you. No further questions.

12 THE COURT: Mr. Brown?

13 MR. BROWN: May it please the Court?

14 CROSS EXAMINATION out of the presence of the jury

15 BY MR. BROWN:

16 MR. BROWN: If I may approach the witness?

17 Q. I would ask you to take a look at Defendant's Ex-
18 hibit 7 and 8.

19 A. Yes.

20 Q. Those documents obviously speak for themselves,
21 but that is not a motion to be relieved or a motion to
22 substitute private counsel, is it?

23 A. It's not. It's a conflict.

24 Q. And the conflict is that there appear to be ad-
25 verse interests between Mr. Hicks and Mr. Howard at

MR. HOOD IN CAMERA

1 the time that affidavit was signed?

2 A. That is correct.

3 Q. And I think there is some language in here about
4 simultaneous representation?

5 A. Correct.

6 Q. And just to make sure I understand, it was the
7 Public Defender's Office understanding that Mr. Hicks
8 had already implicated Mr. Howard by the time that
9 Order was signed?

10 A. I really don't know. I mean, it could have been
11 that way but I just don't know.

12 Q. The date on this one was June 28th and on number 8
13 is June 29th, 2007?

14 A. Correct.

15 Q. And that is, of course, 2006?

16 A. Correct.

17 Q. So if Mr. Hicks gives a statement to law enforce-
18 ment the morning of June 26th, and that statement was
19 known, then that adverse nature would have been up
20 here?

21 A. . .

22 Q. If you all had known about that statement?

23 A. . .

24 Q. Or series of statements?

25 A. I assume we would have.

MR. HOOD IN CAMERA

1 Q. Okay.

2 A. That is again a couple of days so it is very possi-
3 ble that we were not aware that that statement was even
4 given by Mr. Hicks.

5 Q. Between May 26th and June 28th, so thirty-three
6 days?

7 A. Well, that's what I say. Again, it takes sometimes
8 about two to three weeks after our appointment for us to
9 be able to get the police reports, so that we then have
10 hard copies of what is expected, you know, as far as
11 discovery, what people have said, and what is claimed
12 that the clients had done.

13 Q. Let me ask you. One way that the investigator --
14 you said your investigator -- and I say this with no
15 implication here, but they speak to law enforcement,
16 and I think everybody knows that investigators are in-
17 volved with law enforcement.

18 And so they've got a good working relationship with
19 law enforcement, and so it is not uncommon that they
20 would actually go around and find up -- hey, what's up
21 with the case?

22 A. You know, I stated that I determined that Howard,
23 based on the information that I had received, was the
24 most culpable, which would indicate to me I probably
25 was aware of the fact that either Hicks had made some

MR. HOOD IN CAMERA

1 statement against Howard or -- you know, either orally
2 or a written statement -- but I may or may not have had
3 it in my possession at the time.

4 Q. And so along with that idea at some point there is
5 a sworn affidavit that just says that these are adverse
6 interests?

7 A. Absolutely, yes.

8 Q. No further questions, Mr. Hood.

9 THE COURT: You can step down, sir.

10 (Witness excused from stand)

11 MR. BROWN: If I could call Counselor Barnes, who
12 has been summoned from the jail -- he does not appear to
13 be here. He was subpoenaed by my investigator.

14 We just called him but he has not arrived.

15 THE COURT: Okay, and I also understand you want
16 to examine Mr. Hicks. Is that correct?

17 MR. BROWN: The question is -- I understand Mr.
18 Hood doesn't recall meeting with him, but I want to find
19 out what Mr. Hicks says.

20 If Mr. Hicks says, yes, I wrote that letter and I
21 lied in that letter, that may resolve this conflict is-
22 sue, Your Honor.

23 If Mr. Hicks asserts, yes, he did meet with him,
24 and, yes, he wrote that letter, the conflict issue is
25 still alive.

1 THE COURT: I don't see where it's still alive.
2 Mr. Hood has just said that he never had discussions with
3 Mr. Hicks, and additionally -- it was supposed to be
4 that he discussed the case with either Stephanie Campbell
5 who is . .

6 SOLICITOR: Stephanie Smart.

7 THE COURT: With Stephanie Smart or Mr. Deysach.

8 MR. BROWN: I didn't put Mr. Deysach under sub-
9 poena but I asked if he was going to be here and he has
10 said he was.

11 SOLICITOR: Your Honor, until he establishes some
12 kind of chain on this letter, where it came from, how he
13 got it, I object to any further discussion about it.

14 I established a chain of custody on four letters
15 that I submitted to SLED for analysis.

16 MR. BROWN: She did not.

17 SOLICITOR: Yes, I did. I . .

18 MR. BROWN: Ms. Smart is in Japan.

19 SOLICITOR: I had to bring over Jeff Vortisch who
20 testified that he got them from Stephanie Smart and he
21 submitted them into evidence.

22 She had gotten them from Mr. Hicks. They had
23 brought Mr. Hicks over to Mr. Vortisch's office. He was
24 present, Ms. Smart was present, his attorney, and she
25 told him about the letters.

1 He then met her at the back of the Courtroom and
2 he got them from her.

3 I was forced to bring over witnesses to establish
4 chain of custody, and I'm going to make him do the same
5 thing if he intends to use this letter.

6 MR. BROWN: They weren't brought over to establish
7 chain of custody.

8 SOLICITOR: Yes, they were.

9 MR. BROWN: There was no chain because they can't
10 show how they got even to Ms. Smart because we tried to
11 figure that out at the hearing, if you read the tran-
12 script.

13 I kept asking, did Ms. Smart tell you where Mr.
14 Hicks got them from?

15 THE COURT: Okay, we're off point now. Do you need
16 to call Mr. Deysach? Mr. Hicks is being brought over
17 probably.

18 Am I correct, and do you wish to call Mr. Barnes?

19 MR. BROWN: Yes, please. I call Counselor Barnes.
20 I would also call Mr. Deysach.

21 THE COURT: Call Mr. Deysach, please.

22 LEONARD BARNES, being duly
23 sworn, testified as follows, out of the presence of the
24 jury:

25 CLERK: State your full name and spell your last

1 name.

2 WITNESS: Leonard Barnes, B A R N E S.

3 DIRECT EXAMINATION

4 BY MR. BROWN:

5 MR. BROWN: May it please the Court?

6 THE COURT: Yes.

7 Q. Mr. Barnes, you work at the Beaufort County Deten-
8 tion Center?

9 A. Yes.

10 Q. And have you worked there since May of 2006?

11 A. At least since May, 2006.

12 Q. I tried to shorten your career there.

13 Are you a Notary?

14 A. Yes, I am.

15 MR. BROWN: May I approach the witness, Your Honor?

16 THE COURT: Yes.

17 SOLICITOR: Objection, Your Honor, on the grounds
18 there is no idea where this letter came from.

19 THE COURT: Okay. Well, I don't think that is
20 what he's going to establish. I think he's going to
21 establish -- well, let him ask it.

22 BY MR. BROWN:

23 Q. If I could show you what has been marked Defense
24 5, and ask if you recognize on this letter a raised
25 seal and signature?

MR. BARNES IN CAMERA

1 On the back of that letter a raised seal and signature
2 on the back?

3 A. Yes, I do.

4 Q. And what is that raised seal and signature?

5 A. That is Leonard Barnes, Notary Public for South
6 Carolina; my commission expires December 16, 2015.

7 Q. Okay. Does that fairly and accurately represent your
8 seal?

9 A. Yes.

10 Q. And tell me what you do when you notarize a signature?

11 A. The inmate is there in my presence to verify the
12 content of the letter and that he signed it.

13 Q. Did you do that in this case?

14 A. Yes.

15 Q. And so did you verify that it was not Alfonzo Howard
16 but Lorenzo Hicks who signed that letter?

17 A. Yes.

18 Q. No further questions.

19 THE COURT: You have no way to verify it was Mr.
20 Hicks who wrote the letter, is that correct? It's just
21 that Mr. Hicks signed it in your presence?

22 A. Yes.

23 THE COURT: You have no idea who wrote the contents of
24 that letter, is that correct?

25 A. Yes.

MR. BARNES IN CAMERA

1 Q. Do you have any independent recollection of your
2 notarization of this particular letter?

3 A. No, maam.

4 Q. Is there anything in your mind that sticks out in-
5 dependently so you can say you have an independent re-
6 collection of this letter or any of the circumstances
7 surrounding it?

8 A. No, maam.

9 Q. But you do as the notary over at the jail notarize
10 a lot of letters, is that correct?

11 A. Yes.

12 Q. Is that something you do as a part of your job
13 at the jail, sir?

14 A. Yes, maam.

15 THE COURT: All right, Solicitor. Do you need to ask
16 him anything?

17 SOLICITOR: No, maam.

18 MR. BROWN: Can I do a follow-up just briefly on
19 that?

20 THE COURT: Yes.

21 BY MR. BROWN:

22 Q. There is no question you can identify the inmate,
23 you know who they are? They have a wristband with their
24 name and a picture on it?

25 A. Yes.

MR. BARNES IN CAMERA

1 Q. So you could look at that if there is a question
2 about whether that is actually Lorenzo Hicks or Alfonzo
3 Howard?

4 You could look at that wristband and see his name,
5 see his picture, and identify him?

6 A. Yes.

7 Q. Okay. Is there any question that Lorenzo Hicks is
8 the one who actually signed the letter that you notar-
9 ized?

10 A. No, no question.

11 THE COURT: Mr. Barnes, when you notarize letters,
12 do you not date it, the date of the notary?

13 A. No, maam.

14 THE COURT: It just has your expiration date, cor-
15 rect, and your notary seal?

16 A. Yes.

17 THE COURT: Mr. Barnes, thank you. I don't know
18 if there are any more questions.

19 MR. BROWN: No more questions. I'm sorry.

20 THE COURT: You may come down, sir.

21 (Witness excused from stand)

22 MR. BROWN: He's excused -- well, I'll take that
23 back. If you would stay on stand-by for the trial.

24 WITNESS: I'll be at the jail.

25 THE COURT: All right. Would you like to call

1 your next witness?

2 MR. BROWN: I sure would.

3 SOLICITOR: Your Honor, would Mr. Deysach remain se-
4 questered while his client is on the stand?

5 MR. BROWN: Well, I . . .

6 THE COURT: Bring him in.

7 MR. BROWN: Actually, Your Honor, . . .

8 THE COURT: Mr. Hicks, if you'll take a seat, sir.

9 LORENZO HICKS, being duly
10 sworn, testified as follows, OUT OF THE JURY'S PRESENCE:

11 CLERK: State your full name and spell your last
12 name.

13 WITNESS: Lorenzo Hicks, H I C K S.

14 SOLICITOR: Wait a minute. Mr. Brown has already
15 got a motion regarding Mr. Hicks' competency to testify.
16 Now he's calling him to the stand to ask him questions
17 because it suits him.

18 I think this takes care of that motion.

19 MR. BROWN: Actually, I disagree. I think he's
20 an incompetent liar. We'll take that and just fold this
21 motion right on up. If the State
22 will stipulate that he's an incompetent liar, we don't
23 need any of these other motions.

24 SOLICITOR: Absolutely not.

25 THE COURT: I think you need to let him ask his

1 questions.

2 SOLICITOR: That's fine.

3 MR. BROWN: Beg the Court's indulgence.

4 THE COURT: Mr. Brown, get to it.

5 MR. BROWN: Yes, maam. Your Honor, if you'll give
6 me a moment?

7 THE COURT: Mr. Brown, please understand something.
8 You are specifically asking him questions right now
9 having to do with that letter. That is . .

10 MR. BROWN: I understand.

11 THE COURT: And I don't know what you're fishing
12 for in your files, but it's my understanding that the
13 Court Reporter has the letter.

14 MR. BROWN: And I'm looking for my copy.

15 THE COURT: You can use the original.

16 MR. BROWN: No, maam, I'm looking for my copy so
17 I don't have to read over his shoulder. May I approach
18 the witness?

19 THE COURT: Give him a copy of that letter, please,
20 or . .

21 MR. BROWN: If I may approach?

22 DIRECT EXAMINATION

23 BY MR. BROWN:

24 Q. Mr. Hicks, I'm going to hand you a document marked
25 Defendant's Exhibit 5, and ask you to take a look at

1 that item.

2 A. . .

3 Q. And would you look at the back of that item?

4 A. . .

5 THE COURT: Would you like him to read and look
6 at the entire letter?

7 BY MR. BROWN:

8 Q. First of all, is that your signature on the back
9 of it?

10 A. No.

11 Q. You did not sign it?

12 A. No.

13 Q. And if somebody else said they notarized your sig-
14 nature on there, they would not be telling the truth?

15 A. Right.

16 THE COURT: Are you done, Mr. Brown?

17 MR. BROWN: Oh, I'm done.

18 CROSS EXAMINATION

19 BY SOLICITOR:

20 Q. Mr. Hicks, did you write that letter?

21 A. No.

22 THE COURT: Mr. Brown, sit down.

23 Q. Have you ever seen that letter before now?

24 A. Yes.

25 Q. And where did you see that letter?

MR. HICKS IN CAMERA

1 A. One time.

2 Q. How did you get to see it? Did it come to you?

3 A. Yes.

4 Q. All right, describe that for the Court.

5 A. I was in A one and a guy by the name of Rico -- I
6 don't know what his last name was -- but he was in Alpha
7 one, and they had some trouble.

8 Alfonzo Howard was in Bravo two. Rico went into B
9 three and he asked Howard about me, you know, and what
10 not, and Howard asked him to write a letter and try to
11 get me to change my statement, so he wrote this and he
12 bring this to me.

13 Q. So that letter came from Alfonzo Howard?

14 A. Well, Rico and Howard had him give it to me.

15 Q. Okay. So it was transported from Howard to Rico
16 and to you?

17 A. Uh hm.

18 Q. Were you asked at any point to sign that letter as
19 if it were yours?

20 A. Yes.

21 Q. Did you do that?

22 A. No.

23 Q. Is that the only letter that was sent to you?

24 A. No.

25 Q. What is the nature of that letter? What is it

MR. HICKS IN CAMERA

1 asking you to do?

2 A. Somewhat change my statement and make it sound
3 like I'm the one that's writing it.

4 Q. Thank you.

5 THE COURT: Anything further?

6 MR. BROWN: Briefly.

7 REDIRECT EXAMINATION

8 BY MR. BROWN:

9 Q. Where does it ask you to change your story?

10 A. . .

11 (Brief pause in the proceeding)

12 A. This is the second one right here. It was attached
13 to this.

14 Q. All right, thank you. Let me make sure I under-
15 stand. Let me go back.

16 Where does this ask you to change your story?

17 Where does that letter ask you to change your story?

18 A. This is not . .

19 Q. Third time. Where does that letter ask you to
20 change your story?

21 A. It's not in this.

22 Q. So it doesn't ask you to change your story?

23 A. No, but I have one recent.

24 Q. You have a recent one?

25 A. Yes.

MR. HICKS IN CAMERA

1 Q. More recent than that one?

2 A. Yes.

3 Q. Let me make sure I understand. Was that before or
4 after you attempted suicide at the jail?

5 A. That doesn't have anything to do with this right
6 here.

7 Q. Did you not try to attempt suicide from guilt over
8 implicating Mr. Howard?

9 A. No, it wasn't because of him. I'm not guilty of
10 anything.

11 Q. You're not guilty of anything?

12 A. Of being at the wrong place, being with somebody
13 I didn't know.

14 MR. BROWN: Begging the Court's indulgence.

15 This is my copy of the letter I don't mind show-
16 ing him that was in the Clerk's Office, to save time.

17 THE COURT: That says what, Mr. Brown?

18 MR. BROWN: I am going to ask him if this Rico,
19 the person he's talking about -- the letter that was
20 also submitted purportedly signed by Rico -- I was going
21 to ask him if this is the Rico who wrote this letter.

22 SOLICITOR: Objection, Your Honor. Irrelevant.

23 MR. BROWN: Well, I want to know if he wrote this
24 letter or not.

25 THE COURT: If Mr. Hicks wrote this letter?

MR. HICKS IN CAMERA

1 MR. BROWN: I'm going to ask him if he did.

2 My only concern is I'd like to show him the one
3 that has already marked in this case in the Clerk's Of-
4 fice.

5 Can I show this to him? It's my copy of the letter
6 in the Clerk's Office.

7 THE COURT: If it's the same document, he can look
8 at the copy to find out whether or not he actually wrote
9 the letter.

10 MR. BROWN: The only problem I've got -- well, let
11 me . .

12 BY MR. BROWN:

13 Q. I'd ask you to look at Defendant's Exhibit 2 from
14 the October 23, 2008, hearing -- I'd ask you to take a
15 look at that two page letter there.

16 A. . .

17 Q. Did you write that letter?

18 A. No, sir.

19 Q. Do you know who wrote it?

20 A. No.

21 Q. Do you know Derrick Cody?

22 A. Yes.

23 Q. Is that Rico?

24 A. Yes.

25 Q. And you didn't write this other letter?

MR. HICKS IN CAMERA

1 A. No.

2 Q. And Rico gave you this other letter which is . .

3 A. Yes.

4 Q. You didn't write this Exhibit 2 from the October
5 23rd hearing but Rico gave you the letter from -- that
6 is marked Defendant's 5 of this hearing?

7 A. No, sir.

8 Q. Who gave you that letter?

9 A. Rico.

10 Q. Rico?

11 A. Yeah.

12 Q. Okay. You didn't write this but Rico gave you the
13 letter?

14 A. Yes.

15 Q. Okay.

16 MR. BROWN: Your Honor, we'd just ask that, I guess,
17 a copy of this Exhibit from the October 23rd hearing be
18 supplemented in this so . .

19 THE COURT: Let her mark it.

20 MR. BROWN: Your Honor, that's my copy. The
21 point here is that . .

22 THE COURT: All right, we'll go ahead and make a
23 copy of it so you can be given back your copy.

24 MR. BROWN: Thank you.

25 THE COURT: Anything further for Mr. Hicks?

MR. HICKS IN CAMERA

1 SOLICITOR: No, Your Honor. Mr. Hicks has answered
2 that he didn't write that letter which I think was the
3 issue in this hearing.

4 THE COURT: Mr. Hicks, you can step down, sir.

5 (Witness excused from stand)

6 THE COURT: You all can take him back. Thank you.

7 All right. Are you going to call Mr. Deysach?

8 MR. BROWN: I will call Mr. Deysach to flesh out
9 some issues.

10 THE COURT: All right.

11 IAN DEYSACH, being
12 duly sworn, testified as follows, out of the presence of
13 the jury

14 DIRECT EXAMINATION

15 BY MR. BROWN:

16 Q. You took over the Hicks file from Ms. Smart?

17 A. Yes, I did.

18 Q. Did you ever talk to her about the case?

19 A. I did.

20 Q. Had she stopped living here when you took it
21 over?

22 A. She was going -- I met her actually in Myrtle
23 Beach there at a conference, and we had an opportu-
24 nity to talk about a couple of cases that she was hand-
25 ing off to me. This was one of them.

MR. DEYSACH IN CAMERA

1 Q. And after that, about how long were you able to
2 consult with her about the case before she left?

3 A. As I recall, that was the only time I talked to
4 her about the case.

5 Q. Did you have any conversations with Mr. Hood about
6 this case?

7 A. Over the course of my representation I have.

8 Q. Tell me about that.

9 A. I believe some of the conversations I had are pri-
10 vileged and attorney-client.

11 Q. Your conversations with Mr. Hood?

12 A. Uh huh, about Mr. Hicks' case.

13 THE COURT: There is an attorney-client privilege
14 between Mr. Hicks and Mr. Deysach.

15 I guess the more poignant question is did you gar-
16 ner any information from Mr. Hood in regards to Mr.
17 Howard's case.

18 A. No, I did not garner any. He did not tell me any-
19 thing about having even talked to Mr. Howard.

20 THE COURT: Did you have any of these discussions
21 with Mr. Hood prior to Mr. Hood being conflicted out of
22 the case.

23 A. Mr. Hood was conflicted out of the case before I
24 got the Hicks' case.

25 THE COURT: Before you ever got Mr. Hicks' case --

MR. DEYSACH IN CAMERA

1 is that correct?

2 A. That's correct.

3 MR. BROWN: May I approach the witness?

4 THE COURT: Yes, you may.

5 BY MR. BROWN:

6 Q. I just want to make sure I understood. At some
7 point in time Mr. Hood represented Mr. Howard?

8 A. That's my understanding. You know, this is some-
9 thing that happened before I took my position, but I
10 believe he did.

11 As a matter of fact, I sat here and listened to him
12 say he assigned the case to himself.

13 Q. So at one time Mr. Hood represented Mr. Howard?

14 A. Right.

15 Q. Okay, and at some point in time you talked with
16 Mr. Hood about Mr. Hicks' case?

17 A. I did.

18 Q. At some point in time you have negotiated a deal
19 for Mr. Hicks to testify against Mr. Howard?

20 A. I have.

21 Q. Your boss' former client?

22 A. I mean, the relationship was what it was. Mr.
23 Hood said he did, and I talked to Mr. Hood about Mr.
24 Hicks' case. Yes.

25 Q. Did you talk to him about the deal where Hicks

MR. DEYSACH IN CAMERA

1 would testify against Mr. Howard?

2 A. About that possibility, yes.

3 Q. So you talked to Mr. Hood about your client testi-
4 fying against his former client?

5 A. Yes.

6 Q. In the same matter?

7 A. What's that?

8 Q. In the same matter?

9 A. Same matter?

10 Q. In other words -- let me go back. You talked to
11 Mr. Hood about your client testifying against Howard?

12 A. Yes.

13 Q. And you talked to Mr. Hood about Mr. Hicks testify-
14 ing against Mr. Hood's former client?

15 A. I mean, . . .

16 Q. That was his former client in this same matter?

17 A. . . I guess it was. I mean, I don't see you re-
18 lying on me for that point, but, yes.

19 THE COURT: Anything, Solicitor?

20 CROSS EXAMINATION out of the presence of the jury

21 BY SOLICITOR:

22 Q. Did you and Mr. Hood ever have a conversation
23 about Alonzo Howard or any information regarding Alfonzo
24 Howard's case?

25 A. No.

MR. DEYSACH IN CAMERA

1 THE COURT: Anything further?

2 REDIRECT EXAMINATION

3 BY MR. BROWN:

4 Q. Did you talk to Mr. Tanner about it?

5 A. About . .

6 Q. About Mr. Hicks testifying against Mr. Howard?

7 A. Yes. I talked to her about that, yes.

8 Q. And Mr. Hood talked to Ms. Tanner about it?

9 A. I don't believe so.

10 Q. I don't have any further questions.

11 THE COURT: Solicitor?

12 SOLICITOR: No, maam.

13 THE COURT: You can step down.

14 (Witness excused from stand)

15 THE COURT: Mr. Brown, do you want to call anyone
16 else from the Public Defender's Office?

17 MR. BROWN: To finish it off, I'd call Mr. Chapman.

18 (Brief pause in the proceeding)

19 BAILIFF: Mr. Chapman has left the building.

20 THE COURT: All right. You think he just didn't
21 understand that we sequestered him, which meant for him
22 not to leave?

23 MR. BROWN: He was not under subpoena.

24 THE COURT: Okay.

25 MR. BROWN: Your Honor, the last -- as far as the

1 housekeeping, I have two copies -- excuse me -- one copy
2 of two pages from the visitor log, and, again, Ms. Fripp
3 was here this morning. She was under subpoena.

4 I don't mind marking it, a copy. They've got the
5 books. So I need to hand these copies up to Your Honor,
6 the ones I'm marking. I gave one to the prosecutor.

7 THE COURT: Okay.

8 MR. BROWN: The year is not on there but they are
9 from the 2006 book.

10 Again, I've got the real books under subpoena and
11 we didn't bring those over.

12 SOLICITOR: I don't have any objection to copies,
13 Your Honor.

14 THE COURT: All right.

15 MR. BROWN: I want to make sure 2006 is on here.

16 THE COURT: Again, your motion.

17 MR. BROWN: Now we clearly know that Mr. Hicks is
18 testifying against Mr. Howard after Mr. Hicks talked to
19 his lawyer who talked to Mr. Hood, Mr. Howard's former
20 lawyer, all on the same thing.

21 Your Honor, I have been contacted by Codefendants
22 in private practice, and when I talk to the first one
23 that's it. If they don't hire me, I'm out.

24 The first guy who comes to see me and he's got a
25 Dollar and the second person knocks on my door and

1 they've got Ten Thousand Dollars . .

2 THE COURT: Mr. Hood says he didn't have any sub-
3 stantive conversation with him. All he said was he
4 confirmed that he was going to hire private counsel.

5 He had no substantive conversation with Mr. Howard
6 at all.

7 MR. BROWN: Your Honor, I -- and all I can tell
8 you is that I know the rule is you don't have an ap-
9 pointment with somebody unless they pay you because
10 they're going to conflict out.

11 The old divorce lawyer trick where the one that
12 has been to every single lawyer in town and . .

13 THE COURT: Yeah, but you have to actually go in
14 and actually tell your entire side of the story, and
15 that is where the difference is.

16 MR. BROWN: Well, they met at a privileged meeting
17 and . .

18 THE COURT: Mr. Brown, Mr. Hood testified there
19 was no substantive conversation whatsoever in regards to
20 the case.

21 Mr. Brown, . . .

22 MR. BROWN: He didn't recall whether there was one.

23 THE COURT: No, that was not his testimony.

24 MR. BROWN: Well, the record reflects . .

25 THE COURT: He did not say -- he said there was no

1 substantive conversation and there was no reason for
2 it at that point. He said there would be no reason for
3 it at that point.

4 So, respectfully, sir, I'm going to deny your
5 motion. I don't think there was or is any inherent
6 conflict or wrongdoing on behalf of the Public Defender's
7 Office between Mr. Hood and Mr. Hood.

8 Respectfully, I deny that motion.

9 What is your next motion?

10 MR. BROWN: On the competency of Mr. Hicks, and
11 you will recall I did ask for some funds to have an ex-
12 pert review the records for me, and that was denied. So
13 I still don't have anybody to help me present the tech-
14 nical angle on this to the Court. He has a real issue.

15 THE COURT: Mr. Brown, . . .

16 MR. BROWN: Yes, maam. I'm sorry.

17 SOLICITOR: Your Honor, I think he just mooted his
18 own motion. He called him as a witness and put him on
19 the stand. He asked him on direct examination and he
20 didn't make an issue of his competency then.

21 How can he make an issue of it when the State
22 puts him up as a witness?

23 I just think he mooted his own motion.

24 THE COURT: Respectfully, what we'll do is this.
25 Before he does in fact take the stand, we will have a short

1 hearing.

2 Certainly I found him competent at this hearing
3 under a Blair standard and a M'Naghten standard to en-
4 ter a guilty plea.

5 Additionally, it would be proper for me to have
6 that same determination before he testifies at trial,
7 so we can certainly do that directly before his status
8 changes anything.

9 MR. BROWN: We feel, Your Honor -- we have tried
10 to subpoena the doctor who did the evaluation, and we
11 have -- the investigator was sitting here and he's not
12 here any more. Well, we have not been very successful
13 in getting a doctor who -- I have lawyers in another
14 city where he is to call him and leave him messages and
15 talk to him, but he won't take my messages because he
16 knows I will subpoena him.

17 The evaluation of the doctor for the State . .

18 THE COURT: All right, Mr. Brown.

19 MR. BROWN: And I'm asking for some help from the
20 State because he is still part-time with the Medical
21 University, and they did the State's evaluation here,
22 and I would ask for some assistance.

23 I have got an investigator I've sent out to sub-
24 poena him, and he will have to make himself available.
25 He's running away from it.

1 THE COURT: Well, respectfully, Mr. Brown, I have
2 reviewed the doctor's report, and additionally I've had
3 the opportunity now to spend about forty-five minutes
4 with Mr. Hicks this morning as well as when he was just
5 on the stand.

6 MR. BROWN: I haven't been able to challenge him.

7 THE COURT: You can cross examine him.

8 MR. BROWN: It was limited. I was just told it
9 was limited, what I could go into.

10 THE COURT: Respectfully, we will address that be-
11 fore he testifies, and I will give you that opportunity
12 to do that before he testifies.

13 MR. BROWN: I guess what I'm asking . .

14 THE COURT: Is there any other -- do you have any
15 other pretrial motions, Mr. Brown?

16 MR. BROWN: Yes, maam. Absolutely.

17 THE COURT: What are they?

18 MR. BROWN: I move for funds for a handwriting ex-
19 pert to analyze the letters.

20 SOLICITOR: Your Honor, we could withdraw them and
21 not even have that -- I'm going to object that there is
22 no chain. I don't know where the letter came from.
23 His client could have written it last night.

24 I think, like I said, I can tell the handwriting
25 is the same, and I'm not an expert.

1 Dr. Smith.

2 THE COURT: Anything new?

3 Anything new, Mr. Brown?

4 MR. BROWN: I don't believe so.

5 THE COURT: Are you going to make a motion to seques-
6 ter in this case?

7 MR. BROWN: I am.

8 THE COURT: I think now would be the time to do
9 it.

10 These are pre-trial motions. Are you going to do
11 that?

12 MR. BROWN: Okay.

13 THE COURT: Obviously we are going to start the
14 case tomorrow morning, and you might want to tell
15 everybody to leave, so let's just go ahead and do that
16 for the record.

17 Any other pre-trial motions?

18 Tomorrow morning we're going to come in and hear
19 from the DNA expert for the State, Agent Mills.

20 Then we are going to go on and start our trial.
21 We are not going to hear any other issues. We're going
22 to go forward and start our trial. The jury is coming
23 in at ten.

24 Just so we're clear, are you absolutely sure, Mr.
25 Brown, you don't have any other motions to take up, or

1 I think if he does get it in and the jury sees it,
2 they will see through it as well. I'm not going to --
3 I don't have time to get it to SLED tonight anyway, so
4 I will withdraw and not have it analyzed, and we can
5 move on from there.

6 MR. BROWN: That will make it worse because they
7 got it -- I need to have it analyzed to show it's Mr.
8 Hicks.

9 However, now I've got to get somebody . .

10 THE COURT: Mr. Brown, . .

11 MR. BROWN: Yes, maam.

12 THE COURT: . . you had the letter and you consid-
13 ered allowing the State to put the letter in.

14 MR. BROWN: Correct.

15 THE COURT: You could have requested from this
16 Court or anyone else . .

17 MR. BROWN: Well, now . .

18 THE COURT: Mr. Brown, Mr. Brown. Please don't
19 interrupt me.

20 You are asking the Court for other funds, and re-
21 spectfully you could have at any point done so. At this
22 time, sir, I deny your request.

23 We're going to go forward tomorrow morning.

24 What other motions do you have for tonight?

25 MR. BROWN: Still I have two questions regarding

1 Dr. Smith.

2 THE COURT: Anything new?

3 Anything new, Mr. Brown?

4 MR. BROWN: I don't believe so.

5 THE COURT: Are you going to make a motion to seques-
6 ter in this case?

7 MR. BROWN: I am.

8 THE COURT: I think now would be the time to do
9 it.

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19 from the DNA expert for the State, Agent Mills.

20 Then we are going to go on and start our trial.
21 We are not going to hear any other issues. We're going
22 to go forward and start our trial. The jury is coming
23 in at ten.

24 Just so we're clear, are you absolutely sure, Mr.
25 Brown, you don't have any other motions to take up, or

1 does the State have any motions to take up having to
2 do with this trial?

3 SOLICITOR: Your Honor, I have one.

4 THE COURT: Yes, maam. What is your motion?

5 SOLICITOR: About the victim and his prior record.
6 We mentioned it briefly at last meeting. I know Mr.
7 Brown has requested information. We have provided the
8 rap sheet.

9 If he intends to ask the victim about his prior
10 record, the State would ask that he not be allowed to
11 do that under Rule 609.

12 His conviction was more than ten years old, and
13 his incarceration is more than ten years old. It
14 actually ended in February of 1996.

15 This occurrence happened or this incident happened
16 in May of 2006, which is again more than the ten year
17 time limit.

18 Under Rule 609, a person's prior record or a wit-
19 ness' prior record can only be admitted if the Court
20 determines that the probative value of admitting this
21 evidence outweighs the prejudicial effect.

22 The victim is going to testify about being kid-
23 napped, robbed and having his wife raped. It has no-
24 thing to do with a prior conviction more than ten years
25 old involving drugs.

1 There is definitely no probative value in Mr. Brown
2 being allowed to question him about his prior record,
3 other than just to harrass the victim while he is on
4 the stand.

5 Furthermore, under Rule 609 we were not provided
6 notice in writing that he intended to do that.

7 THE COURT: Mr. Brown?

8 MR. BROWN: Just to make it clear, I understand
9 she said it was a 1996 conviction.

10 SOLICITOR: It is a 1995 -- it was a 1993 convic-
11 tion . .

12 MR. BROWN: He was in prison in August of '95.

13 SOLICITOR: No, he tells me -- I had him look at
14 the rap sheet and explain it to me. He went to prison
15 January 25, 1993, and then he was released February 16
16 of 1996, well within the ten year time period.

17 MR. BROWN: I don't know if that's true or not.
18 Obviously, if it doesn't end -- it is the release date
19 from parole that . .

20 THE COURT: I understand that.

21 MR. BROWN: Yes, maam, and considering that this
22 -- the records are stored in Atlanta, Georgia, and we
23 have requested them, but they are not going to be avail-
24 able.

25 THE COURT: All right. Respectfully, before me

1 now is a release date of February 16, 1993, . .

2 MR. BROWN: That is not on the rap sheet.

3 THE COURT: That is according to his testimony,
4 and you don't have an evidence otherwise. Correct?

5 MR. BROWN: I have his own statement that he was
6 in prison in 1997.

7 SOLICITOR: Your Honor, I will tell the Court he
8 was paroled or whatever it is called in the federal sys-
9 tem. He was on some type of parole after he was re-
10 leased from prison. He was released from prison in
11 1996 and was on parole for several years following that.

12 He was on parole less than ten years from the date
13 of this. The State would still argue that this is not
14 probative information.

15 MR. BROWN: But that puts him inside the rule.

16 THE COURT: Respectfully, if he was on parole dur-
17 ing the time of the time year period, it would put him
18 inside of the ten years.

19 However, I agree that even under the rule 403 analy-
20 sis, I don't see any probative value whatsoever. I look
21 at it, and I believe it is outweighed by the prejudicial
22 effect.

23 MR. BROWN: Usually under State v. Coy . .

24 THE COURT: According to the truth and veracity of
25 his statement, and that is what we're looking at. You

1 are looking to use it for impeachment purposes . .

2 MR. BROWN: And I don't mind looking at it. This
3 man was convicted of a felony . .

4 THE COURT: Again, there is no relevance.

5 MR. BROWN: Well, there is . .

6 THE COURT: I see no relevance to this incident.

7 MR. BROWN: I will try a little bit here, because
8 the way he discussed this debriefing of the federal
9 government, he indicated that he had gone to prison for
10 some drug dealings and that -- I want to make sure I
11 get it right.

12 He didn't inform the authorities about his Uncle
13 Jay's role in the cocaine distribution because Jay was
14 going to support him when he got out.

15 So he withheld the other drug dealers' names from
16 the cops. In other words, he continued to conspire in
17 a drug conspiracy to help himself financially because
18 his Uncle Jay was going to give him money.

19 Here's a guy who lied to the cops and minimized
20 the drug role that he went to prison for.

21 THE COURT: All right.

22 MR. BROWN: I could correctly harrass him.

23 THE COURT: Well, respectfully, sir, I do think
24 the prejudicial effect outweighs any probative value,
25 regardless.

1 So I'm going to go ahead and grant the Solicitor's
2 motion that the criminal record not be discussed.

3 MR. BROWN: Okay, and -- but I can still talk about
4 his lying to the cops?

5 He said he lied to the cops.

6 THE COURT: In regard to this case?

7 MR. BROWN: He has lied to the cops before.

8 THE COURT: In regard to this case?

9 MR. BROWN: No.

10 THE COURT: No, sir. There is not going to be any
11 . . .

12 MR. BROWN: But he lied . . .

13 THE COURT: Sir, there is not going to be any dis-
14 cussion about any prior case. This is not relevant
15 to this case and . . .

16 MR. BROWN: And, Your Honor, respectfully, when he
17 gets here, I want to proffer it outside the presence of
18 the jury, for the appellate record.

19 No way -- on excluded evidence, I have to proffer
20 it for an appeal.

21 THE COURT: All right, Mr. Brown. If it is neces-
22 sary at that time, we can do a proffer.

23 Solicitor, that is your only motion?

24 SOLICITOR: My only motion, Your Honor, but Mr.
25 Brown and I had originally discussed a stipulation as

1 regards a chain of evidence witnesses.

2 One Mr. Brown agreed on, and I sent it to him in
3 writing. The nurse who drew the blood from Mr. Howard
4 before it was admitted to SLED for analysis, DNA analy-
5 sis.

6 Mr. Brown has informed me -- I sent him a letter
7 in writing, and he wrote back to me that he did agree.
8 Her name is Amy Bradley. It was Amy Bradley at the time.
9 It is now Amy Bradley Holden.

10 He said he would stipulate so she does not have to
11 return from Alabama, which is where she has moved to.
12 She was working at the detention center at the time. I
13 have it in writing what the stipulation would be.

14 I will provide a copy to the Court. It says, Your
15 Honor, that Ms. Amy Bradley was employed as a nurse
16 on May 8, 2007. On that date she drew a blood sample
17 from Inmate Alfonzo Howard, identified as your client,
18 who will be on trial next week.

19 This procedure was performed within medically ac-
20 cepted practices. She did not tamper with or alter Mr.
21 Howard's sample in any way.

22 This was done in the presence of Sergeant Ott of
23 the Beaufort City Police Department and the sample was
24 turned over to Sergeant Ott by Nurse Bradley, who will
25 testify at trial.

1 If you do not agree with this stipulation or refuse
2 to excuse Ms. Bradley from appearing in Court, please
3 let me know right away.

4 MR. BROWN: I do agree. There is one thing that I
5 just caught that I should have caught before. It says
6 Inmate Howard, and I would ask that any reference to
7 his detention pre-trial be struck.

8 THE COURT: Okay.

9 MR. BROWN: I have no problem stipulating that she
10 took the sample.

11 THE COURT: Okay.

12 SOLICITOR: We will take out inmate. For other
13 chain purposes, there are also some people who work in
14 the evidence area of the Beaufort Police Department,
15 the Beaufort County Sheriff's Office, who take evidence
16 in from investigators and then provide it to SLED.
17 I don't know if he will stipulate to any of those witnes-
18 ses but it will slow down -- the officers will testify
19 that they turned it into evidence, and I am wondering if
20 we need the person they actually handed it to or if we
21 could stipulate to those people.

22 That would be people such as Ramona Cooper from the
23 Sheriff's Office, Steve Murphy with the Beaufort City
24 Police Department --and some will testify about other
25 things.

1 Sergeant Grull will be testifying about other
2 things. He is now in evidence.

3 John Keogh from the Sheriff's Office, Steve Murphy
4 and Carl Schultz -- he's coming to testify about other
5 things.

6 Some of those, their only testimony would be on
7 the chain. Ramona Cooper, John Keogh, Steve Murphy --
8 that would be the extent of their testimony. There are
9 other people who may be in the chain who will be testi-
10 fying to other things and who may be present, but those
11 three people are purely chain witnesses.

12 MR. BROWN: I'm willing to stipulate but I'd rather
13 know which pieces of evidence I'm stipulating to. Cer-
14 tainly I know these officers are here, and I understand
15 they are available. I'm not trying to make it more dif-
16 ficult but I would like to know before I get this just
17 blanket stipulation -- I'll give her my cel phone num-
18 ber or however she wants to do it, but I would like to
19 know what piece it is.

20 Obviously, . .

21 THE COURT: All right, Mr. Brown. I understand.

22 SOLICITOR: I will have to map that out tonight and
23 maybe get with him in the morning.

24 THE COURT: Okay. She'll talk with you about it.

25 MR. BROWN: Okay, and I'm . .

1 THE COURT: Hold on, Mr. Brown.

2 Anything else from you, Solicitor?

3 SOLICITOR: I think that's all.

4 THE COURT: Mr. Brown?

5 MR. BROWN: Briefly, I need to get the two jail log
6 dates.

7 SOLICITOR: Your Honor, I have the Indictments. I
8 have not read them into the record.

9 I know you actually informed the jury of the actual
10 charges, but if I could read the numbers from the In-
11 dictments for the record?

12 THE COURT: Yes.

13 SOLICITOR: Kidnapping, 2006 GS 07 1093; 2006 GS 07
14 1094, kidnapping; 2006 GS 07 1098, armed robbery; 2006
15 GS 07 1099, another count of armed robbery; 2006 GS 07
16 1097, criminal sexual conduct, first degree; 2006 GS
17 07 1096, possession of a firearm or knife during a com-
18 mission of a violent crime.

19 I will supply these to the Court.

20 MR. BROWN: And you have my copy of the handwrit-
21 ing transcript?

22 THE COURT: Solicitor, you have withdrawn want-
23 ing to have that analyzed, is that correct?

24 SOLICITOR: I can do that.

25 THE COURT: You did that already on the record.

1 SOLICITOR: Yes, maam.

2 THE COURT: I'm asking -- I am happy to review it
3 tonight but if I have to have it to review I would
4 like to know at this time.

5 SOLICITOR: No, maam. I am not going to have it
6 analyzed. I think it is too late to get it to SLED.

7 THE COURT: Okay.

8 MR. BROWN: And I plan on impeaching their witness
9 about not having it analyzed.

10 SOLICITOR: He can't . .

11 MR. BROWN: They had a copy. It was entered. It
12 is in the Clerk's Office right now.

13 THE COURT: I guess what Mr. Hicks is going to
14 testify is that he did not write it.

15 SOLICITOR: Right.

16 MR. BROWN: And Mr. Barnes . .

17 THE COURT: You don't have to argue it.

18 Anything else?

19 MR. BROWN: The last thing is the copy we're going
20 to make to substitute in for these items.

21 THE COURT: Did you also premark any exhibits in
22 any way?

23 SOLICITOR: I was going to do it this evening. We
24 had the evidence brought over, but we haven't had an
25 opportunity to do it.

1 THE COURT: All right. I do want to take up another
2 issue so we all understand. We are going to finish this
3 case, and we are going to push through.

4 I respectfully ask that you make sure your witnes-
5 ses are lined up and ready to go. If for some reason
6 you are waiting on someone, take someone out of turn. You
7 can obviously always do that in a case.

8 Don't say anything yet, Mr. Brown.

9 MR. BROWN: Yes, maam.

10 THE COURT: Secondly, you all, when I rule don't
11 argue with me. I'm asking both of you that.

12 I understand you need to make your case and you
13 need to put it on the record, but do it and let's move on.

14 Lastly, I do not want -- and I mean this -- I do
15 not want running objections in front of the jury. In
16 other words, I don't want you arguing your point in
17 front of the jury, I don't want you testifying in front
18 of the jury.

19 If you have an objection, you state an objection
20 and you state your basis for it, relevance, hearsay, or
21 any of the others, but they are one word objections.

22 They are not it may be that I object to this but
23 I really don't have a reason but I want the jury to
24 know I don't like it.

25 That is really what about half of lawyers' objections

1 are, and we aren't going to do that in this case. You
2 are not going to testify.

3 We are going to let the testimony come from the
4 witness stand, and then we're going to get the evidence
5 in, and that's how we're going to try this case. It
6 is going to be clean.

7 All right? I just want to make sure that every-
8 one understands that.

9 I will also say on the record that I know you are
10 both seasoned attorneys. Solicitor Tanner has been prose-
11 cuting in excess of ten years. Mr. Brown, I know you've
12 been practicing in excess of fifteen years.

13 MR. BROWN: Twelve years.

14 THE COURT: Twelve years, but you look young, so
15 we'll just give you credit for that.

16 The point is this, there will be in this case no
17 freshman mistakes. I will put on the record that I
18 put that in quotations because you both know what you're
19 doing.

20 So there will be no mistrial and there will be no
21 mishaps, for lack of a better word.

22 I just want to make sure that everyone is clear on
23 that issue. Is that clear, Madam Solicitor?

24 SOLICITOR: Absolutely, maam.

25 THE COURT: Mr. Brown?

1 MR. BROWN: Yes, maam.

2 THE COURT: Correct?

3 MR. BROWN: Yes, maam.

4 THE COURT: I look forward to having a clean, pro-
5 fessional trial, and I will see you all tomorrow morn-
6 ing. At nine o'clock we'll be here and we'll start
7 the day.

8 MR. BROWN: Your Honor, there is one thing. If I
9 can ask that somehow or another there may be a phone
10 call from somebody with more authority than Jim Brown
11 to try to get to Dr. Smith.

12 I even have his pager number, and we paged him for
13 many, many days, many hours, and he will not call us
14 back.

15 I have spoken to lawyers in Charleston where he is,
16 and they say, he's right here, he's right here, and we
17 tried to chase him around Charleston. We know he's
18 there.

19 In fact, he was at MUSC when he was contracted to
20 do this competency evaluation, and so we're asking for
21 some contact with him, to tell him that the issue about
22 his evaluation has now come up.

23 When he did the eval, he knew he was involved in a
24 state litigation.

25 THE COURT: Well, that's true according to you, but

1 not according to his opinion.

2 MR. BROWN: Well, this is about competency. We
3 would put him up about what Mr. Hicks told him. It is
4 replete that he talked about what happened that night,
5 all kinds of things.

6 He gives a version of the events.

7 THE COURT: And I've read the version of the events
8 that he gave to the forensic psychologist, and I don't
9 see any difference in it from what it appears he is
10 going to testify at trial.

11 MR. BROWN: Well, it's different from what Ms.
12 Davidson says.

13 We're saying she is the gold standard for what
14 happened that night.

15 THE COURT: The question is whether or not he was
16 consistent in his statements, not whether or not he
17 statement conflicts with the victim's statement.

18 MR. BROWN: He is consistently a liar, and actu-
19 ally we don't believe those two statements are consist-
20 ent either.

21 But that is . .

22 THE COURT: Well, if he is consistently a liar then
23 that takes in a certain amount of capacity, so you do
24 need to be careful what you are arguing, Mr. Brown.

25 MR. BROWN: All I would suggest is this -- all

1 I'm asking from the Court, because on PCR this thing
2 is going to come back that I didn't get Dr. Smith here,
3 and I cannot do anything.

4 I can't drive there and serve him. I can't serve
5 him.

6 THE COURT: I don't think it's going to come back
7 on PCR because I found this morning that he was compe-
8 tent to enter a guilty plea which requires competency.

9 MR. BROWN: I'm not talking about the competency
10 issue. I'm talking about Dr. Smith as a witness. I
11 have called MUSC ..

12 THE COURT: To testify to a version of facts as
13 given by Mr. Hicks . .

14 MR. BROWN: And other things.

15 SOLICITOR: That would be hearsay.

16 MR. BROWN: Not necessarily. Not necessarily.

17 THE COURT: Well, Mr. Hicks is going to testify,
18 and I'm not going to subpoena . .

19 MR. BROWN: I'm trying to subpoena him.

20 THE COURT: I can't do anything. I'm not going
21 to order Dr. Smith -- I don't know if it's a man or
22 a woman . .

23 MR. BROWN: It's a man. Dr. Brighton Keith Smith.

24 THE COURT: . . to be present.

25 MR. BROWN: All I'm asking is for is a phone call,

1 Your Honor, from someone -- I know if the State called
2 and said, we're calling from the police, the Judge's
3 office, the prosecutor's office, we would get some re-
4 sult.

5 SOLICITOR: I don't know where he gets that idea.

6 THE COURT: Respectfully, you all, I will see you
7 in the morning. You have noticed it for the record,
8 and I am not going to order Dr. Smith ..

9 MR. BROWN: Well Your Honor, if I could put on the
10 record my investigator's efforts to reach Dr. Smith, be-
11 cause that's -- we have had difficulties . .

12 THE COURT: Well, he can continue to try again.

13 I have another matter to take up.

14 (Whereupon, the matter was recessed at 5:30 P.M.,
15 and was resumed on February 24, 2009, at 9:05 A.M.)

16 THE COURT: Good morning. All right, it's my un-
17 derstanding that we're going to have testimony on this
18 morning from Dr. Mills.

19 Dr. Mills, I apologize -- in regards to the DNA
20 testimony on behalf of the State.

21 Is that correct, Solicitor?

22 SOLICITOR: Yes, maam.

23 THE COURT: All right.

24 SOLICITOR: Your Honor, the State would call Dr.
25 Laura Mills.

1 THE COURT: Please come and take the stand.

2 LAURA MILLS, being duly
3 sworn, testified as follows out of the presence of the
4 jury

5 CLERK: State your full name and spell your last
6 name, please.

7 WITNESS: Laura Mills, M I L L S.

8 DIRECT EXAMINATION

9 BY SOLICITOR:

10 Q. Good morning, Agent Mills.

11 A. Good morning.

12 Q. Where are you employed?

13 A. The South Carolina Law Enforcement Division,
14 more commonly known as SLED.

15 SOLICITOR: Your Honor, for purposes of this hear-
16 ing, the State would intend to offer Dr. Mills as an
17 expert in forensic DNA analysis.

18 We don't know if the Defense intends to object to
19 that.

20 We might be able to shorten that, by asking that
21 question.

22 THE COURT: Are you going to object to that?

23 MR. BROWN: Well, I guess I need to look at her
24 CV.

25 SOLICITOR: Never mind.

1 BY SOLICITOR:

2 Q. Agent Mills, what kind of educational background
3 do you have?

4 A. I have a bachelor's degree in chemistry, which
5 I received from the Honors College at Clemson Univer-
6 sity.

7 I also have a PHD degree in basic pharmaceutical
8 sciences that I received from the University of South
9 Carolina.

10 Following the completion of these two degrees, I
11 worked for approximately one year as a post-doctoral re-
12 searcher in the biology department at the University
13 of South Carolina.

14 Following the completion of all three of these
15 things, I became employed at SLED.

16 Q. How long have you worked for SLED?

17 A. I've been employed at SLED for approximately four
18 and a half years.

19 Q. And what is your -- what do you do at SLED? What
20 is your job?

21 A. I perform forensic serology and DNA testing on a
22 variety of evidence that is submitted to SLED in Crim-
23 inal investigations.

24 We get evidence into SLED, and I test these items
25 for serology. Then I find out what sort of body fluid

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1 is present on a particular swab or particular cutting,
2 the item of evidence I'm looking at.

3 Once I determine what body fluid is present, then
4 I proceed with DNA analysis where I extract or pull out
5 the DNA from these items and either match them to a
6 particular person or exclude that person as leaving the
7 DNA on that item.

8 Q. And as part of your job, do you also testify in the
9 court of law regarding your analysis?

10 A. Absolutely, yes.

11 Q. How many times would you say you've done that?

12 A. Approximately fifteen times, and I have been of-
13 fered as an expert witness in all of these.

14 Q. And would that be in the Courts of General Ses-
15 sions in South Carolina?

16 A. It would.

17 SOLICITOR: Your Honor, at this time the State
18 would move to have Dr. Laura Mills declared an expert
19 in the field of forensic DNA analysis.

20 THE COURT: Any questions, Mr. Brown?

21 MR. BROWN: Please.

22 THE COURT: Go ahead.

23 CROSS EXAMINATION out of the presence of the jury

24 BY MR. BROWN:

25 Q. Without the CV, I guess -- what is the year of

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1 your degree?

2 A. Which degree, sir?

3 Q. Both.

4 A. My chemistry degree I received in 2007. My PHD
5 degree I received in August of 2003.

6 Q. Okay, I -- to make sure I understand it -- in
7 2007 you got the chemistry degree?

8 A. I'm sorry. In 1997. Sorry.

9 Q. When were you first qualified as an expert? Do
10 you remember the first case you got called on?

11 A. I don't remember the date of the first court, no.

12 Q. Do you know approximately what year that was?

13 A. I would say several years ago. I've testified
14 fifteen times, as I said, in four and a half years. One
15 of those years was spent in training.

16 Q. Okay.

17 A. So . . .

18 Q. So four and a half years ago would have been, say,
19 somewhere like 2004 you started work?

20 A. September of 2004 I started work at SLED, yes.

21 Q. Okay. That first year until September of 2005, you
22 were still in training?

23 A. I think my official date of accepting case work
24 was maybe November of 2005, so a little over a year.

25 Q. Okay. So November of 2005 is when you were first

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1 accepting work?

2 A. On my own, yes.

3 Q. On your own, and obviously since you had not ac-
4 cepted work on your own, I assume you had not testified
5 at that time?

6 A. No, I hadn't.

7 Q. Okay, and do you know about how long from beginning
8 of work until the time of your first testimony? Can you
9 approximate?

10 A. . .

11 Q. I'm talking about the first time that you got
12 qualified.

13 A. Within a year.

14 Q. So somewhere between November 2005 and November of
15 2006?

16 A. You know, I don't have the exact date. I can get
17 that for you. I can call back to the office and get
18 the exact date, if that's what you need.

19 Q. Was it closer to . .

20 A. Sir, I really don't remember. I mean, I can . .

21 Q. Well, let me . .

22 A. Maybe a year. I don't know the exact date.

23 Q. Okay, and when you came up sometime between Novem-
24 ber 2005 and November of 2006, did you inform that Court
25 of your qualifications and about the contamination in

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1 this case, because that occurred in November of 2006?

2 A. . .

3 Q. It actually occurred before -- according to your
4 statement contamination occurred prior to November of
5 2006.

6 A. It occurred in 2006. I would have to look at the
7 date of when I testified for that first court.

8 Q. I understand.

9 A. The contamination in this report for this particu-
10 lar case had nothing to do with the case that I testi-
11 fied on.

12 Q. Did you inform them that there had been contamina-
13 tion in one of your cases before the Judge accepted you
14 as an expert?

15 A. I don't know if we knew at that time about this con-
16 tamination event.

17 Q. But by November 28, 2006, you had found out?

18 A. Yes.

19 Q. Did you inform any of the courts that qualified
20 you about that contamination event?

21 A. No, sir. There was no need to.

22 Q. And so the qualifications that the Solicitor is
23 bolstering your opinion with today were not fully in-
24 formed of the contamination in another case that you had
25 handled?

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1 A. There was no need to inform the Court. I offered
2 my credentials and I was accepted one hundred percent
3 by both the solicitors and the defense.

4 Q. Without knowledge of the contamination?

5 A. Everything that had to do with what I was testify-
6 ing on was furnished to the solicitor, was furnished
7 to the defense if they asked for it.

8 There were no questions raised, no questions
9 about my work.

10 Anything dealing with contamination, nothing was
11 brought up.

12 Q. To make sure I understand, it was without knowledge
13 of -- without that knowledge being disclosed there was
14 . . .

15 A. The contamination in this case dealt with this case.
16 We don't talk -- when we're dealing with other cases in
17 court, we don't generally bring up other cases.

18 Q. Are you saying there was only contamination in this
19 case with this case?

20 A. There wasn't only contamination with this case. In
21 this case, we're talking about this case. When I got to
22 court on another case, I'm talking solely -- talking only
23 about that case.

24 THE COURT: Mr. Brown, I just want to make sure
25 everyone is clear here.

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1 It's nine fifteen, and we are starting the trial
2 of this case at ten o'clock when this jury is here.
3 We need to get to the point.

4 Any contamination having to do with this case is
5 what we're here to talk about, and I understand you are
6 talking about her credentials and she has testified and
7 been qualified in fifteen other cases.

8 The woman holds a BS from Clemson in chemistry,
9 as well as a PHD in basic pharmaceutical sciences.

10 Respectfully, sir, with her educational experience
11 she appears to have good educational background. You
12 are going to have an opportunity to explore her creden-
13 tials in the trial when you cross examine her, if you
14 would like to, but we need to get to the point of what
15 we're talking about here, which is the alleged contami-
16 nation.

17 That is where you need to go. If you will remember,
18 with Dr. Morrison yesterday we didn't go through other
19 than a very broad brushed stroke about his credentials,
20 and he only has a BS and not any other advanced degree.
21 He has advanced studies, but no advanced degree.

22 We talked about his experience and what he had
23 done. It was done very briefly, and we didn't even
24 make a finding on the record, if I am correct, and I'm
25 quite sure I am, that he was an expert in forensic DNA

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1 analysis.

2 We had a discussion, and what I said was, let's move
3 on, and let's figure out exactly what happened.

4 And I am more concerned, Mr. Brown, right now with
5 finding out about this contamination and whether or not
6 the DNA evidence is reliable in this case.

7 So let's move to that next.

8 MR. BROWN: And I won't -- I understand there was
9 an objection by her yesterday.

10 THE COURT: And, again, there was no qualification
11 of your expert in any way. I accepted . .

12 MR. BROWN: I tried . .

13 THE COURT: . . the testimony. I accepted his tes-
14 timony just exactly as I'm going to hear hers and weigh
15 it, given what I know about her background and exper-
16 ience, just as I know and understand the background and
17 experience of Dr. Morrison.

18 So my point is let's move on, because I can tell
19 you right now I don't want to have to cut you off, Mr.
20 Brown.

21 I want you to be able to get to your point of what
22 you want to ask this witness that I ordered to be here
23 at nine o'clock.

24 SOLICITOR: Your Honor, are witnesses sequestered at
25 this point for these pre-trial motions? I have one

1 witness not related to any DNA testimony who is in the
2 Courtroom. I don't want to violate the sequestration
3 order, but it is pre-trial motion testimony and taking
4 it from witnesses who have anything to do with . .

5 THE COURT: Mr. Brown?

6 MR. BROWN: I think everybody has been sequestered.

7 THE COURT: We'll go ahead and sequester any witnes-
8 ses we have out of an abundance of caution. I appreciate
9 it, sir. Thank you.

10 (Witness leaving Courtroom)

11 SOLICITOR: Is Mr. Hood still under subpoena?

12 THE COURT: Is Mr. Hood still under subpoena, Mr.
13 Brown? Do you expect him to testify later on in this
14 case?

15 MR. BROWN: Maybe not, and I'll let you know as
16 soon as I can, but if there is . .

17 THE COURT: Do you need Mr. Hood to leave the Court-
18 room?

19 MR. BROWN: Yes, maam.

20 THE COURT: Mr. Hood, I would appreciate your step-
21 ping outside, sir. Mr. Brown believes he still has you
22 under subpoena. You told me yesterday that you had
23 some plans, is that correct?

24 MR. HOOD: Yes.

25 THE COURT: When do you need to leave town, Mr.

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1 Hood?

2 MR. HOOD: Wednesday.

3 THE COURT: Don't you stop your plans. Just check
4 with me before you leave. All right? Thank you, sir.

5 I appreciate it.

6 (Mr. Hood leaving Courtroom)

7 THE COURT: All right. You may continue, Mr. Brown.

8 BY MR. BROWN:

9 Q. I will word my last question this way. Are there
10 other cases, and I can give some numbers -- file 14126,
11 8041 and 5342, leaving off the year numbers -- did you
12 testify in any of those cases as an expert witness?

13 A. . .

14 Q. And, of course, I don't know who those people are.

15 A. I think you are misin -- when we go to court and
16 testify, if there is a contamination that it needs to
17 be brought to attention, it is done so in the form of a
18 corrected report.

19 If the contamination is fixed, prior to the report
20 being issued, which in these cases it was, there is no
21 need to report that.

22 We caught it in-house, it was fixed in-house, and
23 there is no need for a corrected or amended report to be
24 sent out.

25 Therefore, what I testified in court on in these

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1 cases is reliable and there is no problem with those
2 reports.

3 Q. Let me try again. In case L05 14126, L06 8041,
4 and L06 5342 -- are any of those cases ones you testified
5 as an expert on?

6 A. I think L06 5342, yes, I was.

7 Q. And . . .

8 A. There was a corrective report on this case. There
9 was no problem with that at the time I testified.

10 Q. But I want to make sure I understood. Did you
11 tell them there had been contamination and you had issued
12 a corrected report when you were qualified in that case?

13 A. Again, I said that the only way you would have to
14 point out contamination is an amended or corrected re-
15 port.

16 When we fix a problem in-house, if something arises
17 and we fix it before the report is issued, then those
18 results that we are reporting or testifying to, that we
19 are being qualified with -- I'm sorry.

20 You turned your back and I didn't know if you were
21 still listening to me.

22 Q. I am.

23 A. Those reports are correct and there is no need to
24 bring up any sort of contamination since it was fixed
25 prior to the report being issued.

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1 It is not a corrected report. There is nothing
2 wrong with the results in those reports.

3 Q. One more time. When you were qualified, did you
4 tell them there had been contamination in the L06 5342
5 . . .

6 SOLICITOR: Your Honor, I object. She has answered.

7 MR. BROWN: She has not answered.

8 THE COURT: All right. You need to answer the ques-
9 tion yes or no, and then you can explain it. You need
10 to answer yes or no first, and you have explained it.

11 A. No.

12 THE COURT: Thank you. Do you have any further ques-
13 tions of Agent Mills?

14 MR. BROWN: Well, unless the CV . .

15 A. Sir, you never asked me for one. I would have
16 been more than happy to . .

17 THE COURT: Respectfully, do you have any more
18 questions of Agent Mills?

19 MR. BROWN: Well, I'd like to see her CV and I may
20 have some questions about it.

21 THE COURT: So you have no further questions about
22 the DNA issue, correct?

23 MR. BROWN: Oh, I have questions about the DNA is-
24 sue.

25 THE COURT: Let's move on, and let's go, Solicitor.

1 SOLICITOR: Thank you, Your Honor.

2 BY SOLICITOR:

3 Q. Agent Mills, you talked about the fact that if the
4 contamination was something that was found prior to the
5 report going out, you would fix it. Is that correct?

6 A. That is correct, yes.

7 Q. And in this case, is it fair to say the problem is
8 the November 2006 went out prior to discovering the con-
9 tamination?

10 A. That's exactly the case. We should have caught
11 it before the report went out, but it was not caught un-
12 til the report was issued.

13 Q. And how long after the report was issued was it
14 caught?

15 A. It was caught -- to my understanding it was pretty
16 much immediately. Within a month, I think, of the report
17 being issued, at least.

18 We discovered it, and we immediately alerted the
19 people that needed to be alerted, meaning my lieutenant,
20 my supervisor. A thorough investigation was done and
21 every problem on the DNA on this case was fixed, and a
22 report was reissued which is the corrected and supplemental
23 report.

24 Q. That would be the July 2007 report?

25 A. . .

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1 Q. I'm sorry, July 11, 2008?

2 A. Yes, that's correct.

3 Q. Why is there such a time lag between the November
4 6 and the July 11, 2008 -- what was going on during
5 that time period?

6 A. Well, there were several things going on. First
7 of all, I did get a standard from Mr. Howard, I believe,
8 in -- let me double check -- which would have been --
9 yes, item 54 was the last item ever submitted in this
10 case.

11 That had to be run and be compared to every other
12 piece of evidence run in this case.

13 Additionally, when the problem was found, it took
14 time to thoroughly investigate this case.

15 It was thoroughly investigated. Every run that
16 I have ever done at SLED on case work was analyzed, was
17 checked. A very, very detailed and thorough investiga-
18 tion was begun.

19 We came to the conclusion after several meetings
20 on this case and we issued the corrected and supplemental
21 report, which we stand by one hundred percent.

22 Q. What was discovered about the contamination? What
23 exactly was contaminated, and can you tell us about the
24 incident?

25 A. What we found was that item 1.8, which were the

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1 fingernail scrappings that were taken from Amy Davidson
2 were contaminated with another case sample.

3 The tubes were likely side by side in a rack. We
4 run several cases at one time when we do our DNA analy-
5 sis. It's just not possible to run one at a time.

6 There is just no way time-wise that we can do that,
7 so we run several cases at one time. Somehow, the DNA
8 from one tube from another case got into the fingernail
9 scrapping tubes.

10 Fingernail scrappings sometimes are very, very,
11 very low level DNA, so even just a tiny drop from another
12 tube which was a high concentration of DNA came into the
13 fingernail scrapping tube, to cause what we call a cross-
14 over event.

15 That is when you see DNA from one case appearing in
16 another case.

17 It does happen on occasion. DNA is -- you know,
18 what we use for DNA analysis is an extraordinarily sen-
19 sitive procedure. We are working with very, very small
20 quantities of DNA, and sometimes it happens.

21 We all are human and things happen. The problem in
22 this case was that it was not caught before the report
23 went out. Had it been caught, we still would have issued
24 the same results, calling the fingernail scrappings incon-
25 clusive.

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1 Q. Were there any other items involved in any contami-
2 nation in this case?

3 A. Yes. Item 19 which was a swab from the outside pas-
4 senger door handle on the driver's door of the Lexus.
5 Actually, in one of the samples it showed my profile. I
6 don't say it happens a lot, but it does happen that an
7 analyst's DNA gets into the tube's DNA through skin cells
8 or some other form of our DNA getting in there.

9 Again, the problem should have been caught before
10 the report was issued. Again, we would have said the
11 same results on it, calling it inconclusive.

12 But this case was thoroughly investigated from
13 item 1 all the way to item 54. No other problems were
14 found.

15 I have thoroughly looked at all the other data runs.
16 There is no evidence of any other source of contamina-
17 tion.

18 My lieutenant who was also the technical leader at
19 the time thoroughly investigated this, who also holds
20 a PHD degree, and no other source of error was found at
21 all in any of the other samples, and we stand by these
22 results one hundred percent.

23 Q. Of the 54 items analyzed, these two items can be
24 cut out and identified as having issues separate and
25 apart from the other 54 items?

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1 A. Absolutely, and the fingernail scrappings were cut
2 out and they were run. The whole DNA analysis was done
3 on the fingernail scrappings, apart from any other evi-
4 dence in this case.

5 Q. You didn't have all 54 items laying on a table at
6 the same time when you conducted the DNA analysis on the
7 fingernail scrappings?

8 A. Absolutely not.

9 Q. They were not in proximity to the fingernail scrap-
10 pings at the time the analysis was performed?

11 A. No, they were not.

12 Q. Let me ask you specifically about items 48.1, .2,
13 .3, .4. Those items according to your report have been
14 determined to contain the DNA of Alfonzo Howard.

15 At the time the contamination occurred, was suspect
16 Howard's DNA submitted to you or your lab?

17 A. No. When the swabs from the globes were run, I did
18 not even have Howard's blood standard. I did get his DNA
19 in those gloves, meaning that his DNA had to have been
20 there.

21 There is no way that those could have been contam-
22 inated with his DNA, because I didn't even have his blood
23 standard in the lab at the time, and in fact his blood
24 standard was the very last piece of evidence I ran on
25 this case.

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1 Q. It looks like that wasn't even submitted to your
2 lab until after April of 2007. Does that sound correct?

3 A. Yes, it was after April of 2007.

4 Q. And this event would have occurred prior to Novem-
5 ber of 2006?

6 A. Right.

7 Q. So you've got at least six or seven months in be-
8 tween the two?

9 A. That is correct, and in fact the gloves -- the
10 swabs from the gloves were also run after the fingernail
11 scrappings and run separate from those.

12 Q. Okay. So they were absolutely independent of the
13 fingernail scrappings and the swab from outside the ve-
14 hicle?

15 A. Yes.

16 Q. Now, I need to clarify something on the report.

17 It came up yesterday that it looks like I made a
18 mistake in a letter I sent to the defense counsel. I
19 reported to him that all items bolded on the July re-
20 port were referencing contamination.

21 However, Mr. Howard's blood sample is also bolded
22 on that report.

23 Can you explain my mistake or what the bold actu-
24 ally means on the July 2008 report?

25 A. Certainly. When we send out what is known as a

1 supplemental report, it means that there is additional
2 evidence that has come into SLED, and we are referenc-
3 ing back our original case file.

4 What we do is we bold the items of evidence that
5 are new to the case, and this item 54 was new to the
6 case which is why it was bolded.

7 This is actually the supplemental part of the
8 corrective and supplemental report.

9 Q. So Mr. Howard's blood was new, and the fingernail
10 scrappings and the swab that had been contaminated --
11 those are bolded as well?

12 A. Those are bolded to indicate those were part of
13 the corrective report.

14 Q. And also on page 7 of your report, it was brought
15 up yesterday that in your report it says that DNA pro-
16 files were entered in the codas system.

17 Can you tell me whether or not the day they are en-
18 tered coincides with the day they are run through the
19 codas system?

20 A. No, it doesn't. We enter -- in 2006 when this
21 case was put into codas, our codas administrator -- and
22 he still does -- only searches about once a week.

23 So if he searches on Monday and we enter something
24 on Tuesday, it will take until the following Monday for
25 it to hit.

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1 So it is not uncommon at all to have -- you know,
2 from the time you enter it until it actually hits, you
3 know, against another case or a convicted offender. It
4 will take at least a week.

5 Q. So you write your report on one day, and you write
6 in your report you had entered the information in codas
7 but it wasn't run -- the problem here is the report was
8 issued prior to codas actually being run and the prob-
9 lem being discovered. Is that correct?

10 A. That's correct.

11 Q. But the protocol set up by SLED to catch the con-
12 tamination actually worked or caught the contamination?

13 A. We did catch the contamination.

14 Q. And you reacted to it to reevaluate the case?

15 A. Absolutely, yes. The entire case.

16 Q. Thank you, maam. There is nothing else I have.

17 Please answer Mr. Brown's questions.

18 CROSS EXAMINATION out of the presence of the jury

19 BY MR. BROWN:

20 MR. BROWN: May it please the Court?

21 THE COURT: Yes, sir.

22 Q. I want to make sure I've got this right. When we
23 talked about the contamination of 1.8, the statement
24 was that it was contaminated with another case, and I
25 wrote down what you said.

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1 Is that accurate?

2 A. It was contaminated with a sample from another case,
3 yes.

4 Q. So one case had contamination in its DNA from that
5 case to this case, is that correct?

6 A. . . .

7 Q. The critical word being one -- one case of contam-
8 ination with this case?

9 A. The fingernail scrappings was one case that was in
10 the fingernail scrappings, yes.

11 Q. Let me make sure we are talking apples and apples
12 here. One case with another lab number had DNA mixed or
13 crossed-over with 1.8 DNA?

14 A. I don't -- 1.8, the fingernail scrappings, and a
15 tube from another case -- DNA from another case somehow
16 got into the fingernail scrappings.

17 Q. Which other case?

18 A. The L05 14126.

19 Q. Okay. Let me make sure it's crystal clear. L05
20 14126 got into the fingernail scrappings sample 1.8?

21 A. Correct.

22 Q. Which is this case, L06 7916?

23 A. Correct.

24 Q. That's it?

25 A. Outside of the tube that we've already talked about

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1 that had my DNA, yes.

2 Q. Okay, so there was a one case cross-over?

3 A. Yes, with this case.

4 Q. One item, 1.8?

5 A. Yes.

6 Q. Let's talk a little bit -- do you have a copy of
7 your DNA reports of November 2006 and July of 2008?

8 A. Yes, I do.

9 Q. And if you would look at the November 2006 report,
10 and look at the profile found at table two on page ten
11 of that report.

12 A. Which page? I'm sorry.

13 Q. Ten.

14 A. Page ten -- okay.

15 Q. Look at the entries under the table for 1.8.

16 A. Sure.

17 Q. Now, look at T-pox -- and tell the Court what T-pox
18 stands for under the aliel . .

19 A. It's one of the spots on the DNA that has the
20 short tandem repeat associated with it.

21 Q. T-pox always has a short tandem repeat?

22 A. Well, that's what our numbers correspond to, the
23 number of short tandem repeats that are showing up at
24 . .

25 Q. Okay, the T-pox is not a short tandem repeat?

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1 A. No, I didn't say that.

2 Q. What is a T-pox?

3 A. It is a spot on the DNA chromosome that we are look-
4 ing at. At this particular spot, there is a series of
5 short tandem repeats, and the short tandem repeat is just
6 a short segment of DNA that repeats over and over and
7 over again.

8 So a number such as 8 10 means that this region of
9 DNA is repeating eight times and then, since you inher-
10 ent half your DNA from your mom and half from your dad,
11 the eight would correspond to inheriting it from maybe
12 your mother and the ten repeats come from your dad.

13 Q. Okay, and the focal numbers on that correspond to
14 the major contributor?

15 A. That's correct, yes.

16 Q. And that's the one that you claim is the source L05
17 14126?

18 A. Yes.

19 Q. And that would just be the 11 that appears on 1.8
20 or the T-pox from the 11, and here is a 1.8 L T-pox?

21 A. Correct.

22 Q. And we kind of have two numbers associated with
23 the aliel?

24 A. Yes, unless it is -- I mean, you can have mixtures
25 of more. One person should only have two. Occasionally

1 you have three numbers in every spot, but if you have a
2 mixture it won't be uncommon to see two, three, four,
3 five, six numbers at those spots -- two, three, four,
4 five, six higher up numbers at those spots.

5 Q. Explain to the Court why the number appearing at
6 the T-pox spot in a mixture -- what is that -- what are
7 the other numbers representing?

8 A. They are representing possibly minor contributors,
9 possibly the victim. Just another contributor.

10 Q. Is the victim excluded on this?

11 A. Yes.

12 Q. Okay, and was her husband excluded on this?

13 A. Yes.

14 Q. Okay, and was Mr. Hicks excluded on that?

15 A. Once we call something inconclusive, I'm telling
16 you we aren't going to interpret it. The whole profile
17 is inconclusive.

18 Inclusion versus exclusion -- you know, we reported
19 on the second report that it is inconclusive, and I'll
20 have to stand by that statement that's saying we cannot
21 interpret this because we did find a problem with it.

22 Q. In the 2006 report, was Mr. Hicks excluded as a
23 contributor for 1.8 R or 1.8 L?

24 A. Sir, the problem with the same that we've admitted
25 there is contamination -- I can't say that he is included,

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1 he's excluded -- I cannot say that, because in our sup-
2 plemental report, which is now the report that I have to
3 go by, it said -- and I stand by the statement -- that
4 it is inconclusive.

5 Q. Was he excluded according to the November 20, 2006,
6 report?

7 A. Sir, I . .

8 SOLICITOR: Objection. Asked and answered.

9 MR. BROWN: She has not. She is once again not
10 answering.

11 SOLICITOR: She has answered. That's her answer.

12 MR. BROWN: I have broken it down very ..

13 THE COURT: Just ask a question, sir.

14 MR. BROWN: I don't know what question is addressed to
15 me. I'm sorry, Your Honor.

16 THE COURT: It is addressed to you.

17 BY MR. BROWN:

18 Q. Answer the question.

19 A. . .

20 THE COURT Sir, just ask the question.

21 MR. BROWN: Okay, sure.

22 Q. The November 20, 2006, report -- you had Mr.
23 Hicks' DNA?

24 A. Yes.

25 Q. And the fingernail scrappings were run, 1.8 L and

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1 1.8 R, and you have it now generated without contamina-
2 tion?

3 A. Yes.

4 Q. Okay, and in fact did that match the profile of
5 Mr. Hicks?

6 A. I know there was a problem with this sample, so I
7 have to go by the way that we corrected it and say it
8 is inconclusive.

9 One I have said it is inconclusive . .

10 THE COURT: I'm sorry to interrupt you, but I need
11 you to answer the question yes or no, and then you can
12 explain your answer. If it depends on different times
13 when it was run, that's fine.

14 But you need to say yes or no, and then you can
15 explain your answer.

16 A. I'm sorry.

17 THE COURT: I appreciate it. Thank you.

18 A. It looks like in the November 20, 2006 -- the
19 samples that were contaminated -- Hicks was excluded.

20 Q. Thank you. Now, in the document, the corrective
21 report, there is an indication in there that -- cross-
22 contamination is asserted as possibly occurring from a
23 napkin?

24 A. Not from a napkin itself, but possibly laying the
25 screw top, tube top, down on the napkin. We were then

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1 thinking of possible ways the cross-over could have
2 happened. That was one of the possibilities.

3 Q. Okay. To make sure I understand, it is not that
4 the tube top got put on the wrong tube?

5 A. No.

6 Q. So the . .

7 A. Not to the best of my recollection, no.

8 Q. So the transfer is believed to have occurred on
9 the napkin?

10 A. We can never say or be one hundred percent sure
11 how it occurred. That is a possibility that it oc-
12 curred on a napkin. It is a possibility it was on a
13 glove.

14 Q. Okay, and which tubes in the run had screw tops on
15 them of all the items that you did?

16 A. They should have all had screw tops on them at
17 this time.

18 Q. And that would include the ones with Al Howard's
19 father's car?

20 A. I don't know who Al Howard's father car was, but
21 they should all have, yes.

22 Q. And in the run done with the samples from that car,
23 they had screw tops?

24 A. To the best of my recollection, they probably did.
25 I mean, I can't remember that all of them had screw tops.

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1 from two years ago. I dilute sometimes in snap cap
2 tubes, so it's impossible to say definitively, yes, two
3 years ago, yes, all samples were absolutely in screw
4 tops.

5 Q. Well, was 1.8 in screw tops?

6 A. Yes.

7 Q. How do you know that?

8 A. At this particular run, I was using screw tops on
9 that run.

10 Q. How about on the run on the Tempo?

11 A. They probably were. I cannot say one hundred per-
12 cent. There were problems with these samples, so two
13 years ago . . .

14 Q. When is the transition when you were certain there
15 were screw tops or which items you are certain had screw
16 tops and which ones probably had screw tops?

17 A. Well, I remember the fingernail scrappings because
18 the problem was immediately caught.

19 Q. Immediately . . .

20 A. It was in November shortly after the report was is-
21 sued, so it was runs that I had just finished.

22 I'm sure they are in screw tops, but I don't want
23 to say one hundred percent I'm sure they were all in
24 screw tops.

25 Q. Are you as sure that 1.8 were in screw tops as you

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1 are that the items from the Tempo were in screw tops?

2 A. I'm sure 1.8 was in screw tops.

3 Q. How about items from the Tempo?

4 A. I believe they were. I cannot say one hundred per-
5 cent sure, but . .

6 Q. But you are . .

7 A. . . I'm almost certain they were.

8 Q. Is your certainty the same for those two responses?

9 A. I would say more likely than not that they were in
10 screw tops.

11 Q. I hate to belabor the point but are you as certain
12 . .

13 THE COURT: He wants to know if the certainty of
14 the first items were as certain -- you have testified
15 you are certain that the first set were in fact screw
16 tops.

17 He wants to know if you have the same amount of
18 certainty as to the second set?

19 A. I would have to go back and look at when those
20 Tempo swabs were run versus the fingernail scrappings
21 run because I know the fingernail scrappings run were
22 run in screw tops.

23 As soon as I figured out there was a problem with
24 me using screw tops, I quit using them.

25 BY MR. BROWN:

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1 Q. But this was after this November 2006 report?

2 A. . .

3 Q. You didn't start using . .

4 A. Yes.

5 Q. And that was after the Tempo swabs were run?

6 A. Yes, I feel certain that they were in screw tops.

7 Q. Okay, the Tempo swabs too?

8 A. Yes.

9 Q. So the Tempo screw tops went on the napkin and if

10 the Tempo screw tops had Mr. Howard's DNA from his dad's car

11 that would be a source of his DNA in the lab prior to

12 the November 2006 report, wouldn't it?

13 A. I'd have to look at the actual report. If his

14 full profile showed up on one of those Tempo swabs, it

15 is possible his DNA was in the lab prior to his standard

16 being there.

17 But at the same time the hoods are routinely UV'd

18 which kills the DNA -- routinely cleaned with fungicides

19 so unless his DNA from a touch DNA swab, which is a low

20 level DNA, was to somehow survive for months and months

21 and months, it would have been constantly cleaned and

22 wiped down.

23 Q. That's not what I'm talking about. What I'm saying

24 is if you're running item 48 and you're running the Tempo

25 swabs with your other items, and I can give you the

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1 numbers -- one of them being number 34 and also number
2 5, number 6, number 7, number 8, number 9, number 10,
3 number 11, number 12, number 13, number 15, number 16
4 -- all of those things Tempo swabs, and his DNA appeared
5 on those swabs, and that screw top went on that napkin,
6 it could be a source of cross-contamination of numbered
7 item 48, could it not?

8 A. . .

9 Q. Prior to obtaining his blood sample?

10 A. I will have to see when those items were run.

11 Which items were you referring to again?

12 Q. All of the Tempo items. Let me rephrase it -- any
13 of the Tempo items.

14 A. . .

15 (Brief pause in the proceeding)

16 A. I don't think that on any of the Tempo swabs that
17 I matched Howard to the sample.

18 Q. Let me back up. My question was whether a cross-
19 contamination could have occurred between the Tempo swabs
20 and item 48?

21 A. No, I don't believe so, because I didn't -- there
22 was no full match to Mr. Howard, so nowhere in those
23 items did I see his profile emerging to where -- to the
24 point that I would think that something else could be
25 contaminated with his standard, with his DNA being in

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1 the lab.

2 There was no full low side match to Mr. Howard, so
3 I did not see his profile emerge.

4 Q. You mentioned a drop of DNA, and I don't know if
5 that's the right term, but if that's the term you want
6 to go with -- a drop of DNA, I'll use that.

7 A. A small amount of DNA from a tube in liquid form.

8 Q. You refer to the molecule drop or what term do
9 you prefer to use?

10 A. A drop of DNA is fine.

11 Q. So if a drop of DNA from the Tempo swab dropped
12 off of that cap onto the napkin, and got later on to the
13 cap that had 48 on it, then it could have picked it up
14 there?

15 A. Not possible.

16 Q. Not possible that that happened?

17 A. No, after the one with the Tempo swabs, the napkin
18 turned white. That napkin was not anywhere near the
19 Tempo swabs.

20 Then the swabs from the glove were run and that
21 was a completely separate extraction and quantitation.

22 Q. But you still have the napkin that was used between
23 item or case -- this case and the same napkin got
24 used in an entirely different case?

25 A. When we set up our runs, it is not possible to do

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1 one case at a time. There is just not enough time to
2 do that.

3 So we batch our cases. We have several cases run-
4 ning at one time.

5 In the case with the contamination, those cases
6 were being run together. There was a napkin that was
7 on the hood that I was laying the tops down and then I
8 would reseal it.

9 That is a separate incident from the swabs from the
10 gloves. The gloves were run completely after those swabs
11 from the Tempo, so that napkin -- if I had used a napkin
12 in the same situation to put the tube on, it would have
13 been long gone in the bio-hazard trash ever before the
14 gloves sample being introduced.

15 Q. Now, let me make sure I understand. The napkin
16 served as the answer to the possible way the contamina-
17 tion occurred?

18 A. It is one possible avenue of how the cross-over
19 between the two cases with the fingernail scrappings oc-
20 curred.

21 Q. That begs the question, what were the other possi-
22 ble avenues.

23 A. It is possible that it could have been on my
24 glove. I mean, there is no evidence of any sort of
25 contamination in my reagent lights which were completely

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1 clean. My negative and controls which were completely
2 clean. My reagents were clean. My technique was fine.

3 It was just an unfortunate accident that this case
4 -- in this case the fingernail scrappings got contami-
5 nated.

6 It is -- you know, fingernail scrappings are very,
7 very, very low level DNA a lot of times, and inadver-
8 tently DNA from another case got into this case.

9 Q. Just to make sure I understand. The reagent lights
10 here were not re-run, were they?

11 A. No, sir. There was no need to. They were clean.
12 Completely clean.

13 Q. They were clean because they didn't reflect a re-
14 sult which you all felt to be an anomaly?

15 A. No, sir. I mean, the reagent lights showed no DNA
16 present in the protocol.

17 Q. No reruns were done on any of the samples?

18 A. Not rerun, no. We don't have -- you know, there
19 is no need to rerun evidence that we have already run.

20 Q. Now, a rerun would at least alleviate some concerns
21 here.

22 A. And when you are talking about re-running -- if
23 you are talking about going back and cutting the evidence
24 out again and running it, we don't routinely do that.

25 Q. You don't routinely have cross-contamination?

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1 A. No.

2 Q. Okay, and this then is a case where a rerun might
3 restore some confidence?

4 A. You know, there was no -- we noticed that there
5 was no material left of the fingernail scrappings to
6 go back and re-test.

7 Q. Would re-running of those items make you feel more
8 comfortable?

9 A. No, it wouldn't. I stand by my results one hundred
10 percent. There is no problem. They have been reviewed
11 by me. They have been reviewed by my lieutenant. They
12 have been reviewed by my technical leader.

13 There is absolutely no problem at all with the other
14 samples.

15 Q. Would anybody outside of SLED agree with that?

16 A. . .

17 Q. That there was no problem?

18 A. We don't have people outside of SLED look at our
19 cases. We certainly have qualified enough individuals
20 at SLED to look at our data and to analyze our data and
21 agree with our data.

22 Q. And if an ASCLD inspector said there was no confi-
23 dence in this, do you then feel like it should be rerun?

24 A. No, I don't feel like any of it should be rerun.

25 Q. You would disagree with ASCLD?

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1 A. Yes, I would.

2 Q. Are you acquainted with an ASCLD inspector?

3 A. No, I'm not.

4 Q. SLED is subject to ASCLD?

5 A. Absolutely, and this was part -- we just -- you
6 know, we have had audits since this case has come about
7 and . . .

8 Q. Did you reveal this information?

9 A. Absolutely. It's in our files that are absolutely
10 subject to reviewing. We just had . . .

11 Q. Why did I not get this until last week?

12 A. The report?

13 Q. No, the . . .

14 A. The contamination report?

15 Q. Yes, maam.

16 A. That is not routinely part of our case file. It
17 is an internal document that is certainly available to
18 anybody who specifically requests that.

19 As soon as I was asked for it, I furnished it.

20 Absolutely. I did fax it over as soon as I got word
21 that you requested it. Apparently there was some loss
22 of the transition in the fax. My fax machine said it
23 went through . . .

24 Q. Not to me.

25 A. We don't normally fax to defense attorneys. We

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1 fax items to the Solicitor to provide to you.

2 Q. Okay, so as soon as you were told, it was faxed to
3 the prosecutor?

4 A. As soon as I got the clear from my lieutenant and
5 my captain to fax it.

6 Q. So if I had asked for it months before, you just
7 didn't know about it?

8 A. No, I was never asked by you for this document.

9 Q. Would it be normal that I would ask you directly
10 for it?

11 A. Certainly.

12 Q. Then would you talk to me without her permission?

13 A. No, I would ask her permission and then I would
14 talk to you.

15 Q. Okay. So if I asked for it from her you would give
16 it to me?

17 A. Certainly.

18 Q. Now, is it proper procedure to have cross-contam-
19 ination through a napkin?

20 A. Is it proper procedure? Well, it's not procedure
21 to have contamination, period.

22 Q. And are you any longer using the napkin as the
23 placement point for the screw top lids?

24 A. I'm sorry. I didn't understand.

25 Q. Are you following that same procedure?

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1 A. No, I'm not.

2 Q. You are not following the procedure because, one,
3 you're not using the screw top lids?

4 A. Not at the moment, no.

5 Q. And, two, you're not using the napkin?

6 A. No. I mean, I still use it in the hood for various
7 other things. It's just -- it's thrown away. I throw it
8 away more regularly.

9 Q. Let's talk about that for a minute. In this case,
10 the napkin was a piece of evidence regarding this contam-
11 ination?

12 A. It certainly could have been the source of the con-
13 tamination, yes.

14 Q. And it was thrown away?

15 A. Yes. We would not routinely hold onto what we
16 consider biological trash.

17 Q. All of this stuff is biological?

18 A. That's correct, but what we consider trash, such
19 as pipe head tips, napkins that we lay evidence on, wipes
20 that we use. There are wipes that we use to wipe our
21 scissors. We consider that biological trash.

22 Q. Well, if that has evidentiary value, it is not
23 called trash? There is trash and there is evidence?

24 A. Well, I don't know of any DNA analyst in the entire
25 world that saves ethanol swabs and napkins and q-tips

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1 and things such as that. Those things are part of the
2 set-up of amplification and quantitation.

3 THE COURT: One second, Mr. Brown. I want to go
4 ahead and take about a ten minute break and then come
5 back. You are going to finish up very quickly. It
6 is two minutes of ten, and our jury is here.

7 I presume all of my jurors are here, is that cor-
8 rect?

9 (Colloquy with bailiff)

10 THE COURT: You will briefly finish this up, and
11 you need to be prepared to go directly into opening
12 statements.

13 When we finish this issue, we will not take another
14 break before we begin openings.

15 SOLICITOR: I need to bring my video equipment in.
16 With my first two witnesses, I'll be using it, so I
17 will go ahead and set this up during this break.

18 Agent Mills, I remind you that you are still on
19 the stand. You are not to discuss your testimony with
20 anybody else during this time.

21 Thank you.

22 (Court stood in recess from 10:00 A.M. until
23 10:15 A.M., when the matter resumed)

24 THE COURT: Thank you. Please be seated.

25 (Witness Laura Mills resumed the witness stand)

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1 MR. BROWN: I just have a few more questions.

2 THE COURT: Okay, you may continue, sir.

3 CROSS EXAMINATION CONTINUED, out of the presence of the
4 jury

5 BY MR. BROWN:

6 Q. I think I was asking you about the quality con-
7 trol procedures that you follow, and I want to make
8 sure I understand. I think we got this clear.

9 The cross contamination with another case involved
10 improper procedure, and you are not taught to do that,
11 are you?

12 A. No, sir.

13 Q. Okay, and you are not taught to have an item where
14 different DNA types are in a common spot in the lab,
15 like a screw top being on a napkin with another screw
16 top from a different case being on the same napkin?

17 A. . .

18 THE COURT: Mr. Brown.

19 MR. BROWN: Yes, maam.

20 THE COURT: You need to remember who your audience
21 is. She's already testified . .

22 MR. BROWN: I'm trying to block the camera from
23 taking my client's picture.

24 THE COURT: You don't need to keep talking while
25 you are doing that.

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1 MR. BROWN: I'm sorry.

2 THE COURT: You don't need to be talking while you
3 are attempting to block -- don't use up the Court's
4 time.

5 If you need to ask her a question, you are welcome
6 to, but you have already plowed this ground. Ask her a
7 new question if you need to.

8 MR. BROWN: Sure.

9 THE COURT: If you are arguing this to me, I have
10 heard the testimony and you don't have to repeat it
11 three times.

12 MR. BROWN: Your Honor, I'm sorry. I don't know
13 that I got into . .

14 THE COURT: Clearly you did.

15 MR. BROWN: Then I guess we've established that
16 was incorrect procedure.

17 THE COURT: Mr. Brown, do you have a new question
18 to ask Agent Mills at this time? Do you have a new
19 question or anything new to add?

20 MR. BROWN: Without being able to go into that . .

21 BY MR. BROWN:

22 Q. Well, we were actually also talking about the T-pox
23 aliel because I want to make sure I understand.

24 The explanation from SLED in the report has a 1.8
25 T-pox aliel result -- the explanation would be there

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1 was -- the explanation from SLED, the document or the
2 corrective report, has a 1.8 T-pox aliel result on page
3 10 of 12, the November 20, 2006 report -- the explana-
4 tion for that would be that there was contamination
5 from another case, or how do we end up with a difference
6 in T-pox?

7 A. Are you referring to one of the reports that speci-
8 fically mentions T-pox?

9 Q. No, I'm asking you how that jibes with the T-pox
10 result, page 10 of 12?

11 A. . .

12 Q. They are not the same, are they? You are saying
13 there was contamination with one case into the 1.8 L
14 and 1.8 R?

15 A. Yes.

16 Q. And they are different samples, right?

17 A. Right, but that doesn't mean that she didn't have
18 or something -- you are taking DNA from one hand versus
19 another.

20 You may have a couple extra aliels or maybe some-
21 thing she touched days ago on this hand versus this
22 hand. I mean, these are two separate items of evidence.

23 Q. Okay. The T-pox aliel there -- there are parts of
24 a profile that show up that are not explained by 05 14126
25 cross contamination?

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1 A. That's correct. I said there were mixtures and I
2 bolded a major.

3 Q. All right, and you were asked about that bolding.
4 I believe it did come up.

5 THE COURT: Ask her.

6 BY MR. BROWN:

7 Q. I wrote down in my notes of your examination this
8 morning that bolding of new evidence . .

9 A. Not on the chart. On the actual wording in the
10 chart. The actual wording in the document where we
11 list items submitted, or have a new statement, bolding
12 means either it's been corrected, it's supplemental.

13 Bolding in a chart in number form means that there
14 is a major contributor being called out, or in the
15 case of the corrected I may have bolded the ink, mean-
16 ing inconclusive, just meaning this is new.

17 Q. Okay. On pages . .

18 A. And I see I did not bold the item C, so on this
19 chart the bolding is for pulling out a major contributor,
20 and that is clearly labeled underneath the chart where
21 it says bold equals major contributor.

22 Q. On page one through page six of the July 2008 re-
23 port there are some items in bold?

24 A. Yes.

25 Q. Are those items additional evidence, or are those

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1 items contaminated evidence?

2 A. Those items are either corrected from the original
3 report or they are supplemental to the very first re-
4 port. Obviously, as I stated, item 54 was brand new evi-
5 dence, the blood standard from Alfonzo Howard.

6 That's bolded because it's new in this report. It
7 had not been quoted on before.

8 The fingernail scrappings are bolded as well as
9 the swab from the outside passenger door. Those are now
10 termed inconclusive because there was a problem with it.

11 Then on page eight, where I bolded again, these
12 are new statements because I did not have Alonzo Howard's
13 profile prior to this report being issued.

14 On page eight they are bolded because they are
15 new. I am able to say . .

16 Q. I apologize. If I may, I just asked about one
17 through six, and I'm trying to shorten this.

18 A. I'm sorry. I thought you asked . .

19 Q. I'm sorry. I'm trying to keep it succinct for the
20 Judge.

21 THE COURT: I think I understand what she has said.
22 It is something that is either a corrective action on the
23 new report or it is supplemental, something she did
24 not have prior.

25 That is my understanding from your testimony, and

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1 the Solicitor did mis-speak last Thursday in regards to
2 what it is.

3 I think we are all clear right now. At least I am
4 clear, which is. .

5 MR. BROWN: I'm just trying to make sure because . .

6 THE COURT: I am confident I am clear.

7 Mr. Brown, I will tell you this. It is ten twenty.
8 I believe . . .

9 MR. BROWN: Your Honor, I'm just trying to do my
10 job.

11 THE COURT: And I appreciate that, sir, but we've
12 been doing this now for two and a half hours yesterday
13 and today.

14 We have gone at length over this DNA analysis.

15 MR. BROWN: I have just received this report in a
16 thirty-four month old case. I got it four days ago.

17 THE COURT: Mr. Brown, I didn't ask you that.

18 MR. BROWN: I know, but I need to represent my
19 client and protect my client.

20 THE COURT: Sir, you have protected your record
21 adequately. I assure you of that.

22 MR. BROWN: Well, Your Honor, my fear is that I am
23 threatened with incarceration if I don't work for him,
24 and I'm trying to do that.

25 THE COURT: You have been threatened? By whom?

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1 MR. BROWN: By Your Honor.

2 THE COURT: Where did you get that, Mr. Brown?

3 MR. BROWN: From last Wednesday's hearing. I'm
4 trying to work for him now.

5 THE COURT: Sir, you took an oath as a lawyer to
6 represent your clients' interests. All I'm asking you
7 to do is to do your job.

8 MR. BROWN: Yes, maam.

9 THE COURT: I'm asking you to be his advocate and
10 that is your job, and you understand that, is that cor-
11 rect?

12 MR. BROWN: Yes. I'm trying to do my job. That's
13 what I'm trying to do.

14 THE COURT: And you accept that job, don't you,
15 Mr. Brown?

16 MR. BROWN: But it is crystal clear that I'm try-
17 ing to do it as best I can.

18 THE COURT: I appreciate that, Mr. Brown, but at
19 some point we have to go ahead, so, respectfully, do
20 you have anything new to ask Agent Mills?

21 You discussed, sir, the contamination from the fing-
22 ernail scrappings, right and left, and also the handle
23 of the door of the Lexus.

24 You've also gone through the screw tops versus the
25 snap tops. We've gone through the napkins.

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1 MR. BROWN: Yes, maam.

2 THE COURT: So, is there anything else that you
3 need to go through? Of course, we've gone through many
4 other things, but . .

5 MR. BROWN: Yes, maam.

6 THE COURT: So is there anything else, because the
7 jury has been here since ten o'clock and, as I told you,
8 we are going to get this case going?

9 Anything new you need to ask Agent Mills?

10 MR. BROWN: Well, I'm still -- I want to make sure,
11 because I've been told the bold are contaminated items --
12 I've been told the bold are new items, and now I want
13 to make sure that I understand, does the bold mean either/
14 or.

15 Because I got two different answers.

16 THE COURT: Mr. Brown, she clearly stated . .

17 MR. BROWN: Okay.

18 THE COURT: She has clearly stated what it is, and
19 if you don't understand what her answer is, sir, then --
20 it's been asked and answered respectfully.

21 Do you have anything new to ask her, sir?

22 MR. BROWN: Well, I . .

23 THE COURT: Anything new?

24 MR. BROWN: I still don't know the answer because it
25 goes to part of our argument here.

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1 Because she -- I've been told by the State that the
2 bold is the contamination. Now I have put in my notes
3 and I quote, bold means additional.

4 THE COURT: All right, just so I'm clear -- the con-
5 taminated items are the fingernail scrappings, right and
6 left, and the swab from the outside passenger door handle
7 behind the driver's door of the Lexus. Is that correct,
8 maam?

9 A. That is correct.

10 THE COURT: And the bold that says number 54 is a
11 blood standard from Alfonzo Howard, which was an addi-
12 tional item that you did not have when you first ran this
13 report. Is that correct?

14 A. That's correct.

15 THE COURT: So on this July 11, 2008, supplemental
16 report, that is just new information. Is that correct?

17 A. That's correct.

18 THE COURT: And you are highlighting that so those
19 of us who have read the previous report and then seen
20 this July 11, 2008, report can see what the difference
21 is, without having to go through with our own highlighter
22 and compare those. Is that correct?

23 A. That's correct.

24 THE COURT: All right. Mr. Brown, is there anything
25 about that you don't understand?

AGENT MILLS IN CAMERA

1 MR. BROWN: Bold means different things.

2 THE COURT: She clearly stated that and I can't in-
3 terpret it for you.

4 Respectfully, Agent Mills, you may step down.

5 (Witness excused from stand)

6 THE COURT: I'm going to go ahead and rule on this
7 matter, and then we'll start the trial of this case.

8 All right?

9 MR. BROWN: And I would like to . .

10 THE COURT: Sir, I don't need to hear argument. I
11 have listened to this for . .

12 MR. BROWN: I would move to have the case dismissed
13 for destruction of exculpatory evidence.

14 THE COURT: All right. Respectfully, the first mo-
15 tion before me was a motion to exclude this DNA evidence.

16 MR. BROWN: That's right and . .

17 THE COURT: I'll take that up first. Mr. Brown, be
18 quiet. Okay? That's the motion I'm going to take up
19 first.

20 Respectfully, sir, as we all know, to exclude foren-
21 sic evidence we need to look first at whether the evi-
22 dence will assist the tryers of facts, whether or not
23 the expert witness will testify and explain the DNA find-
24 ings and we have a qualified person to do that, and whe-
25 ther or not the underlying science is reliable when the

1 Jones factors are applied.

2 I do find that in fact the evidence of DNA will
3 assist the tryer of facts, and I do find that this ex-
4 pert witness, Agent Mills, is qualified to testify as
5 to the DNA.

6 As far as the underlying science being reliable
7 when the Jones factors are applied, as you all know, we
8 look at the publications and peer review as to how we go
9 about doing DNA analysis.

10 We go about any prior applications of the method
11 to the type of evidence involved in this case.

12 We look at the quality control procedures used to
13 insure reliability.

14 We look at the consistency of the method that has
15 been recognized in scientific laws and procedures.

16 Respectfully, I understand that there was contami-
17 nation in this case. However, the critical report of
18 discovering the contamination did in fact work, and it
19 was found within eight days of when it was put through
20 codas.

21 This expert has testified, and we take you at what
22 you say and I have found you to be a qualified expert --
23 that that contamination does not directly affect the
24 results of the DNA of the other items.

25 And probably most importantly in this case, the

1 item that allegedly links Mr. Howard to this case, which
2 is the glove sample.

3 So, respectfully, sir, based on that I am going to
4 allow this evidence in.

5 Again, you are going to have a full opportunity,
6 Mr. Brown, to cross examine Agent Mills about the con-
7 tamination in this case much like you've done this morn-
8 ing, and you will have that opportunity.

9 All right, sir?

10 Additionally, Mr. Morrison will also testify because
11 I do find him qualified as well to testify at that point,
12 and he will have the opportunity to again criticize and
13 attack any procedures, any methods.

14 With that said, my understanding is that you have
15 renewed your motion to dismiss this case on the destruc-
16 tion of evidence.

17 Is that correct, sir, and specifically what evidence
18 are we talking about? Are we talking about the napkin
19 or are we talking about anything further?

20 MR. BROWN: We're talking about both the item 1.8 L
21 and 1.8 R, and the napkin -- both.

22 THE COURT: Okay.

23 MR. BROWN: Because we didn't know the napkin was
24 destroyed until that testimony was given.

25 THE COURT: All right. I don't see any intentional

1 destruction of evidence in this case. I don't see any
2 evidence whatsoever of anything intentional on behalf
3 of SLED or its agent, or the Solicitor's Office, or any
4 law enforcement agency in that.

5 So, respectfully, sir, I'm going to deny that mo-
6 tion at this time as well.

7 Are there any further motions we have this morning
8 before we go ahead and bring this jury in?

9 SOLICITOR: Nothing from the State.

10 THE COURT: Anything further from you, Mr. Brown?

11 MR. BROWN: Not at this time, Your Honor.

12 THE COURT: For the record, my Court Reporter came
13 and spoke to me with regards to the entering of exhibits
14 in this case.

15 Obviously we have identified a number of exhibits
16 as exhibits for the hearings. Those documents are not
17 in evidence before this jury.

18 Please understand that you need to enter that into
19 evidence. You need to give it to the Court Reporter. It
20 needs to be marked by her with today's date as evidence
21 in this case to go before this jury.

22 If you fail to do that, if you fail to move it in,
23 it will not be evidence before this jury and it will not
24 come in.

25 Just so we are all clear, and you cannot say I'll

1 give it to her in a moment or I'll give it to her when
2 I'm done asking the witness about it.

3 If you want to move it in, it gets marked immediately.
4 That's the only way we're going to be able to keep up
5 with the evidence in this case.

6 Are we clear, Solicitor?

7 SOLICITOR: Yes, maam.

8 THE COURT: Mr. Brown?

9 MR. BROWN: I am, and I have had all the exhibits
10 from all of the hearings brought into the Courtroom so
11 we don't have to go to the Clerk's Office to get those
12 items.

13 THE COURT: Thank you. Respectfully, do you need
14 two minutes or can we go right into openings when I
15 bring the jury in?

16 SOLICITOR: Either way, Your Honor. I have marked
17 the first few items, and I can go ahead and show those to
18 Mr. Brown, or I can just show them to him as I'm enter-
19 ing them or going through them.

20 However you want to do it.

21 THE COURT: If we take five or ten minutes right
22 now, will it help speed things up during the trial?

23 SOLICITOR: I don't know.

24 THE COURT: Mr. Brown, what would you prefer? Do
25 you want to see them now or . . .

1 MR. BROWN: Probably . .

2 THE COURT: Why don't we take -- we'll take five
3 minutes and everyone will be prompt. Then we'll go on
4 and bring this jury in.

5 We're going to get going on this case. All right?

6 MR. BROWN: One matter regarding transcription --
7 there was some testimony from Mr. Hicks yesterday that I
8 would like to present to the jury from the examination
9 and I've asked Ms. Cummings about it.

10 Obviously, I don't know which testimony I need, whe-
11 ther it's from his guilty plea or from his testimony
12 yesterday, regarding whether he had done anything wrong
13 in this case.

14 THE COURT: Mr. Brown, if you don't know, I certainly
15 don't know.

16 MR. BROWN: Well, I don't know how he's going to
17 testify . .

18 THE COURT: I guess we'll have to get to that when
19 we get to that.

20 MR. BROWN: I know there is supposed to be a request
21 in writing according to Ms. Cummings, . .

22 THE COURT: Write it on a piece of paper in your
23 handwriting and we'll accept that, and it will be fine.

24 Also, respectfully, sir, I understand that the woman
25 seated at the table with you, you introduced her yesterday

1 in voir dire as an investigative reporter.

2 Is that correct, maam?

3 MR. BROWN: A free-lance journalist that I have
4 hired to document this case.

5 THE COURT: Okay. Respectfully, maam. I'm going
6 to ask you not to sit at counsel table unless you can
7 tell me she has some specific role in defense of Mr.
8 Howard's case.

9 I just don't think it is appropriate to do so. I
10 know you probably wanted to ask but unfortunately I
11 can't have you sitting there.

12 MR. BROWN: And that's fine.

13 THE COURT: Okay.

14 MR. BROWN: I'm assume if my investigator comes in
15 or my paralegal comes in, they
16 are allowed . .

17 THE COURT: Absolutely. Absolutely.

18 Thank you. Let's take five minutes, and we'll come
19 back in five.

20 (Court stood in recess for brief period and the
21 matter was resumed)

22 THE COURT: For the record, I understand from my
23 Court Reporter has an issue about exhibits from prior
24 hearings.

25 As you all know, we are a Court of record, and

1 therefore any exhibits that were entered in any other
2 hearings in this case must remain as exhibits in those
3 cases.

4 We have got to somehow secure additional copies to
5 use in the trial of this case to preserve the record.

6 MR. BROWN: I understand. The problem is I don't
7 have anybody . .

8 THE COURT: Someone has got to find a way to copy
9 these documents, respectfully. At the time we come to
10 that, possibly someone from the Clerk's Office can do
11 that.

12 I'm concerned to make sure we keep documents from
13 the prior hearings where they belong.

14 MR. BROWN: I raised the question with Ms. Cummings
15 during an earlier break about pre-marking -- so I am
16 clear, I asked her about referring to an item, referring
17 to a letter right here, like the letter that was entered
18 in the 10 22 or 10 23 08 hearings.

19 I know they have numbers like 1, 2, 3, 4, and would
20 you like me to have those remarked as 1 from this date?

21 THE COURT: Yes.

22 MR. BROWN: I understand. So that's probably --
23 that is item 1 . .

24 THE COURT: We don't want to lose pieces of paper
25 during the trial of this case.

1 Again, Mr. Brown, I'm trying to preserve your re-
2 cord. We just need to make sure that we don't lose any
3 documents. So be mindful of it, sir.

4 If we need to go make copies, we will have someone
5 go and do that, but I respectfully ask that you all do
6 not start grabbing documents from other hearings and send
7 Ronda in a panic. She, of course, is responsible for
8 the evidence entered in this case. Her sole job is not
9 just to take down verbatim what everybody says, but she
10 has to make sure every last exhibit is where it should
11 be.

12 As you all know, she is charged with keeping them,
13 so, respectfully, let's just help her to do her job. It
14 is -- this is no different from any other case. This is
15 what we do every single day in this Courtroom.

16 Respectfully, I'm asking you all to be mindful of
17 that.

18 MR. BROWN: Just so I'm clear, there will be some
19 items -- one item is an original item and there will be
20 some authentication issues.

21 THE COURT: We will make copies, and we can agree
22 that either it can be substituted out or the original
23 will go in and we can make a substituted copy for that
24 hearing, whatever we're using today.

25 MR. BROWN: Significant evidence has been sitting

1 on that counter there and I don't have access to copy.

2 THE COURT: Okay.

3 SOLICITOR: I'm going to hand Mr. Brown -- this is
4 from one of the witnesses that was interviewed yesterday,
5 and she is on the list, Everett Kuhn, Lowcountry National
6 Bank.

7 During their conversation, apparently Ms. Kuhn re-
8 ferenced something called an activity report from the
9 bank, and yesterday she faxed it or E-mailed it. We
10 printed it out this morning and presented it to Mr. Brown,
11 including the E-mail which shows the date and the time
12 it was received by us and the fact that we just received
13 it yesterday.

14 I have provided him with a copy.

15 MR. BROWN: I have no idea what . .

16 THE COURT: Let's go ahead and let him look at it.

17 MR. BROWN: I assume this will not be mentioned
18 in their opening.

19 SOLICITOR: It will not be mentioned in opening.

20 THE COURT: All right, Solicitor. Is the State
21 ready?

22 SOLICITOR: Yes, maam.

23 THE COURT: Is the Defense ready?

24 MR. BROWN: Subject to this late evidence, but,
25 yes, maam.

1 THE COURT: Thank you. Anyone who is subject to
2 the sequestration Order, please make sure they are out,
3 Solicitor and Mr. Brown.

4 MR. BROWN: I don't see any of my witnesses in here.

5 SOLICITOR: These are two investigating officers on
6 the case, and the victims are present. They are witnes-
7 ses, but the State takes the position they have a right
8 to be here.

9 THE COURT: Yes, maam.

10 All right, sir. Bring the jury for me.

11 (Jury returned to Courtroom at 10:46 A.M.)

12 BAILIFF: Jury is entering, Your Honor.

13 Your Honor, the jury is seated.

14 THE COURT: Thank you. Good morning.

15 Ladies and gentlemen of the jury, we are about to
16 start the case of the State of South Carolina versus
17 Alfonzo Howard.

18 Now, before we begin the trial I want to tell you
19 that the trial will probably be different than other
20 things you might expect. People don't have a chance to
21 come into Court and attend actual court sessions as
22 you are doing now.

23 You may think from watching TV or movies or read-
24 ing books that a trial is full of high drama, intense
25 action and riviting circumstances.

1 Now, all of these things may be true at some time
2 but a trial is not for entertainment, ladies and gentle-
3 men. It is a fundamental part of our democracy, a
4 search for the truth in an effort to make sure that
5 justice is done between the parties before the Court.

6 Searching for the truth and making sure that just-
7 ice is done is often a slow, deliberate and intense pro-
8 cess, the opposite of what you may think or see on TV
9 or read in books.

10 Ladies and gentlemen, a Courtroom is a place of
11 honor, dedicated to the protection and preservation of
12 citizens' rights in what many have called the greatest
13 justice system in the world.

14 The attorneys appearing before you are advocates
15 for the parties they represent, but, first and foremost,
16 they are officers of the Court, sworn to uphold the
17 integrity and fairness of our justicial system, and to
18 help you in your search for the truth.

19 You should expect them to ^{be} professional, competent
20 and ethical in their representation of their clients'
21 interests.

22 Remember, ladies and gentlemen, that you are going
23 to take an oath now, and your job in taking that oath is
24 to reach a fair and just verdict.

25 At this time, ladies and gentlemen, would you stand

1 and take the oath?

2 (Whereupon, the jury was sworn for the trial of
3 this case)

4 THE COURT: Ladies and gentlemen, I want to thank
5 you for accepting this important responsibility and for
6 your contribution today to the judicial system.

7 Ladies and gentlemen, what I'm saying to you at
8 this time is intended to serve as a further introduction
9 to the trial of this case. Please understand that these
10 remarks are not a charge on the law.

11 I'm going to instruct on the law that is applicable
12 to this case at the end of the trial before you retire
13 to consider your verdict.

14 This is merely an explanation of the procedure we
15 are going to follow throughout the trial of this case,
16 so that you can better understand what is happening.

17 Ladies and gentlemen, the Defendant, Mr. Alfonzo
18 Howard, is charged by Indictments filed with this Court
19 with the crimes of carjacking, criminal sexual conduct
20 in the first degree, possession of a weapon during a
21 violent crime, two counts of armed robbery, and two
22 counts of kidnapping.

23 The elements of all of these I will explain to you
24 later.

25 Now, ladies and gentlemen, these Indictments are

1 simply the charges by which this case is brought into
2 this Court. It is not in any sense evidence of any of
3 the allegations which they contain.

4 Ladies and gentlemen, the Defendant, Mr. Howard,
5 has pled not guilty to these Indictments, and the State
6 has the burden of proving each of the elements of each
7 of the Indictments beyond a reasonable doubt.

8 Ladies and gentlemen, it is your duty to decide whe-
9 ther the State has met that burden. Your job or purpose
10 as jurors is to determine and find the facts in this case.
11 You are the sole judges of the facts.

12 If I make any comment regarding the facts in this
13 case, you are to disregard it. You are only to deter-
14 mine the facts in this case from the testimony of the
15 witnesses that you are going to hear and any other evi-
16 dence that is introduced into the Court.

17 It is up to you to determine the inferences that
18 you feel may be properly drawn from the evidence.

19 Ladies and gentlemen, it is especially important
20 that you perform your duty of determining the facts
21 in this case diligently and conscientiously. Ordinarily,
22 there is no way to correct an error in determination
23 of the facts by a jury.

24 On the other hand, and with equal emphasis, that
25 same law that makes you the judges of the facts makes me

1 the judge of the law. The law as given by the Court is
2 the only law that you may consider. You must accept it
3 and follow it, ladies and gentlemen, even though you may
4 disagree with it.

5 I cannot tell you what the facts are, and you cannot
6 disagree with me about what the law is or should be.

7 Your job is to take the law as I give it to you
8 and apply it to the facts as you find them from the
9 testimony of the witnesses and any other evidence that
10 is introduced.

11 After doing that, you are going to render a verdict,
12 a true and just verdict, under the oath you just took.

13 Until I advise you to begin deliberations, you must
14 not discuss the case with anyone, including your fellow
15 jurors. That means family members or anyone who is involved
16 in this case.

17 Now, when the case is submitted to you, you must
18 discuss it only in the jury room with your fellow jurors.

19 Ladies and gentlemen, as I told you yesterday, the
20 parties in this case have been advised that they are not
21 to talk with you at all, so, again, if you see anyone
22 involved in this case as you are coming and going from
23 the Courthouse and they do not say hello, please understand
24 they are not being unfriendly. They are simply
25 following my orders.

1 Ladies and gentlemen, during the trial of this case,
2 you are not to read, listen to, watch any news reports
3 about this case.

4 This includes anything that may be in newspapers, on
5 the Internet, radio or television. Ladies and gentlemen,
6 you cannot consider anything that you have read or heard
7 about this case outside of this Courtroom, whether before
8 or during the trial.

9 Ladies and gentlemen, it is important that you keep
10 an open mind and not decide any issue in the case until
11 all the evidence is presented, the attorneys have made
12 their closing arguments, and I have instructed you in
13 the law on this case.

14 Ladies and gentlemen, it is your solemn responsibil-
15 ity to determine the guilt or innocence of the Defendant,
16 and your verdict must be based solely on the evidence as
17 it is presented to you in this trial and on the law as I
18 will instruct you during and at the close of the trial.

19 Ladies and gentlemen, in just a moment, the Solici-
20 tor is going to make her opening statement, in which the
21 Solicitor is going to explain to you the issues in the
22 case, or at least what she thinks the issues in the case
23 are.

24 Then the attorney for the Defense, Mr. Brown, will
25 also make an opening statement, although he is not

1 required to do so.

2 What these attorneys tell you in these opening state-
3 ments is not evidence in the case. It is only their con-
4 tention as to what they think the issues are.

5 Ladies and gentlemen, the evidence in the case will
6 be presented to you by testimony from witnesses right here
7 on this witness stand and any other documents or evidence
8 that comes into evidence.

9 Ladies and gentlemen, from time to time during the
10 trial of this case you may hear one of the lawyers say
11 something like, Your Honor, I believe there's a matter
12 of law we need to take up, or we have something we need
13 to discuss with you and may we approach the bench.

14 Or I might even find it necessary to send you out
15 of the Courtroom to discuss a matter on the record with
16 the attorneys.

17 Please understand, ladies and gentlemen, that we are
18 not hiding anything from you. There are times when I may
19 need to rule on a matter of law as to whether or not some-
20 thing is admissible, and I may make some comment on the
21 facts of the case.

22 I would not want anything I say in regard to the
23 facts in the case to influence you in any way, because, as
24 I told you before, you are the sole judges of the facts.

25 Ladies and gentlemen, we are going to do our very

1 best to not have to keep sending you out when we do need
2 to discuss a matter of law. Please understand that when
3 we do it is not a delay, not to waste your time, but we
4 just need to keep the record clear and we protect every-
5 one's interests.

6 Ladies and gentlemen, in determining what the true
7 facts are in this case, you must decide whether or not
8 the testimony of a witness is believable.

9 It is my responsibility to rule as a matter of law
10 as to whether certain testimony is admissible at all, but
11 once the testimony is admitted whether you believe it is
12 solely for you to determine.

13 In deciding whether to believe a witness, you have
14 a right to consider the interest of any witness, the bias
15 of any witness, the prejudice of any witness, the oppor-
16 tunity of any witness to see the matters and the things
17 about which the witness may testify.

18 You can watch the way the witness acts on the wit-
19 ness stand. You have the right to consider anything
20 that is in the record that will help you evaluate the
21 testimony of the witnesses.

22 Ladies and gentlemen, that means that it is your
23 duty to pay close attention to these witnesses, to observe
24 these witnesses, to listen to them, and to pay close at-
25 tention to the attorneys and the Court.

1 Ladies and gentlemen, you will not be permitted to
2 take notes during the trial of this case, so I ask that
3 you please don't let your thoughts wander. Pay strict
4 attention to the testimony in this case so at the end
5 of all the testimony, after the arguments of counsel and
6 the charge on the law that I give to you, you will then
7 be in a position to determine what the true facts are and
8 to apply the law to the facts and render a true and just
9 verdict.

10 Now, ladies and gentlemen, in order to preserve every-
11 one's rights, I'm going to give the parties an opportunity
12 to object to anything I've said, and you are going to
13 hear me do this each time after I address you as a jury.

14 Are there any exceptions to what I've said to the
15 jury, by the State?

16 SOLICITOR: None from the State, Your Honor.

17 THE COURT: By the Defense?

18 MR. BROWN: None from the Defense, Your Honor.

19 THE COURT: Thank you. At this time, ladies and
20 gentlemen, the Solicitor may make her opening statement.
21 Ms. Tanner?

22 SOLICITOR: Thank you, Your Honor. May it please
23 the Court?

24 THE COURT: Yes, maam.

25 SOLICITOR: Good morning, ladies and gentlemen of

1 the jury, there are probably a few of you wondering, why
2 me? How did I get stuck with jury duty?

3 Well, whether it's fate or whatever it is that has
4 called you here this week, I understand that whatever
5 it is will inconvenience you this week.

6 You are going to hear this case. That fate actu-
7 ally dealt a life-altering blow to the Davidsons.

8 You're going to hear -- you're going to meet Amy
9 and Phillip Davidson, and you're going to hear that
10 on the evening of May 25th and the early morning hours
11 of May 26th, 2006, they crossed paths with Alfonzo
12 Howard and his friend, Lorenzo Hicks.

13 You're going to hear that there were some simple,
14 innocent choices the Davidsons made that day, such as,
15 going to eat, how long they stayed at the restaurant,
16 what time they got tired and decided to leave. Those
17 simple choices put them at the wrong place at the wrong
18 time, because they collided with Alfonzo Howard.

19 You're going to hear that while they are making
20 their simple life choices, how they're going to spend
21 their day, how they're going to spend their evening,
22 on a different path Alfonzo Howard was making much dif-
23 ferent decisions. He was making sinister decisions
24 that put him on a completely different path than the
25 Davidsons to start with.

1 He was making decisions that day with Lorenzo Hicks
2 to go and rob someone. He makes a decision that he's
3 going to go to downtown Beaufort and find people who
4 worked, who had money, people to rob.

5 He makes that decision, and that is where they go.
6 They went down that path.

7 You're going to hear that Amy and Phillip were vis-
8 iting from Tennessee and were actually thinking about
9 moving to this area. Possible job opportunities in the
10 area.

11 They had dinner at Salter's which is downtown, and
12 they catch up with some old friends, and while they're
13 doing that Alfonzo and Lorenzo are discussing robbing peo-
14 ple on their path.

15 While Amy and Phillip are relaxing and catching up
16 with their friends, Alonzo and Lorenzo pull up in
17 Alfonzo's father's car, and they relax with the car
18 seat back.

19 They lie in wait, lie in wait for the right vic-
20 tims -- two different paths.

21 You're going to hear that the Davidsons get tired
22 and decide it was time to go home, time to go back to
23 the hotel they were staying in.

24 Unfortunately, at the time they made that choice,
25 Alfonzo and Lorenzo decided to pounce, decided to change

1 their path, and began coming on the Davidsons' path.

2 You will hear that the Davidsons went out to their
3 car, they decided they needed a bottle of water out of
4 the trunk before they went to the hotel.

5 They opened the trunk and before they knew what was
6 happening Alfonzo Howard came up behind them, put a
7 gun at Amy's head.

8 Lorenzo Hicks came up and had a knife on Phillip,
9 and their worlds collided. At this point the two paths
10 verged into one.

11 While the gun was at Amy's head and the knife was
12 on Phillip, Phillip is begging them, take whatever you
13 want, take my wallet, take the car, just leave us alone,
14 take what you want.

15 Alfonzo Howard makes another decision. Alfonzo
16 Howard decides, no, this isn't just going to be a rob-
17 bery, it's not going to be just a robbery. Get in the
18 car. He makes the decision that everyone would get in
19 the car.

20 He's going further down the path, and he's taking
21 Phillip and Amy there as well.

22 At this point, Amy and Phillip are no longer al-
23 lowed to make a decision. They are now on Alfonzo
24 Howard's path. He's making the decisions, he's issuing
25 the orders.

1 No one is around. Phillip is in the driver's seat of
2 the car with Amy in the passenger seat. Alfonzo Howard
3 gets behind Amy and keeps the gun to her head.

4 Lorenzo Hicks is behind Mr. Davidson. Alfonzo gives
5 the directions, they drive over the Woods Memorial Bridge
6 out of downtown heading to Lady's Island.

7 They drive across that bridge. He directs them to
8 the Lowcountry National Bank and to pull up to the ATM.
9 He orders Phillip Davidson to withdraw cash out of the
10 ATM, which Phillip does.

11 He gets them all the cash he can get out of that
12 ATM that night. He uses several different cards and he
13 gives them the cash. Again he begs, take the money and
14 take my car, take my wallet, take whatever you want and
15 let us go.

16 You got what you wanted. You wanted to rob me. Here
17 you go. Take it and leave us alone.

18 Mr. Howard decides, no. No, this is going to be
19 more than a robbery. It is going to be more than a kid-
20 napping, and it's going to be more than carjacking.

21 No. Alfonzo Howard directs them to go out of that
22 parking lot and gives them directions down to the Beaufort
23 High School football field parking lot.

24 It's very dark. In the night or early morning hours.
25 He has them pull into the parking lot and park the car,

1 has everyone get out of the car.

2 Alfonzo Howard then orders Lorenzo Hicks and Amy
3 to tie up her husband, Phillip, and they use what's there.
4 They use clothing that was in the car, that they were
5 wearing.

6 So now he's got Phillip Davidson bound, laying on
7 the ground in the parking lot.

8 Mr. Howard leaves Lorenzo Hicks to watch over him
9 and takes Amy down a path. He takes Amy down a dark
10 path.

11 He takes this path, this case, in another direction.
12 He now has decided this is going to be everyone's worst
13 nightmare. He rapes Amy. Her husband is yards away,
14 bound and guarded, and he rapes her.

15 Lorenzo Hicks then decides to go see what Alfonzo
16 is doing. He walks away from Phillip, leaving him un-
17 guarded. While he's alone and unguarded, Phillip is
18 able to get untied enough that he is able to get up and
19 run away.

20 He goes to the nearest house to get help, and he
21 calls nine one one. When Amy, Howard and Hicks return
22 to the car, they see that Phillip is gone. He'd run
23 off.

24 They jump into the car and Hicks is now driving with
25 Alonzo Howard in the passenger seat.

1 They drive off in the car and they leave Amy alone
2 there in the dark.

3 As they are driving away, they do encounter a
4 Sheriff's Deputy who is responding to the nine one one
5 call. There was a brief car chase. The two guys jump
6 out and run off on foot.

7 For a few hours that night, as they run around Lady's
8 Island, heading back toward that bridge and headed back
9 toward their car. They're trying to get back to that
10 car.

11 They wind up under the bridge, and they say, we'll
12 swim to it; they can't catch us there. Right? They
13 don't make it so far. Apparently there is a pretty good
14 current out there.

15 They come back to shore, and eventually the search
16 is dying down a little bit, going into other areas, and
17 they make a run for it across the bridge on foot, and
18 they are caught.

19 Lorenzo Hicks is caught at the base of the bridge.
20 Alfonzo Howard makes it further but he is caught shortly
21 thereafter hiding on the balcony at the Beaufort Inn,
22 which is right around the corner from the Woodlands
23 Bridge.

24 They are both caught that night. Both soaking wet
25 from being in the river.

1 I want you to understand, ladies and gentlemen, we
2 are here today and Mr. Howard is here today for those
3 choices he made. He made choices that brought him here.
4 He made those choices.

5 Amy and Phillip didn't make those choices that
6 night.

7 At the end of this trial, we're going to ask you
8 to make a choice. I'm going to ask you to choose justice.
9 I'm going to ask you to find Alfonzo Howard guilty of
10 all counts.

11 I'm going to ask you to find him guilty of carjack-
12 ing. I'm going to ask you to find him guilty of two
13 counts of armed robbery of the two victims involved, Mr.
14 and Mrs. Davidson.

15 I'm going to ask you to find him guilty of two
16 counts of kidnapping of Phillip and Amy Davidson.

17 I'm going to ask you to find him guilty of posses-
18 sion of a weapon during the commission of a violent of-
19 fense, and I'm going to ask you to find him guilty of
20 criminal sexual conduct in the first degree, which is
21 really a polite legal term for rape.

22 Understand that, that that's what that means. It
23 sounds nicer, criminal sexual conduct. But it's rape.

24 I'm going to ask you to find him guilty of all of
25 those things. A verdict is what you'll issue at the end

1 of this case, a verdict, and that means to speak the
2 truth. It's a Latin word, and that's what you will do
3 at the end of this trial, speak the truth.

4 You will do justice and find Alfonzo Howard
5 guilty of all those things.

6 Thank you very much.

7 THE COURT: Mr. Brown.

8 MR. BROWN: May it please the Court, Your Honor.

9 THE COURT: Yes, sir.

10 MR. BROWN: Juries stand as a beacon of light, the
11 Statue of Liberty to welcome the tired, the poor, the
12 huddled masses, yearning to be free.

13 In Beaufort County you are that beacon of light,
14 the Statue of Liberty. You're Alfonzo Howard's jury.

15 You sit here to comment on the facts of the case,
16 and you are here to see that there are no bones placed
17 on the scales of justice, that the evidence presented in
18 this Courtroom is purely the truth and not contaminated
19 and not manipulated.

20 We're going to talk about the events that occurred
21 in the morning hours of May 26, 2006. The police re-
22 ceived a telephone call about a kidnapping and a rape,
23 and you're going to hear about the reports that came in.

24 Your going to hear the details of the evidence as
25 developed by the investigators, and you're going to

1 hear how the first details were conveyed to an emergency
2 room nurse. She noted the facts that she was given by
3 Ms. Davidson. She was the first person to take these
4 details down on that date, the first person to hear a
5 description.

6 That description told that there were two men that
7 were involved, not one or three, but just two.

8 The men were African-American. One man was shorter
9 than six feet tall, and one man was heavier built and
10 greater than six feet tall.

11 You're going to hear some details, and, to be honest,
12 you're going to have to prepare yourself for some of the
13 details. They are things people don't want to talk about
14 in public.

15 You are going to hear details of a description of a
16 sexual assault, of the person who raped Amy Davidson who
17 was less than six feet tall.

18 The assault involved many acts. According to the
19 ER nurse, these acts included vaginal and anal penetra-
20 tion by this person less than six feet tall.

21 It included oral sex performed on Ms. Davidson by
22 the person who's shorter than six feet tall. It includes
23 oral sex performed on the person shorter than six feet
24 tall by Ms. Davidson.

25 You won't have to take our word for it. You'll

1 hear the testimony from that nurse who took the notes
2 in the ER.

3 You're going to hear that the bigger person was also
4 involved in the sexual assault; that the person greater
5 than six feet tall fondled Ms. Davidson.

6 You're going to hear from the ER nurse that there
7 was digital penetration.

8 You're going to hear during the testimony that there
9 was a gentleman named Lorenzo Hicks, Rico Hicks, who is
10 shorter than six feet tall, and you're going to hear
11 that even though he never met the Davidsons before in
12 his life that when he was arrested in the early morning
13 hours of May 26th he had Ms. Davidson's driver's license.

14 Rico Hicks is shorter than six feet tall. Rico
15 Hicks has Ms. Davidson's license in his pocket. Mr.
16 Howard is not taller than six feet.

17 Now, you will hear about DNA evidence, and you're
18 going to find out that there is DNA, male profile DNA,
19 under the fingernail scrappings taken from Amy Davidson,
20 and you're going to hear it is not her husband's DNA.
21 You're going to hear it is not Mr. Hicks' DNA. You're
22 going to hear it is not Mr. Howard's DNA.

23 That DNA is another person who is over six feet
24 tall, and we would have a full description of that
25 DNA profile which was sent to Law Enforcement of this

1 assailant who was over six feet besides Rico Hicks, ex-
2 cept that DNA was contaminated within the lab by the
3 analyst who did the work on this case.

4 That contamination involved a drop of DNA coming
5 from another case and mixed with the vial of fingernail
6 scrappings in this case.

7 Again, there is a personal profile of a male that is
8 not Mr. Howard, not Mr. Hicks, not Mr. Davidson, but the
9 DNA from the contaminated source was stronger so we only
10 have a partial profile.

11 It involves hinderance of law enforcement, and it
12 hinders my client as well and the ladies and gentlemen
13 of the jury, the tryers of facts, to make sure that the
14 evidence it hears is pure and true and not contaminated
15 with another case.

16 Now, you are also going to hear about Rico Hicks'
17 access to Al Howard's belongings. You are going to hear
18 that Rico Hicks had access to Al Howard's car, and in
19 that car included items, a wallet, Al Howard's work
20 gloves from work he used to do when he worked at Publix.

21 Rico Hicks tells the police in fact that these work
22 gloves -- you will hear testimony from Investigator
23 Vortisch that Mr. Hicks said those were gloves I wore,
24 those gloves from under that tree, and that's what Rico
25 Hicks will tell you.

1 You're going to hear testimony that those gloves
2 contained Mr. Howard's DNA, and Mr. Hicks had told the
3 police well before that DNA evidence that those are the
4 gloves that I wore.

5 It is noted in Investigator Vortisch's report and
6 also noted in Detective Ott's report. Twice Rico had
7 stated he wore those work gloves.

8 Now, we're going to talk a little bit about the
9 manipulation of Rico Hicks. You're going to hear
10 about Rico Hicks' severe mental illness, psychosis, his
11 hearing voices. Poly-substance abuse, cocaine, mari-
12 juana, alcohol -- all Rico Hicks.

13 You will hear about a diagnosis of schizo-affective
14 disorder which inhibits his ability to perceive and con-
15 vey reality.

16 You're going to hear Rico Hicks put up on the stand
17 as a witness, and you're going to hear that he is also
18 borderline mentally retarded.

19 He has been committed to the hospital multiple
20 times because he's a danger to people, and he has con-
21 cerns he has expressed that he is a dangerous person to
22 other people and fears he will harm other people and
23 himself.

24 You're going to hear about a deal that he cut with
25 the prosecution. You're going to hear about how his

1 testimony has been manipulated. It starts out early
2 with manipulation of him by an officer who knew of his
3 severe mental illness.

4 That officer knew Rico Hicks before that night and
5 knew Rico Hicks was involved in this case, and he knew
6 Rico Hicks and where he was committed to the hospital.
7 So that officer interviewed Rico Hicks that night, and
8 you are going to hear about a deal cut with the prosecu-
9 tion. This deal was cut between the Beaufort County
10 Public Defender and the prosecution -- was arranged be-
11 tween the prosecution and the Public Defender.

12 The same Beaufort County Public Defender's Office
13 that previously represented Mr. Howard in this very
14 same case cut a deal so one of their clients would
15 get less time than another client would get.

16 Quintessential manipulation within the system, and
17 don't take my report of it. You're going to hear about
18 it from the stand, and you're going to see it in docu-
19 mentary evidence, how this transpired from May 26,
20 2006, thirty-three months later.

21 You are also going to hear how Rico Hicks still as-
22 serts as recently as yesterday that he did nothing wrong
23 but be in the wrong place at the wrong time.

24 In the end, you have to cast aside this contami-
25 nated evidence, because whatever path brought you here

1 as a juror is the same one that brought me here as an
2 attorney.

3 And just as Dr. King said in Birmingham, Alabama,
4 in a letter at his Birmingham jail cell, injustice any-
5 where is a threat to justice everywhere.

6 At the end I ask that you cast aside that contam-
7 inated and manipulated evidence so that there is no in-
8 justice in this Beaufort County Court.

9 Thank you.

10 THE COURT: Solicitor, would you call your first
11 witness?

12 SOLICITOR: Yes, maam. Your Honor, the State calls
13 Edward Rhodes.

14 EDWARD RHODES, being duly
15 sworn, testified as follows:

16 CLERK: Be seated and state your full name and
17 spell your last name.

18 WITNESS: Edward Robert Rhodes, R H O D E S.

19 DIRECT EXAMINATION

20 BY SOLICITOR:

21 Q. Good morning, Mr. Rhodes. Where do you live?

22 A. At Carolyn Drive.

23 Q. And what area of Beaufort County is that in?

24 A. Lady's Island.

25 Q. And where are you close to? Where do you live near

MR. RHODES ON DIRECT

1 as a road mark?

2 A. The high school ballfield.

3 Q. Mr. Rhodes, how long have you been living at
4 Carolyn Drive?

5 A. A little over three years.

6 Q. And were you living there the night of May 25th
7 and the early morning hours of May 26, 2006?

8 A. Yes, maam.

9 Q. Can you tell the jury if anything unusual hap-
10 pened that night at your house?

11 A. Yeah. A man came to my door, saying he had been
12 kidnapped and they had his wife, and he wanted me to
13 call nine one one.

14 Q. And how did this fellow look to you?

15 A. He had a belt wrapped around his arm he was try-
16 ing to get off, and he was real frantic. He was wanting
17 to come in and I didn't know what was going on so I
18 didn't let him in until he said that they had his
19 wife.

20 Q. And once he told you that, what did you do?
21 What happened?

22 A. I called nine eleven.

23 Q. And did you talk to the operator when you called
24 nine eleven?

25 A. Yes, maam.

MR. RHODES ON DIRECT

1 Q. And what did you tell them?

2 A. That there was a man outside my house saying

3 he had got kidnapped and they had his wife.

4 Q. And what happened after that?

5 A. Um, they wanted to talk to him.

6 Q. Had you let him in your house at this point, or

7 was he standing outside?

8 A. No, maam. I went out and talked to him on the

9 porch.

10 Q. And did you go and then give the phone to him?

11 A. Yes.

12 Q. Were you standing there present for the conversa-

13 tion he had with nine eleven?

14 A. Yes.

15 Q. All right, Mr. Rhodes, this morning did you lis-

16 ten to that nine eleven tape?

17 A. Yes, maam.

18 Q. Did you recognize your voice on that tape?

19 A. Yes, maam.

20 Q. Did you recognize the conversation you heard

21 with Mr. Davidson and nine eleven?

22 A. Yes, maam.

23 Q. And that was from that night, May 25-26, 2006?

24 A. Yes, maam.

25 Q. And is that a fair and accurate recording of what

MR. RHODES ON DIRECT

1 you heard and what you said that night?

2 A. Yes, maam.

3 SOLICITOR: Your Honor, at this time I would
4 move State's Exhibit 30 into evidence. It is a CD
5 of that recording which has been identified by Mr.
6 Rhodes.

7 THE COURT: Objection?

8 MR. BROWN: Is this the one or a copy?

9 SOLICITOR: It came out of Beaufort City as their
10 copy.

11 MR. BROWN: It's a copy that was generated?

12 SOLICITOR: It is their copy from the evidence.

13 MR. BROWN: But I want to make sure. Is it a
14 copy or . . .

15 SOLICITOR: It is the actual one from evidence
16 of the Beaufort City Police Department.

17 MR. BROWN: And I understand that, but I'm trying
18 to find out if it's a copy or is it the original.

19 SOLICITOR: The original would be with the dis-
20 patch or . . .

21 MR. BROWN: I don't really have an objection. I
22 just wanted to know that. That's fine.

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

24 (Copy of nine eleven call on tape entered in
25 evidence without objection as State's Exhibit 30.)

MR. RHODES ON DIRECT

1 SOLICITOR: May I publish that to the jury?

2 THE COURT: You may.

3 (Whereupon, nine eleven recording played for
4 the jury, being State's Exhibit 30)

5 BY SOLICITOR:

6 Q. Mr. Rhodes, that's what happened at your house
7 that night?

8 A. Yes, ma'am.

9 Q. And once the police arrived, what, if anything,
10 did you do? Were you still part of this situation?

11 A. Yes, ma'am. I went in the house and got her
12 water a couple of times and stood out there with
13 them.

14 Q.. Before this night, did you know the Davidsons?

15 A. No.

16 Q. Thank you, Mr. Rhodes. I don't have anything
17 else for you.

18 MR. BROWN: May it please the Court?

19 THE COURT: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. BROWN:

22 Q. Have you ever seen Mr. Howard before? Have
23 you seen Mr. Howard before?

24 A. No, sir.

25 Q. No further questions.

1 THE COURT: Anything further for Mr. Rhodes?

2 SOLICITOR: No, Your Honor. May this witness
3 be excused?

4 THE COURT: Any objection?

5 MR. BROWN: No objection.

6 THE COURT: You are excused, Mr. Rhodes, and
7 thank you for coming.

8 (Witness excused)

9 THE COURT: You may call your next witness.

10 SOLICITOR: Keith Michael Gregg.

11 KEITH MICHAEL GREGG,
12 being duly sworn, testified as follows:

13 CLERK: Please be seated. Give your full name
14 and spell your last name.

15 WITNESS: My name is Keith Michael Gregg, G R
16 E G G.

17 DIRECT EXAMINATION

18 BY SOLICITOR:

19 Q. Good afternoon, Mr. Gregg.

20 A. Good afternoon.

21 Q. Where are you employed, sir?

22 A. I'm employed by the Beaufort County Sheriff's
23 Office in South Carolina.

24 Q. Sir, how long have you been employed with the
25 Sheriff's Office?

MR. GREGG ON DIRECT

1 A. I've been employed by the Beaufort County Sher-
2 iff's Office for thirteen years now.

3 Q. What kind of training and experience have you had
4 in law enforcement?

5 A. I started out at the Criminal Justice Academy in
6 Columbia. I received training on the road with an
7 FTO, field training officer.

8 I'm currently working in crisis negotiation, and
9 most of my experience has been on the road.

10 Q. Deputy Gregg, were you working the night of May
11 25 into the early morning hours of May 26, 2006?

12 A. Yes, maam, I was.

13 Q. Can you tell us what area of the county were you
14 working in that night?

15 A. In the area we call area three. That encompasses
16 Lady's Island all the way out to Fripp Island.

17 Q. And did you get a call out that night to go to an
18 area near the Beaufort High School football stadium?

19 A. Yes, I did.

20 Q. What type of call did you respond to at that time?

21 A. A male -- a gentleman stated that someone was
22 knocking on his door, stating he and his wife had been
23 assaulted, and that they were over at the ballfield at
24 Beaufort High.

25 Q. And did you respond in that direction?

MR. GREGG ON DIRECT

1 A. Yes, I did.

2 Q. And where did you head to?

3 A. I was -- first I was headed to the home where the
4 gentleman was but the caller had stated that the man
5 banging on his door said his wife was still at the ball-
6 field, so I diverted to the ballfield.

7 I figured that the wife would need more assistance
8 than the male would since he was safe at somebody's
9 house.

10 Q. And did you arrive at the football field?

11 A. Yes, I did.

12 Q. And the Beaufort High School football field, is it
13 within Beaufort County?

14 A. Yes, it is.

15 Q. So when you arrived at the football field, what did
16 you observe?

17 A. As I was turning in, I saw a vehicle that was parked
18 outside the fence but right behind the bleachers in that
19 area, and upon turning in the headlights on the car came
20 on and the car began to drive.

21 I immediately activated the blue lights on top of my
22 marked Beaufort County patrol car and gave chase to the
23 vehicle as it sped out, down Carolyn Drive, onto Geechie,
24 where it finally hit the dirt and stopped because of the
25 heavy sand and dirt.

MR. GREGG ON DIRECT

1 Q. At this time, were you pursuing that car?

2 A. I was pursuing the car because I believed that to
3 be the suspect the victim was telling us about.

4 Q. Are you what would be referred to, I guess, and what
5 we see on television referred to as a first responder?

6 A. Yes.

7 Q. Kind of the first guy on the scene?

8 A. Yes.

9 Q. And so you pursue the vehicle, and how does that
10 pursuit end?

11 A. It went down the paved road. At the very end of
12 Geechie it turns to dirt, and because of the heavy loose
13 dirt it became mired in that dirt.

14 The two front doors of the vehicle both flew open,
15 at which time two black males got out of the car and
16 headed in a direction away from me toward the front of the
17 car and into the woods.

18 Q. Now, at the time this happened, did you have a clear
19 view of all of this?

20 A. Yes, I did.

21 Q. I'm going to ask you to look at what is marked as
22 State's Exhibits 2, 3 and 4, which I believe defense
23 counsel has already seen.

24 A. . .

25 THE COURT: Any objection?

MR. GREGG ON DIRECT

- 1 MR. BROWN: No objection.
- 2 THE COURT: They are in without objection.
- 3 (Photographs marked in evidence as State's 2, 3, and
- 4 4, without objection)
- 5 SOLICITOR: If I may approach the witness, Your
- 6 Honor?
- 7 THE COURT: You may.
- 8 BY SOLICITOR:
- 9 Q. Deputy Gregg, if you could first identify what's
- 10 been marked as State's Exhibit 2, which is the first
- 11 photograph?
- 12 A. That is the suspect vehicle.
- 13 Q. And where is it located?
- 14 A. That would be at the end of the dirt road of
- 15 Geechie.
- 16 Q. And is that where it came to stop?
- 17 A. That's where it came to a stop.
- 18 Q. And State's Exhibit Number 3, which would be the
- 19 next photograph?
- 20 A. That is the door still open on the vehicle, the
- 21 suspect's vehicle, only a closer shot.
- 22 Q. And what side of the car is that?
- 23 A. The driver's side of the vehicle.
- 24 Q. And did you open that door, or is that how you
- 25 found it?

MR. GREGG ON DIRECT

1 Is that how you found it?

2 A. That's how I found it. It was left open.

3 Q. And State's Exhibit Number 4? The last photo-
4 graph?

5 A. That is the vehicle again. I referred to it as
6 the suspect's vehicle. It was actually the vehicle that the
7 suspects had fled in, which was the victims' vehicle.

8 That is the open side of the passenger door.

9 Q. Okay, and that is how it appeared to you at the end
10 of the . .

11 A. Pursuit, yes.

12 Q. Pursuit, thank you. Did you do anything else with
13 that vehicle once the pursuit came to an end?

14 A. I did go over to the driver's side and remove the
15 keys from the vehicle because I knew I had to check on
16 the victims, and in case the suspects would double back
17 and take the vehicle while I was gone, since I would
18 have been in a separate area.

19 Q. What were the lighting conditions in that area?

20 A. Very dim light. There are some -- at the time of
21 this incident at the Beaufort High ballfield, that ball-
22 field was dark. They have since kept the lights on all
23 night.

24 There was no light on there at that time, other
25 than the lights on Carolyn Road, but none along Geechie

MR. GREGG ON DIRECT

1 Road itself except what was ambient from Beaufort High
2 School.

3 Q. Deputy Gregg, did you conduct a foot chase of the
4 suspects who left the vehicle?

5 A. No, ma'am.

6 Q. Did you see what direction they went in?

7 A. They went toward the front of the vehicle where
8 there was a fence, and that is where I last saw them,
9 jumping over the fence, headed in the direction of the
10 wooded area.

11 Q. And what, if anything, did you do about that, the
12 fact that they were on foot?

13 A. I radioed the other units. From the minute I had
14 started to give chase, I radioed to other units that the
15 car was leaving but they had cut off the lights in an
16 effort to elude me.

17 After the stop, I gave the location of the last
18 direction I saw the suspects at and asked other deputies
19 who were responding not to come to the scene itself, but
20 to start setting up a perimeter around there to try to
21 contain the suspects.

22 Q. And is that what you did?

23 A. Yes.

24 Q. When you say set up a perimeter, what is that?

25 A. What you do is surround the area with law enforcement.

MR. GREGG ON DIRECT

1 and that's to keep the suspects contained in the area,
2 because what we then like to do is get a dog team, and
3 it is easier to track a suspect if we know they are in
4 a set area and their movement is limited.

5 Q. Once you had done that, how do you send that to
6 other deputies? How to you send out this information?

7 A. On the car radio, the patrol car radio. I got on
8 the air by patrol car radio and told them where I was
9 and what I last seen -- the direction I had last saw
10 them headed in.

11 In this way, they could head them off and stop them
12 from moving any further.

13 Q. Is that broadcast across the County, or is that --
14 how does that work?

15 A. The channel can be picked up by anybody in Beaufort
16 County, so anybody who is on the Sheriff's Office chan-
17 nel, whether they be on Fripp Island or Hilton Head,
18 they can still receive that transmission.

19 Q. And how about the Beaufort City Police Department,
20 which is a separate department? Were you also communi-
21 cating with them at that time?

22 A. They have their own channel. We have more than
23 one channel on the radio and it is capable of scanning
24 other channels.

25 So when they heard it, some of them started to

MR. GREGG ON DIRECT

1 respond.

2 Q. Deputy Gregg, at the time this occurred, was your
3 patrol vehicle equipped with what we refer to as an in-
4 car video camera?

5 A. Yes.

6 Q. Did your in-car video camera catch the action that
7 night or the car pursuit?

8 A. It did.

9 Q. And have you had an opportunity to review that tape
10 with me?

11 A. I have.

12 Q. Did you identify it as the events of that night?

13 A. Yes.

14 SOLICITOR: Your Honor, at this time, the State
15 asks that Exhibit 1, which has been viewed and identi-
16 fied by this witness as the in-car video, which Mr.
17 Brown has also been provided a copy of -- we'd move that
18 into evidence.

19 MR. BROWN: There is one question about that, if we
20 could approach?

21 THE COURT: Yes, sir.

22 (Conference at the bench between counsel and the
23 Court)

24 SOLICITOR: This is an in-car video that does go on
25 for about an hour, and I can stop it after the car stops

MR. GREGG ON DIRECT

1 and he takes the key out of the car.

2 MR. BROWN: I would like it to keep playing.

3 SOLICITOR: You want to play it for a whole hour,
4 everything in there?

5 MR. BROWN: I mean, I need to figure out what she's
6 getting in, and I would rather the whole thing to be en-
7 tered.

8 SOLICITOR: The whole thing in front of the jury?
9 I am only going to play the pertinent portions, if the
10 Court will allow.

11 THE COURT: All right.

12 Ladies and gentlemen, they're going to have to
13 cue up the video recorder, so if anyone needs to stand and
14 stretch you are welcome to.

15 Hopefully, it should be done quickly and we'll be
16 able to get going.

17 SOLICITOR: At this time, the State moves 1 into
18 evidence.

19 MR. BROWN: Without objection, the entire tape.

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

21 (In-car camera video from 5 26 06 admitted in evi-
22 dence without objection as State's Exhibit 1)

23 THE COURT: Are you ready to go?

24 SOLICITOR: Yes, and I want to keep Deputy Gregg on
25 the stand in case there is something . .

MR. GREGG ON DIRECT

1 THE COURT: Okay.

2 MR. BROWN: Your Honor, we would object to comment-
3 ary. We believe the tapes speaks for itself.

4 SOLICITOR: I believe . .

5 MR. BROWN: It is hard to have rolling commentary,
6 and, of course, my client can't see it . .

7 THE COURT: You are welcome to move over there to
8 be able to view it. It's not going to be rolling com-
9 mentary, I don't believe, but he's going to be asked to
10 point out certain things in the video.

11 I do not know, but if it will assist I will allow
12 it.

13 SOLICITOR: I will pause at the appropriate time.

14 MR. BROWN: There are a lot of other aspects -- I
15 have no problems with a Q and A sort of thing.

16 WITNESS: I could not supply a commentary, Your
17 Honor.

18 THE COURT: When you are asked a question, Deputy,
19 you will answer.

20 MR. BROWN: Thank you.

21 THE COURT: Again, Mr. Brown, you and Mr. Howard
22 are welcome to come over here and be able to see that.

23 (Whereupon, the in-car video was shown with questions
24 of the witness as follows:)

25 BY SOLICITOR:

MR. GREGG ON DIRECT

1 Q. This was the start and finish of the car chase?

2 A. Yes, it is.

3 Q. If I could go back to the beginning, I would have
4 you point out where you first see the suspect's vehicle.

5 A. . .

6 Q. Come closer and point out where you first see the
7 suspect's vehicle on the screen.

8 A. That's me turning in to the ballfield, and the
9 suspect's car lights just came on.

10 Q. Can you see the suspect's car?

11 A. Yes, I can.

12 Q. What does they just bailed mean?

13 A. They had exited the vehicle and were fleeing from
14 it.

15 Q. Is that your light?

16 A. No, there was another city officer, I believe,
17 there. My vehicle was here, and my spotlight would be
18 here which is shining a different way.

19 Q. What were you doing here?

20 A. That's where I'm removing the keys from the vehicle
21 and checking to be sure there is nobody inside.

22 I'm sorry. That was my flashlight. The other of-
23 ficer is approaching there.

24 Q. Thank you, Deputy Gregg.

25 Deputy Gregg, once you -- it sounds like on the

MR. GREGG ON DIRECT

1 radio you say you are returning to where the victims
2 were located.

3 What do you do next?

4 A. My next priority is to check on the safety of the
5 victims and to give whatever assistance is needed, whe-
6 ther they need EMS or anything.

7 I needed to check for their safety since that was
8 my entire reason for responding, was for the assault.

9 Q. And did you make contact with the victims in this
10 case?

11 A. Yes, I did.

12 Q. And once you did that, what did you do then?

13 A. I started to ascertain exactly what had happened,
14 what was needed.

15 Part of that was to get EMS out there to get them
16 checked out.

17 Q. And did you do that?

18 A. Certainly. EMS did respond to the scene.

19 Q. When they responded what was your next, I guess,
20 duty location?

21 A. After that, and somebody else coming out to inter-
22 view, I returned to the vehicle to sit with the vehicle
23 until it could be processed for evidence.

24 Q. Thank you, sir. Please answer any questions Mr.
25 Brown may have.

MR. GREGG ON CROSS

1 CROSS EXAMINATION

2 BY MR. BROWN:

3 Q. Did you file a report?

4 A. I did do a report for assisting another agency.

5 Q. Take a look at that.

6 A. . .

7 Q. Does that look like the report you filled out?

8 A. Yes, it does.

9 Q. Any descriptions of suspects in that report?

10 A. No, I put a no.

11 Q. And on that video -- on that video that we played,
12 there was a second mike?

13 A. I know there is one on my belt.

14 Q. And in that recording that the jury viewed, how
15 do you get to hear the audio on the second mike?

16 A. If it is powered up, then it should record.

17 Q. And when you play it back is there a little dot
18 where you have to move the mouse over to click it to
19 have that second mike on a play-back?

20 A. . .

21 Q. Without cutting it on?

22 A. It should record . .

23 Q. Right here -- certainly on play back there is a
24 in-car light on the bottom there of the deal here and
25 voice on person here?

MR. GREGG ON CROSS

1 A. Okay, when I'm seated in the car I've got two sym-
2 bols up here, M one and M three. One is for the mike,
3 my body mike, and the other is for the mike in the ve-
4 hicle.

5 Q. Okay.

6 A. How it plays up on this, I'm not sure. I'm not
7 sure how it shows up on this.

8 Q. Okay.

9 A. And when it's recording, I see a red dot so --
10 but I'm not sure what you're referring to.

11 Q. Okay. You're not sure whether or not . .

12 A. I mean, if you bring it up, I can show you what I'm
13 referring to.

14 MR. BROWN: Your Honor, I'm apologize.

15 A. I do have a monitor in my car and there would
16 be an M one and M three to let me know both mikes are
17 activated, and I would have the red dot right here to
18 tell me the camera is recording.

19 I don't know if that's what you're referring to or
20 not.

21 Q. Sir, on the playback if the jury wanted to hear
22 the audio back on the mike on your belt, how would that
23 be done?

24 A. I'm not sure. To my knowledge, it should both be
25 recorded on the same one.

MR. GREGG ON CROSS

1 Q. And it should be but we didn't hear both mikes on
2 the . . .

3 A. I don't know. If my mike wasn't powered up because
4 I do have a charger, it may have been down. There is a
5 chance it may not have worked since it does get run down.
6 It may not have recorded.

7 MR. BROWN: Your Honor, if we can, for the sake of
8 demonstrating to the jury, show how they can view --
9 view is not an appropriate word -- hear both mikes re-
10 corded on this. I mean, otherwise we've got to get
11 another player.

12 SOLICITOR: I can cue it up.

13 THE COURT: Okay.

14 MR. BROWN: I didn't mean it actually had to be
15 played. I just wanted to demonstrate that.

16 A. I was unaware the mikes would be separated on two
17 different recordings. I always thought it was all in
18 one.

19 Q. Yes, sir, and -- can you step back down here?

20 A. Yes, sir.

21 Q. This would be the in-car mike and if I wanted to
22 change it I hit VLP mike one and put the arrow or the
23 curser over here?

24 A. I'm not sure.

25 Q. Okay, but it makes sense if you have an in-car

MR. GREGG ON CROSS

1 and a body mike?

2 A. Yes, I do have both mikes.

3 Q. And one of them is VLP one?

4 A. I believe so.

5 (Tape again partially played)

6 Q. There is static but . .

7 A. I've never switched back and forth. I just run the
8 video with the mikes.

9 Q. And at this point if you're out of the car, the car
10 mike is recording chatter from your police radio, and
11 then if we . .

12 A. Well, the thing is that -- let's say we accelerate
13 this down here and . .

14 Q. We can cut it up and go right here. Is that how
15 that works?

16 A. To best honest with you, I don't know. I have never
17 switched them back and forth. If I run the video, I let
18 them both play.

19 I was unaware until now that the two were separated.
20 I thought both mikes were recording all the same record-
21 ing.

22 Q. But you did have the two mikes?

23 A. Yes.

24 Q. Thank you.

25 THE COURT: Redirect?

1 SOLICITOR: No, maam.

2 THE COURT: You can step down, Deputy Gregg.

3 SOLICITOR: Can we excuse him to return to work?

4 MR. BROWN: Without objection.

5 THE COURT: You're excused, Deputy Gregg, and we
6 thank you.

7 (Witness excused)

8 THE COURT: Is the jury all right, or do you need a
9 break?

10 SOLICITOR: Can we approach real quickly?

11 THE COURT: Sure.

12 (Conference at the bench between counsel and the
13 Court off the record)

14 THE COURT: Ladies and gentlemen of the jury, we're
15 just trying to figure out scheduling for the rest of the
16 day.

17 What we're going to do right now is take a very
18 quick restroom break. Ladies and gentlemen, what I'm
19 going to do is send you back to your jury room. If you
20 have a coffee or coke you are welcome to bring that with
21 you back into the Courtroom.

22 I ask that you do this quickly as possible, and
23 as soon as you all are ready I want you to knock on the
24 door for me, and we'll bring you back in. All right?

25 With that said, ladies and gentlemen, I also would

1 instruct you like I'm going to every time we part dur-
2 ing the trial of this case that you are not to begin
3 discussing this case, and the reason again, of course,
4 is you have not seen all of the evidence in the case, you
5 have not heard arguments of the attorneys nor my charge
6 on the law, and it simply wouldn't be appropriate for you
7 to do so.

8 So go refresh yourself. We're going to run for
9 about another hour before we break for lunch. Okay?

10 Thank you.

11 (Jury excused from Courtroom at 12:09 P.M.)

12 BAILIFF: The jury is clear, Your Honor.

13 THE COURT: Thank you. We'll be at ease for about
14 five minutes until the jury is ready to come back.

15 (The Court stood in recess until 12:20 P.M., when
16 the matter was resumed)

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

18 MR. BROWN: Your Honor, as a matter of housekeeping
19 I've tried to figure out about the copies, and I didn't
20 know if there was something that . .

21 THE COURT: What I think we can do, Mr. Brown, is
22 maybe at the lunch hour -- I see your paralegal here --
23 maybe over the lunch hour while you're grabbing a bite
24 to eat that possibly she can get together with someone
25 in the Clerk's Office and they can assist in some way in

1 getting this done because we don't know what you need
2 to copy.

3 MR. BROWN: Well, I actually prefer to . .

4 THE COURT: Let's deal with this at lunch after we
5 -- let's get this jury in here and go forward.

6 MR. BROWN: I only mention it now to avoid taking
7 up more of the Court's time.

8 Thank you.

9 THE COURT: All right. Is the State ready?

10 SOLICITOR: The State's ready, Your Honor.

11 THE COURT: Defense?

12 MR. BROWN: Defense is ready, Your Honor.

13 THE COURT: All right, bring in the jury.

14 (Jury returned to the Courtroom at 12:22 P.M.)

15 BAILIFF: The jury is entering, Your Honor.

16 The jury is seated.

17 THE COURT: Thank you. Welcome back, ladies and
18 gentlemen of the jury.

19 Solicitor, if you'll call your next witness.

20 SOLICITOR: Your Honor, the State calls Phillip
21 Davidson to the stand.

22 THE COURT: Mr. Davidson, if you will please come
23 forward and be sworn, sir.

24 PHILLIP DAVIDSON, being duly
25 sworn, testified as follows:

VOL. II

1 CLERK: Please have a seat and state your full name
2 for the record. Spell your last name.

3 WITNESS: Phillip Dean Davidson, D A V I D S O N.

4 DIRECT EXAMINATION

5 BY SOLICITOR:

6 Q. Good afternoon, Mr. Davidson.

7 A. Good afternoon.

8 Q. Where are you from originally? Where did you grow
9 up?

10 A. All over California, Nevada, Texas.

11 Q. Where were you living in May of 2006?

12 A. Just outside of Nashville, Tennessee, in what is
13 called Thompson Station, Tennessee.

14 Q. Who was living with you?

15 A. My wife.

16 Q. What's her name?

17 A. Amy.

18 Q. How long have you and Amy been married?

19 A. Seven and a half -- seven years.

20 Q. Mr. Davidson, I need to ask you about May 25th to
21 the 26th of 2006.

22 Where were you during that time period?

23 A. We were -- we came down to Beaufort, South Carolina.
24 My wife was asked to open a store in Bluffton, so we had
25 come down to see if we liked it well enough to move here.

MR. DAVIDSON ON DIRECT

1 So we actually came down and had come over from
2 Hilton Head and were having dinner at a place called
3 Salter's Grill.

4 Q. And where is that? I don't know how familiar you
5 are with the county.

6 A. The only thing I know about where it was is
7 it's downtown Beaufort. The main little street there.

8 Q. And what had you and Amy done earlier in the day?

9 A. Well, we got -- when we first got in town we had
10 stopped by to see a friend that had some property and
11 his dad has a development out there at Bull Point.

12 Q. Okay.

13 A. And then we went over to Hilton Head to, you know,
14 investigate the Bluffton area, and went out to look
15 around and we ran into a guy that was headed toward the
16 Harbourtowne Golf Course, and I'm a golfer. I had talked
17 to this guy and he actually --the conversation is where
18 are you staying, the Holiday Inn in Hilton Head, because
19 I guess me and him connected somehow, and that's what we
20 were doing.

21 Q. That's what you were doing?

22 A. We just got our hotel and got everything settled
23 at the Holiday Inn, and we were going to come back and
24 have dinner at Salter's. I had an old friend that was
25 actually working there as a bartender.

MR. DAVIDSON ON DIRECT

1 Q. And do you recall what time you arrived at Salter's
2 for dinner?

3 A. Eight thirty, something like that.

4 Q. And how did dinner go?

5 A. It was good.

6 Q. And how long did you stay there? Did you eat your
7 dinner and leave or . .

8 A. No, we stayed and hung out and chatted. Matter of
9 fact, we actually helped to close down the restaurant.
10 So we kind of did some duty with him while he counted
11 money and stuff like that. He was the only one that was
12 there so we kind of helped him straighten up.

13 Q. At some point you decide to leave Salter's?

14 A. Right.

15 Q. Do you know what time that would have been?

16 A. Right at one o'clock in the morning.

17 Q. And that would be on May 26?

18 A. Right.

19 Q. And where were you headed when you left from
20 Salter's?

21 A. Just to go back to Hilton Head to the Holiday Inn.

22 Q. When you leave Salter's Restaurant, who is with
23 you?

24 A. Amy.

25 Q. Was anyone else with you when you left?

MR. DAVIDSON ON DIRECT

1 A. No.

2 Q. Where was your friend? Was he still in the res-
3 taurant?

4 A. Right.

5 Q. Did he go outside with you at all?

6 A. No.

7 Q. When you walk outside which way do you head? Where
8 do you go?

9 A. We had parked in the BB and T parking lot, behind
10 the BB and T. So we just, you know, exited Salter's and
11 crossed over to go to the car.

12 Q. Okay, and let me ask you -- I show you what have
13 been marked as Exhibits 5, 6 and 7 -- I'll show them to
14 Defense Counsel. They are in order, 5, 6 and 7.

15 SOLICITOR: If I may approach the witness, Your
16 Honor?

17 THE COURT: You may.

18 BY SOLICITOR:

19 Q. Take those.

20 A. Uh hm.

21 Q. The first photograph on the top, State's Exhibit
22 5, can you . .

23 A. That's a little alley-way that is between Salter's
24 Restaurant and the BB and T.

25 Q. So you do identify that that's that area?

MR. DAVIDSON ON DIRECT

1 A. Yes, maam.

2 Q. And that's how it appeared that night in daylight
3 versus the nighttime?

4 A. Yes. It was pitch black.

5 Q. All right. Would you move to Exhibit Number 6, and
6 can you identify -- that would be the next photograph.
7 Can you identify where that is?

8 A. That's -- they were doing construction on the back
9 of -- I guess that's a little park area back there, so
10 that was all under construction.

11 Q. Is that -- how is that relevant to that night,
12 where you were located?

13 Is that still the parking lot?

14 A. It's still the parking lot. That is actually --
15 if we had been sitting in my car, that would have been
16 behind us.

17 So that part of the parking lot faces the water.

18 Q. And look at State's Exhibit Number 7 and can
19 you identify where that is on that photograph?

20 A. That's the parking lot right behind BB and T.

21 Q. Is that the parking lot you parked in that night?

22 A. Yes.

23 SOLICITOR: I would move State's Exhibits 5, 6 and
24 7 into evidence.

25 MR. BROWN: Without objection.

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1 THE COURT: In evidence without objection.

2 (Photographs of area of parking lot entered in evi-
3 dence without objection as State's Exhibits 5, 6 and 7)

4 SOLICITOR: If I may publish to the jury, Your
5 Honor?

6 THE COURT: You may.

7 (Exhibits 5, 6 and 7 shown to the jury)

8 BY SOLICITOR:

9 Q. Now, Mr. Davidson, when you returned to the park-
10 ing lot to go back to your car, what, if anything, do
11 you see?

12 A. Well, we actually had to like walk over -- try to
13 step over some stuff to get to the B B and T parking
14 lot.

15 I know this car was beside my car, and I was a little
16 curious as to why it was there, it was so late, but they
17 had said there was supposed to be a function going on
18 downtown. I just happened to notice this car was parked
19 beside me initially.

20 Q. Was there anything unusual about that car?

21 A. Yes. When I got close to the back of my vehicle
22 my wife requested she needed some water, and I said, no
23 problem.

24 The windows were down, and at that -- there was a
25 weird feeling that I got so I had to look and I actually

MR. DAVIDSON ON DIRECT

1 stared at the car because I didn't understand why the
2 windows were rolled down in the vehicle. I thought that
3 was strange but . . .

4 Q. Were you able to see in the vehicle?

5 A. No, I didn't look in.

6 Q. I show you what are marked as State's Exhibit 8 and
7 9. I'll show them to Defense Counsel.

8 SOLICITOR: May I approach the witness, Your Honor?

9 THE COURT: Yes.

10 BY SOLICITOR:

11 Q. Can you identify what has been depicted in Exhibits
12 8 and 9?

13 A. The car that was sitting there.

14 Q. Is that the car you were describing that was next
15 to your vehicle?

16 A. Yes.

17 Q. And is that a fair and accurate depiction of how
18 the vehicle looked that night?

19 A. It is.

20 SOLICITOR: I would move State's Exhibits 8 and 9
21 into evidence.

22 MR. BROWN: Without objection.

23 THE COURT: They're in evidence without objection.

24 (Photos of Mr. Howard's father's vehicle entered in
25 evidence without objection as State's Exhibits 8 and 9)

MR. DAVIDSON ON DIRECT

1 SOLICITOR: May I show them to the jury?

2 THE COURT: Yes..

3 (Photos shown to the jury by Solicitor)

4 BY SOLICITOR:

5 Q. You said as you went to your car you got water
6 out of the trunk?

7 A. Well, when we were leaving she requested water and
8 we had it in the trunk.

9 Q. So what did you do?

10 A. I told her I'd get the water.

11 Q. So you and Amy are at the trunk of the car?

12 A. Uh hm. (Affirmative nod)

13 Q. Let me ask you this. Were you parked nose in,
14 the same as this vehicle?

15 A. Right.

16 Q. Or were you backed -- so then what happened at the
17 trunk of your car?

18 A. When we get back there I almost had the trunk
19 lifted up in the back of the car and, like I said, I had
20 -- when I got close to the car and see the windows down
21 -- I don't know, but it was something that sent a shock
22 through me or something like that.

23 And as soon as that happened I turned around and
24 the knife guy was right on me and the gun guy was stand-
25 ing right behind him and he had the gun pointed right

MR. DAVIDSON ON DIRECT

1 at us, and it startled my wife and she froze because
2 I almost tried to grab it and run, but she thinks a gun
3 or a hanggranade -- you know, if you're near the gun you're
4 going to die.

5 So she quickly froze in her tracks and I remember
6 that because I was going to run.

7 Q. Did you stay with your wife?

8 A. Yeah, I couldn't leave my wife and I saw that she
9 was actually frozen like a statue, and then . .

10 Q. Did they say anything when they approached you?

11 A. No, not initially. I think -- not initially, and
12 then the gentleman with the gun came straight with --
13 as soon as we froze, the gentleman with the gun came
14 straight to my wife and put the gun at her head.

15 Q. At this point did he say anything?

16 A. He said for us to get in the car.

17 Q. What did you say?

18 A. I don't want to get in the car. I did not want to
19 get in the car so I said I do not want to get in the
20 car. I'll give you anything you want. Here are the
21 keys. What do you want? Take the car.

22 You know, whatever he wanted I would give to him
23 but I didn't want to get in the car. He said he would
24 blow my fucking wife's head off right in front of me now
25 if you don't get in the Goddamn car. That's exactly

MR. DAVIDSON ON DIRECT

1 what he said.

2 Q. And so you got in the car?

3 A. I got in the car.

4 Q. What placement did you get in the car? This is
5 your car?

6 A. Yes.

7 Q. What kind of car was it?

8 A. A Lexus.

9 Q. What color Lexus?

10 A. Silver.

11 Q. Is it a four seater, two seater?

12 A. Yeah, it's a big one. LS 430.

13 Q. So do you get in the driver's seat?

14 A. Yes, that's correct.

15 Q. Where does everyone else get?

16 A. The gentleman with the knife got behind me and had
17 the knife at my throat. The other gentleman got right
18 behind my wife and kept the gun at her head.

19 He kept the gun on her head the entire time so that
20 there was nothing I could really do. I was separated
21 from my wife across the car.

22 Q. And once you all got in the car, did he say anything
23 or tell you what to do?

24 A. Yeah. You know, you have to listen to me and do
25 exactly what I tell you to do.

MR. DAVIDSON ON DIRECT

1 Q. What did he tell you to do?

2 A. He just instructed where to go at that point. He
3 told me where to go. Don't look at us, don't look at
4 us.

5 Q. Could you see their faces?

6 A. No, especially because the damn gun looked like it
7 was this big.

8 Q. Could you tell if they were wearing masks or hoods
9 or anything like that?

10 Could you see at least that much?

11 A. No. To be honest with you, no. I was not looking
12 at them at the time.

13 Q. So he tells you, and what direction do you start
14 out at?

15 A. He just told me to take a right out of the parking
16 lot, and I didn't know where I was at but at that time
17 the road was taking us over to Lady's Island.

18 Q. Did you drive across the bridge to Lady's Island?

19 A. Yes, maam.

20 Q. And where did he take you to?

21 A. There's a little bank that was right there along the
22 bridge. He had me drive in there to the ATM.

23 Q. And did you?

24 A. Yes.

25 Q. Once you pull up to the ATM machine, what happens?

MR. DAVIDSON ON DIRECT

1 there?

2 A. Well, he told us to get as much money as we could.

3 Q. And were you able to get any money out of the ATM?

4 A. As much as I could.

5 Q. How much do you think you got out? Do you have
6 any idea?

7 A. About Nine Hundred bucks.

8 Q. And did you get that in one withdrawal?

9 A. No. I had to keep on trying and trying and trying
10 again. I didn't know at the time that if it's not your
11 own personal bank it will cut you off at like a Two Hun-
12 dred Dollar clip.

13 So I kept on trying to get money because I thought
14 if I gave them the money that they requested they would
15 let us go.

16 Q. Let me go back and show you State's Exhibit Number
17 11.

18 A. . . .

19 SOLICITOR: If I may approach the witness, Your
20 Honor?

21 THE COURT: You may.

22 SOLICITOR:

23 Q. Could you identify what is depicted in that photo-
24 graph?

25 A. That's the water -- that's the water bottles.

MR. DAVIDSON ON DIRECT

1 Q. Okay.

2 A. Because I had it -- it was like a six pack of water
3 that I grabbed and got the water out and handed it to
4 her.

5 That's what that is. I didn't realize we dropped
6 it but I guess we did.

7 Q. And where is that located?

8 A. That is the BB and T parking lot.

9 Q. Is that where your vehicle was located?

10 A. Uh hm. (Affirmative nod) My vehicle was located
11 right here.

12 Q. In the far right side of the photograph?

13 A. Uh hm.

14 Q. Thank you, sir.

15 SOLICITOR: Your Honor, the State moves 11 into
16 evidence.

17 MR. BROWN: Without objection.

18 THE COURT: In evidence without objection.

19 (Photo showing water bottles admitted in evidence
20 without objection as State's Exhibit 11)

21 SOLICITOR: May I publish to the jury?

22 THE COURT: You may.

23 (Photograph shown to the jury)

24 BY SOLICITOR:

25 Q. Mr. Davidson, going back to the ATM, when you

MR. DAVIDSON ON DIRECT

1 taking -- when you are doing the withdrawals, what are
2 you doing with the cash when it does come out?

3 A. Handing it to them.

4 Q. And were there receipts issued by the ATM machine?

5 A. Yes.

6 Q. I hand you what's marked as State's Exhibits 12 and
7 13.

8 SOLICITOR: I have shown Defense Counsel State's
9 Exhibits 12 and 13, Your Honor. There is one item in
10 Exhibit 12 and eight items in Exhibit 13.

11 Your Honor, may I approach the witness?

12 THE COURT: You may.

13 BY SOLICITOR:

14 Q. First, Exhibit 13 -- I show you the contents of
15 Exhibit 13 which are eight items. I ask if you can
16 identify these items?

17 A. These are the receipts and some of them probably
18 because I kept on requesting large amounts and they
19 just -- it just wouldn't do it, so some of these are
20 probably just regular receipts we had.

21 Q. And can you see the time stamps on these receipts
22 and the dates?

23 A. Yes. The 26th, one seventeen, one eighteen, one
24 twenty-one, one twenty-two, one twenty-three, and one
25 twenty-five.

MR. DAVIDSON ON DIRECT

1 Q. And State's Exhibit 12. One item.

2 A. One fifteen, as well.

3 Q. And are the date and times relevant to when you
4 were at the ATM machine that night with these suspects?

5 A. That's what it says.

6 Q. Would you have -- do you recall making that many
7 withdrawals?

8 A. Oh, yeah. I was trying to get them all the money
9 I could.

10 SOLICITOR: At this time the State would move Ex-
11 hibits 12 and 13 into evidence.

12 MR. BROWN: Without objection.

13 THE COURT: In evidence without objection.

14 (Brown bag containing one ATM receipt admitted in
15 evidence without objection as State's Exhibit 12. Brown
16 bag containing eight ATM receipts admitted in evidence
17 without objection as State's Exhibit 13)

18 BY SOLICITOR:

19 Q. Mr. Davidson, at some point did the event at the
20 ATM come to an end?

21 A. Yes.

22 Q. Did you just run out of money from the ATM or
23 what happened?

24 A. They were convinced I couldn't get any more money.
25 I even tried a credit card. I didn't know you couldn't

MR. DAVIDSON ON DIRECT

1 use the credit card to get money at that bank. I used
2 whatever means I could to get as much money as I could
3 get so they would leave.

4 But when they realized there was no more that I
5 could get, that was pretty much it, and they wanted to
6 leave.

7 That's when I asked them -- I begged them again to
8 let us go. I thought they just wanted to rob us, maybe.

9 Q. What did you say?

10 A. Let us go, please. Take the car. I had -- you
11 know, take whatever, jewelry, you know. I mean, what-
12 ever. Just please let us go, leave us. Just let us
13 live.

14 There was a knife to my throat and the gun was to
15 my wife's head, and it was like we were petrified.

16 Q. So when you begged to be let go, what did he say?

17 A. He said listen to my instructions and do exactly
18 what I say.

19 Q. Which one is that? The one with the knife or the
20 one with the gun?

21 A. The gun.

22 Q. And what was his next instruction?

23 A. To drive exactly where I tell you to go, exactly
24 where I tell you to go.

25 Q. Where did he tell you to go?

MR. DAVIDSON ON DIRECT

1 A. We took a right out of the parking lot and went
2 out to the Circle K and took a right there, and I al-
3 most drove the car through the parking lot of the Cir-
4 cle K because I thought there -- you know, I was trying
5 to figure out how to get away.

6 So took a right by the Circle K and then I made
7 a wrong turn because I thought he told me to take a
8 right, and he took us in a parking area like of a
9 school, and he got agitated with me because I didn't
10 listen to his instructions.

11 So I said, hey, man, I'm sorry.

12 Q. Did he give you further instructions?

13 A. Yes. He instructed me -- I had no idea of our
14 location in the town so I was just following his instruc-
15 tions of where he told us to go, either right or left,
16 you know.

17 Q. And at some point did you come to a destination?

18 A. Yes.

19 Q. Describe that.

20 A. Well, I didn't know where we were but it looked
21 like a big ballfield we were by, a big football field.
22 It was a big parking lot.

23 Q. Were there a lot of lights out there?

24 A. No, there was no light.

25 Q. Was it completely dark?

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1 A. Almost, yes.

2 Q. Once you pulled into that parking area, what hap-
3 pened?

4 A. . .

5 Q. Did you stay in the car?

6 A. He instructed me to pull up parallel to the stad-
7 ium and to stop the car, and at that point in time he
8 instructed us to get out.

9 Q. Did he tell you why?

10 A. No. He just said, get out of the car, so I really
11 honestly thought they were going to let us get out of
12 the car and they were going to get in the car and drive
13 off.

14 I actually started, you know, feeling a little bet-
15 ter.

16 Q. So what happened?

17 A. Nothing happened.

18 Q. What happened when you got out of the car?

19 A. He instructed me to lay face down.

20 Q. Which one was that?

21 A. The one with the gun gave all the instructions.

22 Q. Did the one with the knife speak?

23 A. No.

24 Q. So the one with the gun -- what did he tell you
25 to do?

Mr. DAVIDSON ON DIRECT

1 A. He told me to lay face down on the ground.

2 Q. Once you were on the ground, what happened to you
3 next?

4 A. He told me he was going to tie me up.

5 Q. Did that happen? Were you tied up?

6 A. Yes.

7 Q. What were you tied up with?

8 A. He took the sweater off my wife and tied my ankles
9 and he instructed my wife to take off my belt and give
10 it to the other gentleman, and he tied my hands behind
11 my back.

12 And then he told him to cover up my face, and I
13 thought he was going to kill me, and so I thought I had
14 no chance with this guy. I hadn't been given a chance,
15 and my wife was right by me and she was terrified but
16 I couldn't help her. She was on her knees behind me,
17 and I couldn't help her at that time.

18 Q. At this point, did you see anything?

19 A. No.

20 Q. Could you still hear what's going on around you?

21 A. Uh hm. (Affirmative nod)

22 Q. What do you hear then?

23 A. Come with me.

24 Q. Who did he say that to?

25 A. My wife.

MR. DAVIDSON ON DIRECT

1 Q. Is it the same voice as the man with the gun?

2 A. He was the only one talking.

3 Q. I hand you State's Exhibits 14 and 15.

4 SOLICITOR: May I approach the witness?

5 THE COURT: You may.

6 BY SOLICITOR:

7 Q. State's Exhibits 14 and 15-- can you identify what
8 is in those photographs?

9 A. My wife's sweater.

10 Q. And is that an accurate depiction of how it ap-
11 peared that night?

12 A. When I got that thing off me, I ran.

13 Q. Is that what they used . .

14 A. It was on my ankles.

15 Q. On your ankles?

16 A. Uh hm.

17 SOLICITOR: Your Honor, at this time the State
18 moves Exhibits 14 and 15 in evidence.

19 MR. BROWN: We have no objection.

20 THE COURT: In evidence without objection.

21 (State's Exhibits 14 and 15, photos of sweater,
22 in evidence without objection)

23 THE COURT: You may publish to the jury.

24 (Photos shown to jury)

25 BY SOLICITOR:

MR. DAVIDSON ON DIRECT

1 Q. State's Exhibits 16 and 17 -- I'll show it to
2 Defense Counsel first.

3 SOLICITOR: May I approach the witness?

4 THE COURT: Yes.

5 BY SOLICITOR:

6 Q. Again, if you can just identify and tell us
7 what is in 16 and 17?

8 A. That is the item they tied around my head, my shirt.

9 SOLICITOR: Move State's 16 and 17 in evidence,
10 Your Honor.

11 THE COURT: Any objection?

12 MR. BROWN: No objection.

13 THE COURT: In evidence without objection.

14 (Photos of shirt, State's Exhibits 16 and 17, en-
15 tered in evidence without objection)

16 THE COURT: You may show them to the jury.

17 (Exhibits shown to jury)

18 BY SOLICITOR:

19 Q. I will show you Defense Exhibit 22. First I'll
20 show it to Defense Counsel.

21 SOLICITOR: May I approach the witness, Your Honor?

22 THE COURT: You may,

23 Q. I hand you State's Exhibit 22. Can you identify
24 this item?

25 A. My shirt.

MR. DAVIDSON ON DIRECT

1 Q. The same shirt as depicted in the photograph?

2 A. Yes.

3 SOLICITOR: May I publish to the jury, Your Honor?

4 THE COURT: You wish to enter it? Do you have any
5 objection?

6 MR. BROWN: Without objection.

7 THE COURT: In evidence without objection.

8 (Shirt entered in evidence without objection as
9 State's Exhibit 22)

10 THE COURT: You may show it to the jury.

11 Exhibit 22 shown to the jury)

12 BY SOLICITOR:

13 Q. I show you State's Exhibits 18, 19 and 20.

14 SOLICITOR: May I approach the witness?

15 THE COURT: You may.

16 Q. State's 18, 19 and 20 -- Number 18 is not real
17 clear. There's an item in the very middle. Can you
18 identify those?

19 A. That is a belt.

20 Q. Is that your belt?

21 A. Yes.

22 Q. Is that how it appeared that night?

23 A. Yes, I guess it is. I threw it in the car when
24 they rode by me. I didn't even realize it.

25 When the officer was chasing my vehicle, they had

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1 my wife as a hostage at that point in time, and I ripped
2 it off and threw it in the car.

3 SOLICITOR: State would offer Exhibits 18, 19 and
4 20 into evidence.

5 THE COURT: Any objection?

6 MR. BROWN: No objection.

7 THE COURT: Admitted without objection.

8 (Photos admitted in evidence without objection
9 as State's Exhibits 18, 19 and 20)

10 SOLICITOR: I show State's Exhibit 23 to Defense
11 Counsel.

12 May I approach the witness, Your Honor.

13 THE COURT: You may.

14 BY SOLICITOR:

15 Q. I would ask if you can identify State's Exhibit
16 23?

17 A. Uh hm.

18 Q. What would that be?

19 A. That's my belt.

20 Q. Is this the condition it was in that night?

21 A. Yeah. Like I said, I got it off my hand and I
22 had never seen that thing until you just showed it to
23 me.

24 I've seen the photo but that's the first time I've
25 seen that.

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1 SOLICITOR: Your Honor, State moves 23 in evidence.

2 MR. BROWN: Without objection.

3 THE COURT: Admitted without objection.

4 (Belt entered in evidence as State's Exhibit 23,
5 without objection)

6 SOLICITOR: May I show it to the jury?

7 THE COURT: You may.

8 BY SOLICITOR:

9 Q. Where was your belt tied on you?

10 A. Around my back. It was used to tie my hands up.

11 Q. After you heard the man with the gun tell Amy,
12 come with me, what did you do then?

13 A. They, you know, walked off.

14 Q. What was going on around you? Could you tell?

15 A. I tried to tilt my head so I could hear and I was
16 trying to see if I could see, you know, if it would
17 come down off my face a little bit, where they tied my
18 shirt around my face.

19 I was kind of kicking around on the ground, trying
20 to see if I could see.

21 Q. Were you able to see anything at any point?

22 A. No, just the direction they went, but the other
23 gentleman got upset when I was turning around, trying
24 to look.

25 Q. How do you know that?

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1 A. He came up to me and he said, what are you doing,
2 what are you doing? I just told him I was uncomfortable
3 laying there like that.

4 Q. And what happened to you next?

5 A. . .

6 Q. How long did you think you were laying there bound
7 up?

8 A. I don't know. I don't know because my mind was
9 racing. I was trying to figure out how am I going to
10 get free, and the other gentleman came up to me so I
11 knew that I was at that time being watched by him, but
12 he didn't hover over me.

13 When he saw I hadn't gotten loose or anything he
14 went back to his particular position, wherever he had
15 been wherever he was standing.

16 Q. At any point did that change?

17 A. Yeah. The gentleman with the knife who was watch-
18 ing me came back and got in my car and I felt like I
19 could probably get myself loose at that point in time
20 as I lay on the ground.

21 I was laying on the ground trying to see how tight
22 my restraints were, and I thought I could get my hands
23 undone.

24 So I thought I could get untied. He had got in
25 the car and he shut the door, and I thought that was

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1 even better because with the lights on you won't be
2 able to see outside because he was clever enough to
3 lock the door.

4 So at that point in time I didn't try to get loose
5 any more because I knew I couldn't get to him, so I
6 just waited because I felt I had got loose enough that
7 maybe I could get myself free.

8 So when he came back around the car, he said, I'll
9 be right back, and as he walked off I immediately started
10 trying to get myself untied.

11 The first thing I wanted to do was get undone with
12 my wrists, and I was able to get myself free and then I
13 went straight down to get my ankles untied.

14 I thought I was going to get caught in the act of
15 trying to escape and I was praying to God to help me get
16 out of this restraint.

17 So I, you know, tugged with all my might because,
18 you know, you couldn't see anything. I didn't know how
19 he had tied the knot. I was trying to feel the material
20 and see where the knot was tied, and I was able then
21 to feel my ankles.

22 I never got it untied but I stretched the material
23 enough to pass it over my ankles.

24 Q. Once you were able to do that, did you see one of
25 the suspects?

MR. DAVIDSON ON DIRECT

1 A. No. I can't see at all.

2 Q. Did you hear anything?

3 A. I can't hear anything.

4 Q. So what do you do?

5 A. At that point in time I thought for a second to
6 get one of my golf clubs out of my trunk, and I was
7 going to go over and try to kill them, but obviously I
8 thought to myself, no, wait, there's a gun.

9 The gentleman with the gun had never taken the
10 gun off my wife's head, so I was like, I can't be a hero,
11 so I took the chance to run to go get help for my wife.

12 And it turned out that I had that belt on me but as
13 soon as I got my hands free it stayed on my wrist and
14 that's how I was able to get myself untied on my ankles.

15 Then when I got up and ran, I ran in the opposite
16 direction. I just came the same direction I came in be-
17 cause I had no idea where I was at, but I ran in the same
18 direction we had come in. I ran the way we had come
19 in in the car.

20 And I remember the dang shirt being around my neck
21 as I ran, and I was like, get this thing off me, and I
22 pulled the shirt off me as I was running.

23 Then I felt I was very fortunate because there was
24 a house that was -- that had lights on, because it was
25 late, and I ran straight to that house.

MR. DAVIDSON ON DIRECT

1 I figured if I could get some help from somebody
2 with a gun -- you know, the people that do that for a
3 living, they will come and help.

4 Q. Were you able to get some assistance at that house?

5 A. Uh hm. (Affirmative gesture)

6 Q. And you were present for Mr. Rhodes' testimony so
7 you heard the nine one one call?

8 A. Yes. It was very disturbing. I hadn't heard it
9 until then.

10 Q. Do you remember anything about that?

11 A. I remember when I came up I was petrified because
12 noise travels at night and I didn't know where they had
13 my wife.

14 So when I went to this house I didn't know if it
15 was in earshot or -- I thought they were going to come
16 if they heard my voice and they were going to come and
17 kill me.

18 So I tapped on the window on the porch because I
19 see the TV on. I tapped on the window and a young man
20 popped his head up. He was watching TV.

21 And he actually had the guts to come to the window
22 and I just told him, you know, get your dad to the door,
23 and so he went and, I guess, got his dad.

24 Q. Do you remember at all talking to the nine one one
25 operator?

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1 A. Yeah, because what happened was when he approached
2 the door I immediately tried to go inside because I was
3 scared they were going to come, and because of the way
4 his porch was I would be trapped.

5 So I thought they were going to come through the
6 woods and come up and kill me because I was going to
7 try to rat them out.

8 When I knocked on the door to get his attention I
9 wanted to go inside the house. I tried to go inside the
10 house and he said, no, you can't do that. Of course, I
11 was probably as white as a sheet too.

12 I didn't realize at that time the belt was still on
13 my wrist, and he immediately called nine one one, and I
14 began to get frustrated because it seemed like he was
15 having to beg nine one one to at least get his story.

16 I was getting agitated about that, and he kept on --
17 I heard him say, no, no, I'm serious; something's wrong
18 with this guy.

19 So I thought, well, here I am, unable to get help
20 and all of a sudden there's -- well.

21 Q. When do you see Amy again?

22 A. The recollection I have is that I talked to -- when
23 I got -- when the gentleman finally handed me the phone,
24 you know, she told me there was an officer who was close
25 who was on his way and he would be there very quick.

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1 And, sure enough, he came by in his car and when he
2 came by in his car I don't even know what I did. I
3 guess I handed Mr. Rhodes back his phone but I ran to
4 chase the police officer.

5 I thought, well, here's the calvary, and I would
6 join in now at that point in time. I had seen my car
7 going and there was a car chase right in front of me.

8 And I do know at that point in time is the first
9 time I collapsed. The adrenalin I had left me and I
10 thought my wife was a hostage.

11 So I remember falling on the ground and getting
12 right back up, and I chased the police officer's car
13 while they were chasing my car. I didn't catch up with
14 them though.

15 I just ran in that direction because I thought my
16 wife was in my vehicle. When I ran the car stopped, the
17 police officer's car stopped, and I kept on running be-
18 cause I thought they've got her, and then I heard Amy
19 screaming my name, and I immediately turned around at
20 that time and ran back to Amy.

21 All she would tell me -- all she said was, I'm
22 alive, I'm alive. I'm alive, I'm alive. I knew some-
23 thing had happened to her because I could tell she
24 didn't have a bra on.

25 So I figured something bad might have happened.

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1 But that was the first time I heard her voice and the
2 first time I came back to her.

3 I didn't know she had talked to the operator on
4 the phone. To be honest with you, I was totally beside
5 myself.

6 Q. Were you able to give a statement right away to
7 law enforcement?

8 A. Right away? You mean on the spot? Yeah, I was
9 -- you know, they were trying to ask questions obviously.
10 The ambulance got there really quick as I think about
11 it, and what happened is Amy and I got into the ambu-
12 lance.

13 So they had a couple of initial questions but pretty
14 much when the ambulance got there we were leaving in
15 the ambulance to go to the hospital.

16 Q. So how did you spend the rest of your night?

17 A. I -- in amazement. Crying, angry, you know, and
18 trying to help the detectives at that time. Trying to
19 find out what was going on, and checking on my wife.

20 Q. Did you leave the hospital at any point?

21 A. Yes.

22 Q. Where did you go?

23 A. We went to the -- back to the parking lot because
24 I said if the car is still in that parking lot, that's
25 the vehicle. So I was wanting to go back to that spot

MR. DAVIDSON ON DIRECT

1 to see.

2 When we got to there and turned the corner there
3 in the parking lot is that car.

4 Q. So you took the officers back to the original scene
5 where you were kidnapped from?

6 A. Yes.

7 Q. And did you go anywhere else?

8 A. Uh hm.

9 Q. Where did you go after that?

10 A. I ended up taking them back to the ballfield.

11 Q. So you ended up retracing your steps that night
12 with law enforcement?

13 A. Uh hm.

14 Q. And once you leave there, are you finally able to
15 go back to your hotel, or at what point do you finally
16 get back to your hotel room?

17 A. Never.

18 Q. You don't go back there?

19 A. Just to get our clothes. I think Amy did that.
20 She did that herself, went back that day.

21 Q. And did you go back home to Tennessee?

22 A. Uh hm.

23 Q. What, if anything, do you remember about the two
24 subjects?

25 What were they wearing, what did they look like as

MR. DAVIDSON ON DIRECT

1 far as you could see?

2 A. Everything was dark. There was never a point in
3 time we were under light, and, like I say, they never
4 wanted us to look at them at all, so you couldn't get --
5 you know, you couldn't stare.

6 You've got to sit there and not look -- without
7 permission to look at them, I never got a look. I had
8 thought they were little, bitty guys. I just remember
9 these guys as tiny.

10 Q. Okay.

11 A. And they just had black on, and it would be like
12 anybody else trying to sneak up on anybody with black
13 shirt, black pants. All you're going to see is dark
14 clothes, and that itself is going to be sinister and
15 also they're going to turn into giants.

16 You have two little men with a gun and knife and
17 the next minute they're giants.

18 Q. Were they both wearing all black clothing . .

19 MR. BROWN: Objection to leading.

20 A. Dark.

21 THE COURT: Sustained. Go ahead.

22 BY SOLICITOR:

23 Q. What did their clothing look like if you can re-
24 call that?

25 A. Dark.

MR. DAVIDSON ON DIRECT

1 Q. That's all?

2 A. Uh hm.

3 Q. Do you recall if they were wearing long pants or
4 short?

5 A. Pants -- long sleeves, long pants.

6 Q. Gloves?

7 A. Uh huh.

8 Q. Were they both wearing gloves?

9 A. Uh huh.

10 Q. Did they have gloves on the entire time they were
11 with you?

12 A. The entire time they were with me, yes.

13 Q. Did you ever get a look at either one of them's
14 face?

15 A. No, because I was instructed not to.

16 Q. Were you ever able to see skin color?

17 Were they white, hispanic, african-american?

18 A. You couldn't see because everything was dark.

19 Q. Mr. Davidson, other than the cash that was taken,
20 were any other items missing from your vehicle that
21 night?

22 A. A watch.

23 SOLICITOR: May I approach the witness?

24 THE COURT: You may.

25 BY SOLICITOR:

MR. DAVIDSON ON DIRECT

1 Q. I hand you items which have been marked as State's
2 Exhibits 24, 25 and 26, and ask if you can identify
3 any of these items I'm handing you?

4 Look at the number on the back and tell me which
5 items you identify.

6 A. Number 26 is our room key.

7 Q. Is that where you were staying that night?

8 A. Uh hm.

9 Q. Okay.

10 A. My wife's ID is 25 and my watch that was given
11 to me by my buddy Tim.

12 Q. When is the last time you saw that watch?

13 A. That night. Number 24.

14 SOLICITOR: Your Honor, I won't move 24 in evidence
15 so he can get it back after the trial. At this point,
16 it's marked Number 24, for identification.

17 (Watch marked as State's Exhibit 24 for identifica-
18 tion purposes)

19 SOLICITOR: I would move State's Exhibit 25 and 26
20 in evidence.

21 MR. BROWN: No objection.

22 THE COURT: Admitted, without objection.

23 (State's Exhibit 25 and 26 admitted in evidence
24 without objection being driver's license and room key,
25 respectively)

MR. DAVIDSON ON DIRECT

1 SOLICITOR: May I publish to the jury?

2 THE COURT: You may.

3 (Exhibits shown to the jury)

4 BY SOLICITOR:

5 Q. What do you recall about the voice of the man with
6 the gun?

7 A. . .

8 Q. Was it deep, high or low?

9 A. As a matter of fact, no. He was -- he wasn't try-
10 ing to hide his voice. In other words, if he spoke up
11 I would recognize it. It's just in my mind.

12 Q. The guy with the knife didn't talk much?

13 A. No. He said very little.

14 Q. Mr. Davidson, I don't have any further questions
15 for you. Please answer anything Defense Counsel may
16 have for you.

17 A. Okay.

18 THE COURT: Mr. Brown?

19 MR. BROWN: Your Honor, there were some issues that
20 we took up pre-trial.

21 THE COURT: Yes.

22 MR. BROWN: And there were some questions raised
23 by the testimony that I would like to put on the record
24 regarding those issues.

25 THE COURT: Okay. Ladies and gentlemen of the jury,

1 I think now is a good time to break for lunch.

2 Mr. Davidson, you can go ahead and step down, sir.

3 Please remember that you are not to speak to anyone
4 about your testimony during this break since you are
5 still on the stand.

6 (Witness excused from stand)

7 THE COURT: Ladies and gentlemen of the jury, it
8 is about one fifteen now, and if you would be back in
9 your jury room at two forty-five we will continue with
10 the trial of this case.

11 Ladies and gentlemen, you are free to go about your
12 business during the lunch hour. You can grab anything
13 you want before you come back, but again I will caution
14 you that you are not to discuss this case with anyone
15 or with each other.

16 As you walk out to the parking lot, please do not
17 discuss this case or allow anyone to speak to you about
18 it, even a good friend or family member.

19 You are not to discuss anything you've heard in
20 this Courtroom during the trial.

21 I'm going to let you go. Have a wonderful lunch,
22 and I'll see you back at two forty-five.

23 (Jury excused for the lunch period at 1:17 P.M.)

24 THE COURT: All right, Mr. Brown.

25 MR. BROWN: May it please the Court, Your Honor.

1 THE COURT: Yes, sir.

2 MR. BROWN: I've got to be quite honest with you.
3 I don't know what I was going to say, but before going
4 straight into the testimony I had other issues that I
5 had.

6 I think there is a lady who is listed on my witness
7 list who may be here. I don't recognize her -- Ms.
8 Camp.

9 THE COURT: Okay. Is Ms. Camp here? (Affirmative answer)

10 MR. BROWN: She was read off the witness list. I
11 never met her before.

12 THE COURT: Respectfully, was she on your witness
13 list as well?

14 SOLICITOR: No. I had no idea he was calling her.
15 She is not on my witness list. She is a counselor, and
16 we would object to any testimony from her.

17 But in any event, she has nothing to do with . .

18 MR. BROWN: I never met her but we did have a se-
19 questration issue that we took up.

20 SOLICITOR: She has nothing to do with this issue
21 that I'm aware of.

22 MR. BROWN: I'm assuming that is who she is and she
23 did just identify herself. That is not the issue I have.

24 THE COURT: All right.

25 MR. BROWN: In regard to the issue I've got here,

1 obviously it is clear from the thrust of my argument
2 to the jury about the description that may have been
3 given that night and what was given this morning -- We
4 are all in here and I don't mind going in to it.

5 There was a statement given by Mr. Davidson that
6 night and it was memorialized in writing, and also there
7 was a statement that is memorialized in the officer's
8 report -- no description given.

9 The report actually has a spot where it actually
10 talks about a description of suspect and things like
11 that and no description was given by Mr. Davidson.

12 Mr. Davidson has been in Court hearings where Mr.
13 Howard was present, and that raises a question regarding
14 the genuineness of the description given today; whether
15 that is actually a description from that time and it
16 raises a question of impeachment which goes clearly
17 back into the fact that there is a strong impeachment
18 issue relating to a ^{federal} drug conviction or drug dealings
19 which falls within the rule and provides for a limiting
20 instruction, and things of that nature.

21 THE COURT: You are talking about Rule 609.

22 MR. BROWN: Rule 609 and it protects the right of
23 impeachment . .

24 THE COURT: Respectfully, Mr. Brown, we are all
25 aware of what Rule 609 provides for. My question is,

1 what are you impeaching?

2 Is it testimony here that he gave today, or is what
3 you are impeaching what he gave after the incident?

4 MR. BROWN: What difference does it make? The Rule
5 is . . .

6 THE COURT: Mr. Brown, . . .

7 MR. BROWN: I'm sorry.

8 THE COURT: Just answer my question I asked you.
9 What do you say needs to be impeached? Is it what he
10 said on the witness stand today or what you are saying he
11 said after the incident?

12 MR. BROWN: His description.

13 THE COURT: What is the difference?

14 MR. BROWN: Okay, he gave a description in his tes-
15 timony today and he did not give one after the incident.

16 THE COURT: So it's not that it's different in
17 any way. It is just that he gave one today and he did
18 not give one at the time of the incident.

19 Is that what you're telling me?

20 MR. BROWN: He failed to give one at the time of
21 the incident, but he -- he was unable to give one at
22 the time of the incident, but he gave one here today.

23 THE COURT: All right, Mr. Brown. Respectfully,
24 I understand your motion, and I am going to continue to
25 deny your motion to allow you to impeach the witness

1 based on any prior criminal record.

2 Again, we have discussed that at length.

3 There is a rule that allows me to use my discretion
4 when a question is not only prejudicial but any preju-
5 dicial value outweighs the probative value, and I assure
6 you in this case that there is no probative value to
7 what you want to use to impeach Mr. Davidson.

8 So, respectfully, sir, I am not going to allow you
9 to do it.

10 Additionally, this witness has not made a positive
11 ID of anybody. He said in his testimony today he didn't
12 look at the person because he was ordered not to and he
13 could not identify him.

14 Do you have any other motions?

15 MR. BROWN: I wish to proffer the information.

16 THE COURT: Respectfully, sir, we have discussed
17 this at length, and I have ruled on it. It is my un-
18 derstanding, and I believe the Solicitor read into the
19 record, what his prior conviction was and that he in
20 fact did do some prison time and he was released at
21 some point and put on parole.

22 Is that correct?

23 SOLICITOR: That is correct.

24 THE COURT: Okay. Respectfully, that is noted for
25 the record and we will have no proffer.

1 MR. BROWN: I would like to make a proffer for my-
2 self for the record, but I understand . .

3 THE COURT: Respectfully, sir, the record and the
4 rap sheet speak for itself.

5 You are protected for the appeal . .

6 MR. BROWN: But that's not in evidence.

7 THE COURT: You are protected for the record, sir.

8 MR. BROWN: That's not . .

9 THE COURT: You are adequately protected for the
10 record, sir.

11 MR. BROWN: He was convicted . .

12 THE COURT: You are protected for the record, and
13 I am telling you that.

14 MR. BROWN: But they won't know what his record is
15 and . .

16 THE COURT: All right. What was he convicted of,
17 sir?

18 MR. BROWN: He has a count of conspiracy to distri-
19 bute cocaine in federal court, and . .

20 THE COURT: Conspiracy to distribute cocaine, is
21 that correct?

22 MR. BROWN: They had him charged with actual dis-
23 tribution and aiding and abetting.

24 THE COURT: What was he convicted of? Was he con-
25 victed of conspiracy?

1 Solicitor, do you have a copy of his rap sheet?

2 SOLICITOR: Yes, maam.

3 THE COURT: I'm going to ask you to make that a
4 Court's Exhibit.

5 Mr. Brown, your interpretation of it and my inter--
6 pretation of it don't change it in any way. I'll make
7 it a Court's Exhibit. It is not to go back to the jury.
8 Please mark it. It speaks for itself.

9 (Rap sheet of Witness Davidson marked Court's Ex-
10 hibit 1 for purposes of the record)

11 THE COURT: Anything further?

12 MR. BROWN: I don't have anything further about the
13 witness.

14 THE COURT: The Court will be in recess until
15 2:35.

16 (Whereupon, the Court stood in recess until 2:35 P.M.,
17 when the matter resumed)

18 THE COURT: Mr. Brown, were you able to get the
19 copies over the lunch hour that you needed?

20 MR. BROWN: I believe they are laying on my desk.
21 Yes, maam.

22 THE COURT: Anything else we need to take up before
23 the jury comes back?

24 I understand the witness is not here so is there
25 anything we need to put on the record that we can take

1 care of at this time?

2 MR. BROWN: We are still trying to find Dr. Smith.
3 We were given a number at MUSC because we understand he
4 is now full time there.

5 We called that number. I called it one time. My
6 investigator called it one time. I left a message for
7 Dr. Smith and had a voice mail, this is Dr. Smith.

8 I called him back as soon as I left the Courtroom.
9 My investigator was behind me, and they answered the phone,
10 the first time they've done that, and he said, this is
11 Dr. Mideagh.

12 THE COURT: Did he know Dr. Smith?

13 MR. BROWN: He did, and he said I know him because
14 we used to work at MUSC, and so we're still -- he said,
15 well, that's my phone number and not Dr. Smith's, and I
16 had previously had a voice mail call from Dr. Smith on
17 it.

18 There are other events we had to go through in try-
19 ing to locate Dr. Smith, including being told that Dr.
20 Smith -- even though we were told Friday he was in
21 Columbia -- that he is on the West Coast.

22 Again, I hope that someone with a little more author-
23 ity could contact him. He practices in Mount Pleasant,
24 and I know that because I was given that number, and I
25 -- I got the same phone number for two different places,

1 one from a lawyer in Charleston who knew him and one
2 from MUSC. That's the same number that came up with the
3 other doctor.

4 THE COURT: The lawyer in Charleston is a friend of
5 his?

6 MR. BROWN: Well, I don't know how they know each
7 other. They may be friends. I don't know, but I have
8 a subpoena out there and I don't know where he is.

9 All of this -- and I've got to . .

10 THE COURT: Mr. Brown, let me ask you this. I un-
11 derstand he did a forensic evaluation for the State at
12 MUSC on Mr. Hicks.

13 MR. BROWN: Yes, maam.

14 THE COURT: You say he has an office in Mount
15 Pleasant?

16 MR. BROWN: We've been told that . .

17 THE COURT: My question is this, if he has an of-
18 fice in Mount Pleasant, you should be able to find him
19 either by calling information or on the internet in some
20 way.

21 MR. BROWN: That's the same phone number. My para-
22 legal here was standing over here and we looked it up,
23 and we actually did a reverse look-up to . .

24 THE COURT: Right.

25 MR. BROWN: . . and so it appears to me that he's

1 -- we did a reverse look-up on that number and it is a
2 cel phone and that's where we got that other person.

3 It appears to me he is running a cel phone as his
4 business phone.

5 THE COURT: Okay.

6 MR. BROWN: But it doesn't have a record . .

7 THE COURT: Even though he has an office address?

8 MR. BROWN: I was given an address that I would
9 have to find somewhere on my computer. It's in Mount
10 Pleasant.

11 THE COURT: You need to send someone out there to
12 find that address.

13 MR. BROWN: In fact, we've already sent a subpoena
14 . .

15 THE COURT: Mr. Brown, what you need to do is act-
16 ually get your hands on the man. Again, do you have an
17 actual physical location, an address?

18 MR. BROWN: We have an address that we were given,
19 that's correct.

20 THE COURT: You have a suite number?

21 MR. BROWN: Yes, we were given that, and I had my
22 investigator -- at the time we picked the jury I said
23 we have to find this guy, and, of course, I've been in
24 here with you so ..

25 THE COURT: Mr. Brown, Mr. Brown.

1 MR. BROWN: Yes, maam.

2 THE COURT: Have your investigator do what he needs
3 to do to find out where this man is located.

4 My other question is, you said someone has told you
5 this man is now on the west coast.

6 Again, I assume it's a man, but I don't know.

7 MR. BROWN: Michael Smith.

8 THE COURT: Michael Smith?

9 MR. BROWN: Yes, maam.

10 THE COURT: Who told you he is on the west coast?

11 MR. BROWN: Investigator Rowell told me that an
12 investigator in Charleston told him that someone else
13 told him that, somebody in that office.

14 THE COURT: Three different people.

15 MR. BROWN: And I asked Mr. Rowell to be here at
16 this time so we can deal with this, and he is over at the
17 jail.

18 THE COURT: Mr. Brown, I can't do your legwork for
19 you. That's not my -- just bear with me. That is not
20 my role.

21 MR. BROWN: Yes, maam. I understand that.

22 THE COURT: But you need to tell your investigator
23 to use whatever contacts he has to be able to locate this
24 Dr. Smith to be able to get him served.

25 MR. BROWN: Yes, maam.

1 THE COURT: It appears to me you are getting a lot
2 of information, and with that information you could
3 maybe get those people to assist you. The Charleston
4 lawyer is a lot closer to Mount Pleasant than we are.
5 We are maybe an hour and a half away from Mount Pleasant,
6 so it's not as far.

7 But my question is -- see who you can find, possi-
8 bly Andy Savege's office, who we all know is a criminal
9 defense attorney out of Charleston.

10 You might ask him to see if maybe he can get one
11 of his investigators to at least discover where in fact
12 this Dr. Smith is.

13 It sounds like you have a physical address.

14 MR. BROWN: Your Honor, you've got to -- all I can
15 say is this. What we've had coming from MUSC was not
16 exactly forthcoming because they kept saying -- they're
17 saying, leave him a message, leave him a message, and
18 then they say, well, he's not working here any more.

19 THE COURT: Mr. Brown, I don't know how I can as-
20 sist you. You're telling me you don't even have a phone
21 number.

22 I'm happy to give a phone number to my secretary
23 and have her call and ask Dr. Smith to call my office
24 back, but the problem is if I don't have a phone number
25 I can't assist you.

1 MR. BROWN: I can give you the MUSC number. He is
2 still part time with them.

3 THE COURT: Again though, sir, I'm not going to --
4 we're in the middle of the trial of this case. I'm not
5 going to sit on the phone and do the legwork.

6 MR. BROWN: Okay.

7 THE COURT: If you have a phone number, what you
8 need to do is -- if you've got a direct phone number,
9 or a cel phone number or something, we will certainly make
10 an attempt.

11 The point is -- the point is as well I can't do
12 your legwork for you, but I will leave . .

13 MR. BROWN: Your Honor, I can't do any more either.
14 I've got two hundred fifty hours in this case with one
15 investigator . .

16 THE COURT: Mr. Brown, we're not going down this
17 road. I appreciate it.

18 Even know that I sympathize with you. I'm the one
19 that ordered that you be allowed a private investigator.
20 I understand.

21 MR. BROWN: And I've asked the investigator to be
22 here so we can deal with this at this time.

23 THE COURT: I understand, and there are times Mr.
24 Rowell has be sitting in the Courtroom so I presume he's
25 doing work for you, and I presume he's helping this case

1 along.

2 Respectfully, sir, we're going to move on. If you
3 have a phone number I will have my secretary phone this
4 doctor but there is nothing I can do.

5 You have to serve a subpoena on him to get him here.

6 MR. BROWN: Yes, maam.

7 THE COURT: All right. Anything before I bring this
8 jury in?

9 MR. BROWN: Can I give this phone number to your
10 secretary?

11 THE COURT: Yes, sir.

12 (Brief pause in proceeding)

13 THE COURT: All right?

14 MR. BROWN: Yes, maam. Thank you.

15 THE COURT: Anything further before I bring the
16 jury in, for the State?

17 SOLICITOR: No, maam.

18 THE COURT: For the Defense?

19 MR. BROWN: Nothing subject to the motion that . .

20 THE COURT: Bring the jury in.

21 SOLICITOR: So we are definitely clear, he cannot
22 ask any questions related to the victim's prior record?

23 THE COURT: No. He's not to ask.

24 (Witness Phillip Davidson resumed witness stand)

25 (Jury returned to Courtroom at 2:50 P.M.)

1 BAILIFF: The jury is entering, Your Honor.

2 THE COURT: Thank you.

3 BAILIFF: The jury is seated.

4 THE COURT: Thank you. Welcome back, ladies and
5 gentlemen.

6 At this time, I would remind you that you are still
7 under oath.

8 WITNESS: Yes, ma'am.

9 THE COURT: Mr. Brown.

10 MR. BROWN: May it please the Court?

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION

13 BY MR. BROWN:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. Do you recall speaking to one of the police of-
17 ficers back on May 26, 2006?

18 A. Sure.

19 Q. And if I may approach . .

20 THE COURT: You may.

21 Q. Do you recognize that item?

22 A. Yes.

23 Q. Law enforcement officers talked to you about the
24 matters that eventually came into writing here. What
25 did they ask you?

MR. DAVIDSON ON CROSS

1 Q. Well, the standard questions, I guess, you would
2 ask anybody when they are trying to find out what you
3 have been through.

4 Q. And was part of their concern directed at who the
5 suspects were?

6 A. What do you mean?

7 Q. Were they making efforts to develop suspects in the
8 case?

9 A. Well, I think that's what they do, so I would
10 say yes.

11 Q. Okay, and so one of the things that they asked you
12 was details of May 25th-26th?

13 A. Yes.

14 Q. And at some point in time did they ask you for a de-
15 scription of the suspects?

16 A. I'm sure they did.

17 Q. Okay. What description did you put in writing?

18 A. Are you talking about their physical size?

19 Q. Any description.

20 A. Can I -- do you care if I read this real quick?

21 Q. I have no problem -- would that refresh your recol-
22 lection?

23 A. Yes, sir.

24 Q. Please.

25 A. Okay.

MR. DAVIDSON ON CROSS

1 Q. And what description did you provide them?

2 A. There is none on here.

3 MR. BROWN: May I approach?

4 THE COURT: Yes.

5 BY MR. BROWN:

6 Q. And is that the only time you wrote down information
7 for law enforcement?

8 A. That I remember, yes, sir.

9 Q. Now, I'll ask you a few things about the suspect
10 that stayed in the parking lot, and I've got a couple of
11 notes where you've indicated or told Ms. Tanner during
12 her examination that the other suspect never spoke.

13 A. Well, he made a comment.

14 Q. Okay.

15 A. Speaking and making a comment are two different
16 things.

17 Q. I'm just trying to flesh that out a little bit. I
18 think he said something like what are you doing or why
19 are you moving around, or something like that?

20 A. He said what are you doing.

21 Q. Okay. So he did speak at some point in time?

22 A. Yes.

23 Q. Okay. All right, and did the other suspect that
24 stayed at the car, did he lay back like he wasn't really
25 involved when you all were in the parking lot, or did

MR. DAVIDSON ON CROSS

1 he -- was he as assertive as the other one?

2 A. Yes. They were equal partners as far as that was
3 concerned.

4 Q. They were equally involved in the BB and T parking
5 lot?

6 A. Yes.

7 Q. Okay, and that other suspect, the one I assume with
8 the knife, did that suspect stay in the car the whole
9 time or by the car the whole time?

10 A. What do you mean by that?

11 Q. Did -- in the football stadium parking lot, did he
12 stay at the car the whole time or did he walk off?

13 A. As I said, he stepped away far enough where I
14 really couldn't see him but he could see me.

15 Q. Okay. Did he go down to the area where Amy had
16 been taken, or did he stay at the car?

17 A. I couldn't tell where he was at. He had stepped
18 off far enough where, like I said, I could not -- like I
19 said, I was partially covered, so I couldn't tell exactly
20 how far he went.

21 Q. Okay, and did he walk off like that once or twice?

22 A. Like I said, he came up to see what I was doing and
23 he stepped away and then he came back to the car in re-
24 ference to the car, and then he left.

25 Q. And you never saw him again after that?

MR. DAVIDSON ON CROSS

1 A. The last time he stepped away from my car, that's
2 correct.

3 Q. To make it clear, twice he walked away? He
4 stepped away a little bit and came back and then stepped
5 away for good?

6 A. As I said, he came up to me and made the comment,
7 and then he stepped away and then he came to the car and
8 then he stepped away. So I guess that's twice.

9 Q. Okay. I just was trying to get that clear.

10 A. Okay.

11 Q. There are a couple of items that you were shown
12 that were entered into evidence, and that is 25 and 26.
13 One was a driver's license and the other was a hotel key.

14 Let me show you what's already been introduced in
15 evidence as State's Exhibit 26, and I think you've iden-
16 tified that as a hotel key?

17 A. Uh hm.

18 Q. That's your hotel key?

19 A. . .

20 Q. You and your wife both got hotel keys?

21 A. They usually give you two keys, but I couldn't tell
22 if I had one on me or not.

23 Q. I understand, but I'm trying to find out -- this is
24 her driver's license, and I'm trying to find out if that
25 is your key or her key.

MR. DAVIDSON ON CROSS

1 A. You know, whenever I stay in a hotel the key for
2 me I keep in a little thing that they give you.

3 Q. Like a little sleeve?

4 A. Because if you put it in a wallet you can disable
5 the back of the card. I've learned that so I don't put
6 it in my wallet. I just have a little wallet with my
7 credit cards in it, and you can disable that thing and
8 you can't get in the room.

9 Q. So that may not be your key?

10 A. I don't know.

11 Q. Okay. Which of the two suspects did you hand the
12 money to?

13 A. I couldn't even tell you.

14 Q. Okay.

15 A. I just would take it . .

16 Q. So the money went in the back . .

17 A. . . I'm doing this and I have no idea who grabbed
18 it. I don't know who grabbed the money.

19 Q. The money went in the back seat and you don't know
20 who took it?

21 A. I have no idea.

22 Q. And did you ever hand them anything else of yours,
23 a credit card, driver's license?

24 A. No. I'm pretty sure they got my wife's purse from
25 her because when they were trying to get money from me

MR. DAVIDSON ON CROSS

1 they also got her purse.

2 Q. Okay.

3 A. I guess they got her stuff as well out of that.

4 Q. Do you know whether State's 25, that driver's li-
5 cense -- do you know whether that license was in her
6 purse?

7 A. Yes.

8 Q. It was?

9 A. Yes.

10 Q. Okay, and the guy with the gun that did the talking
11 when he asked for the purse, asked for the money or the
12 withdrawal?

13 A. As I said before, the gentleman with the gun was
14 giving all the instructions. He was giving all of the
15 commands.

16 Q. He would have been the one asking for the purse?

17 A. If he -- I can't remember if he asked for the
18 purse.

19 Q. All right.

20 A. But, yes, he was the one kind of running the show.
21 If anybody asked, it would have been him.

22 Q. Okay. And I'm sorry but I do need to ask you, did
23 he sound like an angry or mean person?

24 A. No.

25 Q. How about the comment when he said -- I wrote it

1 down, the language, when he said I'll blow your wife's
2 fucking head off. Did he say that in a nice way or angry
3 way?

4 A. Very aggressive. Very assertive. That was when we
5 were still outside the car, if I remember right.

6 Q. Okay, and that's the same person with the gun?

7 A. Correct.

8 Q. And he said it in an aggressive, assertive way?

9 A. At that time, yes.

10 Q. Okay, and so there is some anger there? He had ex-
11 pressed some anger?

12 A. When he was telling me that, yes.

13 Q. And so he sounded like he would hurt somebody?

14 A. Oh, yeah.

15 Q. A frustrated person who was willing to hurt some-
16 body?

17 A. Well, yeah. I mean, I can't tell you what somebody's
18 motive is.

19 You know, I mean, . . .

20 Q. Fair enough. But could you feel any anger from him?

21 A. I thought he may have did it, sure.

22 Q. Okay. Now, you mentioned a function going on down
23 at the waterfront park area at that time?

24 A. . .

25 Q. You recalled there being a function?

MR. DAVIDSON ON CROSS

1 A. Uh hm.

2 Q. Was that the Gullah Festival that was going on?

3 Did anybody tell you that?

4 A. I don't know. I'm not from here so I don't know.

5 Q. You've lived here for a while though since then?

6 A. After this, yes, sir.

7 Q. You don't recall if anybody told you that was the

8 Gullah Festival going on around that time?

9 A. No.

10 Q. Did you live here while the Gullah Festival was going
11 on?

12 A. I didn't live here.

13 Q. But since then?

14 A. I didn't live here.

15 Q. Did you ever work here?

16 A. Yes.

17 Q. Okay.

18 A. I worked out at Garden's Corner in a real estate

19 development so I didn't have any reason to come into

20 Beaufort.

21 Q. I'm sorry but I . . .

22 A. That's all right.

23 Q. Now, one thing I want to ask you about. You knew

24 Neil at some point in time?

25 A. In Atlanta.

MR. DAVIDSON ON CROSS

1 Q. In Atlanta?

2 A. Uh-hm.

3 Q. Okay. He's not from Tennessee?

4 A. No, sir.

5 Q. How long have you known Neil to be employed by
6 Salter's?

7 A. I don't know. Probably two or three years. Some-
8 thing like that.

9 Q. Okay.

10 SOLICITOR: May we approach, Your Honor?

11 THE COURT: Yes.

12 (Conference at the bench between counsel and the
13 Court off the record)

14 BY MR. BROWN:

15 Q. Now, Neil was apparently employed there in May
16 of 2006?

17 A. Yes.

18 Q. Do you know how long Neil stayed employed there
19 afterwards?

20 A. No, I don't.

21 Q. Okay, so you said you talked to Neil?

22 A. Yes.

23 Q. He's not employed at Salter's any more?

24 A. No, sir.

25 Q. Do you know why?

MR. DAVIDSON ON CROSS

1 A. No.

2 Q. He's never told you?

3 A. No.

4 Q. Okay. Now, the police talked to you a little bit
5 about your time at Salter's that evening, and I think it
6 may have had to do with whether there was any alcohol
7 consumed that night?

8 A. Yes.

9 Q. Okay, and was there any?

10 A. Not by me.

11 Q. And you all were there from eight thirty until one
12 o'clock?

13 A. Yes, sir.

14 Q. Okay. Four . .

15 A. Four and a half hours.

16 Q. Is there a bar in Salter's as well . .

17 A. Yes.

18 Q. . . as a restaurant?

19 A. Yes.

20 Q. And did Amy consume some alcohol?

21 A. Yes, sir.

22 Q. Anything else that happened that evening that could
23 have affected your recall of what happened?

24 A. No, sir. Just the terror and the shock. That
25 could have . .

MR. DAVIDSON ON CROSS

1 Q. Okay.

2 A. The fear or terror of what happened could have.
3 The whole time.

4 Q. The trauma . .

5 A. I can't express to you how -- what the terror was
6 that ran through my body.

7 Q. And I can certainly understand where you're coming
8 from, but what I'm trying to find out -- Mr. Davidson, I
9 would go ahead and apologize to you for what happened
10 that evening.

11 What I'm trying to find out . .

12 MR. BROWN: Your Honor, maybe I should approach
13 at this time.

14 THE COURT: Uh hm.

15 (Conference at the bench between counsel and the
16 Court off the record)

17 BY MR. BROWN:

18 Q. Mr. Davidson, with all due respect, I asked you
19 about alcohol. Were you taking any prescription drugs
20 that would have affected your ability to recall the
21 events that night?

22 A. No, sir.

23 Q. Were you taking any illegal drugs that night that
24 would have affected your ability to recall?

25 A. No, sir.

MR. DAVIDSON ON CROSS

1 Q. Do you have an uncle named Jay?

2 A. Yes, sir.

3 SOLICITOR: May we approach, Your Honor?

4 THE COURT: Yes.

5 (Conference at the bench between counsel and the
6 Court off the record)

7 BY MR. BROWN:

8 Q. How were you employed back in 1996?

9 A. It depends on which part of 1996 you're talking
10 about.

11 SOLICITOR: Objection.

12 THE COURT: Okay, you need to move on, Mr. Brown.

13 MR. BROWN: I am . . .

14 THE COURT: You need to move on to 2006.

15 BY MR. BROWN:

16 Q. If we move to 2008 -- let me back up.

17 You are about six feet tall?

18 A. Six one.

19 Q. Okay, and if the police report put you down at
20 five eleven, . . .

21 A. Okay. Five eleven, six foot.

22 Q. And I'm not that tall?

23 A. . .

24 Q. You and I actually -- you approached me in the
25 Courtroom back in May of 2008 over here, and you were

MR. DAVIDSON ON CROSS

1 taller?

2 A. Yes, sir.

3 Q. Okay, and when did you and Amy get married?

4 A. September 16, 2001. About a week after nine
5 eleven.

6 Q. And so by May of 2006 you all had been married
7 for almost five years?

8 A. Uh hm.

9 Q. Did you attend any other Court proceedings related
10 to this matter?

11 A. Yes, sir.

12 Q. Okay.

13 A. Sometime last year when your client was trying to
14 get a reduction in bond.

15 MR. BROWN: Your Honor, may we approach?

16 THE COURT: Yes.

17 (Conference at the bench between counsel and the
18 Court off the record)

19 BY MR. BROWN:

20 Q. Mr. Davidson, needless to say, you had the op-
21 portunity over the last thirty-four months to see Mr.
22 Howard several times?

23 A. Twice. This is the third time.

24 Q. This is the third time?

25 A. Yes.

MR. DAVIDSON ON CROSS

1 Q. Okay, and have you had the opportunity to see Mr.
2 Hicks?

3 A. Yes, sir.

4 Q. Okay, in a Court proceeding?

5 A. No, sir. I consider this a Court proceeding. I
6 don't -- is an arraignment a Court proceeding?

7 Q. Okay, have you seen him at all?

8 A. When they arraigned those gentlemen, I was there
9 that morning.

10 Q. Okay.

11 A. If that's a Court proceeding, then I would have to
12 say yes.

13 Q. Okay. May 26th?

14 A. Yes, sir.

15 Q. I want to make sure I understand. So you have seen
16 Mr. Howard and Mr. Hicks before today?

17 A. Yes, sir.

18 Q. And how close have you been to those individuals?

19 A. Well, if you've been downstairs in that little ar-
20 raignment area, it's a small little box and they have
21 a shield that, you know, protects from whatever they
22 decide to do when they come up for their charges and
23 decide on a bond.

24 Q. Would you say that you were closer or further away?

25 A. I was further.

MR. DAVIDSON ON CROSS

1 Q. Tell me when. (Moving backward from witness)

2 A. About there.

3 Q. Okay, and every time you've seen him has it been
4 this far away?

5 A. I guess so. That was the only time I saw Mr.
6 Hicks.

7 Q. Now, all the times you saw him, were you under the
8 impression that the police believed that they were the
9 ones that committed the crimes that night?

10 A. Yes, sir.

11 Q. Now, in September of 2006 did you express a com-
12 plaint to the City of Beaufort about their handling of
13 this matter?

14 A. No.

15 Q. How about . .

16 A. A formal complaint such as writing it down, no, but
17 we have never been happy with the fact that it's taken
18 three years to bring this case to trial. I mean, I don't
19 know how anybody would not be upset about that.

20 I've been living with this thing for three years
21 now, Mr. Brown.

22 Q. And . .

23 SOLICITOR: Your Honor, may we approach again?

24 THE COURT: Yes.

25 (Conference at the bench between counsel and the

MR. DAVIDSON ON CROSS

1 Court, off the record)

2 BY MR BROWN:

3 Q. Let me ask you this. In September of 2006, was
4 there a statement you made or a recording regarding your
5 displeasure with the way the City of Beaufort was prose-
6 cuting this criminal case?

7 A. I don't remember saying anything specifically in
8 2006, but I can say I've been complaining about it since
9 the moment . .

10 Q. And do you know a Clark Penson?

11 A. Yes.

12 Q. Did you make a statement to Clark Penson in Septem-
13 ber of 2006 in Beaufort County?

14 A. He was my counselor, and I went to see him because
15 of the violent crime that was committed against my wife.
16 You know, I need help psychologically to try to deal
17 with this.

18 I wasn't functioning properly, and so, as I said
19 before, Mr. Brown, I haven't been happy since day one.
20 I haven't been happy since I was abducted and bound.

21 Q. Mr. Davidson, if I could take the event back for
22 you, I would. I hope you understand that.

23 What I'm trying to find out is whether just three
24 and a half months after this happened you expressed
25 frustration with the City of Beaufort about this case?

MR. DAVIDSON ON CROSS

1 With the City of Beaufort's handling of this case?

2 A. You know, like I said, I don't know what to tell
3 you as far as -- I'm sitting here telling you now that
4 every day since this happened I have never been happy
5 with anything.

6 Okay, I don't want to be here. You don't want to
7 be here.

8 Q. And in fact you are suing the City of Beaufort,
9 aren't you?

10 A. No.

11 Q. You don't have a lawsuit against the City of Beau-
12 fort?

13 A. Oh, there is going to be a civil case.

14 Q. Is there already one?

15 A. Yes.

16 Q. And is one of your attorneys -- isn't your attorney
17 or law firm the law firm of Moss, Kuhn and Fleming?

18 A. Yes, sir.

19 Q. Okay.

20 A. But that doesn't have anything to do with this par-
21 ticular -- the way they handled the case.

22 It's going to be against the City of Beaufort as
23 far as like Osha and different things like that. It is
24 not how they handled the case. You know, how they done
25 their detective work or whatever you want to call it.

MR. DAVIDSON ON CROSS

1 It's not that. That's not what is in question.

2 Q. Let me make sure I understand. You are suing the
3 City of Beaufort for an injury from the events of May 26,
4 2006?

5 A. Yes, sir.

6 MR. BROWN: Your Honor, I do need some appropriate
7 time to make, I guess, the legal issues that I've got,
8 and I say that because otherwise the question comes up
9 that may moot or change the landscape.

10 So I . . .

11 THE COURT: Respectfully, I think you need to con-
12 tinue. Are you finished with your cross examination,
13 Mr. Brown?

14 MR. BROWN: Well, subject to the issues that I need
15 to put on the record.

16 THE COURT: Solicitor, any Redirect?

17 SOLICITOR: Just very briefly.

18 THE COURT: All right.

19 REDIRECT EXAMINATION

20 BY SOLICITOR:

21 Q. It came up that the civil law suit you said was
22 with Osha? Is that about the lighting?

23 A. Yes. You know, to be honest, we're getting into
24 an area that since I only spoke to Mr. Moss like on one
25 particular occasion and he said the people he was going

MR. DAVIDSON ON REDIRECT

1 after in particular.

2 I mean, you all's is three years and it's nothing.
3 I've been down here in Beaufort now for a few days,
4 and I still haven't even spoke to Mr. Moss. So I don't
5 know any more to tell you.

6 I don't know exactly what he has planned.

7 Q. Do you have any idea what the issue would be? I
8 think Mr. Brown was asking whether it was the criminal
9 investigation or how the police handled your case.

10 A. It has nothing to do with the way the police hand-
11 led the case.

12 You know, if my memory is serving me correctly it
13 is Osha because Osha has particular parks that you have
14 to have lit up properly. It looks like Osha did not light
15 the area properly where they were doing construction,
16 because they were back there doing construction that
17 night and if they had lit it properly they wouldn't
18 have had a place to hide and wait for us.

19 So it is that kind of stuff. It's not about the
20 criminal side at all and the investigation of the trial.

21 Q. Thank you for clearing that up. No further ques-
22 tions.

23 RECROSS EXAMINATION

24 BY MR. BROWN:

25 Q. Now, would your memory not be serving you correctly

MR. DAVIDSON ON RECROSS

1 because you had used marijuana from now to then -- from
2 then to now?

3 A. Do what?

4 Q. Would your use of marijuana documented in Clark
5 Penson's report have affected your memory of the events?

6 A. No.

7 Q. You said if your memory serves you correctly.

8 A. No.

9 Q. How about the ecstasy or cocaine that you used?

10 A. No.

11 MR. BROWN: That's it, subject to the objections
12 I've got, Your Honor.

13 THE COURT: Any Redirect?

14 SOLICITOR: No, maam.

15 THE COURT: You may step down, sir.

16 (Witness excused from stand)

17 THE COURT: Solicitor, call your next witness.

18 SOLICITOR: State calls Amy Davidson to the stand.

19 AMY DAVIDSON, being duly
20 sworn, testified as follows:

21 CLERK: Please have a seat and state your full name
22 for the record.

23 WITNESS: Amy Lynn Davidson, D A V I D S O N.

24 DIRECT EXAMINATION

25 BY SOLICITOR:

MRS. DAVIDSON ON DIRECT

1 Q. Good afternoon, Mrs. Davidson.

2 A. Good afternoon.

3 Q. You've been here for the testimony today, so I'm
4 just going to jump right into May 24-26, 2006.

5 A. Okay.

6 Q. Can you tell us how -- you had dinner at Salter's,
7 is that correct?

8 A. Yes, ma'am.

9 Q. And when you leave Salter's and return to your ve-
10 hicle, describe for the jury what happened then?

11 A. We went to get some water out of the trunk of the
12 car, and all of a sudden two men came out of nowhere and
13 one placed a gun to my head and the other pulled a knife
14 on Phillip, and they told us to get in the car.

15 And to shut up and drive, and they gave us direc-
16 tions to drive right out of the parking lot and over a
17 bridge, I guess toward Lady's Island.

18 And they told us to pull into the first ATM we saw,
19 and so we did, and they told us -- at some point they
20 asked for my purse, and I gave them my purse, and they
21 took my driver's license and credit cards out of it,
22 and that happened while we were driving.

23 And we pulled into the ATM and they told Phillip to
24 start taking out money, and he was trying to get as much
25 as he could.

MRS. DAVIDSON ON DIRECT

1 They said they wanted Five Thousand Dollars but we
2 couldn't come up with that much money, so we just took
3 out what we could.

4 Q. And you said they, are they both talking at the
5 same time?

6 A. No. I believe it was just one talking, the one with
7 the gun.

8 Q. And where is he located in the vehicle?

9 A. Behind me.

10 Q. And where is the gun?

11 A. It was on my head.

12 Q. Touching your head?

13 A. Yes.

14 Q. Now, once you get to the end of giving them money
15 from the ATM, what, if anything, is said in the vehicle?

16 A. He told us to keep driving and he was giving us
17 directions of where he wanted us to go.

18 I remember he did get mad at Phillip because he
19 accidentally started to make the wrong turn.

20 He directed us to what looked like a ballfield and
21 he told us specifically how to park the car, and then he
22 made us get up and get out of the car.

23 Q. At any time while you are in the car, did he get
24 upset with you?

25 A. One time because I reached over to touch Phillip's

MRS. DAVIDSON ON DIRECT

1 hand, and he said, now, what are you doing, and Phillip
2 just explained that I wanted to hold his hand, and I
3 took my hand back.

4 Q. When you get to the ballfield and you get out of the
5 car, what happens there in the parking lot?

6 A. We get out of the car and the man with the gun told
7 Phillip to lay down and he asked me to take off my
8 sweater so that, I believe, the other guy can tie him up,
9 tie his legs.

10 And he told me to take off Phillip's belt and tie
11 his hands with his belt, and I think the man with the
12 gun told me to go back in the car and get another shirt
13 or something to tie Phillip's mouth with, so I did that,
14 and they tied him up.

15 Q. And let me ask you . .

16 SOLICITOR: I show Defense Counsel what's marked as
17 State's Exhibit 21.

18 May I approach, Your Honor?

19 THE COURT: You may.

20 BY SOLICITOR:

21 Q. I show you what's marked as State's Exhibit 21,
22 and ask if you can identify this item?

23 A. That's my sweater I was wearing that night.

24 SOLICITOR: Your Honor, State moves Exhibit 21 into
25 evidence.

MRS. DAVIDSON ON DIRECT

1 MR. BROWN: Without objection.

2 THE COURT: Admitted, without objection.

3 (Sweater in beg admitted in evidence without objec-
4 tion as State's Exhibit 21)

5 SOLICITOR: May I publish to the jury?

6 THE COURT: You may.

7 (Exhibit 21 shown to the jury)

8 BY SOLICITOR:

9 Q. So, Mrs. Davidson, so you started your evening
10 wearing this sweater?

11 A. Yes.

12 Q. And it ended up where?

13 A. Tied on Phillip's feet.

14 Q. You mentioned items from your purse?

15 A. Uh hm.

16 SOLICITOR: If I may approach the witness, Your
17 Honor?

18 THE COURT: Yes.

19 BY SOLICITOR:

20 Q. I show you what have been moved into evidence as
21 State's Exhibits 25 and 26. Do you recognize these as
22 items from your purse?

23 A. Yes.

24 Q. What are those two items?

25 A. The hotel room key and my driver's license.

MRS. DAVIDSON ON DIRECT

1 Q. Back at the parking lot, once Phillip is tied up,
2 what do you do then? Where are you then?

3 A. I'm kneeling beside him. I just knew that nothing
4 good was coming of this.

5 Q. What does happen next?

6 A. The man with the gun walked me down a path by the
7 ballfield, and he turned to a place that looked like it
8 was by some bathrooms maybe, and there was a brick wall.

9 And he told me to take off all my clothes and put
10 my hands on the wall so that I was facing him, and I did
11 that.

12 And it seemed like forever that he had me standing
13 that way while he was fumbling with something behind me,
14 and then he told me to turn around and get on my knees
15 and suck it.

16 So I did what he said, and he was wearing a condom,
17 and then he told me to turn around with my back against
18 the brick wall, and he tried to enter me from behind
19 vaginally, and I did that, but he couldn't, and so he
20 told me to turn around again and to oral sex again, and
21 I did that.

22 And so he turned around again and tried again from
23 behind, with me against the wall, and after that it just
24 wasn't working.

25 So he had me lay down on the pavement and he got on

MRS. DAVIDSON ON DIRECT

1 top of me and about that time the man with the knife
2 came walking up, and he started -- he spread my legs out
3 so that -- to help the other man, the man with the gun,
4 and he finally finished the act.

5 And they -- the man with the knife said he wanted
6 his turn, but the man with the gun said, no, no, we don't
7 have enough time.

8 So they talked in some code language. I thought
9 they were saying they had to go or they were in a hurry.
10 So they told me to put on my clothes and we walked back
11 down the path to where Phillip was, but he was gone when
12 we got there.

13 And both of them got in the car and drove away.

14 Q. At this point, were you able to put your clothing
15 back on?

16 A. My pants and my top, yes.

17 Q. Once they drive off in your car, are you then
18 alone?

19 A. Yes.

20 Q. Can you see anything from where you are?

21 A. My eyes adjusted so I could see the road and I heard
22 voices, and I just started calling out to Phillip. He
23 came and we found each other.

24 Q. And once you get back with Phillip, what then starts
25 to happen?

MRS. DAVIDSON ON DIRECT

1 A. It all happened really fast then. The ambulance
2 came and the police were there. That's kind of chaos to
3 me at that point.

4 Q. And did the ambulance take you to the hospital?

5 A. Yes.

6 Q. And did you undergo any kind of examination or any
7 treatment that night?

8 A. They did a rape kit on me.

9 Q. Describe to the jury what exactly is a rape kit?

10 A. Um, you are not allowed to drink any water or any-
11 thing and they go through every inch of your body, trying
12 to get samples.

13 They scan for fibers or anything to match up to the
14 perpetrator.

15 Q. Do you recall if your rapist was wearing a condom?

16 A. Yes.

17 Q. During the attack? He was?

18 A. Yes.

19 Q. Okay.

20 A. He did tell me -- he told me -- these are his words
21 -- I'm sorry. To turn around and suck but don't touch
22 me.

23 Q. At any point did you have a physical fight with
24 your assailant or scratch him in any way?

25 A. No. I accidentally touched him and he said don't

MRS. DAVIDSON ON DIRECT

1 touch me.

2 Q. So with him wearing a condom was there a lot of con-
3 tact, physical contact, with this person?

4 A. Well, when he was on top of me or behind me we were
5 touching. I could see the color of his skin.

6 Q. And I apologize, but do you know if he ejaculated?

7 A. I believe he did.

8 Q. Into the condom?

9 A. Yes.

10 Q. Did you see what he did with the condom?

11 A. I did not, no.

12 Q. How about his clothing? What was he wearing that
13 night?

14 A. Just long pants and a long sleeve shirt is all I can
15 remember.

16 Q. What color were his pants and shirt?

17 A. They were dark.

18 Q. Did you see his face?

19 A. It was covered with a mask.

20 Q. What kind of mask was he wearing?

21 A. I don't know.

22 Q. Was it like a Halloween mask?

23 A. No. I couldn't see very well.

24 Q. Did it have eyeholes or . .

25 A. It had eyeholes.

MRS. DAVIDSON ON DIRECT

1 Q. Do you recall anything else about a physical de-
2 scription of this individual with the gun?

3 A. He wasn't very big.

4 Q. Do you recall if he was white, black, hispanic?

5 A. I saw that he was black.

6 Q. Mrs. Davidson, thank you. Please answer anything
7 Defense Counsel has.

8 A. Yes.

9 THE COURT: Mr. Brown.

10 MR. BROWN: May it please the Court?

11 CROSS EXAMINATION

12 BY MR. BROWN:

13 Q. Good afternoon, Mrs. Davidson.

14 A. Good afternoon.

15 Q. And I apologize for everything that happened. Ob-
16 viously, you spoke to some folks that night after the
17 police showed up?

18 A. Yes, sir.

19 Q. And did you ever speak to Detective Ott?

20 A. I did. I don't know if it was that night.

21 Q. And did you speak with a gentleman named John
22 Kelleher?

23 A. I don't remember.

24 Q. From the Sheriff's Department?

25 A. I may have. I'm not sure.

MRS. DAVIDSON ON CROSS

1 Q. And did you mention to Detective Kelleher that once
2 you got to the bank the person with the gun took your
3 purse from you?

4 A. I don't remember.

5 Q. You don't remember making that statement?

6 A. I don't remember.

7 Q. And the person with the gun is the person that took
8 you down to the ballfield area?

9 A. Yes.

10 Q. And that is the one you described as not very big?

11 A. Yes, sir.

12 Q. And did you also at some point in time speak with
13 a Ms. Katz from Hope Haven?

14 A. Yes.

15 Q. And did you give her information on May 26th that
16 drugs or alcohol may have been involved in this?

17 A. No.

18 Q. And when you got to the hospital, did you speak to
19 a Dr. Raymond?

20 A. I don't remember the doctor's name.

21 Q. Could you speak up a little?

22 A. I don't remember.

23 Q. Did you speak with more than one doctor?

24 A. I don't remember.

25 Q. Was it male doctors you spoke with?

MRS. DAVIDSON ON CROSS

1 A. I'm sorry, sir. I don't recall if it was a male or
2 a female.

3 Q. Did you speak to a nurse?

4 A. Yes.

5 Q. And did she take down -- she asked you a bunch of
6 questions about if you had bathed or eaten anything --
7 questions like that?

8 A. I believe so.

9 Q. Okay. Did she appear to have -- to be taking notes?

10 A. I think so.

11 Q. That could have been maybe at three o'clock in the
12 morning at that point?

13 A. It could have.

14 Q. And do you recall telling her that one suspect was
15 medium built, less than six feet tall, and the other
16 suspect was large, stocky-built, taller than six feet?

17 A. I don't recall giving her a description.

18 Q. Is it possible you did tell her that?

19 A. I don't think so.

20 Q. Do you have any animosity toward the folks at
21 Beaufort Memorial Hospital?

22 A. They were wonderful.

23 Q. So she would have no reason to misrepresent what
24 you told her?

25 A. Right.

MRS. DAVIDSON ON CROSS

- 1 Q. And it's been a number of years?
- 2 A. Uh hm.
- 3 Q. Did you take notes from that interview?
- 4 A. Not from that interview.
- 5 Q. Did you later on take notes regarding this incident?
- 6 A. No, I only wrote a statement.
- 7 Q. And in that statement, did you give a description
- 8 of the suspect?
- 9 A. I don't recall.
- 10 Q. Would a chance to look at the state refresh your
- 11 recollection?
- 12 A. Sure.
- 13 MR. BROWN: May I approach?
- 14 THE COURT: Yes.
- 15 BY MR. BROWN:
- 16 Q. This is a three page statement. If you would let
- 17 me know when you are ready.
- 18 A. Okay.
- 19 (Brief pause in proceeding)
- 20 A. I'm ready.
- 21 Q. Now, one person is a smaller gentleman and one is
- 22 taller than the smaller gentleman.
- 23 A. I thought he was.
- 24 Q. Okay. The second person touched me in a sexual
- 25 manner?

MRS. DAVIDSON ON CROSS

1 A. The second person did not rape me but did open my
2 legs up and keep me down so that the gentleman with the
3 gun could rape me.

4 Q. And that person fondled you going back to the car?

5 A. Yes.

6 Q. In a sexual manner?

7 A. Yes.

8 Q. Now, I want to make sure I understand. There is
9 no question that that was not the same person?

10 A. That was not the same person that raped me.

11 Q. No question?

12 A. No question.

13 Q. And I don't mean to be graphic here, but when he
14 fondled you was it an accidental touching, or was it
15 very intentional?

16 A. He was grabbing me all over, making rude comments.
17 I had my clothes on.

18 Q. You had your clothes on and he grabbed on you. Did
19 you feel him?

20 A. . .

21 Q. I mean, I don't know how close he was to you, but
22 it was at least arm's length?

23 A. Yes. He walked me back to the car.

24 Q. Did he still have a knife?

25 A. I don't know.

MRS. DAVIDSON ON CROSS

1 Q. He was the person you were saying had the knife
2 earlier?

3 A. Yes.

4 Q. Okay. Now, he was fondling you and you said it was
5 an intentional and inappropriate sexual contact?

6 A. Yes, sir.

7 Q. And part of the reason you know that is that he had
8 made inappropriate comments while he was doing the
9 touching?

10 A. Yes.

11 Q. All right. And was he wearing cloth, garden type
12 gloves, or do you know?

13 A. I don't know.

14 Q. Did you feel his gloved hands?

15 A. I could feel hands on me. I don't know if they
16 were gloved or not.

17 Q. And your hands weren't gloved?

18 A. No.

19 Q. And if I can go back -- did the gentleman who
20 raped you put this condom on while he was wearing cloth
21 type garden gloves?

22 A. . .

23 Q. While he was opening the condom wrapper?

24 A. I did not see him. He made me keep my back turned
25 to him.

MRS. DAVIDSON ON CROSS

1 Q. Okay. Could you tell if he was taking gloves on
2 and off?

3 A. I couldn't tell.

4 Q. And when he laid on top of you, were his hands
5 gloved at that time?

6 A. I don't know.

7 Q. Do you recall feeling any glove-type garden gloves
8 on your body?

9 A. I don't think he touched me.

10 Q. With his hands, he didn't touch you?

11 A. With his hands.

12 Q. How about the gentleman that held your legs, did
13 he do that with his hands?

14 A. Yes.

15 Q. Do you recall cloth type gloves being worn?

16 A. I can't recall.

17 Q. So you can't say he was wearing gloves at that
18 time?

19 A. I can't say for sure.

20 Q. Can you say whether he was or was not wearing
21 gloves -- either one?

22 A. I'm sorry. I don't know.

23 Q. But there is no questions that both persons had in-
24 appropriate sexual contact with you?

25 A. One much more so than the other.

MRS. DAVIDSON ON CROSS

1 Q. But no question they both did?

2 A. Right.

3 Q. Okay, and so one person that walked you back to
4 the car, did he collect with his hands any of your be-
5 longings such as your shoes or maybe your bra and panties?

6 A. I can't remember.

7 Q. Was he touching you with one or both hands?

8 A. You'll have to forgive me. It's hard to remember
9 and I don't know if it was one or both hands.

10 Q. So this is the bigger one?

11 A. The one that appeared a little bit bigger than the
12 other one.

13 Q. And so the one that appeared bigger touched you
14 maybe with one or both hands, and you don't recall him
15 having your bra or panties or shoes?

16 A. Correct.

17 Q. Okay. You couldn't find your -- any of those items
18 at the football field?

19 A. My -- I believe I got my shoes back but not my
20 bra and panties.

21 Q. From the football field?

22 A. They were not on the football field.

23 Q. In the ballfield area?

24 A. I got my shoes back. I don't know how. I never
25 did get my bra and panties back.

MRS. DAVIDSON ON CROSS

1 Q. And would it surprise you to find out that the
2 shoes came out of the car seat, the driver's seat of
3 the car?

4 A. No.

5 Q. Where were the bra and panties?

6 A. I don't understand. Would it surprise me? What
7 do you mean?

8 Q. Or does that sound familiar that they were in the
9 car? I don't know.

10 If law enforcement said here's your shoes back, we
11 found them in the car seat?

12 A. I don't recall that.

13 Q. You don't recall them telling you that?

14 A. No.

15 Q. Well, let me just ask you just briefly -- do you
16 recall telling Heather Klingon on May 26th that you
17 could not find your bra or panties or shoes even though
18 you are sure you wore them to the assault site?

19 A. I don't remember telling anyone that but I believe
20 that is what happened, yes.

21 Q. Okay, and do you recall telling her or in your writ-
22 ten statement you made to the police, do you recall
23 telling Ms. Klingon that the -- that while you were walk-
24 ing back to the car the bigger person was fondling you
25 the entire time?

MRS. DAVIDSON ON CROSS

1 A. I know that is what happened but I don't recall --
2 I don't know who I told that to.

3 Q. And, of course, I asked you about the sexual as-
4 sault report that was filled out at three o'clock in the
5 morning.

6 A. Uh hm.

7 Q. Do you also recall telling Ms. Klingon that one per-
8 son was medium build, less than six feet, and that one
9 person was a black male greater than six feet?

10 A. I don't remember ever saying greater than six feet.

11 Q. Neither at three o'clock or at three thirty?

12 A. I don't recall saying that.

13 Q. Do you dispute it?

14 A. I don't dispute it. I just don't remember.

15 Q. And I want to ask you -- I think it already came
16 out but you're sure that was your driver's license and
17 your hotel key?

18 A. Yes, sir.

19 Q. And those items were in your purse?

20 A. Yes.

21 Q. No question about it?

22 A. No question.

23 Q. Mrs. Davidson, you are about five foot six?

24 A. Five foot three.

25 Q. Let me ask you, when they did a report at the

MRS. DAVIDSON ON CROSS

1 hospital, do you know why they would put you down at
2 five foot six?

3 A. No.

4 Q. And when you spoke to the police, did you tell them
5 you were five foot six?

6 A. I don't think so.

7 Q. And your husband was in here to testify that he is
8 over six feet tall?

9 A. Yes, sir.

10 MR. BROWN: Beg the Court's indulgence.

11 BY MR. BROWN:

12 Q. Did you ever speak to an Officer Seth Brodnay?

13 A. I don't recall that name.

14 Q. Do you recall which officers you did speak with?

15 A. I saw some of them here today.

16 MR. BROWN: No further questions, Your Honor.

17 THE COURT: Redirect?

18 SOLICITOR: Just briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY SOLICITOR:

21 SOLICITOR: May I approach?

22 THE COURT: Yes.

23 Q. Mrs. Davidson, Mr. Brown asked you about your state-
24 ment that night. Is this your actual handwritten state-
25 ment?

MRS. DAVIDSON ON REDIRECT

1 A. Yes.

2 Q. I ask you on page two -- what physical description
3 do you give on page two of the man with the gun?

4 Top of page two.

5 A. The smaller guy then walked me down the path away
6 from the car.

7 Q. And on the bottom of the page, what physical de-
8 scription do you give of the man with the knife?

9 A. The guy who raped me went in a different direction
10 to the car and the bigger guy walked me back to the car.

11 Q. What word is before bigger?

12 A. The . . .

13 Q. Is it slightly on there somewhere?

14 A. Let me find it. Yes. His friend, in parenthesis
15 the slightly bigger guy, said he wanted to have his turn.
16 Do you want me to go on.

17 Q. No. Thank you, Mrs. Davidson.

18 SOLICITOR: Your Honor, at this time the State
19 would move the statement into evidence. It would be
20 State's Exhibit 35.

21 THE COURT: Mr. Brown?

22 MR. BROWN: May we approach?

23 THE COURT: Yes.

24 (Conference at the bench between counsel and the
25 Court off the record)

MRS. DAVIDSON ON REDIRECT

1 SOLICITOR: I have no further questions.

2 THE COURT: All right. Anything further, Mr.
3 Brown?

4 MR. BROWN: Very briefly.

5 RECROSS EXAMINATION

6 BY MR. BROWN:

7 Q. No question that your description of the actual size
8 of the rapist was that he was the smaller of the two,
9 consistently, from what you said, and that the non-rapist
10 fondler was the bigger person?

11 A. No, sir.

12 THE COURT: Solicitor?

13 SOLICITOR: Nothing further.

14 THE COURT: You can step down, Mrs. Davidson.

15 (Witness excused from stand)

16 THE COURT: Ladies and gentlemen of the jury, at
17 this time I need to take up a matter of law with the
18 attorneys.

19 I'm going to go ahead and excuse you to the jury
20 room.

21 I'm going to remind you that you are not to dis-
22 cuss this case.

23 Again, it would not be appropriate for you to have
24 any discussion of the case until you have heard the clos-
25 ing arguments of counsel and my charge on the law.

1 Go back and get a coke and we'll be with you very
2 shortly.

3 (Jury excused from Courtroom at 3:56 P.M.)

4 BAILIFF: The jury is clear, Your Honor.

5 THE COURT: Thank you.

6 Before we go ahead and take the matters that we
7 need to put on the record, let's take a five minute
8 break, and I appreciate that, Mr. Brown.

9 Solicitor, respectfully, would you not put evi-
10 dence on the jury rail for me?

11 SOLICITOR: Yes, maam.

12 THE COURT: Because they are coming and going, and
13 it might get tossed around.

14 I appreciate that. Be back in five minutes and we
15 will put those things on the record.

16 Thank you.

17 (Court stood in recess from 3:58 to 4:10 P.M., when
18 the matter resumed)

19 MR. BROWN: Your Honor, for scheduling issues I'm
20 trying to find out about bringing Mr. Morrison back. My
21 paralegal is still here and I need him to go tell Mr.
22 Morrison when we'll need him back here.

23 Not today obviously, but I wonder if we need to
24 have him here tomorrow?

25 THE COURT: Solicitor, do you think you will be

1 continuing through tomorrow, or do you have any idea?

2 SOLICITOR: I will definitely be continuing through
3 tomorrow, and I'm actually about six witnesses behind
4 where I thought I would be already. So I know I'll be
5 putting witnesses up tomorrow.

6 I've got a few short ones I can put up this evening
7 and they are waiting in the wings. There are still --
8 even if I got all of these up today, I still will have
9 more tomorrow.

10 THE COURT: Do you believe you will take all of to-
11 morrow?

12 SOLICITOR: I don't know. It really depends on how
13 it goes, but I will take a good portion of tomorrow. I
14 already believe that.

15 MR. BROWN: However Your Honor thinks because I
16 don't mind. I mean, I can bring him here . .

17 THE COURT: Again, I can't guess how fast witnesses
18 go. I can't control how long it takes for you to ask
19 questions on direct and how long it will take for your
20 cross examination.

21 So you have to use your best estimate and we'll have
22 to work under that theory of your own best judgment,
23 Mr. Brown.

24 MR. BROWN: Besides Dr. Smith, I have the issue of
25 another person under subpoena. Mr. Rowell, my investigator

1 as you know, is on the way back up here, and I understand
2 her husband called and they were given a subpoena in the
3 State of South Carolina . . .

4 THE COURT: Who are you talking about?

5 MR. BROWN: Heather Klingon who was a nurse that . . .

6 THE COURT: Is she the ER nurse that I understand
7 is living in Virginia at this time?

8 MR. BROWN: She is here.

9 THE COURT: Oh, she is here?

10 MR. BROWN: In the State of South Carolina. She
11 has been served with a subpoena and her husband told my
12 investigator they will see me tonight, and I had Mr.
13 Rowell come back up here because I thought it best to do
14 this now -- that was a duly served subpoena in the State
15 of South Carolina.

16 THE COURT: Well, obviously she is subject to the
17 subpoena powers, and I presume she is going to be here.
18 So Mr. Rowell needs to get with her and tell her she
19 needs to be here.

20 MR. BROWN: I understand, but they called up and
21 said they weren't going to be here. I have asked Mr.
22 Rowell to come during every break we have, and he is on
23 his way.

24 THE COURT: I understand he is going to continue to
25 try to get ahold of her, and that she is going to be

1 here. We'll have to work on that premise.

2 Let's put on the record, Mr. Brown, . .

3 MR. BROWN: Yes, maam.

4 THE COURT: . . your objections or maybe it was the
5 Solicitor's objections to certain testimony that came
6 out during Mrs. Davidson's testimony.

7 SOLICITOR: Would you like me to start, Your Honor?

8 THE COURT: Yes, maam.

9 SOLICITOR: The first objection was when Mrs. Davidson
10 was on the stand and Mr. Brown -- we had a pre-trial
11 hearing and you ruled out any questions and said he could
12 not go into Mr. Davidson's prior history, could not ask
13 him anything about the events or ever lying to law en-
14 forcement.

15 That was addressed at pre-trial.

16 THE COURT: And you made reference to a 1996 arrest
17 for what originally was distribution of cocaine, for which
18 he pled guilty to conspiracy.

19 I understand it was conspiracy to distribute cocaine,
20 is that correct?

21 SOLICITOR: Well, the conviction was actually in
22 1993. He got out of prison sometime in 1996 and was on
23 parole.

24 THE COURT: Okay.

25 SOLICITOR: But Mr. Brown intimated that he made

1 some statement during that investigation at some point
2 -- I'm not sure when -- about him making some statement
3 about his Uncle Jay and not being initially forthcoming
4 about that.

5 I know there was a discussion, and it was ruled he
6 was not to go into any of that. Once Mr. Davidson was
7 on the stand I believe I had to ask to approach three
8 separate times because of that issue.

9 He continued to try to violate the Court Order,
10 despite not only the first ruling but continuous conver-
11 sations at the Bar that he sought to go into it, and he
12 continued to go into it, and he continued to attempt to
13 go into it.

14 I know it's confusing for the jury when I have to
15 ask to approach, which makes me look bad. They think I
16 am trying to hide something, when, in fact, Mr. Brown is
17 the one violating the rules or violating the Order that
18 was already issued that he was well aware of.

19 He did everything he could to go into that, and he
20 continued to ask Mr. Davidson where he worked in 1996 and
21 then he asked him did he have an Uncle Jay, and he just
22 continued on.

23 THE COURT: For the record, he asked him where he
24 worked in 1996, is that correct?

25 SOLICITOR: Yes, maam.

1 THE COURT: Which had to do with what? That he was
2 allegedly dealing drugs as opposed to working a lawful
3 job, or . . .

4 SOLICITOR: Yes. I can only guess. I guess if he
5 was in prison he was hoping he would say, I was in prison
6 in 1996. Or I was on parole in 1996.

7 I think he was hoping he would open a door that way,
8 which is a violation of the Order, and at some point --
9 you know, the State was being very patient, but at some
10 point we would possibly ask for sanctions.

11 It is getting so out of hand with some of these is-
12 sues.

13 THE COURT: Okay, and, respectfully, the Uncle Jay
14 on that -- of course, I didn't know where Mr. Brown was
15 going on that, but my understanding is there is some kind
16 of allegation as to that drug conspiracy back in 1993;
17 that his Uncle Jay -- I don't know if it's his real uncle
18 or not -- was a Codefendant, is that correct, or somehow
19 was involved in this, is that correct?

20 SOLICITOR: What I got out of Mr. Brown's comment
21 earlier was that he believed Mr. Davidson made comments
22 to law enforcement about not being truthful about Uncle
23 Jay's involvement initially.

24 That is what I got out of Mr. Brown. I have no
25 idea if that's true. I have not discussed that with Mr.

1 Mr. Davidson and don't intend to, but it was brought up
2 pre-trial that he had made untruthful remarks to law en-
3 forcement with regards to his Uncle Jay.

4 MR. BROWN: Your Honor, I haven't even been able to
5 tell the Court on the record what I tried to get out,
6 and so at some point I'd like to say what I was trying
7 to get out.

8 THE COURT: Well, what are you trying to get out,
9 sir?

10 MR. BROWN: And before I'm accused of . .

11 THE COURT: What are you trying to get out, Mr.
12 Brown?

13 MR. BROWN: Okay. Regarding his Uncle Jay, there
14 was a report that was given regarding a law enforcement
15 investigation about that drug conspiracy, and if I may,
16 with the Court's indulgence while I find these records --
17 and as far as Uncle Jay is concerned, I will read to the
18 Court the information which I know which has not one
19 thing to do with exclusion of 609 evidence.

20 Now, there is no doubt that it somehow is tangen-
21 tially factually related to the underlying fact and it
22 was a 609 conviction, but I also did not go into anything
23 having to do with his conviction, his drug conviction.

24 So here the question is whether or not he was
25 asked to give a statement to law enforcement regarding

1 Uncle Jay and whether he was truthful then.

2 THE COURT: This was back in what year, sir?

3 MR. BROWN: I can only guess the mid-nineties. I
4 can read you the basis for my question. Quote, he,
5 Phillip Davidson, said he did not inform the authorities
6 about Jay's role in the distribution because Jay was
7 going to financially support Phillip.

8 In other words, he covered up information to the
9 authorities, Your Honor, which has nothing to do with the
10 conviction.

11 He may never have been charged. The jury may never
12 have known that he was charged.

13 What the jury would have heard, and I would have
14 proffered -- I will proffer now -- is I would have asked
15 whether or not he gave untruthful or less than completely
16 truthful information to law enforcement during an inves-
17 tigation during a prior specific instance -- untruthful-
18 ness, which is allowed under a different rule.

19 And so . . .

20 THE COURT: Under Rule 608 B, sir, but, respectfully,
21 sir, . . .

22 MR. BROWN: Yes, maam.

23 THE COURT: . . it is in the discretion of the
24 Court . . .

25 MR. BROWN: Yes, maam.

1 THE COURT: . . . whether or not it is probative of
2 truthfulness or untruthfulness, and whether or not Mr.
3 Davidson made a statement back in the mid or early nine-
4 ties with regards to a drug case that he was involved in
5 has absolutely no relevance, nor is it probative of
6 truthful or untruthfulness of his recollection of his ac-
7 counts in this case where he was a victim of kidnapping
8 and armed robbery and car jacking, and his wife was a
9 victim of CSC in the first degree.

10 I don't see how that can be relevant to this case,
11 and I don't see that it is relevant or probative to his
12 truthfulness or untruthfulness, particularly in light
13 of there not being any conflicting statements or of any-
14 thing that is spurious involved in this case.

15 MR. BROWN: There is a conflicting statement in
16 other respects, Your Honor. From our advocate view of
17 the evidence which is the only way I can do it.

18 I'm not the Judge, I'm not the State.

19 THE COURT: Conflicting -- which conflicting state-
20 ments are we talking about?

21 MR. BROWN: The statements where he told the police
22 in response to their questions about what -- the descrip-
23 tion of the assailants.

24 He gives that statement, and I said, what does it
25 say about their height, and it says nothing about it,

1 and I asked him was he asked about the description and
2 he said he was, and now he comes in thirty-three or thir-
3 ty-four months later and has a description, and this is
4 a gentleman who by his own admission has been untruthful
5 with law enforcement in the past.

6 THE COURT: I don't see that as truthfulness or un-
7 truthfulness, respectfully.

8 His recollection of events -- the question was asked
9 at the time of the incident and then subsequent. I do
10 think it was proper in your questioning when you started
11 asking him what court proceedings he had been to where he
12 had an opportunity to view Mr. Hicks or Mr. Howard.

13 However, I will clearly put the objection on the re-
14 cord which stated -- you clearly opened the door when you
15 asked him what court proceedings he was present at in an
16 effort to glean when Mr. Davidson had an opportunity to
17 see not only your client but Mr. Hicks.

18 You asked him what court proceedings, and he is a
19 lay person, and the first thing that came into his mind
20 was the bond hearing because I believe -- I may not be
21 correct, but I believe the motion to reconsider the bond
22 was probably the last court hearing that Mr. Davidson
23 had been present at.

24 I can tell you I know that because I was the Presid-
25 ing Judge for it, so that is his response to that, sir,

1 and you opened that door yourself clearly, which got me
2 to one of your objections to be put on the record.

3 MR. BROWN: To make sure I understand, that was a
4 hearing where Mr. Davidson approached me and threatened
5 me in the back of the Courtroom?

6 THE COURT: I have no idea what he did, sir, but
7 . . .

8 MR. BROWN: We had a conference in Chambers about
9 it at the bond hearing in May of 2008.

10 THE COURT: Respectfully, sir, I have no idea what
11 was done off the record. I'm telling you that is the last
12 one that I recall, and apparently that was the last one
13 Mr. Davidson recalls.

14 MR. BROWN: And -- yes, maam.

15 THE COURT: Again, Mr. Brown, so we are clear, you
16 opened that door.

17 As far as any untruthfulness or anything having to
18 do with any discussion with law enforcement prior to 2006,
19 it has really no relevance in this case, and, again,
20 that was the basis of my ruling.

21 Mr. Davidson is off the stand, and for the record
22 that is how I have ruled.

23 Move on, please, to the next objection?

24 MR. BROWN: And to make sure it's clear, . .

25 THE COURT: Mr. Brown, . .

1 MR. BROWN: I want to make sure I'm clear.

2 THE COURT: Mr. Brown, don't interrupt me. So we
3 are clear, . .

4 MR. BROWN: Yes, maam.

5 THE COURT: . . I don't want you rephrasing my rul-
6 ings from the bench. They are . .

7 MR. BROWN: Yes, maam.

8 THE COURT: They are my rulings. I understand you
9 are trying to make this objection pursuant to Rules of
10 Evidence 608 -- I understand that.

11 We all work under the same rules, and, respectfully,
12 sir, you have made your point. Move on.

13 MR. BROWN: That is . .

14 THE COURT: What is your next point?

15 MR. BROWN: The next issue I had sought to go into
16 is whether Mr. Davidson had been truthful in his tax re-
17 turns as far as money he earned in his drug dealings,
18 or to report the money he earned in his drug dealings,
19 which had nothing to do with his conviction.

20 THE COURT: Again, on the same basis -- and I under-
21 stand you're trying to get into 608 B.

22 MR. BROWN: Yes, maam.

23 THE COURT: It has nothing to do with this case.
24 It has nothing to do with any truthfulness or untruthful-
25 ness of Mr. Davidson in this case.

1 MR. BROWN: And what we would proffer is the informa-
2 tion that there are three things . .

3 THE COURT: All right. Respectfully, I heard the
4 three. What's the next one?

5 MR. BROWN: The conviction, the false statement to
6 law enforcement, and then the false tax return statement.

7 THE COURT: Anything further? Anything further?

8 MR. BROWN: That's what I offer here. Now there
9 was a proffer of a statement from Amy Davidson by the
10 State and I raised an objection.

11 THE COURT: Okay.

12 MR. BROWN: And the objection there . .

13 THE COURT: What statement?

14 MR. BROWN: I don't . .

15 THE COURT: What statement?

16 MR. BROWN: Actually they go back to May and it
17 was a statement, a written statement, . .

18 THE COURT: The handwritten statement, sir, . .

19 MR. BROWN: Yes, maam.

20 THE COURT: . . and the Solicitor tried to introduce
21 it into evidence because you used it as a basis to im-
22 peach her testimony. Is that right?

23 MR. BROWN: I refreshed her recollection with it when
24 she asked.

25 THE COURT: And, again, you used that statement and

1 asked if that is how she recounted the events.

2 You used it to impeach her statement, is that not
3 correct?

4 MR. BROWN: She agreed that's what she had said. I
5 don't think I impeached her.

6 She said she couldn't remember, and I asked her if
7 she wrote a statement; if it would refresh her memory.
8 Your Honor smiled.

9 I approached and gave it to her and asked her to let
10 me know when she finished reading it, and she looked at
11 me and I asked her then what she had told law enforcement
12 about the description of the two suspects.

13 It was not impeachment.

14 THE COURT: I'm surprised I smiled during that, but
15 with that said, . .

16 MR. BROWN: You smiled when I asked if that would
17 refresh her recollection.

18 SOLICITOR: May I, Your Honor?

19 THE COURT: Yes, go ahead.

20 SOLICITOR: He also asked Ms. Davidson if she had
21 told the same nurse, Heather Klingon, that night who was
22 taking notes that one was medium and one was large, which
23 is different, and was it her statement that evening.

24 So he's asked her about two separate statements
25 that she gave that night.

1 Clearly I would not have tried to introduce it on
2 direct. She testified, he brought it up on cross, and
3 this rebuts what he did on cross, which was to try to
4 tell the jury that she gave differing descriptions of the
5 suspect.

6 He is trying to say that she told the same nurse
7 one was medium and one was large, and that she gave a
8 statement to law enforcement of smaller and slightly
9 larger than smaller, which are two separate statements,
10 and he is going to jump all over that.

11 In his opening statement he talked a lot about
12 height, six foot this, six foot that in his opening state-
13 ment.

14 That's why this is an issue. He has already tried
15 to say she has given two separate identifying sizes for
16 the suspects.

17 That is why the State on Redirect thought it was
18 probative to introduce her statement that was given that
19 night.

20 THE COURT: What rule are you basing getting her
21 statement in?

22 MR. BROWN: I would object on hearsay, just to make
23 sure we're clear.

24 THE COURT: When was that statement given?

25 SOLICITOR: It was given the night of 5 26 06. That

1 is the date on the statement.

2 THE COURT: It is still a time she is recounting the
3 events and still -- you know, is it a present-sense im-
4 pression or an excited utterance?

5 What is it that you are saying?

6 SOLICITOR: Under Rule 801, under D, statements
7 which are not hearsay. A statement is not hearsay if a
8 prior statement by witness . .

9 (Reading Rule rapidly)

10 THE COURT: Respectfully, I am not going to rule on
11 this until I have had an opportunity and you all have
12 had an opportunity to look at the case law allowing a
13 prior statement in based on inconsistency.

14 So we are going to give you overnight to do that
15 clearly, and I will make a determination in the morning.
16 You all bring in whatever case law you've got.

17 MR. BROWN: Well, we believe it is consistent, not
18 inconsistent.

19 THE COURT: I understand.

20 MR. BROWN: Okay.

21 THE COURT: Anything else before I bring the jury
22 back in?

23 MR. BROWN: Yes, maam. Mr. Rowell has been here
24 and I would ask -- as I told the Court, I would ask that
25 Mr. Rowell address the Court about what Mr. Klingon, I

1 guess, . . .

2 THE COURT: Mr. Rowell, you spoke apparently with
3 Ms. Klingon's husband, and I understand they are in
4 South Carolina.

5 It has been pointed out they are under subpoena and
6 are required to come to trial. You notified them of
7 that? Have you done that, sir?

8 MR. ROWELL: I have, Your Honor.

9 THE COURT: All right.

10 MR. ROWELL: Mr. Klingon is upset about some of the
11 issues, and apparently he has some time issues. They
12 have been sitting over at the hotel under some distress.

13 THE COURT: Well, respectfully, you need to tell
14 them she is under subpoena and obviously we're going to
15 get to them as soon as we possibly can.

16 Make sure they understand what a subpoena is and
17 that she is required to be here.

18 MR. ROWELL: I have asked them to come to the Court-
19 house so you can speak to them in person.

20 THE COURT: Thank you. Anything further before we
21 bring the jury back, from the State?

22 SOLICITOR: Nothing from the State.

23 THE COURT: From the Defense?

24 MR. BROWN: There is -- at six thirty . . .

25 THE COURT: You have baseball, correct?

1 MR. BROWN: Yes, maam.

2 THE COURT: What time do you have to be out of here?

3 MR. BROWN: Six thirty. It starts at seven across
4 the county.

5 THE COURT: Okay. I don't believe we'll go that
6 long, depending on the witnesses. I anticipate we will
7 go until six o'clock. Of course, if we go over that --
8 you understand that I would like to complete the witness-
9 ses that they have.

10 MR. BROWN: Yes, maam.

11 THE COURT: All right, bring the jury in.

12 (Jury returned to the Courtroom at 4:32 P.M.)

13 BAILIFF: Jury is entering, Your Honor.

14 THE COURT: Thank you.

15 BAILIFF: The jury is seated, Your Honor.

16 THE COURT: Thank you. Welcome back, ladies and
17 gentlemen of the jury.

18 Solicitor, call your next witness.

19 SOLICITOR: Thank you, Your Honor. The State calls
20 Donald Rentz.

21 DONALD RENTZ, being duly
22 sworn, testified as follows:

23 CLERK: Please be seated and state your full name.
24 Spell your last name.

25 WITNESS: Donald C. Rentz, R E N T Z.

1 DIRECT EXAMINATION

2 BY SOLICITOR:

3 Q. Good afternoon, Mr. Rentz.

4 A. Afternoon.

5 Q. Where are you employed?

6 A. State of South Carolina. Woods Bridge downtown.

7 Q. What do you do at the Woods Bridge?

8 A. Operator, twelve to eight.

9 Q. All right, and what do you operate?

10 A. The Woods Bridge Span.

11 Q. What do you do?

12 A. Open and close the span for water traffic.

13 Q. So you move the bridge?

14 A. Yeah.

15 Q. And from you -- where exactly on the bridge do you
16 work?

17 Is there an office there or . .

18 A. There is a bridge house on the center -- at the top
19 of the center of the span.

20 Q. And from that position, what can you see?

21 A. I can see all around.

22 Q. For a pretty good distance?

23 A. Yeah, a good view.

24 Q. Can you see downtown Beaufort?

25 A. I can certain of it.

MR. RENTZ ON DIRECT

1 Q. Water front park?

2 A. Yeah.

3 Q. How about toward Lady's Island?

4 A. I can see the roadway, yeah. A straight line.

5 Q. How long have you been working on the bridge?

6 A. Thirty-five years.

7 Q. I'm going to ask you about the early morning hours
8 of May 26, 2006. Did you somehow become involved with
9 assisting law enforcement?

10 A. Yes.

11 Q. Can you describe that? How you assisted them that
12 night?

13 A. I got a phone call. Officer O'Neill called me and
14 said if two males were walking across the bridge to give
15 him a call.

16 Q. Okay.

17 A. And I see them walk across the bridge towards town
18 and they was waiting in water front park, and as they
19 got up the bridge they ran into the law and law enforce-
20 ment got them.

21 Q. Do you recall what time you made that phone call,
22 what time you see these fellows?

23 A. About four something -- five A.M.

24 Q. And what direction were they coming from?

25 A. They were coming off Lady's Island.

MR. RENTZ ON DIRECT

1 Q. So they were headed toward downtown?

2 A. Yeah.

3 Q. Can you give any kind of description of these two
4 fellows?

5 A. I couldn't really tell you. They was black.

6 Q. Do you recall what kind of clothes they were wear-
7 ing?

8 A. . .

9 Q. What color?

10 A. Not one hundred percent, no. It seemed like one of
11 them might have had the sleeves cut off a sweatshirt,
12 you know.

13 Q. Do you recall what colors they were wearing?

14 A. No.

15 Q. Were they kind of walking across the bridge to-
16 gether?

17 A. One was running and the other was walking.

18 Q. Mr. Rentz, please answer anything Defense Counsel
19 may have.

20 THE COURT: Mr. Brown?

21 MR. BROWN: May it please the Court?

22 CROSS EXAMINATION

23 BY MR. BROWN:

24 Q. How are you, Mr. Rentz?

25 A. Good. How about you?

MR. RENTZ ON CROSS

1 Q. Fine. Did you talk to law enforcement about this
2 case after that phone call? Did you speak to them?

3 A. He called up, yeah.

4 Q. Did you ever write a statement to him?

5 A. Yeah.

6 Q. Okay. Did you give any description in that state-
7 ment?

8 A. Black males.

9 Q. Which part of their skin did you see?

10 A. Huh?

11 Q. Which part of their skin did you . .

12 A. All there was to see. It's lit up well.

13 Q. It's lit -- I'll be honest with you. I've never
14 been up there so I don't know.

15 A. It's up there so it's like a bird . .

16 Q. Bird's eye?

17 A. Yeah.

18 Q. So you're looking down at them?

19 A. Yeah.

20 Q. Okay, and you saw them, two black males, coming
21 across the bridge?

22 A. Yes.

23 Q. And going into the B B and T parking lot?

24 A. Uh hm.

25 Q. No further questions.

1 THE COURT: Anything further?

2 SOLICITOR: No further questions.

3 Can we excuse Mr. Rentz?

4 THE COURT: Any objection?

5 MR. BROWN: No objection.

6 THE COURT: You may be excused, sir.

7 (Witness excused)

8 THE COURT: Call your next witness, Solicitor.

9 SOLICITOR: Thank you, Your Honor. The State calls

10 John O'Neill.

11 JOHN O'NEILL, being duly

12 sworn, testified as follows:

13 CLERK: Please be seated and state your name; spell

14 your last name.

15 WITNESS: John O'Neill O apostrophe N E I L L.

16 DIRECT EXAMINATION

17 BY SOLICITOR:

18 Q. Good afternoon, Officer O'Neill. Where are you

19 employed?

20 A. City of Beaufort Police Department.

21 Q. How long have you worked there?

22 A. Thirteen years.

23 Q. What kind of training and background do you have

24 with the police department?

25 What kind of training in law enforcement generally?

OFR. O'NEILL ON DIRECT

1 A. Yes, maam. I've been through the academy, the South
2 Carolina Criminal Justice Academy, back in '97.

3 I started out as a reserve officer back in '94, so
4 that's where I got my experience working in the downtown
5 district.

6 Q. And what are your basic duties working with the City
7 of Beaufort Police Department?

8 A. My basic duties are traffic and patrol, general law
9 enforcement duties.

10 Q. Do you do road patrol . .

11 A. Yes.

12 Q. . . first responder type . .

13 A. Yes.

14 Q. I'm going to ask you about the early morning hours
15 of May 26, 2006. What kind of call did you receive to
16 respond to that evening?

17 A. That morning I signed on duty at three o'clock in
18 the morning because I was working the downtown district
19 and going out to collect coins, and I received a call
20 from Operations Lieutenant McNorman to cease operations
21 as far as collecting coins and to secure a parking lot of
22 B B and T due to a robbery and kidnapping.

23 And so I went to the parking lot at B B and T and
24 secured the area.

25 Q. And once you had responded to that area, did you

OFFICER O'NEILL ON DIRECT

1 do anything?

2 A. I checked all the vehicles back there and had dis-
3 patch by radio to check the registration on all of the
4 vehicles parked back there in the parking lot.

5 SOLICITOR: May I approach the witness, Your Honor?

6 THE COURT: You may.

7 BY SOLICITOR: I show you what have been entered as
8 State's Exhibits 8 and 9, and ask you if you can identify
9 what is shown in these photographs?

10 A. Yes, maam, I can. This is one of the vehicles that
11 was parked in the parking lot back there.

12 Q. And did you run the license tag on that vehicle?

13 A. Yes, maam, I sure did.

14 Q. And who did that tag come back belonging to?

15 A. It came back to a Eddie Howard over on St. Helena.

16 Q. And once you find out -- well, what did you do
17 next?

18 A. I was contacted by Investigator Vortisch. He came
19 on the scene at about three twenty in the morning, and
20 we conducted a search of all the vehicles there.

21 We came upon this vehicle here that belonged to
22 Eddie Howard, and I noticed that the windows were all
23 down and the seat backs were laying all the way back
24 down, and the keys were in the ignition.

25 At that time, Investigator Vortisch told me to go

OFFICER O'NEILL ON DIRECT

1 ahead and . .

2 MR. BROWN: Objection to hearsay.

3 THE COURT: Sustained.

4 SOLICITOR: All right. If I could approach Defense
5 Counsel and show him State's Exhibit Number 10.

6 May I approach the witness?

7 THE COURT: You may.

8 BY SOLICITOR:

9 Q. Officer O'Neill, is Exhibit 10 a fair and accurate
10 depiction of the vehicle that you ob-
11 served?

12 A. Yes, maam, it is.

13 Q. And what does that photograph portray?

14 A. It portrays the exact layout of the vehicle when I
15 observed it in the parking lot there.

16 Q. Can you see the seat area?

17 A. Yes, maam.

18 Q. In what condition were those seats when you found
19 them?

20 A. The seats were all the way to the rear just like in
21 the picture.

22 SOLICITOR: State would move Exhibit 10 into evi-
23 dence, Your Honor.

24 THE COURT: Mr. Brown?

25 MR. BROWN: Without objection.

OFFICER O'NEILL ON DIRECT

1 THE COURT: Admitted, without objection.

2 (Photograph of automobile admitted in evidence
3 without objection as State's Exhibit 10

4 BY SOLICITOR:

5 Q. Now, is there anything further you did with this
6 particular vehicle once you discovered its condition?

7 A. I take my patrol vehicle and pull it behind the ve-
8 hicle and block it in so it cannot be removed from the
9 parking lot.

10 Q. All right, and how long do you stay in that area?
11 You say you responded somewhere in the three A.M. area?

12 A. I was there from three A.M. to five -- four forty-
13 five is when I heard on the radio that they shut down the
14 search over on the island.

15 Q. And did you take any action or did you do anything
16 to follow up on that?

17 A. I called the bridge tender, Donald Rentz, and ad-
18 vised him of what was going on, and asked if he saw any
19 black males come up the bridge, two black males in par-
20 ticular, to contact me on my department cel phone.

21 Q. And what time would that have been?

22 A. It was at four forty-five.

23 Q. And did you hear from Mr. Rentz?

24 A. Yes, maam, I sure did.

25 Q. When did you hear back?

OFFICER O'NEILL ON DIRECT

1 A. Approximately zero five hundred in the morning, and
2 he called and stated that . .

3 MR. BROWN: Objection to hearsay.

4 SOLICITOR: Mr. Rentz has just testified.

5 MR. BROWN: It is still an out of Court statement
6 offered for the truth of the matter asserted, I assume . .

7 SOLICITOR: That's fine.

8 THE COURT: Go ahead and move on.

9 BY SOLICITOR:

10 Q. Based on your conversation with Mr. Rentz, what did
11 you do?

12 A. Looked toward the bridge area and I observed the
13 black male running off the bridge wearing dark trousers
14 and a white tank top tee shirt.

15 I yelled at him to stop, told him I was a police
16 officer, and he continued to run -- didn't even look toward
17 my direction. He ran down Carterett Street.

18 I proceeded toward Carterett Street where he was
19 going, while I was broadcasting the information over the
20 radio.

21 I looked down Carterett Street and didn't see him
22 anywhere and advised officers on the radio that he probably
23 went down Republic Street heading toward Scott
24 Street and West Street.

25 Q. And what did you see next?

OFFICER O'NEILL ON DIRECT

1 A. I started to turn around and proceed back to the
2 vehicle so I could stay with the vehicle, and I saw
3 another black male coming off the bridge, just walking
4 off the bridge.

5 I observed he was tired and haggard, and saw he was
6 dressed in black, totally black clothing.

7 I noticed he didn't have any shoes on, and I told
8 him, come over here and talk to me, and I had him come
9 and stand in front of me, and I looked at him and I said,
10 how about having a seat, and I proceeded to ask him what
11 his name was.

12 He wouldn't provide any information for me, and I
13 told him to give me some ID. He started digging into
14 his pocket and the next thing he's looking around and he
15 gets up and bolts and we're in a foot pursuit back behind
16 B B and T.

17 Q. Did you chase the suspect on foot?

18 A. Yes, maam.

19 Q. And did you catch him?

20 A. I did not catch him. Unfortunately, a manhole cover
21 was kind of damp and I lost traction on the manhole cover
22 and fell down.

23 Chief Clancy came up. I put out a call I was on
24 foot pursuit, and he came up and pursued and finally ap-
25 prehended the suspect.

OFFICER O'NEILL ON DIRECT

1 Q. So to clarify, the first suspect that runs off the
2 bridge apparently gets out of sight?

3 A. Yes, maam.

4 Q. And the second one is walking and you were there and
5 then he was caught?

6 A. Yes, maam.

7 Q. Thank you, sir. Please answer anything Defense Coun-
8 sel has for you.

9 THE COURT: Mr. Brown.

10 MR. BROWN: May it please the Court?

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION

13 BY MR. BROWN:

14 Q. Officer O'Neill, . .

15 A. Yes, sir.

16 Q. . . did you prepare a report in 2006?

17 A. Yes, sir, I did, a supplemental report.

18 Q. Okay, and do you recall the Gullah Festival week-
19 end?

20 A. Yes sir.

21 Q. Okay, and a lot of people were out -- extra people
22 were out for the festival?

23 A. At that time in the morning, there wasn't a whole
24 lot of people out. It was a Friday morning and it was
25 the start of the Gullah Festival, so there weren't a lot

OFFICER O'NEILL ON CROSS

1 of people out at that time of the morning.

2 Q. Do you generally have extra people out for the Gul-
3 lah Festival?

4 A. Not on Friday morning, not at zero three hundred in
5 the morning.

6 It is usually about six o'clock in the morning when
7 we have extra people come out.

8 Q. I got you. Again, not trying to be nitpicking, but
9 there are extra people that come out because of the . .

10 A. Right.

11 Q. . . attraction?

12 A. Right.

13 Q. Okay, and one thing you put down in your report
14 back in 2006 had to do with your description of people
15 you saw?

16 A. Yes, sir.

17 Q. Okay, and you use the phrase black trousers here,
18 and do you recall you put down in your report that the
19 first person who came across the bridge was wearing a
20 white tank top and jogging pants?

21 A. I might have put down in my report that it was black
22 jogging pants. It was black pants, some kind of pants.
23 They were baggy -- baggy type pants.

24 Q. All right, and . .

25 A. So it could have been jogging pants or it could have

OFFICER O'NEILL ON CROSS

1. been regular trousers.

2 Q. Okay, and there is no question . .

3 A. There is no question he had on a white tank top tee
4 shirt on.

5 Q. And there is no question that your memory was fresher
6 back in May of 2006 than it is today?

7 A. I would say so, yes.

8 Q. And the second person you actually came face to face
9 with, did you describe that person as being approximately
10 five foot six?

11 A. Yes, sir.

12 Q. And do you recall describing the first person who
13 came across the bridge as, quote, being a black male ap-
14 proximately six foot tall?

15 A. Yes, sir.

16 Q. And that is consistent with what you reported back
17 in May of 2006?

18 A. Yes, sir.

19 Q. No further questions.

20 THE COURT: Solicitor?

21 REDIRECT EXAMINATION

22 BY SOLICITOR:

23 Q. Back to the clothing, is there anything -- the one
24 you actually saw face to face and had sit down, was
25 there anything unusual about the clothing or its

OFFICER O'NEILL ON REDIRECT

1 condition?

2 A. His clothing was torn and it was wet. It was tot-
3 ally soaking wet. He also had a shirt that he left it
4 when he bolted from me.

5 He left the shirt where he was sitting at, which
6 Officer Shultz collected as evidence.

7 Q. And what was the color of that shirt?

8 A. It was black.

9 Q. Officer O'Neill, was it raining that night?

10 A. No, it wasn't. It was a dry evening.

11 Q. Had it rained earlier that night?

12 A. No, maam.

13 Q. No further questions.

14 THE COURT: Mr. Brown?

15 MR. BROWN: Very briefly.

16 RECROSS EXAMINATION

17 BY MR. BROWN:

18 Q. You mentioned the manhole cover was wet?

19 A. It was from the dew.

20 Q. But there was some moisture out there?

21 A. There was some, yes, sir, from the dew.

22 Q. Okay, and I want to make sure I understand.

23 The fellow that was five foot six that you saw face
24 to face was the one who was arrested by Chief Clancy?

25 A. Yes, sir.

OFFICER O'NEILL ON RECROSS

1 Q. Thank you. Nothing further.

2 SOLICITOR: Nothing further, Your Honor.

3 THE COURT: You may step down.

4 SOLICITOR: May he be excused?

5 THE COURT: Any objection?

6 MR. BROWN: No objection.

7 THE COURT: You are excused.

8 (Witness excused)

9 THE COURT: Solicitor, call your next witness.

10 SOLICITOR: Thank you, Your Honor. The State calls

11 Matt Clancy.

12 MR. BROWN: May we approach?

13 THE COURT: Yes.

14 (Conference at the bench between counsel and the
15 Court off the record)

16 THE COURT: All right.

17 MATTHEW CLANCY, being duly
18 sworn, testified as follows:

19 CLERK: Please have a seat. State your full name
20 and spell your last name.

21 WITNESS: Matthew James Clancy, C L A N C Y.

22 DIRECT EXAMINATION

23 BY SOLICITOR:

24 Q. Good afternoon, Chief.

25 A. Good afternoon, ma'am.

CHIEF CLANCY ON DIRECT

1 Q. Congratulations on your promotion.

2 A. Thank you.

3 Q. You are employed with . .

4 A. The Beaufort City Police Department.

5 Q. How long have you worked there?

6 A. About four years.

7 Q. And back in May of 2006, what was your position?

8 A. I was the Deputy Chief of Police.

9 Q. I want to ask you about an incident you would have
10 responded to in the early morning hours of May 26 of
11 2006.

12 At some morning in the early morning hours, do you
13 recall that you responded to a call that morning?

14 A. Yes, maam.

15 Q. Okay.

16 A. I got a phone call at my house shortly after two,
17 informing me of the situation that was going on, so I got
18 dressed and went out there to see if I could assist to
19 help coordinate what was going on.

20 Q. And once you reached the downtown area, were you
21 involved in a pursuit?

22 A. Yes, maam.

23 Q. Can you describe how that started?

24 A. I guess it was a little before five A.M. or around
25 five A.M. when Officer O'Neill was watching what he

CHIEF CLANCY ON DIRECT

1 believed to be a suspect vehicle down behind the B B and
2 T, and myself and Officer Seronka were checking that
3 area for suspicious persons and checking businesses that
4 might be open at that time.

5 And Officer O'Neill came across the radio and said
6 he had a subject running across the bridge, that he was in
7 foot pursuit of the subject.

8 So I was on Boundary Street near the cemetery and I
9 went down that way to see if I could assist.

10 Q. So at this time you were in your patrol car?

11 A. Yes, maam.

12 Q. And are you able to assist?

13 A. When I got there, Officer O'Neill had lost sight of
14 the subject. He had gone down Republic Street, and I
15 pulled my car -- I was on Carterett Street near Republic
16 facing towards the bridge.

17 I went to see if I could see any movement down
18 there.

19 Q. And did you actually see one of the suspects?

20 A. I did when Officer O'Neill said he was chasing a
21 second suspect, and as I looked up I saw Officer O'Neill
22 chasing an individual coming down across the bridge into
23 the B B and T parking lot.

24 Q. Did you have an encounter with that suspect?

25 A. Yes, maam. What I did, since I was still in my car,

OFFICER CLANCY ON DIRECT

1 I drove down there and as they ran into the B B and T
2 parking lot, I went around them and pulled in front of
3 them to cut the suspect off since he was trying to get
4 to that vehicle.

5 So I pulled in and I slid my vehicle sideways by
6 that vehicle. The suspect then actually ran into the
7 side of my car and turned around and started running the
8 other way.

9 I jumped out and started chasing him, and Officer
10 O'Neill tripped or slipped on a manhole cover and he went
11 down and so -- and I was right there catching up with the
12 suspect. I was a short distance behind him.

13 He tripped and fell and I was right there behind him
14 and almost fell on top of him, but I got up and held him
15 at gunpoint, and Officer Seronka got there shortly after
16 that.

17 And he was handcuffed and taken into custody.

18 Q. And will you describe the condition of the person,
19 what he was wearing, the clothing?

20 A. He was wearing all dark clothing and he was soaking
21 wet. When I grabbed ahold of him, he was drenched --
22 fairly cold water.

23 Q. And are we talking about maybe dew from the morn-
24 ing?

25 A. No, he was dripping. He was soaked like he had

CHIEF CLANCY ON DIRECT

1 been immersed in water.

2 Q. And were you able to identify the subject?

3 A. He was identified as Mr. Hicks.

4 Q. Do you know his first name?

5 A. Alfonzo, I believe. Alfonzo or Lorenzo -- something
6 like that.

7 Q. Could it be Lorenzo Hicks?

8 A. That sounds right. Yes, maam.

9 Q. Once Mr. Hicks is in custody, what do you do then?

10 A. Myself and Officer Seronka had him handcuffed, and
11 we brought him over to Officer Seronka's patrol car that
12 was nearby and patted him down for weapons and did an
13 inventory of property that was on his person and put him
14 in the back seat of the patrol car.

15 Q. And once you turned him over to the patrol car,
16 where do you then go?

17 A. Then I went back into the B B and T parking lot and
18 we were starting to talk about -- there had been a
19 whole perimeter set up looking for the two subjects,
20 and the whole perimeter was now shifting because the in-
21 dividual was now on the loose.

22 Q. So we were moving to try to get a new perimeter set
23 up, and while we were doing that a call came in from
24 someone that said they thought they saw somebody on the
25 balcony at the Beaufort Inn.

CHIEF CLANCY ON DIRECT

1 And so I started heading over to that direction and
2 when I got there there were several officers in front,
3 and the sergeant that was there told me there was only
4 one officer in the back, so I went back there to assist
5 her.

6 And so the county K-nine officers were in that area
7 or coming through that area so there was a short wait,
8 and some people thought that the person who phoned had
9 seen the K-nine officers who were searching the area, so
10 there was some confusion as to whether it was a police
11 officer they saw or not.

12 Myself and one of the Sheriff's deputies -- we went
13 into the Beaufort Inn there and contacted the one who
14 had called the call in, and we said, where did you see
15 the person, and she said, well, I think he's still there.
16 We said, show us where, so we went up onto the second
17 floor and there's a little semi-circle or balcony that
18 came off the building.

19 We went to that door and we saw the subject and he
20 was laying on the balcony up against the wall, almost
21 like he was trying to get up underneath the siding there.

22 We went out and took him at gunpoint. At first, he
23 wouldn't come out, so Officer Heirs held him at gunpoint
24 and I physically got hold of him and cuffed him.

25 We stood him up and when we stood him up he started

CHIEF CLANCY ON DIRECT

1 pleading with us, please don't beat up, don't beat me
2 up, and we escorted him down to the patrol car.

3 Q. Were you threatening him? Is that why he was say-
4 ing don't beat me up?

5 A. No, maam. We took him into custody.

6 Q. Describe the condition of this suspect and his cloth-
7 ing?

8 A. Well, he was also soaking wet. He had no shirt on.
9 Like dark colored pants on, and when we pulled him up he
10 had a white tank top and some type of towel that he had
11 been laying on. It was also all wet, and when we patted
12 him down, we realized that underneath the trousers he
13 had on he had another set of -- he had a pair of shorts
14 with a belt on and everything that was underneath that
15 over-- that pair of trousers he had over them.

16 Q. So he had two layers of clothing on?

17 A. Yes, maam.

18 Q. Were both sets of clothing soaked all the way
19 through?

20 A. Yes, maam.

21 Q. And who was this suspect identified as?

22 A. This one was -- I just lost my train of thought --
23 I've got his picture -- I've got his name in my report.
24 It was Mr. Howard. I believe his first name was Alfonzo
25 or Lorenzo Howard.

CHIEF CLANCY ON DIRECT

1 Q. This second suspect, Mr. Howard, who was out on the
2 balcony, do you see him in the Courtroom?

3 A. Yes, I do. The gentleman right there in the grey
4 jacket and the blue tie.

5 Q. This gentleman you have identified as the Defendant
6 in the Courtroom is the man you arrested off the balcony
7 at the Beaufort Inn?

8 A. Yes, ma'am.

9 Q. Thank you, sir. Please answer any questions that
10 Mr. Brown may have for you.

11 THE COURT: Mr. Brown.

12 MR. BROWN: May it please the Court?

13 THE COURT: Yes, sir.

14 CROSS EXAMINATION

15 BY MR. BROWN:

16 Q. Mr. Clancy, were you here today out in the lobby?

17 A. Yes, sir.

18 Q. Did you talk with other officers about the case?

19 A. We talked about some things. Yes, sir.

20 Q. About this case?

21 A. Yes, sir.

22 Q. Prior to your testimony here today?

23 A. Yes, sir.

24 Q. Including other officers who have testified or
25 are going to testify?

CHIEF CLANCY ON CROSS

1 A. Yes, sir.

2 MR. BROWN: I'd like to address that issue at the
3 appropriate time, and I ask for your guidance on that.

4 BY MR. BROWN:

5 Q. Did you know there was an Alfonzo and a Lorenzo?

6 A. Yes, sir.

7 Q. Which is which?

8 A. That's -- well, I don't know them by their first
9 names. I'm not acquainted with them on a friendly basis.
10 The only time I dealt with them was during the arrest.

11 THE COURT: Mr. Brown, just a moment. Why don't we
12 take a moment and take up a matter of law?

13 Ladies and gentlemen, I'm going to send you back to
14 your jury room briefly. If we're going to take any
15 lengthy amount of time I'll go ahead and send you home
16 for the evening.

17 If not, I will bring you back in here and we'll con-
18 tinue with the testimony.

19 Do not begin discussing this case. It would not be
20 appropriate for you to do so at this time.

21 We'll be back with you shortly. Thank you.

22 (Jury excused from Courtroom at 5:02 P.M.)

23 BAILIFF: Your Honor, the jury is clear.

24 THE COURT: Thank you.

25 Chief Clancy, Mr. Brown just asked you whether

CHIEF CLANCY IN CAMERA

1 or not you have spoken with other officers that were in
2 the hallway of the Courthouse before you testified?

3 A. Yes, maam.

4 THE COURT: Is that correct, sir?

5 A. Yes, maam.

6 THE COURT: So you did have conversations with some
7 of the officers, is that correct?

8 A. Yes, maam.

9 THE COURT: About this case, is that also correct?

10 A. Yes, maam.

11 THE COURT: You knew that these officers had in fact
12 testified ..

13 A. No.

14 THE COURT: . . . at that time?

15 A. No one that I spoke with had already testified.

16 THE COURT: So no one who has come in here and tes-
17 tified in this case went back and spoke to you essentially
18 about what questions had been asked by the Solicitor or
19 by the Defense Attorney?

20 Is that correct?

21 A. No, maam. I was talking with the officers I was
22 sitting with, and they are still behind me.

23 THE COURT: So all of the officers that you talked
24 to about this case, you only discussed what you knew
25 about the case, and not anything having to do with the ..

CHIEF CLANCY IN CAMERA

1 testimony that went forward and was heard or the last --
2 since the morning. Is that correct, sir?

3 A. Yes, maam, that's correct.

4 THE COURT: Okay, because the way you explained it
5 after Mr. Brown's question was not clear. It made it
6 sound like some had already testified and some had not.

7 Your testimony here is that you are telling me you
8 did not speak to any officer in this case who had al-
9 ready testified here in this case today?

10 A. That is correct.

11 THE COURT: All right, sir.

12 Mr. Brown, do you need to explore it any further?
13 Do you need to briefly explore it any further?

14 MR. BROWN: Well, I would briefly because . .

15 THE COURT: Yes, sir. Go ahead and do it.

16 QUESTIONS BY MR. BROWN OUT OF THE PRESENCE OF THE JURY:

17 Q. Do you know which officers have already testified?

18 A. I know O'Neill did because he was right in front
19 of me.

20 Q. You saw him walk in and out of the Courtroom?

21 A. Right.

22 Q. Do you know any other officers who have testified?

23 A. I know the ones that are going to but I don't . .

24 Q. Do you know any of the other ones that have been
25 waiting . .

CHIEF CLANCY IN CAMERA

1 A. The only one I know of who has testified already
2 was Corporal Gregg from the Sheriff's Office because I
3 saw him earlier this morning when he was leaving here,
4 but I did not discuss the case with him.

5 Q. So you saw one officer leave. Do you know of any
6 other officer who left?

7 A. No one I know who testified in this case, no, sir.

8 Q. And what were you informed -- I assume you knew you
9 were going to be a witness because you were in the lobby?

10 A. Correct.

11 Q. And you were also out in the lobby at some point in
12 time with the Davidsons?

13 A. I saw them. I didn't speak with them.

14 Q. What instructions were you given about speaking with
15 folks outside who were witnesses in this case?

16 A. I don't recall any specific instructions.

17 MR. BROWN: That would end my inquiry.

18 THE COURT: Okay.

19 MR. BROWN: I can suggest that sequestration kind
20 of loses . . .

21 THE COURT: All right. Respectfully, I understand.
22 It was -- just the way you phrased your question and the
23 way he answered gave me some concern. I am confident in
24 my mind through Chief Clancy's testimony here in camera
25 441

1 that he did not have any conversations about any prior
2 testimony in this case.

3 We're going to bring the jury back in, and we're
4 going to continue with Chief Clancy.

5 Solicitor, respectfully, I'm going to ask you to
6 let all your witnesses know that they are not to discuss
7 this case in any way with anyone who has previously
8 testified.

9 And I say that because I understand the Davidsons
10 are both here, and I'm not sure if there is anyone here
11 who has testified, but, again, I remind you as well that
12 it just wouldn't be appropriate to do so.

13 Respectfully, let's bring the jury back in and we
14 will get as far as we can. Who is the next witness you
15 will call, Solicitor?

16 SOLICITOR: I have a very short witness, and after
17 that witness that will probably be a good ending place.

18 Ms. Frazier is going to go and relay that message
19 and in that way I won't have to leave the Courtroom.

20 THE COURT: Thank you.

21 SOLICITOR: In reference to your earlier matter,
22 Mr. Brown, with reference to Dr. Cully, my secretary
23 contacted his office. She got the voice mail and left a
24 message that he needed to call Judge Mullen, and there
25 is no one in my office now because it's after five

1 o'clock, but if I get a message I will return Dr. Cully's
2 call and I will take care of it from there.

3 MR. BROWN: Dr. Smith.

4 THE COURT: I'm sorry. Whoever you gave the name
5 of to her to call -- I apologize. Dr. Smith.

6 MR. BROWN: Thank you.

7 (Jury returned to Courtroom)

8 BAILIFF: The jury is entering the Courtroom, Your
9 Honor.

10 Your Honor, the jury is seated.

11 THE COURT: Okay. Mr. Brown, you may continue, sir.

12 (Chief Clancy remaining on the witness stand)

13 CROSS EXAMINATION CONTINUED

14 BY MR. BROWN:

15 Q. Did you fill out a report, sir?

16 A. Sir?

17 Q. Did you fill out a report in this case?

18 A. Sir, I did a supplemental report.

19 Q. Does it look like this?

20 A. Yes, sir.

21 Q. Would you like to see it?

22 A. I have a copy of it here.

23 Q. Oh, okay. One page?

24 A. Yes, sir.

25 Q. And let me ask you what was your position with the

CHIEF CLANCY ON CROSS

1 City in February of 2005?

2 A. In February of 2005, I would have been Deputy Chief
3 of Police.

4 Q. Okay, and were you involved somehow in reviewing
5 the reports or anywhere in the prosecution of Lorenzo
6 Rico Hicks for theft of a truck from Memorial Hospital?

7 A. I may have. I don't specifically recall it.

8 Q. A firefighter's truck that Hicks stole from the
9 City?

10 A. I don't remember the case, sir.

11 Q. You don't recall?

12 A. No.

13 Q. How about discussions with Detective Ott about re-
14 turning Mr. Hicks to the mental hospital at Beaufort Me-
15 morial as opposed to taking him to jail?

16 A. I have no recollection of what you're talking about,
17 sir.

18 Q. Okay. So you and Detective Ott never talked about
19 whether . . .

20 SOLICITOR: Your Honor, . . .

21 Q. . . Lorenzo Hicks should go to the hospital . . .

22 SOLICITOR: . . . objection.

23 THE COURT: The basis?

24 SOLICITOR: Asked and answered.

25 Now he's testifying because this officer has said he

CHIEF CLANCY ON CROSS

1 does not remember.

2 MR. BROWN: I'm trying to . .

3 THE COURT: You can continue. It's cross examina-
4 tion.

5 BY MR. BROWN:

6 Q. You don't recall a conversation with Detective Ott
7 concerning that Lorenzo Rico Hicks should go back to
8 -- whether Lorenzo Rico Hicks should go back to the men-
9 tal ward or go to jail for stealing a firefighter's
10 truck?

11 A. No, sir.

12 MR. BROWN: Beg the Court's indulgence.

13 (Brief pause)

14 MR. BROWN: I don't have any further questions.

15 THE COURT: Any Redirect?

16 SOLICITOR: Just briefly, to make sure it is clear.

17 REDIRECT EXAMINATION

18 BY SOLICITOR:

19 Q. Mr. Brown asked you about your conversations with
20 other officers about this case.

21 A. Yes, maam.

22 Q. You are the Chief of Police of Beaufort City?

23 A. Yes, maam.

24 Q. You are responsible for all these other fellows who
25 are going to testify in this case?

CHIEF CLANCY ON REDIRECT

1 A. Yes, maam.

2 Q. Did you have any conversations with them about your
3 testimony or what your testimony should be?

4 A. No, maam.

5 Q. Did you have any conversations with anyone who has
6 already testified?

7 A. No, maam, I have not.

8 Q. And your testimony is just that, your testimony?

9 A. Yes, maam.

10 Q. And you are having a little difficulty remembering
11 the first names of the suspects?

12 A. Yes, maam. Typically when I was an investigator, in
13 my cases I didn't get too concerned with the first name
14 of the suspects.

15 Q. So as far as last names, the suspect taken off the
16 balcony of the Beaufort Inn, that suspect's last name is
17 . .

18 A. The suspect right here, maam. That is Mr. Howard.

19 Q. And the suspect who was caught closer to the bot-
20 tom of the bridge was . .

21 A. That was Mr. Hicks.

22 Q. Thank you, sir.

23 THE COURT: Mr. Brown? Any follow-up?

24 MR. BROWN: Just very briefly.

25 RECROSS EXAMINATION

CHIEF CLANCY ON RECROSS

1 A. I just want to make sure I understand. You did
2 have conversations about this case with other officers
3 who have yet to testify?

4 A. In general, yes, sir. Not about the testimony, but
5 we were sitting out here to testify for this case, and we
6 talked about why we were here and that type of thing.

7 Q. Did you go into details of the case?

8 A. No, sir.

9 Q. But something about the case?

10 A. What we were here for, pretty much.

11 Q. Like what each one of you did?

12 A. We didn't discuss anything like that in detail.

13 Mainly, things about who is not with the department any
14 more. Things that have changed in the department. That
15 type of thing.

16 Q. Which doesn't really have anything -- nobody has
17 left the department that was on this case, have they?

18 A. No.

19 Q. Okay. I wanted to make sure. But there was some
20 discussion with other officers out in the waiting area
21 about this case?

22 A. Yes, sir, the whole reason we were in that waiting
23 area. This case.

24 Q. And the Prosecutor never told you all that you were
25 not supposed to go out there and talk about the case when

CHIEF CLANCY ON RECROSS

1 you were sequestered?

2 A. I don't recall, sir, a specific instruction not to
3 talk to each other out there. No, sir.

4 Q. Was there any instruction?

5 A. Not that I recall, but I have been told in meetings
6 and so forth.

7 Q. About this case? In meetings about this case?

8 A. It was just to make sure that all the evidence that
9 -- we just had a meeting to make sure that all the evi-
10 dence requested was turned over and everything was done
11 in a timely fashion; that there wasn't going to be any
12 documents or anything else like that that would be needed
13 that wouldn't be here.

14 What you do before every criminal case to make sure
15 everything is ready to go.

16 Q. Is that with the prosecutor?

17 A. The prosecutor was involved in that.

18 Q. Is that about the time that you saw me at the police
19 department, down there going over the evidence?

20 A. Yes, sir, in that general time frame.

21 Q. I have no other questions.

22 THE COURT: Anything further?

23 SOLICITOR: Nothing further, Your Honor. May this
24 witness be excused.

25 THE COURT: Any objection?

1 MR. BROWN: No objection.

2 THE COURT: You're excused.

3 (Witness excused)

4 THE COURT: Solicitor?

5 SOLICITOR: Your Honor, the State calls Chad Seronka.

6 CHAD SERONKA, being duly sworn,
7 testified as follows:

8 CLERK: Have a seat and state your full name; spell
9 your last name.

10 WITNESS: Chad Seronka, S E R O N K A.

11 DIRECT EXAMINATION

12 BY SOLICITOR:

13 Q. Good afternoon, sir. Where are you employed?

14 A. Beaufort County Sheriff's Office.

15 Q. How long have you been employed at the Sheriff's
16 Office?

17 A. A year and a half.

18 Q. And where were you on May 26, 2006?

19 A. Beaufort Police Department.

20 Q. Still working with law enforcement?

21 A. Yes.

22 Q. Different agency?

23 A. Correct.

24 Q. What kind of training do you have in law enforce-
25 ment?

OFR. SERONKA ON DIRECT

1 A. I've done a couple of DUI classes. I've been over
2 the K-nine training.

3 Q. Did you attend the Academy at SLED?

4 A. Yes, maam.

5 Q. And how many years experience do you have in law
6 enforcement total?

7 A. Five and a half total.

8 Q. Let's go directly to May 26, 2006. What kind of
9 incident are you involved in on that day?

10 A. The morning of May 26th I was working patrol. An
11 officer was dispatched to a kidnapping, armed robbery,
12 rape call. That is what it was initially dispatched as,
13 at the Beaufort High School.

14 I responded to the area and was subsequently set up
15 on a perimeter, the Sea Island Parkway, I believe.

16 Q. And did that change at some point?

17 A. No, I was there for the entire perimeter.

18 Q. Once the perimeter is called off, where do you go?

19 A. When the perimeter was called off, I went back to
20 normal patrol and crossed the downtown bridge back into
21 Beaufort.

22 Q. And did you get another call regarding this case?

23 A. There was some radio traffic of one of the suspects
24 running out of the B B and T parking lot, headed up to-
25 ward Bay and Carterette, which at the time that came out

OFR. SERONKA ON DIRECT

1 I was in front of City Hall, which is approximately one
2 block behind me.

3 Q. Do you respond to that area?

4 A. I do, maam.

5 Q. And do you have any contact with the suspect?

6 A. I do.

7 Q. Can you describe that contact?

8 A. As I stopped my car at Bay and Carterett, Chief
9 Clancy was pursuing the suspect on foot, coming out of the
10 B B and T parking lot, and he was giving verbal commands
11 to stop, show me your hands, and he subsequently went to
12 the ground, at which point Chief Clancy held him there.

13 When I was able to make contact, I came up and the
14 subject was arrested and put in handcuffs.

15 Q. And once he was handcuffed what do you do with him?

16 A. The individual was handcuffed, and Chief Clancy and
17 I escorted him to my vehicle, at which point he was
18 searched incident to arrest.

19 Q. And during the search, how would you describe the
20 suspect's clothing?

21 A. Soaking wet. He smelled like the river. His pants
22 and half of his clothes were falling off because they
23 were so wet.

24 Q. And this suspect was identified?

25 A. Correct.

OFR. SERONKA ON DIRECT

1 Q. What was this suspect's name?

2 A. The last name I remember as Hicks.

3 Q. And in the search incident to arrest, did you find
4 anything on the suspect?

5 A. Several articles. The first was a black-handled,
6 silver-blade^{folded}/pocket knife, cash totally Four Hundred Dol-
7 lars in twenty dollar bills.

8 There was a Holiday Inn slide room-key card, a
9 Tennessee driver's license, a wash cloth, I believe.

10 SOLICITOR: May I approach the witness, Your Honor?

11 THE COURT: Yes.

12 BY SOLICITOR:

13 Q. This is a bag containing State's Exhibits 24, 25 and
14 26. I would ask if you can identify these items?

15 A. This is a Tennessee driver's license with the name
16 of Amy Davidson.

17 Q. Is this the driver's license you collected from Mr.
18 Hicks?

19 A. It is, maam.

20 Q. All right.

21 A. The second is a Holiday Inn key card, the key card
22 for a door.

23 Q. And was this taken from the suspect? From Mr. Hicks?

24 A. It was, maam, and third was a -- I don't know the
25 spelling, but a Peterno wristwatch.

OFR. SERONKA ON DIRECT

1 Q. And did you recover that watch?

2 A. Correct.

3 Q. Where was it located?

4 A. I believe in one of his front pockets.

5 Q. Hicks' pocket?

6 A. Yes, maam.

7 SOLICITOR: May I approach the witness?

8 THE COURT: Yes, maam.

9 BY SOLICITOR:

10 Q. State's 27 -- can you identify this item?

11 A. The black-handled silver bladed knife I took from
12 Mr. Hicks that night.

13 Q. Thank you.

14 SOLICITOR: The State would move Exhibit 27 into
15 evidence.

16 THE COURT: Any objection?

17 MR. BROWN: Without objection.

18 THE COURT: In evidence, without objection.

19 (State's Exhibit 27, knife, entered in evidence with-
20 out objection)

21 SOLICITOR: May I publish to the jury?

22 THE COURT: You may.

23 (Items shown to the jury)

24 BY SOLICITOR:

25 Q. You said the knife was in the pocket of Lorenzo

OFR. SERONKA ON DIRECT

1 Hicks, is that correct?

2 A. It is correct.

3 SOLICITOR: I'm showing Defense Counsel Exhibit 28.

4 May I approach the witness, Your Honor?

5 THE COURT: Yes.

6 BY SOLICITOR:

7 Q. Can you identify State's Exhibit 28?

8 A. This is the money that was removed from his pocket,
9 twenty dollar bills, I believe, totalling Four Hundred
10 Dollars.

11 Q. This was from Lorenzo Hicks' pocket?

12 A. Yes, maam.

13 SOLICITOR: The State would move Exhibit 28 into
14 evidence.

15 THE COURT: Any objection?

16 MR. BROWN: Not to the actual items. The baggie
17 itself actually may come up with all these other little
18 baggies.

19 I'm assuming what's being entered are the items and
20 not the baggie.

21 THE COURT: In evidence without objection.

22 (Cash identified was entered in evidence without
23 objection as State's Exhibit 28)

24 MR. BROWN: We can contend with the baggies . .

25 SOLICITOR: The bag is sealed.

OFR. SERONKA ON DIRECT

1 THE COURT: No arguments right now in front of the
2 jury.

3 MR. BROWN: Yes, maam.

4 BY SOLICITOR:

5 Q. Thank you, sir. Please answer anything the Defense
6 Counsel may ask you.

7 THE COURT: Mr. Brown?

8 MR. BROWN: May it please the Court?

9 May I approach the witness?

10 THE COURT: Yes.

11 CROSS EXAMINATION

12 BY MR. BROWN:

13 Q. Did you do a report?

14 A. I did a supplement, sir.

15 Q. And is it dated August 28, 2006?

16 A. If that's what it says.

17 Q. Would you look at this item and see if you can
18 recognize what that is?

19 A. This is the supplemental report that I completed.

20 A. I just want to make sure I understand. You filled
21 out this report on August 28, 2006, or did you do it be-
22 fore then?

23 A. . .

24 Q. There's a date at the top. If you can help me to

25 . .

OFR. SERONKA ON CROSS

1 A. This -- the way this looks, this was done that morn-
2 ing, when I went off that night shift, sir.

3 The date, August 28th, is probably the date the re-
4 port was approved.

5 Q. Okay, so it was submitted on a different date and
6 would you help me with this? It says date submitted
7 slash changed, and so the report was changed at some
8 point in time?

9 A. No, this is consistent with what I wrote.

10 Q. Okay, sir, and I am not really questioning that.
11 What happened on August 28th because it says date changed?

12 A. I'm not that familiar with that aspect of the report.
13 The only thing I can tell you is this report was com-
14 pleted on the morning of May 26th, before I went off.

15 Q. Did you receive a copy of that May 26th report?

16 A. No, the way we submit the report is they are done
17 electronically, and it's kind of like an Email. It's
18 sent to the supervisor on that date.

19 Q. Does it look like this?

20 A. Similar, yes.

21 Q. So you sent it but it wouldn't have had -- you sub-
22 mitted it, but it would not have had August 28, 2006,
23 date on it?

24 A. No, it would not.

25 Q. It would have had May 26, 2006?

OFR. SERONKA ON CROSS

- 1 A. The date I completed it, yes.
- 2 Q. And it would have that date on it?
- 3 A. The date I submitted it on May 26th. I honestly . .
- 4 Q. Did you enter a date?
- 5 A. It is attached to the -- when you initially start
- 6 the supplement in the computer, the date you do the sup-
- 7 plement is added on there.
- 8 Q. So that May 26, 2006 date would have been on the
- 9 report you did?
- 10 A. Correct.
- 11 Q. Is it on this one?
- 12 A. This one shows August 28th, 2006.
- 13 Q. Not May 26, 2006?
- 14 A. No.
- 15 Q. Do you see the date May 26, 2006 on there?
- 16 A. Not that I can see, no, sir.
- 17 Q. So it is not exactly like the report that you did?
- 18 A. This is my writing. I mean, I recognize the . .
- 19 Q. Is it writing or typing?
- 20 A. My typing that I -- the way that I would . .
- 21 Q. You're talking about your syntax?
- 22 A. Correct. I recognize this as what I wrote. Unfort-
- 23 unately I don't know what to tell you about the date.
- 24 Q. Do you know how the date changed?
- 25 A. No, I do not.

OFR. SERONKA ON CROSS

1 MR. BROWN: Your Honor, at some point I would have
2 a question about where the May 26 version of that is.

3 Thank you.

4 BY MR. BROWN:

5 Q. And there was a question about the driver's license
6 and key card. Those came off of Lorenzo Hicks?

7 A. Yes, sir.

8 Q. No further questions.

9 THE COURT: Any Redirect?

10 SOLICITOR: Thank you.

11 REDIRECT EXAMINATION

12 BY SOLICITOR:

13 Q. When you worked at Beaufort City, did your reports
14 have to be approved by the supervisor before it was made
15 a part of a file?

16 A. Yes.

17 Q. Was there possibly a lag between when you actually
18 finished it and when it went into the file?

19 A. Correct. With the amount of paper work that is gen-
20 erated with a case like this, it is very likely that by
21 the time I -- when the supplement was done and it got
22 attached to the report and was approved, and everything
23 was approved by the supervisor, that could result in the
24 date change.

25 Q. But there are no -- there is nothing in your report

OFR. SERONKA ON REDIRECT

1 that you disagree with or that is different from what
2 you've testified to today?

3 A. That is exactly what I wrote on May 26.

4 Q. No further questions.

5 RECROSS EXAMINATION

6 BY MR. BROWN:

7 Q. Just very briefly. The supervisor who would have
8 done all this approving, who would that have been?

9 A. On this case, it would have been the Corporal di-
10 rectly above me, and at that point it would have gone to
11 a first sergeant and then above him is a lieutenant.

12 Q. Can you tell me the names of those persons?

13 A. No, it's changed.

14 Q. Any of them?

15 A. The sergeant I believe would be Sergeant Idell, but,
16 again, that was almost three years ago, sir.

17 Q. Okay, so just to get some idea, do all the reports
18 go into one common area, so to speak, and they look at
19 them and decide whether they need to be changed or whe-
20 ther they're going to be okay?

21 A. Something like this would have been looked at prior
22 to me going home. If it needed to be changed or if it
23 wasn't exactly what they were looking for, I would have
24 had to change that prior to leaving, given this type of
25 case.

OFR. SERONKA ON RE CROSS

1 So it definitely would have been turned in prior
2 to me going home.

3 Q. But my -- I got you, because there is no question
4 that the report goes in and is looked at and they decide
5 if it needs to be changed?

6 A. Yes. It has to go to somebody above me who approves
7 it.

8 Q. What happens if they don't approve it?

9 A. They contact you and you have to come in and either
10 add information if you've forgotten something. If there
11 are spelling errors, grammar errors, you fix it, but all
12 that would have been done before I had gone home.

13 Q. That is just the normal approval process, where it
14 goes to somebody who looks at the report and tells you
15 whether they are approved?

16 A. Yes. It has to see at least two sets of eyes before
17 it will get approved.

18 Q. Okay, and so you mentioned it was done before you
19 went home but you went home before August of 2006, didn't
20 you?

21 I mean, you didn't stay at the police department for
22 three months?

23 A. No.

24 Q. So somebody gave approval on May 26 but obviously
25 according to the date on this there was no final approval

OFR. SERONKA ON RECROSS

1 until August 28?

2 A. That I don't know. I honestly don't know. It was
3 approved by my supervisor on May 26th, and I was given
4 the okay to go home, and that was the last contact I had
5 with it.

6 Q. And you don't have any idea why it has August 28th
7 on it?

8 A. I honestly don't, sir.

9 Q. Okay, but it clearly says date entered slash changed?

10 A. That is what's on there, yes.

11 Q. No further questions.

12 THE COURT: Any further questions?

13 SOLICITOR: Nothing further, Your Honor. I'd ask
14 that the witness be excused.

15 THE COURT: Any objection?

16 MR. BROWN: No objection.

17 THE COURT: You are excused, sir.

18 (Witness excused)

19 THE COURT: Ladies and gentlemen of the jury, I be-
20 lieve this is a good time to break for the evening.

21 It's about five thirty.

22 I would like to begin in the morning at nine thirty.

23 Is that a problem for anyone?

24 (No response audibly)

25 Wonderful. I appreciate that, you all, but before

1 I send you out tonight, again, ladies and gentlemen, I
2 need to give you my instructions as you hear them all the
3 time, but I want you to understand how vitally important
4 it is.

5 You are not to discuss this case with anyone, and do
6 not discuss anything that has occurred in this Courtroom,
7 and I'll tell you why.

8 It simply is inappropriate for you to do that, and
9 I want you to understand and take that very seriously be-
10 cause I do mean it seriously.

11 Additionally, ladies and gentlemen, you are to do
12 no independent research of this case.

13 I know at this point you have garnered some informa-
14 tion about this case, but it would not be appropriate for
15 you to go driving around at the locations you've heard
16 about today.

17 As I have told you repeatedly, you will have every-
18 thing you need to decide this case right here in this
19 Courtroom, and it would be a violation of your oath to
20 do any independent research or speak to anyone in regard
21 to this case, and, again, that includes each other.

22 Lastly, ladies and gentlemen, there is a chance that
23 there will be some press coverage of this case tomorrow
24 either by the news, the newspaper or on TV, and I tell
25 you again that I am ordering that you not read or view

1 or listen on the radio to anything in regards to this
2 case.

3 Again, it would be inappropriate for you to do so.
4 It would be a violation of my Order, and it would be a
5 violation of your oath as jurors as in this case.

6 All right, so with that said, ladies and gentlemen,
7 I will excuse you for the evening and we'll see you back
8 at nine thirty when we will continue the trial of the
9 case.

10 Thank you.

11 (Jury excused at 5:32 P.M.)

12 BAILIFF: The jury is clear, Your Honor.

13 THE COURT: Thank you. Let's take a couple of min-
14 utes and then we'll come back and put what we need to on
15 the record.

16 (Court stood in recess from 5:32 to 5:35 P.M., when
17 the case was resumed)

18 THE COURT: Thank you. Please be seated.

19 All right, what do you need to put on the record,
20 other than this issue of Ms. Davidson's handwritten
21 statement that the Solicitor is trying to introduce as
22 evidence?

23 What do you need to put on the record tonight?

24 MR. BROWN: The only thing has to do with the objec-
25 tion regarding packaging . .

1 THE COURT: With what?

2 MR. BROWN: My objection about packaging of the
3 items, and if I may explain.

4 The question was whether I agreed to the item, like
5 the photos. I made sure I looked at each item to make
6 sure the number sticker was on the photo that I was agree-
7 ing to.

8 I certainly trust Ms. Tanner. It is not anything
9 like that, but I'm making sure that I agree to what is
10 going in.

11 THE COURT: Right.

12 MR. BROWN: And like with the driver's license and
13 the hotel key, and the watch -- I think those were like
14 items 24, 25, 26 -- they are actually marked on the item.
15 Then I noticed they went back into a bag, and some of
16 these items -- and I understand some of them were cloth-
17 ing -- but some of these items I -- even though I without
18 objection agreed to let them in -- I had no objections
19 to items coming in but I don't want the bags in.

20 And I'll tell you why. Because bags contain writing
21 and I haven't read every single bag, and they have writ-
22 ing from law enforcement on the bag, and the writing and
23 all of that is not admissible.

24 THE COURT: Well, let me see what the writing speci-
25 fically is because it is my experience that the writing

1 typically is a case code, the officer's initials, and
2 possibly chain of custody. This typically -- this has an
3 agency name, the item number, the case number, and it is
4 . . .

5 MR. BROWN: Yes, maam.

6 THE COURT: It's got an agency name, an item number.
7 It's got a case number. It's got in this case it's got
8 offense, and it's got kidnapping.

9 It's got suspects and it has the victims, date and
10 time, and recovered by the officer's name, I presume, or
11 whoever it was, the description and/or location.

12 It is just the -- this one just happens to be the --
13 it says a green blouse, and so this is the green sweater,
14 and it has parking lot . . .

15 MR. BROWN: And my objection, I guess, is that it's
16 hearsay because they are out of Court statements offered
17 for the truth of the matter asserted.

18 For example, item 28 -- it's got Howard, Hicks, and
19 all of these different things which are not -- I mean, it
20 looks like the top of a police report and police reports
21 are not admissible.

22 I mean, they couldn't get that in if it came on a
23 police report.

24 THE COURT: Well, this is the way we can package it,
25 and I can tell you there are -- in other cases that we

1 have -- we will send back gloves sometimes that are in
2 evidence, and sometimes jurors don't like that and defense
3 attorneys don't enjoy that.

4 What is your proposal?

5 I mean, we have to get it back there some way.

6 MR. BROWN: I am arguing to the effect -- I mean,
7 on each item I said without objection -- I might have let
8 the sweater in or the knife in or whatever, but then I
9 -- but the bills when it came over, I realized that it
10 had all this writing on it and when they came over and
11 showed it to me they showed me the items and pulled them
12 out of the bag and said, we're introducing the green
13 sweater, and I said without objection, but not the bag,
14 and my objection . .

15 THE COURT: Let's just talk about the practical
16 aspects of it. That's really what we . .

17 MR. BROWN: Can we get another plain bag and mark
18 that?

19 THE COURT: Again, my only concern, and I would say,
20 Solicitor, respectfully, we could redact this information
21 but if for some reason in some way this case ends up com-
22 ing back it may be necessary to have these specific and
23 exact bags.

24 So . .

25 SOLICITOR: Yes, ma'am, but this is the integrity of

1 the evidence. If he is concerned about protecting the
2 appellate record, I think he needs these bags to remain
3 in evidence if it does come back.

4 THE COURT: Well, let me ask you this. Is there
5 any information on these bags that has not been testified
6 to from the witness stand, and I don't see any?

7 I don't see any.

8 SOLICITOR: It's got the victim's name, and it's got
9 what's in the bag.

10 THE COURT: I'm looking specifically at item 21 and
11 that is the green sweater. There is nothing in here
12 that was not testified to by the officer, other than the
13 case number.

14 I will tell you that is not going to be shocking in
15 any way because that is on the verdict form anyway.

16 So I don't believe there is any new evidence and
17 . .

18 MR. BROWN: Well, Your Honor, . .

19 THE COURT: Let me sleep on it, and if I can think
20 of an easier way . .

21 MR. BROWN: Yes, maam.

22 THE COURT: I don't know of any other way short of
23 putting them in other bags, and I have a concern -- as
24 you know, we are all here to protect the record, and we
25 are all here to protect the record for appeal purposes.

1 I don't know how we can get another bag into that,
2 and that is my concern.

3 MR. BROWN: And I would . .

4 THE COURT: Respectfully, I don't know of any other
5 way to do it. I have never had anyone ask for this be-
6 fore.

7 MR. BROWN: I come back to item 28 which was recov-
8 ered from Mr. Hicks and it has my client's name on it.

9 THE COURT: It says suspects, Howard slash Hicks.

10 MR. BROWN: It was testified that it came off of
11 Hicks.

12 THE COURT: Wait a minute. Now you're asking me to
13 inject who the money came from or whatever is in there.
14 This does not say who it came off or . .

15 MR. BROWN: I would ask that it have no reference to
16 a suspect. The testimony is what it is. The testimony
17 is what links it to my client.

18 THE COURT: Respectfully, there is nothing on here
19 to indicate who it came from, where the money came from.

20 MR. BROWN: Mr. Howard denies being with Mr. Hicks
21 at the time of the crime.

22 THE COURT: I understand that, but what I am say-
23 ing is that I would be concerned if this identified spe-
24 cifically who it came off of, but it does not.

25 MR. BROWN: But it implies.

1 THE COURT: No, it doesn't. It says suspects, Howard
2 slash Hicks.

3 MR. BROWN: Suspect . .

4 THE COURT: I don't think there is any question in
5 this case that they were both charged with this. I mean,
6 we are getting ready to hear Mr. Hicks' testimony event-
7 ually if I find him qualified to testify.

8 So I can tell you as of right now when I read it I
9 don't have any problem with the money as it is.

10 It is going to come in just as it is. If I can
11 come up with something -- how many actually paper bags
12 do I have? I only see four -- she's got a few back there,
13 but . .

14 MR. BROWN: One of them has items that are marked
15 individually inside.

16 SOLICITOR: And that's fine. We can take those out
17 from the bag. There are three small items.

18 THE COURT: Okay.

19 SOLICITOR: That's fine. We'll take those out but
20 for convenience we'll keep them in now. When we take
21 them back to the jury we'll take them out of the bag.

22 But the other ones, the exhibit is marked on the
23 bag itself and the identifiers on the bag are not any-
24 thing that is not . .

25 THE COURT: Has not already been testified to.

1 SOLICITOR: Yes, maam.

2 THE COURT: All right.

3 MR. BROWN: I have to be honest. I haven't read
4 all of these because I wasn't -- it wasn't offered in the
5 bags so I didn't study the bag before I -- it wasn't in
6 the bag to me.

7 THE COURT: With all due respect, they have to get
8 back there somehow.

9 SOLICITOR: Yes, maam.

10 THE COURT: My bailiff will have to take it back
11 and it has to get back there somehow.

12 Let's do this right now. Let's just see at the
13 end of the trial how many bags there are. I think the
14 biggest concern is the brown bag which actually had
15 where potentially the item was found. The money doesn't
16 say that.

17 MR. BROWN: Yes, maam.

18 THE COURT: So while you raise it on the money issue,
19 I think there is less concern on the money than there
20 may be on one of the brown bags.

21 MR. BROWN: That's because they were pulled out of
22 the brown bag when they were shown to me, and the money
23 was offered in in the bag, so I raised an objection at
24 that time.

25 THE COURT: All right. I understand that.

1 MR. BROWN: Thank you, and, Your Honor, is there
2 any way we can confirm that Dr. Smith was actually lo-
3 cated?

4 THE COURT: I have no idea. It was my secretary and
5 she left at five o'clock, I'm sure. So if I speak with
6 her I will get in touch with Dr. Smith and as best I can.

7 MR. BROWN: Yes, maam. Thank you.

8 THE COURT: My understanding is that the State's
9 case is going to take at least until tomorrow, so we
10 have some time.

11 MR. BROWN: Okay.

12 THE COURT: It's my understanding that my secretary
13 contacted someone at MUSC based on the name you gave her
14 and the phone number you gave her which is all she dialed
15 off of.

16 MR. BROWN: Right.

17 THE COURT: Then she did contact the correct person
18 and it was the correct person. You need to send Mr.
19 Rowell out to try to serve this doctor.

20 MR. BROWN: That's where Mr. Rowell is now.

21 THE COURT: Like I said, if I can get him here, I
22 will as well.

23 Okay?

24 MR. BROWN: Yes, maam, and I do see Ms. Katz back
25 in the Courtroom and I assume she was in the sequestration.

1 Again, I am going to keep my witnesses sequestered and

2 . . .

3 THE COURT: Do you expect Ms. Katz to testify?

4 SOLICITOR: I didn't call her.

5 MR. BROWN: Her name was called on voir dire, and
6 she is in the Courtroom. I mean, I don't know if she was
7 in here for the last bit of testimony but I'm trying to
8 make sure the Sequestration Order is followed.

9 THE COURT: I understand Ms. Katz is Dr. Katz, if
10 I'm correct, or she may have a Master's Degree, but she
11 -- I'm not sure.

12 You are the director at Hope Haven, is that correct?

13 MS. KATZ: Yes, maam.

14 THE COURT: Okay. What is her testimony going to
15 concern?

16 MR. BROWN: I asked one of the witnesses about state-
17 ments told to her. I asked, did you say X Y and Z to Ms.
18 Katz on this date at this time.

19 The reason I'm asking it like that is because she
20 is in here and I don't want to tell her what I asked. I
21 mean, . . .

22 SOLICITOR: I don't have her under subpoena.

23 MR. BROWN: I didn't subpoena her.

24 MS. KATZ: Hope Haven was subpoenaed for records.
25 That's why I'm here.

1 THE COURT: Okay.

2 MR. BROWN: But the problem is if I call her as a
3 witness she has now sat in on the testimony which de-
4 feats some of the sequestration issues.

5 So I have no -- I'm asking, did she follow sequestra-
6 tion and I don't know what else to say.

7 THE COURT: If she is not under subpoena, she is not
8 subject to sequestration.

9 Respectfully, we don't know if Ms. Katz is going to
10 testify at all or if you're going to need her.

11 MR. BROWN: Well, I believe I will because . . .

12 THE COURT: She is currently not under subpoena.

13 MR BROWN: But she should be subject to sequestra-
14 tion. Mr. Dysach wasn't under subpoena yesterday either
15 but he now is under subpoena because I'm informed he is
16 a possible witness.

17 THE COURT: That is your decision, whether you want
18 to serve her with a subpoena or not, sir.

19 MR. BROWN: I would ask that she be sequestered as
20 a witness. In fact, I'm trying to prevent there being an
21 issue about one of my witnesses being in here to hear
22 testimony.

23 I mean, I've got the reports and . . .

24 THE COURT: Well, I haven't seen the reports and we
25 will -- I don't know what the discrepancy is allegedly.

1 We are not going to do it tonight.

2 Respectfully, Ms. Katz, if you plan on being back
3 in the morning, before you do please get with Mr. Brown
4 to determine whether or not he is going to call you as a
5 witness.

6 MR. BROWN: Right now, I plan on it.

7 THE COURT: We'll just revisit it in the morning.

8 Thank you, you all.

9 SOLICITOR: May I bring up a scheduling problem?

10 THE COURT: Absolutely.

11 SOLICITOR: I apologize.

12 THE COURT: We're fine. I just want Mr. Brown to
13 be able to go to his baseball and sometimes it's better
14 to wrap up for the night.

15 SOLICITOR: Looking at the scheduling for tomorrow,
16 we got through eight witnesses today. I could put up
17 anywhere from eleven to thirteen witnesses tomorrow.

18 I have one issue. My last witness, who probably will
19 not take long, is coming from Columbia, and if I could
20 tell the witness to be here first thing Thursday morning
21 that would be easier for me.

22 Of course, my concern is if the testimony goes
23 quicker tomorrow than I expect, and I'm asking if we do
24 somehow end up early tomorrow -- and I've already told
25 this guy he wouldn't have to be here until Thursday . .

1 MR. BROWN: My only concern is I had told my paralegal
2 at four o'clock to go buy a plane ticket so my guy can
3 fly in here tomorrow. I would ask the exact same question.

4 I don't have any problem with her witness not being
5 here until Thursday. I've got my witness flying in a day
6 early. I wouldn't have told him to come until Thursday

7 . .

8 THE COURT: All right.

9 SOLICITOR: There is no way I'll finish tomorrow at
10 this rate.

11 MR. BROWN: I wish I had known that before we bought
12 a plane ticket and have to get a hotel reservation for
13 our witness.

14 THE COURT: You all, again, this is scheduling. This
15 is probably the most difficult part of trial work.

16 Solicitor, I don't think you can tell your doctor or
17 whomever is coming from Columbia that they absolutely will
18 not go tomorrow.

19 You will have a better feeling about lunch time and
20 Columbia is two and a half hours away roughly, maybe two
21 forty-five -- it depends on who is driving.

22 That would give that person enough time to get here
23 at the end of the afternoon if it was necessary.

24 I know you'd like to be able to advise your witnes-
25 ses, and, of course, you can put it back on me and just say

1 the Judge is going to make you be here. All right?

2 With that said, we're going to break for the even-
3 ing, although we do have one other issue. Your inves-
4 tigator, Mr. Brown, told me that the nurse and her hus-
5 band are in fact here and need to speak with you.

6 MR. BROWN: I assume they're going to speak with me
7 about sitting in a hotel room.

8 THE COURT: Well, they need to understand that ob-
9 viously they are here and hopefully . .

10 MR. BROWN: I think that's them right there.

11 THE COURT: And, again, that's all fine and good but
12 it is not my job to orchestrate in terms of when and when
13 people arrive during a trial of a case.

14 You should remind them that they are under subpoena
15 and, respectfully, they need to be here.

16 Okay?

17 MR. BROWN: Oh, yes, maam, and they asked about being
18 paid, and, of course, I can't pay lay witnesses.

19 THE COURT: Well, you can explain that to them and
20 at the end of the trial if they have a concern I can cer-
21 tainly explain it to them.

22 Thank you. Everyone have a good evening. We will
23 see you all about nine fifteen tomorrow morning.

24 (Court stood in recess until February 25, 2009, at
25 9:53 A.M.)

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

2 Good morning. Just a few issues we need to take up
3 this morning before we bring this jury in. Before I
4 bring the jury on in, to begin with, Mr. Brown, I have
5 been in contact with Dr. Smith this morning.

6 He apologized profusely for not responding to your
7 inquiries, and I have respectfully requested him to check
8 his schedule today and see if he can make his way down
9 to Beaufort.

10 As soon as he calls me back and lets me know, I'll
11 let you know.

12 MR. BROWN: Yes, maam. Thank you.

13 THE COURT: Absolutely. I don't even know -- it is
14 not clear from my conversations with him whether or not
15 he ever received a subpoena.

16 Do you know if Mr. Rowell was able to subpoena him?

17 MR. BROWN: Mr. Rowell was in Charleston last night
18 and obviously it was late in the evening. When I talked
19 to him about eight thirty he was in Charleston.

20 THE COURT: Did he actually serve him?

21 MR. BROWN: Not as of eight thirty last night but
22 I think he was there to do that this morning.

23 THE COURT: Okay.

24 MR. BROWN: I sent him a copy of the attachment to
25 his Email address as well, and I never heard back, and

1 we told him -- this is a copy of it and we did that to
2 try to give him a head's up.

3 THE COURT: Okay.

4 MR. BROWN: I know Mr. Rowell is in Charleston to
5 serve him today.

6 THE COURT: I would say for the record that one of
7 the things he stated to me was that all his records would
8 be at MUSC so he would not physically have them, and
9 what he asked me to do is fax him a copy of his forensic
10 evaluation report which is what I did, and I told him
11 that is all I had.

12 MR. BROWN: Yes, maam.

13 THE COURT: I went ahead in my office and sent him
14 a copy of that. I presume you want him to come, is that
15 correct?

16 MR. BROWN: I do, Judge. I don't know exactly what
17 witnesses they have scheduled today, and we know there
18 are like ten or eleven today for the State.

19 Of course, . .

20 THE COURT: Respectfully, my question is, do you
21 want to call him in front of this jury or are we calling
22 him strictly for a competency hearing.

23 That was my understanding, it was for a competency
24 issue, for me to determine whether or not Mr. Hicks could
25 adequately testify.

1 MR. BROWN: There is another question which I cannot
2 answer which goes into some of the rules of evidence
3 about statements that were made by Mr. Hicks, and whether
4 Mr. Hicks is going to admit those statements or not, be-
5 cause that triggers portions of extrinsic -- excuse me
6 -- prior statement requires that the witness deny it.

7 I want to ask Mr. Hicks first whether he made these
8 statements to Dr. Smith, and if he said -- date and time
9 is what the rule says -- and if he denies it, then I can
10 introduce such statements through Dr. Smith.

11 I know that's a long answer, but if Mr. Hicks denies
12 the statements then, yes, I'm going to call Dr. Smith to
13 get any those statements.

14 That's my understanding of the rule of how you can
15 get them in, get into extrinsic proof of other statements.

16 THE COURT: Let me ask you this, Solicitor. Is it
17 possible for you to consent to the introduction of those
18 portions of the forensic evaluation, because Dr. Smith
19 is going to strictly testify as to, I presume, that re-
20 port, and it would be possibly just that portion of the
21 report that he can use to refute it, if that makes sense?

22 SOLICITOR: Your Honor, here is my concern with Dr.
23 Smith because we came up against this in a death pen-
24 alty case.

25 The State had the Defendant evaluated prior to the

1 death penalty trial.

2 We went to call that expert as one of our witnesses,
3 and their lawyers got involved and told us we could not
4 do that; that they could not testify regarding their re-
5 port.

6 That that was done for an evaluation, and they
7 could not go into it as a witness. They had all kinds
8 of reasons for it.

9 So I cannot consent to anything about Dr. Smith's
10 testimony or his report until he gets there and we see
11 what he says. I don't know if that policy is changed
12 or if anything has happened in the courts about that,
13 but I know it was a major ordeal and it definitely came
14 with our witness, and we couldn't get him on the stand
15 to testify.

16 MR. BROWN: And if I may, I know exactly what she's
17 talking about because I have some documents related to
18 that same doctor for this case in Beaufort, and I argued
19 it in a case in a Greenville capital PCR, and I lost on
20 that issue because the State called a witness from the
21 Department of Mental Health and put him up, and the argu-
22 ment I made was that was an error because of this same
23 privilege that the doctor asserted in that Baker case,
24 where in my case involving John Woods, who is on death
25 row for a trooper killing in Greenville County, and Judge
480

1 Patterson ruled that it was not shielded by that same
2 privilege and that it was proper that the State introduced
3 it at trial.

4 The case just went up on appeal last week, and so this
5 is not exactly on all fours, but where the opposite rul-
6 ing came about.

7 THE COURT: So that explains why the State doesn't
8 want to put him up. Correct?

9 SOLICITOR: Well, I don't think -- in my experience,
10 I would love to put him up for that purpose. It is only
11 for the evaluation if we're having a hearing regarding
12 his competency or something of that nature that we would
13 call him.

14 But as a State witness in a trial, we do oppose that
15 and have opposed that in our cases.

16 So I would not stipulate to anything regarding his
17 testimony. However, I wasn't prepared to argue this this
18 morning.

19 I have done some research and done case law, and
20 it actually concerned me after Mr. Brown's opening state-
21 ment. I believe I should have made a motion prior to
22 this that he not be allowed to go into such detail about
23 Mr. Hicks' diagnosis, his mental health history.

24 There is case law on there -- I believe it's Curry
25 or Currin -- I've got it printed out.

1 The Defense was not allowed to go into this guy's
2 prior history, and he even used the word, I believe,
3 schizophrenia. He was allowed to ask him some very van-
4 illa question about his health history but not in the de-
5 tail Mr. Brown went into in opening statement.

6 That is my fault for not making a pretrial motion
7 regarding that. Still, we will . .

8 THE COURT: Will you provide me with the case law
9 because I would like to know the basis for not allowing
10 him to go into any prior mental health history.

11 I believe he has the opportunity to cross examine
12 him certainly to the extent to determine whether or not
13 he is being truthful, whether or not he in fact did pur-
14 ceive the events as they happened.

15 SOLICITOR: It was actually the length that they were
16 going into it, I think. He was allowed to ask him if he
17 had some kind of history, but not in depth.

18 MR. BROWN: If I may, one thing about the case, the
19 death penalty case Ms. Tanner mentioned, and the one I've
20 got, there is a difference because in both of those cases
21 the reports were being introduced against the person on
22 trial.

23 That is the difference, and I know the rule may not
24 -- it may not appear different to them, but -- for the
25 doctor, it may not appear different.

1 THE COURT: Right. You are planning to introduce
2 them.

3 MR. BROWN: I want them introduced because it's a
4 witness against my client, and so that is the difference
5 between this and the two death penalty cases.

6 I'm certainly aware of Ms. Tanner's efforts because
7 it came up in mine. Yes, maam.

8 THE COURT: All right. Well, Solicitor, you can
9 pull that up for me and I'll take a look at it in our
10 first break. I will do that.

11 To address a few other housekeeping matters, you
12 objected, Mr. Brown, to the introduction of the actual
13 bags that the evidence is housed in or . .

14 MR. BROWN: Yes, maam.

15 THE COURT: I believe it was information that you
16 objected to that is on the bag. Everything that is on
17 that bag was testified by whoever collected the bag and
18 it was identified.

19 Therefore, there is nothing on the bag that is hear-
20 say in any way. I think the jury is entitled to know --
21 it certainly cannot be expected for us to just go and
22 dump a bunch of bags in front of them to know what it is
23 they are looking at.

24 So, respectfully, I certainly thing any possible
25 prejudice is outweighed by the probative value, and I'm

1 going to allow the bags to go back as they are.

2 MR. BROWN: And we would object . .

3 THE COURT: You have noted it for the record, abso-
4 lutely.

5 Lastly, Solicitor, we had an issue about Ms.
6 Davidson's statement, the handwritten statement, and,
7 again, remind me when that was taken from Ms. Davidson?

8 SOLICITOR: It was taken the night of the incident.
9 I tried to do some research last night. It seems like a
10 very convoluted issue.

11 I believe one case I found said it was inadmissible
12 because the witness had not been impeached. I think in
13 this case she was impeached about a statement made the
14 same night.

15 However, because it is a convoluted issue, I don't
16 want this to be a reason this case gets flipped. I'm
17 going to pull that back. We have the testimony that is
18 pertinent, and I'm just not going to create an appellate
19 issue at this point and try to enter.

20 I withdraw my motion to enter that.

21 THE COURT: Okay. Solicitor, just for future pur-
22 poses, not this trial, I went through and did some research
23 as well and looked at this, and I looked at whether or
24 not I believed there was consistent or inconsistent
25 statements, and I think if it did fall under anything it

1 would be under 801 D one, either B or C, but, again, it
2 would have to fit the facts specifically. I am guessing
3 but I believe it is probably C. It would be more appro-
4 priate, and even if it were to do that maybe even it
5 would be that portion of the statement that just talked
6 about identity and not the entire statement.

7 But, of course, you have withdrawn it to keep a
8 clean record, and I respectfully note that, so we don't
9 even need to get into that issue.

10 I'm just talking about for future purposes. I don't
11 mean to pre-rule on something but we all know it will
12 come up again.

13 I appreciate the research you did as well, and you
14 have withdrawn your motion to put that in.

15 Thank you.

16 All right, anything further we need to take up? The
17 jury has been back there about thirty minutes and I'd
18 like to bring them out here and continue on with the
19 State's case.

20 You understand you cannot put Mr. Hicks up until I
21 hear back from Mr. Smith.

22 Anything further?

23 SOLICITOR: Nothing from the State.

24 THE COURT: Mr. Brown?

25 MR. BROWN: Briefly, Your Honor. I asked yesterday

1 and I just want to make it clear for the record so it
2 doesn't come up. This morning there was an article in
3 the paper by a reporter. A reporter went back and spoke
4 to you and I asked if I could be a part of that if it had
5 to do with this case, and you said it didn't.

6 I just want to put on the record that there was a
7 story in the paper this morning about and I wouldn't mind
8 getting it and marking a copy of the story as an exhibit.

9 THE COURT: Uh hm.

10 MR. BROWN: I want to make sure what I'm supposed to
11 do to inquire about that contact, and I'm doing due dili-
12 gence here.

13 THE COURT: All right. Are you alleging that I
14 stated or had a conversation with the reporter about this
15 case?

16 MR. BROWN: No, maam, and all I'm trying to say is
17 that I asked.

18 THE COURT: Okay, for the record we didn't discuss
19 this case in any way. Mr. Donahue is the investigative
20 reporter for the Beaufort Sentinel and the Island Packet.
21 He is in my Courtroom most of the time on any cases that
22 they are interested in, as is a photographer.

23 We always meet, and, respectfully, we did not discuss
24 this case.

25 So there is no issue.

1 MR. BROWN: And if I could just put this copy of the
2 paper in to show what the article was for the record. It
3 shows -- because we asked about it, and I am satisfied,
4 Your Honor.

5 THE COURT: Okay.

6 MR. BROWN: Do you want to do it as a Court's Exhi-
7 bit?

8 THE COURT: We can do it as a Court's Exhibit so I
9 can see it too, because I haven't seen it.

10 (Newspaper article marked Court's Exhibit 2 for
11 identification purposes)

12 THE COURT: It appears the article that I'm reading
13 mostly recounts what you and Ms. Tanner said in your
14 opening statements.

15 Is that a fair . . .

16 MR. BROWN: Yes, maam. I have offered it up and I
17 think it was marked as a Court's Exhibit, a copy of
18 an article from the Beaufort Gazette.

19 THE COURT: Okay.

20 MR. BROWN: Yes, maam, I agree with that.

21 THE COURT: Okay.

22 MR. BROWN: It is more of an issue of due diligence
23 on behalf of Mr. Howard.

24 THE COURT: It appears it is the same article as in
25 the Packet.

1 MR. BROWN: I haven't looked at the Packet.

2 THE COURT: Okay. I haven't compared it word for
3 word but it appears the same.

4 Anything you need me to do with this?

5 MR. BROWN: Maybe to make sure the jury didn't --
6 they followed your instructions.

7 THE COURT: Okay. Lastly, you all, I have received
8 a note from a Heather Clingon that I would make a trial
9 exhibit. I haven't read it.

10 (Note of Ms. Clingon dated 2 24 09 marked Court's
11 Exhibit 3)

12 THE COURT: Okay, the note just says she is here and
13 the subpoena that she understood was that she was to tes-
14 tify on Monday and be done on Monday, which she recounted
15 in this that she is civic minded and wants to do her
16 duty and, of course, she was a nurse at the time this oc-
17 curred.

18 She is here to testify but she is six months preg-
19 nant, a bit uncomfortable, and certainly concerned about
20 money, having a child coming down the line.

21 She said in here that I understand you have ruled
22 she is not to be paid.

23 MR. BROWN: I think the statement I made is that I
24 am not allowed to pay a lay witness.

25 THE COURT: Okay.

1 MR. BROWN: I believe that is what I said.

2 THE COURT: But you didn't tell her that I ruled I
3 wasn't going to be able to find funds for her or to as-
4 sist her?

5 MR. BROWN: Your Honor, I tried not to speak to her
6 on that issue, and I explained to her, you know, I would
7 put her up as soon as I could but I couldn't put her up
8 out of order.

9 She asked about the money and I said I can't -- of
10 course, I'm appointed, Your Honor, and I can't pay her
11 any way but I don't know of any rule that allows for pay-
12 ment of lay witnesses.

13 I certainly understand that it's a hardship and I
14 wish I could deal with it.

15 THE COURT: Okay. Solicitor, is there any chance
16 at all we will finish with your case today and be able to
17 put Ms. Clingon up today?

18 SOLICITOR: I can't imagine we'll be done today.

19 MR. BROWN: I will put her up first.

20 SOLICITOR: If he wants to go ahead and put her up
21 out of order, he can do that. I'm fine with that.

22 THE COURT: You're fine with that?

23 SOLICITOR: Yes, maam. The victim has already tes-
24 tified she was the nurse who took her exam that night.

25 THE COURT: Mr. Brown?

1 MR. BROWN: I can't destroy my case, and by putting
2 up witnesses I lose the only coherency for my case in my
3 closing.

4 THE COURT: Usually defense counsel would jump all
5 over being able to put up witnesses in the State's case.
6 If you're going to object to it -- I can certainly tell
7 you I have done it in civil trials. I haven't done it in
8 a criminal trial but usually defenses love to put up a
9 witness in the State's case but the Solicitor would never
10 allow it.

11 Certainly she is trying to accommodate you.

12 MR. BROWN: And in a way it is actually an advantage
13 because they are then able to reply in their own case in
14 chief instead of putting up a reply case.

15 THE COURT: Do you want some time to think about it?

16 MR. BROWN: Right now, Your Honor, I'm trying to
17 keep my case holistic, if there is some strategy benefit
18 to having a coherent case to present.

19 THE COURT: Okay. Well, let's take a break, and I
20 understand they are out here. I will speak to them di-
21 rectly about the financial issues.

22 MR. BROWN: If the Court thinks it proper I will
23 move for funds . .

24 THE COURT: I don't think you can move for funds or
25 try to do anything along those lines.

1 MR. BROWN: . . but I'm not comfortable with even
2 touching the paying of lay witnesses.

3 THE COURT: I can just see if I can somehow do it,
4 ...

5 MR. BROWN: Yes, maam.

6 THE COURT: . . and I'm not sure I can do it either
7 but if I can, I will.

8 MR. BROWN: And, Your Honor, one thing I would note,
9 they actually were never served the out-of-state subpoena.
10 They've been served an in-state subpoena when they came
11 here out of an abundance of caution.

12 One thing I would also note is that the out-of-state
13 subpoena says on there that arrangements will be made to
14 take care of the expense of the out-of-state witness com-
15 ing.

16 THE COURT: All right.

17 MR. BROWN: And I don't know how I would have done
18 that, even though it was not actually served on them.

19 THE COURT: Why does the subpoena say that then?

20 MR. BROWN: That's part of what they require, no
21 undue financial burden, and I don't know . .

22 THE COURT: Maybe it allows me to do so.

23 MR. BROWN: That's what I was going to say and that
24 is why I would point out that you did sign that part of
25 it. It was never domesticated in Virginia.

1 THE COURT: All right. Just tell them to sit tight.
2 We're going to do our best.

3 With that said, Ronda has made that a Court's Exhibit
4 as well.

5 Anything further before we bring the jury in?

6 From the State?

7 SOLICITOR: Your Honor, the case I was referencing,
8 I had the name wrong. It's a 2007 case of State versus
9 Turner, and it's 644 SE Second 693.

10 Basically, what the Court said in that case -- the
11 State made a motion to exclude defense counsel from ask-
12 ing the victim-witness about her schizophrenia diagnosis
13 and asked no reference to the word schizophrenia or about
14 that diagnosis be referred to in her testimony.

15 Furthermore, defense counsel wanted to ask the wit-
16 ness if she was taking Prozac or varied medications for
17 the purpose of saying it affected her testimony or mem-
18 ory of that night.

19 They were allowed to ask if she was taking medica-
20 tion and whether or not if she took the medication and
21 if it affected her testimony. They were not allowed to
22 use the name of the drug, and they were not allowed to
23 ask her about her schizophrenia as being irrelevant, or
24 her diagnosis was.

25 Just the fact that she was prescribed medication and

1 whether or not she took it like she was supposed to, and
2 if it affected her memory from that night when she testi-
3 fied that day.

4 Also, you know, it still leaves wide discretion in
5 the Trial Court as to inadmissibility or admissibility
6 of any evidence.

7 That is the case I was referring to and I think
8 with reference to Mr. Hicks' diagnosis, again, that we
9 would make the same argument. It is not relevant. Whe-
10 ther or not something affects his memory or affects his
11 ability to control his behaviors or testify -- that
12 would be the issue without going into diagnoses or the
13 word schizophrenia, which I think to lay people has con-
14 notations which would be inappropriate.

15 That would be the State's motion that he be pre-
16 cluded from using those words or the names of medications
17 Mr. Hicks would have been taking at the time.

18 MR. BROWN: Your Honor, just briefly, I just have
19 pulled the case up. If I may respond briefly?

20 To begin with, the Courts and especially in the
21 Fourth Circuit have been very clear that with cooperating
22 witnesses who are cutting a deal or considered back in
23 the Fourth Circuit to get a jury charge regarding the
24 skepticism that a jury should bring to its evaluation of
25 a cooperating witness, because of the incredible bias

1 created by the ability to offer freedom in exchange for
2 testimony, which is unique to a criminal case to the
3 State.

4 I point that out as it is a little different, and,
5 two, on this -- the prosecutor mentioned it and we have
6 gone through an opening, and I made references and it is
7 clear by looking at this report that I was going to at-
8 tack Mr. Hicks.

9 I don't think there is any question of that, and I
10 did it in my opening, and I would tell you now that there
11 are cases -- I know there is a case that came out in the
12 mid-nineties where on post conviction it was raised that
13 a defense lawyer failed to object to some items and some
14 Fourth Amendment issues of search and seizure in an open-
15 ing statement, and to me it is the flip side of it.

16 That lawyer was ineffective for not objecting to any
17 opening remarks concerning items that should have been
18 suppressed. To me, it is kind of the opposite, that they
19 waived it.

20 And she mentioned that certainly -- otherwise now I
21 may at a later point in time have to answer why I made an
22 opening statement that I could not back up.

23 SOLICITOR: Opening statements are not evidence,
24 Your Honor, and they are going to be told that. The
25 State will refrain in our closing from mentioning that

1 he didn't prove that this person had schizophrenia.

2 Again, I think there are ways to ask Mr. Hicks if
3 he has anything that prevents him from remembering or
4 testifying without going into all this medical diagnoses
5 and things of that nature which do become prejudicial,
6 because unless he has someone who is going to explain all
7 of that stuff to the jury it is -- the word schizophrenia
8 right now I think in modern culture is a scary word, and
9 I think it actually has connotations that are inappropriate
10 ate to Mr. Hicks' case.

11 It is way beyond prejudicial, Your Honor, and there
12 is no documentation actually that he was diagnosed with
13 that. It is something he kind of came up with.

14 MR. BROWN: I think schizo-affective disorder
15 which . .

16 THE COURT: I understand what it is. Here's what
17 I'm going to do, you all.

18 I'm going to read the Turner case. Mr. Brown, if
19 you have any other cases that would allow you to go into
20 it -- I am going to allow you at this point to some extent
21 question him.

22 MR. BROWN: Yes, maam.

23 THE COURT: Because I do believe as you've stated
24 that we have a witness who, like you said, we do allow
25 you to ask what's the deal you cut with the State, to

1 show any bias or prejudice of a witness.

2 Certainly I tell them in my jury charge that they
3 can consider that. Whether or not it is admissible is
4 one question, and then whether or not they believe his
5 testimony is a whole other issue.

6 MR. BROWN: Yes, maam.

7 THE COURT: I think to a certain extent I will allow
8 you to go into it where he can understand and know -- I
9 assume he is going to sit here and say he understood what
10 the events were. I have no idea if he was taking medica-
11 tion at this time. He may or may not have been.

12 MR. BROWN: He got out of prison like two months be-
13 fore he was arrested here, and he went to Coastal En-
14 vironmental Health on reference from his parole officer,
15 I believe, or correctional facility.

16 THE COURT: Okay.

17 MR. BROWN: Which has absolutely nothing to do with
18 this, so he was in and out of treatment. In fact his
19 treatment records predate this and they are an inch
20 thick.

21 THE COURT: You and I both know an issue is whether
22 he was taking his medication or not, and it may be some-
23 thing we take up ahead of time.

24 I have to read the Turner case . .

25 MR. BROWN: Yes, maam.

1 THE COURT: . . and, Mr. Brown, if you have any case
2 law that talks about the extent you should be allowed
3 to go into a testifying Codefendant or witness against
4 the Defendant, any bias, any prejudice, inability to
5 tell the truth -- and I think that's probably more where
6 you'll find your case law, other than just mental health.

7 MR. BROWN: Yes, maam.

8 THE COURT: Their ability to tell the truth -- I
9 mean, it's almost more akin to children who testify or
10 something along those lines.

11 So let me do the research and you see if you can
12 find anything, and we'll address that in time.

13 Anything else we need to take up before we bring
14 the jury in, Solicitor?

15 SOLICITOR: Alongside that, Your Honor, there are
16 witnesses coming up today and based on questions he asked
17 yesterday of the officers about a prior incident with
18 Mr. Hicks or whether or not they took him to the hos-
19 pital, if he wanted to go to the hospital or jail or some-
20 thing like that -- I am going to argue that is irrelevant
21 whether they took him to a hospital or not years before
22 this incident occurred.

23 I would like some guidance on that prior to him
24 taking the stand because, clearly, Mr. Brown is going to
25 jump out and ask a question before the jury before I can

1 even object and they are going to hear that kind of
2 stuff.

3 I would ask that it be excluded, and that he not be
4 allowed to ask whether Mr. Hicks was taken to a mental
5 hospital in a prior incident that has nothing to do with
6 this case.

7 He's allowed to ask him about his mental health is-
8 sues, but that clearly serves his purpose.

9 I don't think he needs to ask these officers. One of
10 them has already answered that he doesn't remember that,
11 but there is another officer who was mentioned took him,
12 and he will be testifying.

13 I don't know whether or not he remembers it either,
14 but I would like him not to be given another shot to put
15 that information out and testifying himself through his
16 question.

17 MR. BROWN: If I may, . .

18 THE COURT: Yes.

19 MR. BROWN: . . the leading officer on this case
20 just one year before his arrest was involved in the inci-
21 dent that I mentioned.

22 The reason why I asked that question yesterday at
23 that time of the witness, which I prefaced it he was second
24 in charge of the City Police Department, so he was one of
25 the ones -- I say that because I didn't know whether they