

VOLUME II 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

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PAGES 501-1000

INDEX

INDEX.....	i
TRIAL TRANSCRIPT DATED (February 23-27, 2009).....	1
APPLICATION FOR POST-CONVICTION RELIEF (July 14, 2011).....	1303
AMENDED APPLICATION FOR POST-CONVICTION RELIEF (March 22, 2013)	1309
RETURN (March 20, 2012).....	1313
POST-CONVICTION RELIEF HEARING TRANSCRIPT (April 2, 2013)	1317
APPLICANT’S EXHIBIT NO. 1	1453
APPLICANT’S EXHIBIT NO. 5	1466
ORDER OF DISMISSAL (September 23, 2016).....	1471
APPLICANT’S MOTION TO ALTER AND AMEND JUDGEMENT (October 12, 2016).....	1492
ORDER DENYING APPLICANT’S MOTION TO ALTER OR AMEND (October 27, 2016).....	1494
INDICTMENTS.....	1496

1 had talked about where he should go.

2 But it is clear in here that Mr. Hicks says that he
3 had stolen a truck and he took it because voices made
4 him take it. In other words, he didn't want to do it
5 but the voices said to do it.

6 THE COURT: Are you depending on something in the
7 report that states whoever the arresting was asked him
8 if he preferred to go to the hospital or if he wanted to
9 go to jail? I mean, where are you making that leap?

10 Is that in the report or is just something you are
11 coming up with?

12 MR. BROWN: No, it's true, and if Your Honor will
13 bear with me I can pull up the exact part of it. There
14 was contact with him, and it says he was -- on 26 Febru-
15 ary 2005, the day after the theft, Mr. Hicks had called
16 the police to say, come out here, and when they get out
17 there he says, the voices made me steal the truck, and
18 the report, and I read it -- quote, the suspect was not
19 charged at this time due to his psychological impairment
20 and hospital evaluation.

21 Then they arrested him later. In fact, they came
22 back and arrested him and took him to jail. Took him out
23 of the hospital and took him to jail, and . .

24 THE COURT: I will allow you to ask the arresting
25 officer who wrote the report that states they did not

1 arrest him at the time; that he was hospitalized.

2 That's the extent of it because I'm assuming the
3 officer isn't going to know any more than what is on
4 that report.

5 In other words, you can't go into detail unless he
6 needs.

7 MR. BROWN: Okay. I certainly understand, and,
8 Your Honor, again, the basis, which I tried to build the
9 basis for asking the officer yesterday -- he was second
10 in charge at the time.

11 My question was whether he was involved in that de-
12 cision.

13 THE COURT: Explore it as long as whether he was the
14 second in charge officer in the scene who would have wit-
15 nessed any of this, but not is he some chief that may
16 have seen a report.

17 Do you understand what I'm saying?

18 MR. BROWN: Detective Ott's name is listed right
19 here on the page.

20 THE COURT: Who all is on that report?

21 MR. BROWN: The original signing reporting officer
22 was a Richard Rias Orano and . .

23 THE COURT: Was he the arresting officer?

24 MR. BROWN: I don't . .

25 THE COURT: I assume he was arrested and just not

1 charged.

2 MR. BROWN: And it looks like the Sheriff's Depart-
3 ment went out there at some point and I notified -- it
4 says arrest of Hicks by Sergeant Ott.

5 THE COURT: So that would be appropriate question-
6 ing of Sergeant Ott.

7 MR. BROWN: And I think that is who she believes I
8 intend to ask.

9 THE COURT: That is who you will ask. You will not
10 ask every officer that comes up that may have touched him
11 in any way, shape or form.

12 Be prepared, Mr. Brown, if you continue to testify,
13 if the person has no independent knowledge or has no-
14 thing, I'm going to tell you to move on.

15 MR. BROWN: Yes, ma'am, and I understand. One thing
16 I want you to -- one thing I want to put in context is
17 this. Mr. Ott's report of this case indicates that he
18 was questioning Mr. Hicks about what happened after his
19 arrest on May 26th, and he says, I don't know anything,
20 and Detective Ott says, we know that isn't true.

21 You will recall in my opening statement I said the
22 officer questioning him knew of his mental weakness, and
23 that was part of my opening. In fact, I've got my open-
24 ing right here. I can read it to you verbatim.

25 THE COURT: Again, it's not evidence so it doesn't

1 really matter, other than what you have promised, but we
2 are going to go ahead and go for it.

3 MR. BROWN: Yes, maam.

4 THE COURT: I'm going to give you a leeway, as I
5 told you, on this issue, but I'm not going to let you
6 testify to what you believe. I can't imagine how the
7 officer would know when he is in the hospital or what is
8 going on.

9 MR. BROWN: Yes, maam.

10 THE COURT: It's just a hospitalization and we're
11 going to keep it to that.

12 MR. BROWN: Yes, maam.

13 THE COURT: Anything further before we bring the
14 jury in?

15 SOLICITOR: Nothing from the State.

16 THE COURT: Anything more from the Defense?

17 MR. BROWN: Nothing more for the Defense, but we
18 don't waive any other objections. I'm not doing that.

19 THE COURT: Noted for the record.

20 Bring the jury out.

21 (Jury returned to Courtroom at 10:29 A.M.)

22 BAILIFF: Your Honor, the jury is seated.

23 THE COURT: Thank you. Good morning, ladies and
24 gentlemen.

25 I trust you all had a nice evening. Ladies and

1 gentlemen, this morning I understand there were a couple
2 of articles or an article in the Beaufort Gazette as
3 well as the Island Packet.

4 I want to make sure that everyone followed my order
5 last night and did not read that.

6 Is there anyone on the jury panel that in fact did
7 read the article?

8 If you would, just raise your hands.

9 (No response)

10 Thank you. I appreciate it, ladies and gentlemen.
11 I note for the record no one on the jury raised their
12 hand.

13 With that said, ladies and gentlemen, we are ready
14 to proceed with the trial of this case.

15 If the State would call their next witness?

16 SOLICITOR: Thank you, Your Honor. The State calls
17 Officer David Ott to the stand.

18 THE COURT: Mr. Ott, if you would come forward to
19 be sworn, sir.

20 DAVID OTT, being duly sworn,
21 testified as follows:

22 CLERK: Please be seated. State your full name
23 and spell your last name.

24 WITNESS: Charlie David Ott, O T T.

25 DIRECT EXAMINATION

1 BY SOLICITOR:

2 Q. Good morning, Sergeant Ott.

3 A. Good morning.

4 Q. Where are you employed?

5 A. Beaufort City Police Department.

6 Q. And in what capacity?

7 A. As an investigator.

8 Q. How long have you worked in law enforcement?

9 A. Looking at twenty-nine years. Lacking four months
10 of 29 years.

11 Q. And were you involved as an investigator in the
12 State of South Carolina versus Alfonzo Howard?

13 A. Yes, I was.

14 Q. And what was the first thing that you did in your
15 investigation?

16 What did you respond to first?

17 A. I was notified to respond to the hospital, to go
18 down there and meet with the victims.

19 Q. Who did you meet with?

20 A. Corporal Kelleher -- I believe that's how you pro-
21 nounce it.

22 Q. And did you talk with the victims while you were at
23 the hospital?

24 A. I talked to Mr. Davidson. Mrs. Davidson was still
25 being treated.

OFR. OTT ON DIRECT

1 Q. And once you talked to Mr. Davidson, did you then
2 remain at the hospital, or did you go somewhere else?

3 A. We transported Mr. Davidson back to the BB and T,
4 where the initial incident started. He showed us where
5 he was parked at, and he also pointed out a white Ford
6 -- I believe it was a Tempo -- that was parked right
7 next to him.

8 From there he led me over to Lady's Island across
9 the Woods Bridge. We made a right turn on Meridian Road
10 and an immediate left into the bank that was on the cor-
11 ner, to an ATM machine.

12 At which time he said they got the money from there,
13 and come out from that parking lot back onto 21, going to
14 the beach; then went down and made the first right turn
15 which comes back around and I believe that's Yeomans
16 Drive, and it comes back around toward the back seat of
17 Beaufort High School.

18 At which time he said they went down to where the
19 baseball, softball fields are, where the buses pick up
20 the kids in the afternoon, and they told him to drive out
21 there, and he went back up and made a right, and I be-
22 lieve that is Geechie Road, down to the second entrance
23 of the Beaufort High School, the parking lot for the
24 football stadium, and parked at mid-field beside an oak
25 tree.

OFR. OTT ON DIRECT

1 Q. So you actually went back through all the crime
2 scene with Mr. Davidson?

3 A. Yes, I did.

4 Q. And that was the early morning hours of the 26th?

5 A. Yes, it was.

6 Q. Sergeant Ott, you said you first went back to the
7 BB and T and observed a white Ford Tempo?

8 A. Yes.

9 SOLICITOR: May I approach, Your Honor?

10 THE COURT: You may.

11 BY SOLICITOR:

12 Q. These have been entered as State's 8 and 9. Is
13 this the Tempo you are referring to?

14 A. Yeah, it is.

15 Q. And were you given information about who was the
16 registered owner of that vehicle?

17 A. Yes, I was. I was given that it came back to a
18 Mr. Eddie Howard over on St. Helena Island.

19 Q. And once this vehicle was processed, were you in-
20 volved in returning it to its owner?

21 A. Yes, I was.

22 SOLICITOR: Showing the Defense what has been marked
23 as State's Exhibit 29.

24 If I may approach the witness, Your Honor?

25 THE COURT: You may.

OFR. OTT ON DIRECT

1 BY SOLICITOR:

2 Q. Sergeant Ott, can you identify what is marked as
3 State's 29?

4 A. Yes, I can.

5 Q. What would that be?

6 A. It's a police department form that we use for re-
7 lease of property back to owners or victims. It was the
8 owner's vehicle, a Ford Tempo, and it was returned back
9 to Mr. Eddie Heyward at which time he signed it and fol-
10 lowed by my signature.

11 This was completed on June 2nd of 2006.

12 Q. You said Heyward.

13 A. Eddie Heyward.

14 Q. Howard?

15 A. Eddie Howard. I'm sorry. I can't read.

16 SOLICITOR: State would move Exhibit 29 into evi-
17 dence.

18 MR. BROWN: Without objection.

19 THE COURT: Admitted without objection.

20 (Property release form admitted in evidence with-
21 out objection as State's Exhibit 29)

22 SOLICITOR: May I publish to the jury?

23 THE COURT: You may.

24 (Exhibit 29 shown to the jury)

25 BY SOLICITOR:

OFR. OTT ON DIRECT

1 Q. Sergeant Ott, were you able to determine if there
2 was any relationship between Eddie Howard, the registered
3 owner of this Ford, and Mr. Alfonzo Howard, the Defendant?

4 A. Yes, I was. It was his father.

5 Q. Eddie Howard is Alfonzo's father?

6 A. That is correct.

7 Q. Were you able to determine in your investigation
8 that Alfonzo Howard had authority or permission to drive
9 . .

10 MR. BROWN: Your Honor, obviously that is a state-
11 ment . .

12 THE COURT: Is there an objection?

13 MR. BROWN: Hearsay.

14 SOLICITOR: During his investigation did he learn
15 whether Alfonzo Howard had permission to drive the car.

16 MR. BROWN: Well, I assume he learned from somebody
17 telling him.

18 SOLICITOR: It was information he learned in his in-
19 vestigation.

20 THE COURT: That he had permission to drive the car?

21 SOLICITOR: Yes, Your Honor.

22 THE COURT: Overruled. You may ask the question.

23 A. Can you repeat the question?

24 Q. Did you learn in your investigation whether Alfonzo
25 Howard had permission to be driving his father's vehicle?

OFR. OTT ON DIRECT

1 A. Yes, he did.

2 Q. All right, Sergeant. As another part of our inves-
3 tigation, were you involved in an interview of Codefen-
4 dant Lorenzo Hicks?

5 A. Yes, I was.

6 Q. And did you inform Mr. Hicks of his rights, includ-
7 ing his Miranda Rights, prior to interviewing him?

8 A. Yes.

9 Q. And once you did that, did he appear to understand
10 his rights?

11 A. Yes, he did.

12 Q. Did you interview Mr. Hicks?

13 A. Yes, I did.

14 Q. Did Mr. Hicks give you a statement?

15 A. Yes, he did.

16 Q. And was he cooperative in giving his statement?

17 A. Yes.

18 Q. And did he relate information about events of that
19 night?

20 A. Yes, maam.

21 Q. And based on information provided to you by Mr.
22 Hicks, did that further your investigation as far as
23 evidentiary matters and other suspects?

24 A. It did.

25 Q. Also, as part of your investigation did you conduct

OFR. OTT ON DIRECT

1 a search warrant on the residence resided in by Mr.
2 Alfonzo Howard?

3 A. Yes, I did.

4 Q. And whose home was it? Was it registered to him?

5 A. No, it was his father's home.

6 Q. Mr. Eddie Howard's home?

7 A. Correct.

8 Q. And did you actually execute that search warrant?

9 A. Yes.

10 Q. What items were you looking for in the home of Mr.
11 Howard?

12 A. Anything pertaining to evidence of this case.

13 Q. And during your investigation were you able to de-
14 termine whether or not there was a gun involved?

15 A. Yes.

16 Q. And did you locate a gun in that residence?

17 A. No, I did not.

18 THE COURT: Objection?

19 MR. BROWN: No, not yet.

20 THE COURT: Sit down then. Thank you.

21 BY SOLICITOR:

22 Q. During your time with Mr. Hicks, the Codefendant,
23 did you take any biological evidence from him?

24 A. We did swabs for DNA from his mouth.

25 Q. What is the procedure for doing a swab?

MR. OTT ON DIRECT

1 A. We use sterile gloves, evidence gloves we call them,
2 and a swab is a very large Q-tip with cotton on the end
3 of it. Then basically you have the person open their
4 mouth and you rub just the inside of their cheeks and
5 gums and get the saliva off of it, at which time it is
6 taken and packaged in a box and labeled and sealed.

7 SOLICITOR: Showing Defense Counsel what's been
8 marked State's Exhibit 80.

9 May I approach the witness?

10 THE COURT: You may.

11 BY SOLICITOR:

12 Q. Sergeant Ott, I show you what's marked as State's
13 Exhibit 80. Can you identify this item?

14 A. Yes, I can. This is a box containing the swabs
15 of Mr. Hicks, and there is my initial.

16 Q. This is the DNA sample from the Codefendant Lorenzo
17 Hicks?

18 A. Yes, it is.

19 SOLICITOR: Your Honor, State moves 80 in evidence.

20 MR. BROWN: Without objection.

21 THE COURT: Admitted, without objection.

22 (Hicks DNA swab admitted without objection into
23 evidence as State's Exhibit 80)

24 BY SOLICITOR:

25 Q. Sergeant Ott, were you also involved in taking a

OFR. OTT ON DIRECT

1 DNA sample from Alfonzo Howard?

2 A. Yes, I was.

3 Q. And was the swab taken from Mr. Howard as it was
4 from Mr. Hicks?

5 A. No, it was blood.

6 Q. Did you actually draw the blood?

7 A. No.

8 Q. Who drew the blood?

9 A. The nurse at the Beaufort County Detention . .

10 Q. And her name is . .

11 A. I'll have to look at my notes and see. I can't re-
12 call.

13 Q. Does Amy Bradley sound familiar?

14 A. It sounds very familiar, yeah.

15 Q. Were you present, and did you watch her draw the
16 blood?

17 A. Yes.

18 Q. And once she drew the blood from Mr. Howard, what
19 then happens to it?

20 A. That actually is sealed. He gives his fingerprints
21 on a piece of paper on the inside with the blood. It is
22 sealed by the nurse initially and turned in to evidence.

23 SOLICITOR: Showing Defense Counsel what has been
24 marked as State's Exhibit 81, Your Honor, two pages, one
25 stapled to the other.

OFR. OTT ON DIRECT

1 While I'm at it, I'll show him State's Exhibit 34
2 as well.

3 MR. BROWN: Thank you.

4 SOLICITOR: May I approach the witness?

5 THE COURT: You may.

6 BY SOLICITOR:

7 Q. Sgt. Ott, I'm going to show you State's Exhibits
8 81 and 34, and ask if you can identify these two items.

9 Start with 81. Is that the form that was filled out?

10 A. Yes, it is the form that was filled out.

11 Q. When was that taken or filled out?

12 A. May 8th, 2007.

13 Q. And what was going on then?

14 A. It was the taking of the blood sample from Alonzo
15 Howard.

16 SOLICITOR: Your Honor, the State moves 81 into
17 evidence.

18 MR. BROWN: Without objection.

19 THE COURT: In evidence without objection.

20 (Paperwork for Defendant Howard's DNA sample admit-
21 ted in evidence without objection as State's Exhibit 81)

22 BY SOLICITOR:

23 Q. Sgt. Ott, I show you State's Exhibit 34, and ask
24 if you can identify that?

25 A. Yes, this is the box that the items were packaged

OFR. OTT ON DIRECT

1 that day, being the blood sample obtained that day, and
2 also there is my initials on it and the date.

3 Q. And once you came into possession of that item, did
4 you do anything to tamper with it, alter it, or do any-
5 thing of that nature?

6 A. No, I did not.

7 Q. Was it sealed once in the box?

8 A. Yes, it was.

9 Q. What is the protective seal? What is that called?
10 To keep anyone else from tampering with it, what pro-
11 cedures do you have in place?

12 A. To begin with the box or kit has an integrity seal
13 that goes on -- all the way around the opening of the
14 box. If you open the box, of course this breaks, and
15 you can see that.

16 It is then turned in as that. This particular box
17 was put into another plastic bag by me and we have a heat
18 seal which when it is turned in is heat sealed.

19 It was then taken to SLED, which I believe I deliv-
20 ered it to SLED, and they received it as a sealed pack-
21 age that had never been tampered with.

22 SOLICITOR: Your Honor, State moves 34 into evi-
23 dence.

24 MR. BROWN: Without objection.

25 THE COURT: Admitted, without objection.

OFR. OTT ON DIRECT

1 (Blood specimen box entered in evidence without ob-
2 jection as State's Exhibit 34)

3 BY SOLICITOR:

4 Q. You are the one that transported these items to
5 SLED for their analysis?

6 A. Yes, that is correct.

7 Q. And during the transportation of these items, did
8 you tamper with these items?

9 A. No, maam.

10 SOLICITOR: Your Honor, at this time the State would
11 like to enter the stipulation that was entered into re-
12 garding Amy Bradley's testimony.

13 MR. BROWN: Obviously we agreed to the stipulation
14 as to the one item.

15 SOLICITOR: That's correct.

16 MR. BROWN: No objection.

17 SOLICITOR: Your Honor, if I may read it into the
18 record?

19 Miss Amy Bradley was employed as a nurse on May 8th,
20 2007. On that date she drew a blood sample from Alfonzo
21 Howard, identified as the client/Defendant on trial to-
22 day.

23 This procedure was performed through medically ac-
24 cepted practices and she did not tamper with or alter
25 Mr. Howard's sample in any way.

OFR. OTT ON DIRECT

1 This was done in the presence of Sergeant Ott,
2 Beaufort City Police Department, and the sample was turned
3 over to Sergeant Ott by Nurse Bradley, and Sergeant Ott
4 will testify at trial.

5 BY SOLICITOR:

6 Q. Thank you, Sergeant Ott. Please answer anything
7 Defense Counsel asks.

8 A. 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. I want to ask you a little bit about you work with
15 the police department back in 2005.

16 Do you recall there being an incident involving the
17 theft of a truck at the Beaufort Memorial Hospital park-
18 ing lot?

19 A. Yes, I do.

20 Q. And do you recall meeting within twenty-four hours
21 or so with a gentleman named Rico Hicks?

22 A. I believe it was two days later.

23 Q. Two days later?

24 A. Uh hm.

25 Q. And how did you go to see Mr. Hicks? How did you

OFR. OTT ON CROSS

1 get there?

2 A. I drove a car.

3 Q. How did you know to go see him?

4 A. He called me.

5 Q. He called and said, I've got a stolen car out here?

6 A. He actually called the police two days prior to
7 that and said he had a stolen car, and then we followed
8 up on it.

9 Q. Okay.

10 A. In fact, to be honest with you, I cannot -- I know
11 he called the police and reported a stolen car, and I
12 believe that was done on the initial date of the stolen
13 car.

14 I believe I was the one who actually initiated to
15 call him back two days later.

16 Q. And when you met with him, did he mention that
17 voices made him take the truck?

18 A. No.

19 Q. He didn't tell you that when you met with him?

20 A. Not back in the car.

21 Q. Okay, and did he go to jail that day or did he go
22 back to the hospital?

23 A. Matter of fact, he went back home.

24 Q. Did he at some point in time have to return to
25 the hospital because of his psychological impairment?

OFR. OTT ON CROSS

- 1 A. No.
- 2 Q. He never went back to the hospital?
- 3 A. No.
- 4 Q. And were you the lead detective on that case?
- 5 A. Yes, I was.
- 6 Q. Would you take a look at these items with me?
- 7 A. . .
- 8 Q. I show you page two, . . .
- 9 A. Okay.
- 10 Q. . . to see if that will refresh your recollection
- 11 of those events.
- 12 A. Refresh my recollection? This is another officer's
- 13 writing, not mine.
- 14 Q. That is a typed report, isn't it, actually?
- 15 A. Yes, but it's not mine. You asked me if I did it.
- 16 Q. Okay, bear with me. You're the lead investigative
- 17 officer on this case?
- 18 A. Yes, I picked it up two days later.
- 19 Q. And so you would have been brought up to speed, so
- 20 to speak, on that case?
- 21 A. I would have reviewed the paperwork, yes.
- 22 Q. Okay, and didn't Mr. Hicks say that voices made
- 23 him take the truck?
- 24 A. By reading the report, I would say yes, but, again,
- 25 I did not do the report.

MR. OTT ON CROSS

1 Q. And at some point he was returned back to the hos-
2 pital because of his psychological impairment?

3 A. Again, the Beaufort County Sheriff's Department re-
4 turned him to the hospital. Again I'm reading from the
5 report. That I had nothing to do with.

6 Q. You read that report back at the time of that inci-
7 dent?

8 A. Yes.

9 Q. Okay, so you were aware of it before you went to
10 see him?

11 A. Yes.

12 Q. And so certainly thirteen months later when you
13 speak with Mr. Hicks in May of 2006, you were aware that
14 he had a weakened mental state, at least to the point
15 of a prior commitment, and that he had attributed bad
16 conduct to voices telling him what to do?

17 A. I am not a psychiatrist. I can't answer that. I
18 only know what I read in the report. I can state, how-
19 ever, the day that I arrested him I had contacted Coastal
20 Mental Health and he had visited them and they said he's
21 good to go, and he walked out of there and was walking
22 down the street.

23 At the time I arrested him on this particular case,
24 he went to jail.

25 Q. I want to see if I understand. He was admitted

MR. OTT ON CROSS

1 to Beaufort Memorial Hospital when he snuck out to steal
2 the truck, but he was arrested actually leaving a dif-
3 ferent mental health facility?

4 A. I cannot say he was committed, and that's what I
5 say. I have no knowledge of whether or not he was com-
6 mitted.

7 On the 25th of February there is a little knowledge
8 in the report that he was transported to Beaufort Memor-
9 ial Hospital.

10 Q. And he was transported back to the hospital because
11 of his psychological impairment?

12 A. Again, I can only state what's written in the re-
13 port. I have no knowledge of it.

14 Q. And in May of 2006, you knew he had given that state-
15 ment from your review of that report?

16 A. Yes.

17 Q. And the officer had said he had been returned to the
18 hospital from the jail after they contacted him about the
19 trouble?

20 A. That's in the report, yes.

21 Q. Okay, and then you knew obviously when he was ar-
22 rested that he was continuing to go to see mental health
23 providers?

24 A. That's correct.

25 Q. Now, as part of that investigation, did you seek to
520

OFR. OTT ON CROSS

1 recover some items that were missing from the truck?

2 A. Yes, I did.

3 Q. And did he tell you those items were at somebody's
4 house?

5 A. Yes, he did.

6 Q. Did you actually find those items there?

7 A. We found most of the items. Some of the items that
8 was taken was actually burned.

9 Q. So he said you can go back to this guy's house and
10 he's got these items?

11 A. Correct.

12 Q. But when you got there, there were items that were
13 burned?

14 A. Actually, when we got there the guy in the house
15 was not home and we found some of the items burned in
16 the burn pit and we went back later and got some items
17 out of the house once the owner got there.

18 Q. And then he didn't tell you that you'd find them in
19 a burn pit did he?

20 A. I don't believe he did.

21 Q. Now, how many times did you interview Mr. Hicks be-
22 fore you came here today?

23 A. Three times.

24 Q. Okay, so there was an interview . .

25 A. In reference to this particular incident are you

OFR. OTT ON CROSS

1 talking about, sir? Three times.

2 Q. And you interviewed him -- three interviews you
3 referenced? One occurred between six and seven o'clock
4 A.M. on May 26th, 2006?

5 A. That sounds correct.

6 Q. And the second interview took place approximately
7 five hours later?

8 A. Yes, or pretty close to it.

9 Q. Okay, and there was another interview that was done
10 some five weeks later?

11 A. Correct.

12 Q. Okay, and did Mr. Hicks write you a statement?

13 A. No. He said he couldn't write very well and we had
14 Sergeant Morris type one.

15 Q. Okay, and this is a statement that was typed up by
16 somebody else and how did it become Mr. Hicks' statement?

17 A. Mr. Hicks verbally tells or told -- again, I was
18 not in there during this typed statement.

19 As a general practice, when someone cannot read or
20 write, in order for us to type it they tell us what to
21 type and we type it and they review it and sign it, and
22 if there's any mistakes or typos or changes they make the
23 changes and we ask they put their initials on it where
24 there is a change.

25 Q. And so the statement is actually the typed statement

OFR. OTT ON CROSS

1 from a law enforcement officer, and it becomes Mr. Hicks'
2 statement by nature of his signature on it?

3 A. That's correct.

4 Q. And that signature more or less endorses the state-
5 ment?

6 A. That is correct. I would say so, yes.

7 Q. And does it make it actually four interviews that
8 there were? I mean, for lack of a better word, there
9 was one you had between six and seven o'clock and then the
10 one Detective Vortisch has where he does this statement,
11 and then there's an eleven o'clock interview, and then at
12 some point there's a July 10th interview?

13 A. You could say there was four. The typed statement
14 again is him sitting there telling Sergeant Vortisch what
15 to type.

16 It's not a question/answer type deal or situation.

17 Q. Did you record any of the interview, video or audio
18 recording?

19 A. No. There was not.

20 Q. But you've done that in the past?

21 A. Yes.

22 Q. Did you have the capability to do it on May 26,
23 2006?

24 A. We did.

25 Q. All right, and actually the first statement was when

OFR. OTT ON CROSS

- 1 Mr. Hicks tells you he doesn't know anything about this?
- 2 A. Yes.
- 3 Q. And did you believe he was lying?
- 4 A. I'm sorry?
- 5 Q. Did you believe he was lying?
- 6 A. Yes, I did.
- 7 Q. And so Mr. Hicks lied to you?
- 8 A. Yes.
- 9 Q. What did Mr. Hicks tell you about fondling Amy
- 10 Davidson when he was walking her back to the car?
- 11 A. I don't recall him saying anything to me about it.
- 12 Q. Do you believe he was truthful when he does not say
- 13 he fondled her on the way back to the car?
- 14 A. I believe he was truthful in the statements that
- 15 he gave me.
- 16 Q. Would you want him to omit his involvement in fond-
- 17 ling her?
- 18 A. Yes, sure, if I knew.
- 19 Q. You would want him to omit it? Omit it or include
- 20 it?
- 21 A. I would want him to include it.
- 22 Q. Okay. So when you ask him to write everything that
- 23 happened and he doesn't put that in there, he's not doing
- 24 what you told him to do?
- 25 A. That's correct.

OFR. OTT ON CROSS

1 Q. All right, and in no interview did he say I fond-
2 led Amy Davidson on the way back to the car?

3 A. That's correct.

4 Q. Do you recall Mr. Hicks telling you that he drove
5 the Lexus in a chase with Deputy Gregg?

6 A. Yes.

7 Q. Do you recall finding Amy Davidson's shoes, bra and
8 panties in that same driver's seat Mr. Hicks was in?

9 A. No.

10 Q. Do you recall whether any other officers took photo-
11 graphs of those items in that location?

12 A. I believe they did. Again, I was not involved in
13 the process of that particular vehicle.

14 Q. As chief investigator in this case, it is your be-
15 lief that the shoes, bra and panties were found in the
16 seat Mr. Hicks says he was in?

17 A. That is correct.

18 Q. And there is photographic documentation of that?

19 A. I'm sure there is, yes.

20 Q. And do you know if those shoes were returned to Ms.
21 Davidson?

22 A. To be honest with you, I can't answer that.

23 Q. Did Detective Vortisch take Mr. Hicks out of the
24 -- out of detention and in a car to visit back to the
25 area Mr. Davidson said they had been?

OFR. OTT ON CROSS

1 A. Yes.

2 Q. Okay, and do you recall him telling you some informa-
3 tion about a pair of gloves?

4 A. Yes.

5 Q. Okay, and do you recall him telling you that Mr.
6 Howard's gloves were dropped by a fence when the car --
7 when they got out of the car?

8 A. Are you saying did Sergeant Vortisch told me that
9 or . .

10 Q. Whether Rico Hicks told him that.

11 A. That's correct.

12 Q. Let me make sure I understand. Rico Hicks said
13 that they jumped out of the car and then Mr. Howard took
14 off his gloves as they jumped the fence?

15 A. Could I refresh my memory, please?

16 Q. Sure. Certainly, and I've got a copy as well.

17 A. Mr. Brown, do you have what page it's on that you
18 are looking at, sir?

19 Q. Yes, sir. I've got a page five. I'm sorry, I'm
20 going to hand you this.

21 A. That's fine.

22 Q. And it's hard to go through these paragraphs, but
23 it is just above the halfway mark. It is stated . .

24 A. Yes, it does say something . .

25 Q. Does it say what happened when they got out of the

OFR. OTT ON CROSS

1 car?

2 A. Yes, Howard dropped the gloves.

3 Q. Okay, and it says that Hicks and Howard got out of
4 the car and jumped the fence, and Howard dropped his
5 gloves?

6 A. That's correct.

7 Q. Okay, and Hicks goes on to tell you that his gloves
8 were thrown by a tree?

9 A. Yes.

10 Q. Okay. Do you recall finding a glove by the fence?

11 A. No, I did not.

12 Q. Okay.

13 A. I believe it was found by another investigator.

14 Q. Do you recall hearing a pair of gloves being found
15 by a tree?

16 A. Again, I did not find them but I believe it was
17 found by another investigator.

18 Q. Do you recall asking Mr. Hicks about Amy Davidson's
19 driver's license?

20 A. Yes, I do.

21 Q. And he said he got her driver's license before they
22 pull in at the ATM machine?

23 A. That is correct.

24 Q. From the BB and T parking lot to the ATM machine,
25 Mr. Hicks obtained custody of the driver's license?

OFR. OTT ON CROSS

1 A. That's correct.

2 Q. Approximately how far would you estimate the distance
3 to be between the BB and T parking lot and that ATM ma-
4 chine?

5 A. Maybe a mile going over the Woods Bridge and down --
6 three quarters of a mile.

7 Q. And the speed limit, ball park, is thirty-five to
8 forty miles an hour there?

9 A. Sounds about correct.

10 Q. And if it's a mile we're talking about going the
11 speed limit, it's less than two minutes?

12 A. . .

13 Q. From the time they pull out of that parking lot if
14 they go thirty miles an hour and it's one mile . .

15 A. Again, I can't sit here and tell you how long it
16 took.

17 Q. Okay. If it's a mile going about that speed, we're
18 talking about less than two minutes from the time they
19 pull out to when they pull up to the machine, and he ob-
20 tains custody of her driver's license that was in her
21 purse?

22 A. Again, he got in contact with her driver's license
23 between BB and T and the ATM machine. I can't sit here
24 and say how long it was, but I can only say a distance
25 of probably three quarters of a mile. I can't speak on

OFR. OTT ON CROSS

1 the speed.

2 Q. Were you involved in the negotiations with Mr. Hicks?

3 A. No, I was not.

4 Q. For his testimony in Court?

5 A. I'm sorry. Rephrase -- I mean, . . .

6 Q. Okay. Did you get him to come to Court and testify?

7 A. Did I attempt to get him to come to Court and tes-
8 tify?

9 Q. Were you involved in any of those negotiations?

10 A. No, no.

11 MR. BROWN: Your Honor, there is an item I need to
12 mark and ask him if he is familiar with this item.

13 THE COURT: All right.

14 MR. BROWN: And we had spoken to the Court Reporter
15 about substituting out a copy for the original since it
16 has marks on it from another hearing.

17 THE COURT: Okay.

18 MR. BROWN: I guess I need to have this one marked,
19 so I can approach the witness with it.

20 BY MR. BROWN:

21 Q. I show you what's been marked as Defense Exhibit
22 1.

23 A. . .

24 SOLICITOR: Your Honor, objection. This was pre-
25 viously noted in our pre-trial motions, and I object to

OFR. OTT ON CROSS

1 that particular letter.

2 THE COURT: Noted for the record.

3 BY MR. BROWN:

4 A. You asking if I recognize it?

5 Q. As lead investigator, have you seen that letter
6 before?

7 A. . . .

8 Q. Or a copy of that letter?

9 A. I can't say that I have.

10 Q. Did you go through that file before or in prepara-
11 tion for this case?

12 A. No. I've never been through the prosecutor's file.

13 Q. And there are reports in this case that have been
14 generated by other agencies beside your agency?

15 A. That is correct.

16 Q. And at least one of them would be the State Law En-
17 forcement Division?

18 A. Yes, one of them would be the State Law Enforcement
19 Division.

20 Q. And one of them would be the Beaufort County Sher-
21 iff's Department?

22 A. That's correct.

23 Q. So you are the lead officer of the whole kit and
24 kaboodle?

25 A. I guess you could say that, yes.

OFR. OTT ON CROSS

1 Q. Did you have the opportunity to review the reports
2 of those other agencies?

3 A. Yes, most of them I have. I believe I have.

4 Q. Did you do that through the Prosecutor's Office or
5 through those agencies?

6 A. Through those agencies.

7 Q. So you never sat down with the Prosecutor with the
8 other agencies' reports?

9 A. It's part of an investigator's job to meet with the
10 Solicitor's Office and go over the evidence, statements,
11 reports of others. I have sat down with the Solicitor's
12 Office, and we have discussed this case.

13 Q. And so you have had a copy of that letter?

14 A. I don't believe I've ever seen this letter before.

15 Q. Did you have a chance to review Detective Vortisch's
16 report?

17 A. Yes, I did.

18 Q. And did Detective Vortisch have a conversation with
19 Rico Hicks about the gloves he was wearing, Mr. Hicks
20 was wearing?

21 A. I believe that is the gloves that -- if I'm correct,
22 what you're asking is the gloves they found by the tree.

23 Q. And Mr. Hicks told Detective Vortisch those are
24 gloves he wore?

25 A. He said those are gloves he wore.

OFR. OTT ON CROSS

1 Q. He wore those gloves?

2 A. That's correct.

3 Q. Do you recall a report being generated by Seth Bresnan?

4 A. Yes, I do.

5 Q. And do you know why he put down that Amy Davidson
6 is five foot six?

7 A. . .

8 Q. I can tell you what page, but every page of these
9 reports are page one. I don't know how to tell you which
10 page one it is.

11 A. I've got five two, a hundred fifteen pounds.

12 MR. BROWN: May I approach?

13 THE COURT: You may.

14 BY MR. BROWN:

15 Q. And, again, I would point out this page.

16 A. In this particular report, it does reflect five
17 six.

18 Q. Is there a different report that you have for Offi-
19 cer Bresnan?

20 A. Yes, five two, a hundred fifteen pounds.

21 Q. Is that from Bresnan?

22 A. When we print out the reports, it changes if you add
23 a witness block to it or if you add a victim or what not.
24 It moves it on down, and you might have one from here
25 all the way down.

OFR. OTT ON CROSS

1 It is not always but we find in fact that where a
2 person may be a certain height and then we find out that
3 that is not really the height.

4 In this case, I believe it's from her driver's li-
5 cense, and when her original height was done, and a change
6 is made to the correct height.

7 In this particular case, I would think how that hap-
8 pened is I've got a victim in the hospital and the offi-
9 cer sees her, and he put down what he believed is her
10 height, without going up really and interviewing her at
11 that time.

12 It is not really uncommon to come back and amend the
13 height to reflect the actual size, and in this case I can-
14 not say but I believe that is what took place.

15 Q. Let me make sure I understand. You have a different
16 report from Officer Bresnan than the one I handed you?

17 A. This is the initial report that I believe he did.

18 Q. That's the one I handed you?

19 A. Yes.

20 Q. And that is dated May 26, 2006, correct?

21 A. Yes.

22 Q. Do you have a different report from this officer?

23 A. I'm not going to say it is from this officer. I
24 have his report. Again, when we print out this report
25 if there is an amendment to a height it reflects the

OFR. OTT ON CROSS

1 change. It reflects her actual height.

2 Q. Do you have that . . .

3 A. And if you -- yes, and let me make sure . . .

4 MR. BROWN: Your Honor, at this time I have a mat-
5 ter of law to take up regarding a report that I don't
6 have.

7 THE COURT: Ladies and gentlemen of the jury, I will
8 send you back to your jury room for a brief moment. You
9 may refresh yourselves, and I'll be back with you very
10 shortly.

11 (Jury excused from Courtroom at 11:12 A.M.)

12 THE COURT: Again, as I remind you every time we
13 part, you may not begin discussing this case. It is
14 not appropriate for you to do so at this time.

15 Thank you.

16 BAILIFF: Your Honor, the jury is clear.

17 THE COURT: Thank you. You all, I'm going to step
18 down for about ten minutes, and, Mr. Brown, I'm going to
19 have you come and compare what you have with Officer Ott.

20 Let's see if there is something that you do not have,
21 so we can intelligently talk about it.

22 I'll be back on the bench in ten minutes.

23 Solicitor, I'll appreciate your staying and figuring
24 out what it is that may be missing. I'll be back in with
25 you shortly.

OFR. OTT ON CROSS

1 WITNESS: May I step down in front with them?

2 THE COURT: Absolutely. Whichever way is easier
3 for you. Do not discuss your testimony with anyone.

4 (Whereupon, the Court stood at ease from 11:12 until
5 11:32 P.M., when the matter resumed)

6 THE COURT: Mr. Brown, have you had an opportunity
7 to compare what Sergeant Ott has with what you have?

8 MR. BROWN: Yes, maam, and it appears that the same
9 information is put in a different format.

10 THE COURT: Okay.

11 MR. BROWN: And that's why -- it has a different
12 -- it looks like it has a different heading at the top
13 and rolls in a different format, but words and letters
14 on the page are the same.

15 THE COURT: So you are comfortable, is that correct?

16 MR. BROWN: I am, and they appear to be exactly the
17 same.

18 SOLICITOR: It's the same one I have.

19 THE COURT: Okay. Anything further we need to take
20 up before we bring the jury back?

21 MR. BROWN: No, maam.

22 THE COURT: Thank you. I have not heard back from
23 Dr. Smith yet, so I am still waiting.

24 MR. BROWN: I tried to call Mr. Rowell during the
25 last break, and I will during the next break.

MR. OTT ON CROSS

1 THE COURT: I understand. All right, are we ready
2 to go, from the State?

3 SOLICITOR: The State is ready, Your Honor.

4 THE COURT: Is the Defense ready?

5 MR. BROWN: Ready, Your Honor, and I withdraw the
6 objection.

7 THE COURT: All right, bring them back in, please.

8 Come back up and take your seat on the stand, Mr.

9 Ott.

10 (Witness resumed witness stand)

11 BAILIFF: The jurors are entering, Your Honor.

12 The jury is seated.

13 THE COURT: Thank you.

14 Welcome back, ladies and gentlemen.

15 Mr. Brown, you may continue.

16 MR. BROWN: Thank you, Your Honor.

17 BY MR. BROWN:

18 Q. Did Mr. Hicks tell Investigator Vortisch in that
19 statement that sometime around two o'clock in the morning
20 he met up with Mr. Howard?

21 A. I do not have that typed statement here in front
22 of me.

23 MR. BROWN: May I approach?

24 THE COURT: You may.

25 BY MR. BROWN:

OFR. OTT ON CROSS

1 A. That is correct.

2 Q. And actually two thirty in the morning is when Mr.
3 Hicks told Investigator Vortisch that he met up with Mr.
4 Howard?

5 A. Yes.

6 Q. Two thirty in the morning of May 26th he met up with
7 him?

8 A. Yes.

9 Q. Do you believe that is accurate?

10 A. No, I do not.

11 Q. Because you all had already gotten a phone call
12 at that time?

13 A. Correct.

14 Q. And that is the one statement Mr. Hicks has writ-
15 ten out?

16 A. That is correct. Typed out.

17 Q. And there is nothing else written or typed by Rico
18 Hicks?

19 A. That is correct. You say Rico. I call him Lorenzo.

20 Q. Lorenzo.

21 A. That's okay. There is no other statement. Go ahead.

22 Q. Bear with me -- alias Rico.

23 Did Mr. Hicks tell you at some point in time that
24 he urged Mr. Howard to hesitate with the kidnapping, and
25 he stated it started in the . .

OFR. OTT ON CROSS

1 A. I'm sorry? Please . . .

2 Q. Did Mr. Hicks in recalling his story -- he talks
3 about Mr. Davidson being tied up in the parking lot?

4 A. Yes.

5 Q. And do you recall him saying he verbally said, whoa,
6 this is kidnapping?

7 A. Yes, I do.

8 Q. And so he actually said that he said something . .

9 A. Yes.

10 Q. . . expressing hesitation about . .

11 A. Mr. Hicks did.

12 Q. Mr. Hicks did?

13 A. Yes.

14 Q. Did either of the Davidsons tell you all that?

15 A. No.

16 Q. Do you believe Mr. Hicks was telling you the truth?

17 A. Yes.

18 Q. You believe he did make that statement?

19 A. Yes.

20 Q. Mr. Davidson said that Mr. Hicks only said something
21 to him when he tried to squirm or get away, and that is
22 not the same thing as Mr. Hicks saying he expressed ver-
23 bal hesitation about the kidnapping?

24 A. . .

25 Q. They're not the same, are they?

MR. OTT ON CROSS

1 A. No.

2 Q. But you believe Mr. Hicks?

3 A. Actually I believe both of them.

4 Q. Okay. I want to make sure I'm clear. Mr. Hicks
5 said that when Mr. Davidson was being tied up that Mr.
6 Hicks said, whoa, this is kidnapping?

7 A. That is correct.

8 Q. But you never heard that from anyone else?

9 A. No, and -- I've just got to say no to that.

10 Q. Had you interviewed or read the interview with Amy?

11 A. There was a lot going on that night, a lot of crime
12 and a lot of excitement, and it would be hard for someone
13 to remember everything that was said by anybody.

14 I can't say that I don't believe Mr. Hicks, nor can
15 I say I don't believe Mr. or Mrs. Davidson.

16 So -- but the answer is I believe both of them.

17 Q. You heard the questioning of Mr. Davidson while you
18 were here in the Courtroom about how many times Mr.
19 Hicks spoke? It was extensive questioning?

20 A. Yes, that is correct.

21 Q. And that was a critical issue then in identifying
22 the suspects?

23 A. Correct.

24 Q. And were they consistent with each other?

25 A. Yes, they would be.

MR. OTT ON CROSS

1 Q. And do you recall Mr. Hicks saying that he expressed
2 concern to Mr. Howard that maybe Amy Davidson did not
3 want to have sexual intercourse at the football field?

4 A. Yes, he did.

5 Q. Did Mrs. Davidson say she heard that?

6 A. No. I cannot say that I recall hearing her testify
7 to that?

8 Q. Again, Mr. Hicks never said he fondled Mrs. Davidson?

9 A. That's correct.

10 Q. And he actually never said Mr. Howard fondled Mrs.
11 Davidson?

12 A. That's correct.

13 Q. He never mentioned the fondling at all?

14 A. That is correct.

15 Q. And you testified about your experience as a detec-
16 tive and -- well, your experience as a law enforcement
17 officer?

18 A. I testified to my years of service.

19 Q. And you've been a detective for a little while?

20 A. Quite a few years.

21 Q. In fact, I believe you are a senior detective with
22 the police department?

23 A. I believe I'm the most senior.

24 Q. And have you been involved in interrogation of sus-
25 pects before?

MR. OTT ON CROSS

1 A. Yes, I have.

2 Q. And do you recall in 1998 coercing a statement of
3 the Atlantic Inn Hotel murders?

4 A. I remember the case, yes, but I wouldn't say it was
5 coerced.

6 Q. Did a Judge say it was coerced?

7 A. The Judge ruled on it.

8 Q. And said it was coerced?

9 A. That is correct.

10 Q. And that you coerced that statement?

11 A. That is correct.

12 Q. I have no other questions.

13 THE COURT: Solicitor?

14 SOLICITOR: Yes, maam.

15 REDIRECT EXAMINATION

16 BY SOLICITOR:

17 Q. Sergeant Ott, Mr. Brown asked you about Mr. Hicks'
18 statement to you, that while out on the football field
19 he said out loud, whoa, this is kidnapping?

20 And he was hesitant about his participation, is
21 that correct?

22 A. That's correct.

23 Q. At the time Mr. Hicks reportedly would be making
24 this statement, Mr. Davidson is bound, blind-folded and
25 his wife is being taken off and being raped?

541

MR. OTT ON REDIRECT

1 A. That is correct.

2 Q. He also asked you about a statement Mr. Hicks made
3 in the presence of Mr. Howard and Mrs. Davidson, something
4 to the effect of maybe she doesn't want to be raped.

5 What was that statement?

6 A. Mr. Hicks told me that Mr. Howard stated that she
7 was acting up and Mr. Hicks said he told Mr. Howard that,
8 well, maybe she doesn't want to be raped, and Mr. Howard
9 stated, well, she's going to get it anyway.

10 Q. And at the time that Mr. Hicks reported that state-
11 ment being made, Mrs. Davidson is being raped?

12 A. That's correct.

13 Q. So perhaps his memory would be clearer than Mrs.
14 Davidson's statement she made that night?

15 A. Yes.

16 Q. Sergeant Ott, during the time you were interviewing
17 Mr. Hicks, did you have any problem understanding or com-
18 municating with him?

19 A. No.

20 Q. Did he have any problems communicating with you?

21 A. No.

22 Q. Is he making crazy statements about voices talking
23 to him during your interview?

24 A. No.

25 Q. Now, in fact, he admits to you in his statement that

MR. OTT ON REDIRECT

1 he was the guy with the knife that night?

2 A. That is correct.

3 Q. And Mr. Howard was the guy with the gun?

4 A. Correct.

5 Q. He admits being part of the robbery?

6 A. That is correct.

7 Q. He admits being part of the kidnapping?

8 A. Yes, maam.

9 Q. He admits being present when Mr. Howard is raping
10 Mrs. Davidson?

11 A. Yes, maam.

12 Q. Now, after he gives this typewritten statement with
13 Sergeant Vortisch, do you go back then and talk to him
14 or interview him, particularly about this point of start-
15 ing at two A.M. meeting up with Howard?

16 A. Yes, matter of fact we do.

17 Q. And did he clarify or change that piece of informa-
18 tion?

19 A. . .

20 Q. Did you confront him about that two o'clock time
21 period?

22 A. To be honest, I believe I did.

23 Q. And what did he tell you about when he first meets
24 up with Mr. Howard?

25 A. It was, if I'm not mistaken, around seven P.M.

MR. OTT ON REDIRECT

1 Q. So earlier in the evening?

2 A. Yes...

3 Q. And does he admit he was with Mr. Howard during all
4 of these events?

5 A. That is correct.

6 Q. In contradiction to what he said in the typewrit-
7 ten statement?

8 A. Correct.

9 Q. At some point during the interview, he does try to
10 minimize his participation at some point?

11 That's true?

12 A. Yes, he does.

13 Q. He doesn't just walk in the office and blurt out
14 all of this guilt?

15 A. No.

16 Q. He gives it to you in pieces?

17 A. That's correct.

18 Q. Is that common in your interviews with people?

19 A. Yes, it is.

20 Q. I have no further questions.

21 THE COURT: Mr. Brown?

22 MR. BROWN: Just briefly.

23 RECROSS EXAMINATION

24 BY MR. BROWN:

25 Q. Do you recall whether in February of 2008 Mr. Hicks

MR. OTT ON RECROSS

1 said that he met up with Mr. Howard at twelve thirty
2 A.M. on May 26, 2006?

3 A. That would be the first time they met up.

4 Q. What did he tell you on May 26?

5 A. Oh, no, that would be in the park I believe that
6 you're talking about, the beginning of his statement.

7 Bear with me one second, please, Mr. Brown.

8 Q. February 19, 2008.

9 A. Let me have the dates again.

10 Q. February 19, 2008.

11 A. I don't recall interviewing Mr. Hicks at that time,
12 sir.

13 SOLICITOR: Objection, Your Honor.

14 MR. BROWN: All I'm asking is . . .

15 SOLICITOR: May I 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. And let me ask you, all those different statements
21 regarding seeing Mr. Howard rape Mrs. Davidson -- I hand
22 you this back -- would you be able to say that he said
23 in a statement that was given in the morning hours that
24 he recalls going down there and seeing -- he says he saw
25 Mr. Howard with a female and they were both standing up?

MR. OTT ON RECROSS

1 A. . .

2 Q. At the top of page four.

3 A. Please repeat your question.

4 Q. Do you recall Mr. Hicks saying that he went down to
5 the football field and he saw Mr. Howard and the female
6 and they were both standing up?

7 A. Yes. He states he saw the female naked and Mr.
8 Howard trying to have sex with her, with both of them
9 standing up.

10 Q. And then a few hours later he says he went down to
11 the field and Mr. Howard was on top of the female?

12 A. That is correct.

13 Q. Now, if you look at that report, the date on your
14 report is August 31, 2006, the one I handed you?

15 A. Yes.

16 Q. Is that the date that you typed your report from
17 this investigation?

18 A. It was the date it was entered.

19 Q. That was the date . .

20 A. That's correct. It's the date that it was finished.

21 Q. And so we're talking about ninety-five days after
22 this incident when you get that report?

23 A. Approximately.

24 Q. Where was the information contained in the ninety-
25 five days before August 31st?

MRS. OTT ON RECROSS

1 A. It was contained in a bunch of field notes, con-
2 tained in memory, contained in statements. It's con-
3 tained in a number of different ways.

4 Q. And August 31st, after the time you met Mr. Hicks
5 and his lawyer from the Beaufort County Public Defender
6 Office, . .

7 A. At that time I met with Mr. Hicks and lawyers?

8 Q. Hicks and his lawyer, the Beaufort
9 County Public Defender?

10 A. Yes.

11 Q. That happened first and then this report was done?

12 A. If I may explain, we type our reports. Investi-
13 gators type it on Microsoft Word. We type as we go
14 along.

15 This is not to say that I sat down and typed this
16 report on August 31st. I actually started it when the
17 incident took place.

18 This is the date that we analyzed it and we cut and
19 pasted it to send it on to the record.

20 This report was actually generated and the typing
21 was started on the date of the offense. That's the date
22 the final investigation was completed.

23 Q. And why didn't you tell us information that was in
24 there on the date before August 31st?

25 A. It's -- we go back and check the record, check for

MR. OTT ON RECROSS

1 spelling. I mean, it's the purpose for us typing on
2 Microsoft Word, so that we can find and correct, or go
3 back in and add a piece that -- it's just the way the
4 investigation does and it saves a lot of time doing it
5 this way.

6 Q. And so July 10th, 2006, you meet with Mr. Hicks,
7 Detective Vortisch, and Mr. Hicks' attorney from the
8 Beaufort County Public Defender's Office?

9 A. Correct.

10 Q. And then after that is when all the alterations are
11 made to this report by the date of August 31st?

12 A. No, it's not the date that alterations are made.
13 Changes are made throughout to the investigative report.
14 We constantly proof read, etcetera, etcetera.

15 I can't say all of this was done after that date,
16 although I can say it was a submittal date by me, August
17 31st.

18 Q. So all the alterations were made by August 31st?

19 A. Correct.

20 MR. BROWN: No further questions, Your Honor.

21 THE COURT: Solicitor.

22 SOLICITOR: Nothing further.

23 THE COURT: You can step down.

24 (Witness excused from stand)

25 (Conference at the bench between counsel and the

1 Court off the record)

2 THE COURT: Solicitor, call your next witness.

3 SOLICITOR: State would call Officer Vortisch.

4 THE COURT: Come around, please.

5 JEFF VORTISCH, being duly
6 sworn, testified as follows:

7 CLERK: Be seated and state your full name. Spell
8 your last name.

9 WITNESS: Jeff Vortisch, V O R T I S C H.

10 DIRECT EXAMINATION

11 BY SOLICITOR:

12 Q. Good afternoon, Officer Vortisch. Where are you now
13 employed?

14 A. Beaufort County Detention Center.

15 Q. In May of 2006, where were you employed?

16 A. Beaufort City Police Department.

17 Q. What did you do with the City Police Department?

18 A. I was a Sergeant in criminal investigations.

19 Q. How long did you work there?

20 A. Twenty years.

21 Q. And let me ask if you were working on a case involv-
22 ing Alfonzo Howard on May 26, 2006?

23 A. Yes, maam.

24 Q. What was the first area you responded to on that
25 night?

1 A. I was instructed to go to the parking lot at the
2 foot of Bay and Carterett and to process a scene for a
3 possible offense.

4 Q. And did you do that?

5 A. I did.

6 Q. And what did you actually process?

7 A. When I arrived on the scene, there was Officer
8 O'Neill already there, and I observed some items laying
9 on the ground that was out of place.

10 I photographed them, and during this process I re-
11 ceived word from Sergeant Ott that there was a possible
12 vehicle involved, and he described the vehicle as a
13 white Ford Tempo, and in this parking lot there was a
14 white Ford Tempo.

15 So I walked over there and looked at it. I noticed
16 all the windows was down. This is three thirty or four
17 o'clock in the morning, and the keys was in the ignition.
18 I was told to secure the vehicle.

19 Q. Is that the vehicle that was identified as belong-
20 ing to Eddie Howard?

21 A. Yes, maam.

22 Q. All right, and did you stay there all night?

23 A. No. Once it was determined that the vehicle was
24 possibly involved, I was instructed by Lieutenant Dorman
25 to go to the police department and start a search warrant

OFR. VORTISCH ON DIRECT

1 for the vehicle.

2 Q. Did you do that?

3 A. Yes.

4 Q. And were you able to complete that task?

5 A. No, maam.

6 Q. What happened?

7 A. Well, while I was in the process of typing the
8 search warrant I heard over the radio that there was two
9 suspects running over the bridge into town, and the
10 units at the perimeter were in foot pursuit.

11 So I left the police department and went back to
12 the scene.

13 Q. Was the search warrant for the vehicle ever com-
14 pleted?

15 A. Without reviewing it -- I'm sure it was. I don't
16 have knowledge that I personally was the one that fin-
17 ished it.

18 Q. Would it be fair to say that Detective Rhodes com-
19 pleted that for you?

20 A. If -- without reviewing it, yes, maam.

21 Q. If someone else didn't do it, you would have gone
22 back and completed it?

23 A. Absolutely.

24 Q. Once the suspects are caught, do you participate
25 in the interview of Codefendant Lorenzo Hicks?

551

OFR. VORTISCH ON DIRECT

1 A. I did.

2 Q. And were you present when he was read his Miranda
3 Rights?

4 A. I was.

5 Q. And was he understanding and cooperative during
6 the interview?

7 A. He was.

8 Q. Did you or Sergeant Ott at any point threaten him,
9 coerce him, or force him to give you a statement?

10 A. No, maam.

11 Q. And we've heard that you participated in getting
12 some type of typewritten statement?

13 A. Yes, maam.

14 Q. Explain how that came about.

15 A. When the interviewed started with myself and Mr.
16 Hicks, he indicated his writing was not very good. I
17 informed him I would type his statement if he would like,
18 and he agreed to that.

19 So we went from Sergeant Ott's office over to mine,
20 which is across the hallway, and I typed his statement
21 as he told it to me.

22 Q. So you are asking him questions and he's answering
23 them or . . .

24 A. No, he's telling me and I'm typing what he says.

25 Q. And once that comes to an end, what, if anything,

OFR. VORTISCH ON DIRECT

1 THE COURT: You may

2 BY SOLICITOR:

3 Q. If you could identify or can you identify what is
4 depicted in State's Exhibits 31, 32 and 33?

5 A. Number 31 is an overall shot that shows the stop
6 sign at the intersection. I'm not quite sure what rela-
7 tion that is to the other two.

8 However, 32 and 33 are the gloves I located under-
9 neath the tree and in the position I found them in that
10 photograph.

11 SOLICITOR: State would move Exhibits 31, 32 and 33
12 into evidence.

13 MR. BROWN: Without objection.

14 THE COURT: They are entered without objection.

15 (Photographs admitted in evidence without objection
16 as State's Exhibits 31, 32 and 33)

17 BY SOLICITOR:

18 Q. So 31 would not be a backup view of where the
19 gloves were located?

20 A. When we were doing the photographs, I took an over-
21 all photograph first of the area, and then I got to the
22 specific item.

23 This -- I'm not sure if this overall shot is for-
24 ward or backward.

25 Q. But looking at 32 and 33, those are the gloves?

OFR. VORTISCH ON DIRECT

1 do you do to get him to agree that that's his state-
2 ment?

3 A. I let him read it and we went back over to Sergeant
4 Ott's office at this time and it was read, and he agreed
5 that was his statement.

6 Q. Following that, did you continue talking to him and
7 getting information beyond the written statement?

8 A. Yes, ma'am.

9 Q. Was there anything that he changed that was in his
10 written statement during that follow-up interview?

11 A. He indicated after the written statement was done
12 where he had thrown some items, some gloves.

13 Q. And what do you do with that information?

14 A. I myself and Officer Wilson take Mr. Hicks to the
15 area he indicated over by the bank, and we were by a
16 large tree by the bank.

17 We leave Mr. Hicks in the vehicle. I get out of
18 the vehicle and as he's directing me I go underneath the
19 tree and I locate a pair of gloves under the tree, and
20 he identifies them as the ones he has thrown.

21 Q. Ones he had thrown?

22 A. Yeah. That he put there.

23 Q. Let me show you what's been marked State's Exhibits
24 31, 32 and 33.

25 May I approach the witness, Your Honor?

OFR. VORTISCH ON DIRECT

1 A. Yes, maam.

2 Q. Did you do anything with those gloves or did you
3 leave them there?

4 A. I collected those gloves and placed them in a brown
5 bag.

6 SOLICITOR: Showing Defense Counsel State's Exhibit
7 45.

8 May I approach the witness, Your Honor?

9 THE COURT: You may.

10 BY SOLICITOR:

11 Q. I ask if you can identify the contents of Exhibit
12 45?

13 A. Yes, maam.

14 Q. Other than the writing . .

15 A. These were the work gloves I found under the tree
16 and recovered.

17 SOLICITOR: Your Honor, State moves 45 into evi-
18 dence.

19 MR. BROWN: Without objection.

20 THE COURT: In evidence without objection.

21 (Gloves in brown bag admitted in evidence without
22 objection as State's Exhibit 45)

23 SOLICITOR: May I publish 32 and 33 to the jury?

24 THE COURT: You may.

25 (Photographs shown to the jury)

OFR. VORTISCH ON DIRECT

1 BY SOLICITOR:

2 Q. Sergeant Vortisch, what then happened to these
3 gloves once you take them into evidence?

4 Do you submit them for analysis?

5 A. Yes, maam. I turned them in and they was taken
6 to SLED.

7 Q. Were there any other items you collected on the
8 night of this incident related to this case?

9 A. Yes, maam.

10 Q. What would that be?

11 A. When they located Mr. Howard at the Beaufort Inn,
12 I was running behind Major Clancy and I got there just
13 about the same time he did.

14 He was bringing Mr. Howard down from where they
15 found him, and his clothes was wet and muddy, his shoes
16 was muddy.

17 I took into possession the outer pants he had on,
18 the shoes, the white tee shirt and the cloth because I
19 was the only investigator on the scene.

20 So I took custody of the clothes.

21 Q. Did you leave him with any clothes on?

22 A. Yes, maam. He had on a pair of blue jean shorts and,
23 if I remember correctly, a belt.

24 SOLICITOR: Showing Defense Counsel what has been
25 marked as State's Exhibit 44.

OFR. VORTISCH ON DIRECT

1 May I approach the witness, Your Honor.

2 THE COURT: You may.

3 BY SOLICITOR:

4 Q. I show you what's marked as State's Exhibit 44.

5 Can you identify these items?

6 A. Yes, maam. This is the outer pair of pants, the
7 belt, the tee shirt that I took into custody there in the
8 parking lot near the Beaufort Inn.

9 Q. And who did you remove these items from?

10 A. Mr. Howard.

11 Q. Would you please point out Mr. Howard, who you
12 removed these clothes from?

13 A. Second person on the right at defense table.

14 SOLICITOR: Please let the record reflect he has
15 indicated the Defendant.

16 State moves 44 into evidence.

17 THE COURT: Any objection?

18 MR. BROWN: Without objection.

19 THE COURT: Admitted, without objection.

20 (Brown bag containing pants, belt, white tee shirt
21 admitted in evidence without objection as State's Exhibit
22 44)

23 SOLICITOR: Publish to the jury?

24 THE COURT: You may.

25 (Items shown to jury)

OFR. VORTISCH ON DIRECT

1 BY SOLICITOR:

2 Q. What kind of condition were these clothes in when
3 you collected them?

4 A. Soaking wet, muddy, dripping with water.

5 Q. I'm getting kind of gritty. Was there sand on them
6 or is that something else?

7 A. No, ma'am, they had sand on them. They were soaking
8 wet, muddy, dirty.

9 SOLICITOR: My apologies to the cleaning crew this
10 evening.

11 Q. Officer Vostisch, I now show you State's Exhibit 73
12 and can you identify the items contained within?

13 A. Yes, ma'am.

14 Q. What are they?

15 A. They are shoes that I removed from Mr. Howard at
16 the same time I removed the clothing.

17 Q. Again, if you would indicate in the Courtroom which
18 individual you removed the shoes from?

19 A. Mr. Howard, the second gentleman on the right.

20 SOLICITOR: State moves 73 into evidence.

21 MR. BROWN: Without objection.

22 THE COURT: Admitted without objection.

23 (Pair of shoes in bag admitted in evidence with-
24 out objection as State's Exhibit 73)

25 SOLICITOR: May I publish to the jury?

OFR. VORTISCH ON DIRECT

1 THE COURT: You may.

2 (Exhibit 73 shown to the jury by Solicitor)

3 BY SOLICITOR:

4 Q. Sergeant Vortisch, is there a beach or a sandy area
5 outside the Beaufort Inn?

6 A. No, maam.

7 Q. Mr. Vortisch, were you a part of the interview of
8 the Codefendant, Lorenzo Hicks, in July of 2006?

9 A. Yes, maam.

10 Q. As a result of that interview, did you collect any
11 items?

12 A. Yes, maam. it came to our knowledge that . .

13 MR. BROWN: Your Honor, I would interject an objec-
14 tion at this time. Hearsay.

15 THE COURT: Would you all approach the bench, please?

16 (Conference at the bench between counsel and the
17 Court off the record)

18 THE COURT: You may continue.

19 SOLICITOR: Thank you, Your Honor.

20 BY SOLICITOR:

21 Q. Sergeant Vortisch, as a result of that interview --
22 the interview with Mr. Hicks -- was anyone else present
23 with you at that time?

24 A. Yes, maam.

25 Q. Who was that?

OFR. VORTISCH ON DIRECT

1 A. His attorney, Stephanie Smart.

2 Q. And did you take anything in your custody as a re-
3 sult of this interview?

4 A. I did.

5 Q. What would that be?

6 A. Four handwritten letters.

7 Q. I ask you . .

8 SOLICITOR: I show Defense Counsel State's Exhibit
9 82.

10 May I approach the witness?

11 THE COURT: You may.

12 BY SOLICITOR:

13 Q. Sergeant Vortisch, do you recognize what is marked
14 State's Exhibit 82?

15 A. Yes, maam.

16 Q. And what are they?

17 A. These are the four letters I received at the time of
18 the interview.

19 Q. SOLICITOR: Your Honor, State moves 82 into evi-
20 dence.

21 THE COURT: Objection?

22 MR. BROWN: No, maam.

23 THE COURT: Then without objection.

24 (Four handwritten letters entered in evidence with-
25 out objection as State's Exhibit 82)

OFR. VORTISCH ON DIRECT

1 BY SOLICITOR:

2 Q. I have no further questions. Please answer anything
3 the Defense Counsel has.

4 A. Yes, ma'am.

5 THE COURT: Mr. Brown.

6 MR. BROWN: May it please the Court?

7 THE COURT: Yes, sir.

8 CROSS EXAMINATION

9 BY MR. BROWN:

10 Q. Did Mr. Hicks have any difficulty -- I don't know
11 whether what he was saying had any accuracy, but did he
12 have any difficulty uttering words out of his mouth?

13 A. No, sir.

14 Q. Would it have been just as easy to write a state-
15 ment like this as to hit a record button on a tape re-
16 corder so we could have heard what he said?

17 A. Yes, sir.

18 Q. Because this is typed up because he didn't think
19 his writing would be good?

20 A. Yes. He asked for -- that's what he said, yes,
21 sir.

22 Q. And is there any question he told you he met up
23 with a gentleman at two thirty A.M. on May 26, 2006?

24 A. May I refresh my . .

25 MR. BROWN: May I approach?

OFR. VORTISCH ON CROSS

1 THE COURT: You may.

2 BY MR. BROWN:

3 A. The question, sir, again?

4 Q. Mr. Hicks says he meets at two thirty A.M. on May
5 26, 2006, at the BB and T parking lot?

6 A. That's what he told and that's the way I typed it.
7 Yes, sir.

8 Q. And did he also tell you he met with Alonzo?

9 A. That's what this says here. Yes, sir.

10 Q. And did he consistently say Alonzo throughout that
11 statement?

12 A. It does, sir.

13 Q. And that's what he told you?

14 A. Yes, sir.

15 Q. And where is he telling you in this statement that
16 he fondled Amy Davidson?

17 A. It doesn't say that, sir.

18 Q. And in fact, doesn't he say next to the last para-
19 graph on the first page that he called back -- I guess
20 facing toward the stadium area -- and Alonzo and the girl
21 came up?

22 A. Would you repeat that? I'm sorry.

23 Q. Yes, sir. Again, he didn't tell you he fondled
24 Amy Davidson on the way back to the car?

25 A. The only indication I typed was he told me he

OFR. VORTISCH ON CROSS

1 held her legs. That's the only touch I see in the
2 statement.

3 Q. Does it anywhere in there say on the way back to
4 the Lexus that Mr. Hicks fondled Amy Davidson?

5 A. No, sir.

6 Q. All right, and doesn't it in fact say that he turned
7 around and called Alonzo and the girl was with him?

8 A. It does say that.

9 Q. And so it doesn't say that Alonzo walked back to
10 the car and I fondled Amy Davidson when I walked her
11 back to the car?

12 A. No, sir, it does not.

13 Q. You completed two supplemental police reports?

14 A. Yes, sir.

15 Q. And you actually completed one that was entered the
16 first half of June of 2006?

17 A. Yes, sir.

18 Q. Okay, and that indicates that all alterations were
19 made on this report by June 12, 2006?

20 A. No, sir. What that date means is something was
21 done in this supplement on that date. The specific
22 changes it doesn't indicate. It could have already been
23 in the computer and I changed something. I don't know
24 what I changed.

25 Q. But were there any changes after that date?

OFR. VORTISCH ON CROSS

- 1 A. . . .
- 2 Q. To this report?
- 3 A. Not to my supplement. This specific one here, no,
- 4 sir.
- 5 Q. Okay, and in this on the second page you indicate
- 6 in there your efforts to go back and retrieve some gloves?
- 7 A. Yes, sir.
- 8 Q. Is that accurate?
- 9 A. Yes, sir.
- 10 Q. And is that the gloves under the tree?
- 11 A. Yes, sir.
- 12 Q. These are the gloves that are marked as State's --
- 13 entered as State's Exhibit 45?
- 14 A. Yes, sir.
- 15 Q. And some kind of work gloves, cloth working gloves
- 16 or garden gloves?
- 17 A. I described them as garden gloves.
- 18 Q. All right, and the same gloves that were depicted
- 19 in the photographs that were entered as Exhibits 32 and
- 20 33, I believe?
- 21 A. Yes, sir.
- 22 Q. And Mr. Hicks clearly told you he was wearing those
- 23 gloves?
- 24 A. That's what it says, yes, sir.
- 25 Q. In fact, not just once, not just twice, but three

OFF. VORTISCH ON CROSS

1 times in this once paragraph you note that Hicks was
2 wearing those gloves?

3 A. Yes, sir.

4 Q. In fact, it says threw the gloves he was wearing
5 into and then later it says those are the gloves he was
6 wearing and threw into the tree?

7 A. Yes, sir.

8 Q. To conclude this, Stephanie Smart, Mr. Hicks' law-
9 yer, on July 2006, a member of the Beaufort County Public
10 Defender Office, met with you?

11 A. Yes, sir.

12 Q. No further questions.

13 THE COURT: Solicitor?

14 SOLICITOR: Nothing further, Your Honor.

15 THE COURT: Please step down.

16 SOLICITOR: May he be excused?

17 THE COURT: Mr. Brown?

18 MR. BROWN: He is under a subpoena from me but I
19 don't mind him being excused.

20 THE COURT: You can call him back if you need him.
21 He's right next door.

22 Don't leave town.

23 WITNESS: No, ma'am.

24 THE COURT: Thank you, sir.

25 (Witness excused)

1 THE COURT: Solicitor?

2 SOLICITOR: Your Honor, the State would call John
3 Kelleher.

4 JOHN KELLEHER, being duly sworn,
5 testified as follows:

6 CLERK: Please take a seat and state your full
7 name.

8 SOLICITOR: Can he stay in the Courtroom if he's
9 been excused? (Referring to Witness Vortisch)

10 THE COURT: Mr. Brown?

11 MR. BROWN: My only concern is that I had indicated
12 I was going to call him but they've called him and I had
13 an opportunity to cross examine him. I may recall him,
14 and I may have an issue with sequestration on that.

15 I think it is better if he didn't.

16 THE COURT: Thank you, sir.

17 CLERK: Please state your full name and spell your
18 last name.

19 WITNESS: My name is John E. Kelleher, K E L L E H
20 E R.

21 DIRECT EXAMINATION

22 BY SOLICITOR:

23 Q. Good afternoon, Mr. Kelleher.

24 A. Good afternoon, maam. Sorry, I've got a little
25 cold.

MR. KELLEHER ON DIRECT

1 Q. Where are you employed?

2 A. I'm employed with the Beaufort County Sheriff's
3 Office.

4 Q. And how long have you worked there?

5 A. Going on six years now.

6 Q. And were you with the Beaufort City Police Depart-
7 ment on May 26, 2006?

8 A. Yes, I was.

9 Q. And where did you respond initially with regards to
10 this case?

11 A. I responded to the Beaufort Memorial Hospital to
12 the ER.

13 Q. And who, if anyone, did you speak to at the ER?

14 A. Upon arrival, I spoke to some of the staff and then
15 I met with the victim in this case, Mrs. Amy Davidson.

16 Q. Did you speak to Mr. Davidson while you were there?

17 A. Yes, I did.

18 Q. Did you at any point leave the hospital with Mr.
19 Davidson?

20 A. I did.

21 Q. And what was the purpose of that?

22 A. Mr. Davidson took me out to -- we were going to
23 where the alleged CSC took place. He was going to point
24 out the locations where other crimes in reference to the
25 call took place.

MR. KELLEHER ON DIRECT

1 Q. You said CSC and that's police language. What is
2 that?

3 A. That is police language. CSC is criminal sexual
4 conduct. In laymen's terms it would be a rape.

5 Q. So you went to various incident locations in this
6 case?

7 A. We drove by the ATM machine. We went to the foot-
8 ball field where the rape took place, and later in the
9 evening we also went to the BB and T parking lot.

10 Q. Mr. Kelleher, in order to aid your testimony today,
11 did you prepare an exhibit related to your testimony?

12 A. Yes, I did.

13 SOLICITOR: I show Defense Counsel State's Exhibit
14 36.

15 May I approach the witness, Your Honor?

16 THE COURT: Yes.

17 BY SOLICITOR:

18 Q. Mr. Kelleher, I show you State's Exhibit 36, and
19 would this be your exhibit for this trial?

20 A. Yes, it is, maam.

21 SOLICITOR: I would move State's Exhibit 36 into
22 evidence.

23 MR. BROWN: Without objection.

24 THE COURT: In evidence without objection.

25 (Blow-up of scene admitted in evidence without

MR. KELLEHER ON DIRECT

1 objection as State's Exhibit 36)

2 BY SOLICITOR:

3 SOLICITOR: May I have Sergeant Kelleher come off
4 the stand in front of the jury to publish this Exhibit?

5 THE COURT: You may.

6 Q. I'll hold this, and if you can indicate for the
7 jury what it is, Exhibit 36? What is depicted in this
8 Exhibit?

9 A. A map of Beaufort City in increments of half a
10 mile in the lighted areas. Each of these that I set
11 out are locations where a crime was initiated.

12 The first was initiated at the B B and T Bank park-
13 ing lot here, and this is the Woods Bridge.

14 Down the highway, the Sea Island Parkway, . .

15 Q. Stand so that everybody can see it.

16 A. Yes, maam. I'm sorry.

17 Q. What is the significance of the BB and T parking
18 lot?

19 A. This is where the initial crime originated at. The
20 Defendants met the victims at their vehicle there.

21 MR. BROWN: Your Honor, he is making conclusary
22 statements, not recollection of facts from his own know-
23 ledge.

24 THE COURT: Well, respectfully, . .

25 MR. BROWN: I don't mind him pointing out . .

MR. KELLEHER ON DIRECT

1 THE COURT: Solicitor, ask him a question and he
2 can respond to your questions.

3 SOLICITOR: Yes, maam.

4 BY SOLICITOR:

5 Q. So you were involved in the investigation?

6 A. Yes.

7 Q. And you are aware of all of the investigation --
8 the materials collected in the investigation?

9 A. Yes.

10 Q. So you are familiar with all the locations that
11 are related to this case?

12 A. Yes.

13 Q. And their significance?

14 A. Yes.

15 Q. Is that what you have depicted on this Exhibit?

16 A. Yes, maam.

17 Q. The next item on the map would be what?

18 A. The Lowcountry National Bank where the ATM machine
19 is, each increment is half a mile.

20 THE COURT: Solicitor, you may want to have some-
21 one else hold it because I have some jurors straining
22 to try to see.

23 Thank you. I appreciate that.

24 A. The Lowcountry National Bank where the ATM machine
25 is located.

MR. KELLEHER ON DIRECT

1 Here is the high school football stadium at this
2 location.

3 This is the nine one one location, and as I men-
4 tioned, each is within a half mile from the other.

5 Q. What is the significance of the Beaufort High School
6 football field?

7 A. This is where the victim -- where the rape was said
8 to take place.

9 Q. And the nine one one call?

10 A. This is where Mr. Davidson made contact with a res-
11 ident in that area who made the call.

12 Q. And the Lowcountry National Bank?

13 A. Where the victims got money from the ATM machine
14 and gave it to the Defendants.

15 MR. BROWN: And, again, Your Honor, I don't mind
16 him pointing out locations, but the concern I've got
17 -- at some point he gets into a conclusary statement or
18 some type of summary of event's significance.

19 I think^{that} kind of conclusion is what the jury decides,
20 Your Honor.

21 THE COURT: But he investigated it and he can tell
22 the facts as he has found through his investigation.

23 You can go ahead and just tell what -- why don't
24 we grab an easel, which would be much easier for this
25 jury to see.

MR. KELLEHER ON DIRECT

1 That way we don't have to have the bailiff there
2 holding it.

3 (Brief pause in proceeding)

4 THE COURT: Thank you.

5 BY SOLICITOR:

6 Q. The Woods Memorial Bridge, why did you put that on
7 the map?

8 A. I put that on there because the bridge operator
9 was notified of the incident and to . .

10 MR. BROWN: I would object, Your Honor. This is
11 hearsay.

12 THE COURT: Respectfully, I overrule. You can go
13 ahead.

14 The question was why is that on there.

15 A. Thank you, maam. As a reference point, the operator
16 was notified to look for any individual running across
17 the bridge, due to the fact that we had an idea at the
18 time who it possibly was.

19 MR. BROWN: I would object, Your Honor. That is
20 speculation now.

21 SOLICITOR: This is part of the investigation,
22 Your Honor.

23 WITNESS: This is what was going on at the time,
24 maam, in my mind.

25 A. The Defendant vehicle may have been at the BB and

MR. KELLEHER ON DIRECT

1 T parking lot. This is where it originated also.

2 The bridge is on there and it is closest to where
3 the Defendants were apprehended.

4 Is that . .

5 BY SOLICITOR:

6 Q. Yes, sir. You can return to the stand.

7 Corporal Kelleher, did you report anywhere else?

8 A. Later that morning I went over to the Beaufort City
9 Police Department, besides those locations.

10 Q. And were you present or did you observe any inter-
11 view or part of an interview with the Codefendant Lorenzo
12 Hicks?

13 A. Yes, I did.

14 Q. And who was present or conducting the interview of
15 Mr. Hicks?

16 A. Upon my arrival, Retired Detective Vortisch from
17 the City was there, Detective Ott from the City, Lorenzo
18 Hicks.

19 Q. And at any point did you or did you observe Detec-
20 tive Ott or Sergeant Vortisch threaten, coerce or do any-
21 thing untoward toward Mr. Hicks?

22 A. Not at all.

23 Q. And was Mr. Hicks cooperating at the time you ob-
24 served him?

25 A. Yes, he was.

MR. KELLEHER ON DIRECT

1 Q. Did he give a statement in your presence regarding
2 this crime?

3 A. Yes, he did.

4 Q. And was he cooperating?

5 A. Yes.

6 Q. And following that, did you do any investigation
7 regarding any of these incident locations?

8 A. Yes, I did.

9 Q. Where did you go?

10 A. I made contact with the manager of the BB -- excuse
11 me, the Lowcountry National Bank, the ATM machine, and
12 obtained a video of the ATM transactions.

13 SOLICITOR: I show Defense what is marked as State's
14 Exhibit 37.

15 May I approach the witness, Your Honor?

16 THE COURT: You may.

17 BY SOLICITOR:

18 Q. Mr. Kelleher, can you identify what's been marked
19 State's Exhibit 37?

20 A. Yes, maam. That's my handwriting.

21 Q. And what would that item be?

22 A. This would be the transactions at the ATM machine
23 that morning.

24 Q. Is this considered a surveillance video tape?

25 A. Yes, this is a surveillance -- security surveillance

MR. KELLEHER ON DIRECT

1 tape at the bank.

2 SOLICITOR: Your Honor, State moves 37 into evi-
3 dence.

4 MR. BROWN: Actually, it is my understanding from
5 -- he made some statement about what it is, but . .

6 SOLICITOR: I'm not offering to publish it at this
7 time. I was just having him identify it as a tape he
8 collected.

9 BY SOLICITOR:

10 Q. And you have identified it?

11 A. Yes.

12 THE COURT: Have you viewed it?

13 WITNESS: Yes, I have, maam.

14 THE COURT: Okay, and it is what you have said it
15 is, is that correct?

16 WITNESS: Yes, it is.

17 THE COURT: Okay, it's in evidence.

18 (Surveillance tape from ATM machine entered in
19 evidence over objection as State's Exhibit 37)

20 BY SOLICITOR:

21 Q. Officer Kelleher, when you do view it, what do you
22 see on it?

23 A. . .

24 MR. BROWN: Your Honor, I would ask that the tape
25 speak for itself. I'm sure we'll be able to view it

574.

MR. KELLEHER ON DIRECT

1 without his giving a conclusion. The finders of the
2 facts can draw their conclusions.

3 SOLICITOR: He can testify to what he observed on
4 the video tape.

5 THE COURT: Come up, please.

6 (Conference at the bench between counsel and the
7 Court off the record)

8 BY SOLICITOR:

9 Q. Corporal Kelleher, what do you see on the tape?

10 A. What I see on the tape, maam, is I see what appears
11 to be a white vehicle pull up to the ATM machine. It is
12 not a very clear picture.

13 I can see someone in the driver's seat who appears
14 to be a caucasian male. I can see some movement behind
15 him in the back seat of the car.

16 I cannot see who that is, and I do believe I do see
17 Mrs. Davidson facing the machine.

18 To me, that's what I saw.

19 Q. Thank you. No further questions.

20 Please answer anything Defense Counsel asks of
21 you.

22 A. All right, maam.

23 MR. BROWN: Thank you.

24 CROSS EXAMINATION

25 BY MR. BROWN:

MR. KELLEHER ON CROSS

1 Q. You're a detective with the Sheriff's Department?

2 A. Investigator.

3 Q. Okay, sorry. And you filled out a report concern-
4 ing your investigation . .

5 A. Yes, I did.

6 Q. . . and your findings?

7 A. Yes.

8 Q. Do you have a copy of that with you?

9 A. Yes, I do. My copy.

10 Q. And was Mr. Rico Hicks cooperative when he told
11 David Ott that he didn't know anything about what had
12 happened?

13 A. When I arrived at the Beaufort City Police Depart-
14 ment he already had a written statement there, and he
15 also was giving a verbal statement.

16 Q. And you are saying written. Do you mean typed or
17 written?

18 A. Typed.

19 Q. Okay. You got and the statement was already typed
20 up?

21 A. Yes. It was in the process of being typed.

22 Q. So you were there when he said I didn't -- I don't
23 know anything?

24 A. He -- I was there when he explained more of the
25 story, yes.

MR. KELLEHER ON CROSS

1 Q. Were you there when he said I don't know anything
2 about what happened on May 26th?

3 A. No, I wasn't.

4 Q. And did you note some heights in your report?

5 A. Heights of . .

6 Q. Of the people who are listed on page two and page
7 three of your thirteen page report?

8 A. Yes, I did.

9 Q. Okay, and you noted that Mr. Davidson was five
10 eleven?

11 A. If I typed it on my report, I did, yes.

12 Q. Let's take a look at it.

13 A. Sure. Yes, I did type in five eleven.

14 Q. Mrs. Davidson is listed as . .

15 A. Five six.

16 Q. Five six, and Mr. Howard is listed as . .

17 A. Five seven.

18 Q. Mr. Hicks is listed as . .

19 A. Five six.

20 Q. Now, you note -- it starts about page nine, your
21 notes from the interview with Rico Hicks.

22 A. Yes.

23 Q. And in that report did Rico Hicks say I fondled
24 Amy Davidson?

25 A. On page eleven I don't have anywhere that I --

MR. KELLEHER ON CROSS

1 indicated that Hicks said he fondled her, except for
2 the part where he held her legs.

3 Q. And how about when he walked -- when Mr. Hicks
4 walked Amy Davidson back to the car? Did Mr. Hicks any-
5 where there report that he fondles Amy Davidson?

6 A. . .

7 Q. That he said mean things or vulgar things to her?

8 A. Not Mr. Hicks, but Amy does.

9 Q. Amy?

10 A. Yes.

11 Q. Mr. Hicks -- does he say I fondled and groped Amy
12 Davidson when I was walking her back to the car?

13 A. No, but he said something to the effect of he had
14 wanted to get some of that.

15 Q. That was before they walked back to the car, is
16 that right?

17 A. Correct.

18 Q. Now, does he ever say or is it not noted that he
19 said, yes, I fondled her, I was all over her -- saying
20 mean things, on the way back to the car after Mr. Howard
21 had already left?

22 A. I don't recall him saying that, and it's not in
23 here.

24 Q. Now, when you talked to Ms. Davidson, did you ask
25 her about her purse?

MR. KELLEHER ON CROSS

1 A. I believe I did, yes.

2 Q. And her effects, such as item 25, her driver's li-
3 cense, and item 26, her hotel key?

4 A. I do recall something like that, yes.

5 Q. Okay, and does he say on the way to the ATM that
6 she gives her purse with those items to the one with the
7 gun?

8 A. . .

9 Q. I refer you to page seven.

10 A. Page seven -- on page seven . .

11 Q. I'm sorry, it's like the third . .

12 A. It says, prior to arriving at the ATM, the suspect
13 with the gun took the purse from her.

14 Q. Okay.

15 A. Then -- well, . .

16 Q. Okay, so looking up here, these are half miles
17 again?

18 A. Yes, sir.

19 Q. So we're talking about probably from the BB and T
20 parking lot to the ATM machine, the suspect with the gun
21 took the purse?

22 A. Yes.

23 Q. Okay.

24 MR. BROWN: Ask the Court's indulgence.

25 (Brief pause in proceeding)

MR. KELLEHER ON CROSS

1 Q. Let me ask you, is the Lowcountry National Bank in
2 the County?

3 A. Yes, sir.

4 Q. Okay, and that is why you went there regarding the
5 tape from the ATM?

6 A. Yes, sir.

7 Q. And you spoke to someone at that bank?

8 A. Yes, sir.

9 Q. And did they give you the serial numbers off the
10 money that was taken from the ATM machine?

11 A. I never acquired any serial numbers.

12 Q. Did you ask them?

13 A. No, I didn't.

14 Q. Okay, but we know the transactions occurred?

15 A. I believe so, yes.

16 Q. I'd like to get that back -- that report back.

17 Thank you.

18 No further questions.

19 THE COURT: Solicitor?

20 SOLICITOR: Briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY SOLICITOR:

23 Q. Corporal Kelleher, Mr. Brown asked you about page
24 eleven of your report.

25 You were present when Mr. Hicks was describing how

MR. KELLEHER ON REDIRECT

1 Mr. Howard raped Amy Davidson?

2 A. Yes.

3 Q. And were you present when Hicks stated that Howard
4 grabbed his hand and placed it on Ms. Davidson's leg to
5 help hold her back?

6 A. Yes, ma'am.

7 Q. And you were present when Hicks said that . .

8 MR. BROWN: Your Honor, although he was present, I
9 am assuming Mr. Hicks would be the proper person to talk
10 about that.

11 THE COURT: Respectfully, you can ask him the ques-
12 tion, Solicitor.

13 BY SOLICITOR:

14 Q. Corporal Kelleher, you were present -- were you
15 present when Mr. Hicks said he told Mr. Howard, maybe
16 she doesn't want it?

17 A. Yes.

18 Q. And Howard replied I'm giving it to her anyway?

19 A. Correct.

20 Q. No further questions.

21 THE COURT: Mr. Brown?

22 MR. BROWN: No further Cross.

23 THE COURT: You may step down.

24 Would you approach, please?

25 (Conference at the bench between counsel and the

1 Court off the record.)

2 (Witness excused from stand.)

3 THE COURT: Solicitor?

4 SOLICITOR: May Officer Kelleher be excused?

5 THE COURT: Mr. Brown?

6 MR. BROWN: Without objection.

7 THE COURT: He is excused.

8 (Mr. Kelleher excused)

9 SOLICITOR: Thank you, Your Honor. The State calls
10 Everett Kuhn.

11 EVERETT KUHN, being duly
12 sworn, testified as follows:

13 CLERK: Please have a seat. State your full name
14 and spell your last name.

15 WITNESS: Everett Kuhn, K U H N.

16 DIRECT EXAMINATION

17 BY SOLICITOR:

18 Q. Good afternoon, Ms. Kuhn. Where are you employed?

19 A. Lowcountry National Bank.

20 Q. What is your position there?

21 A. I'm a Senior Vice President and Branch Coordina-
22 tor.

23 Q. And how long have you worked there?

24 A. Since March of 2005.

25 Q. Let me ask you if back in May of 2006 you had an

VOL. III

MS. KUHN ON DIRECT

1 occasion to meet with Investigator Kelleher from the
2 Beaufort County Sheriff's Office?

3 A. Yes, I did.

4 Q. And during that meeting did you provide him with
5 any information?

6 A. I gave him a video tape from our ATM machine.

7 Q. And can you describe or are you familiar with how
8 a video was kept back then?

9 A. What we do is in the ATM machine itself there is a
10 a VHS recorder there, and weekly the machine is audited,
11 and that is when the tape is changed.

12 It is always done under dual control, and all they
13 do is go in and rewind the tape, take it out. The
14 tapes are in sequence, like one through six or seven,
15 and when they take number four out they go to number five
16 and then they just sequence them around.

17 Q. And you provided -- do you recall what date you
18 would have provided the tape?

19 A. It was -- it would have been May 25th-26th, the
20 tape that would have involved that time.

21 Q. Let me show you what's already been entered into
22 evidence as State's Exhibit 37.

23 SOLICITOR: May I approach the witness, Your
24 Honor?

25 THE COURT: You may.

MS. KUHN ON DIRECT

1 BY SOLICITOR:

2 Q. Can you identify this item?

3 A. Yes.

4 Q. Is this the item you provided to Investigator
5 Kelleher?

6 A. Yes, maam.

7 SOLICITOR: Your Honor, at this time I would like
8 to publish this tape to the jury.

9 THE COURT: Mr. Brown?

10 MR. BROWN: No objection.

11 Q. Have you had an opportunity prior to your testi-
12 mony to view this tape?

13 A. Yes, maam.

14 Q. And can you say whether or not it is very clear or
15 hazy?

16 A. It's -- because of the time and because it is VHS,
17 it was not that clear.

18 (Whereupon, the videotape from the Lowcountry Na-
19 tional Bank ATM machine was played for the jury)

20 SOLICITOR: Your Honor, may I have Ms. Kuhn step
21 down?

22 THE COURT: You may step down, Ms. Kuhn.

23 Again, I'm going to ask that you step over here
24 a little bit to make sure all our jurors can see.

25 Thank you.

MS. KUHN ON DIRECT

1 Q. Can you tell me what is depicted or would be --
2 what is depicted in this?

3 A. From the ATM machine the camera looks out and sees
4 whenever a vehicle comes into it. So the camera is
5 looking out and seeing a vehicle pull in the drive at
6 that time.

7 Q. So this would be May 26th at 1:23 A.M.?

8 A. Yes.

9 Q. Okay, and at 1:35 A.M. does the vehicle head on?

10 A. It would appear so from the tape.

11 Q. And is this the best that you can get from that
12 night?

13 A. At this time, yes. We have now switched to digi-
14 tal, but this was VHS at the time.

15 Q. In May of 2006?

16 A. Yes, maam.

17 Q. So that's all we've got. Thank you, maam.

18 I have no further questions. Please answer anything
19 Defense Counsel may have.

20 THE COURT: Mr. Brown.

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

22 THE COURT: Yes, sir.

23 CROSS EXAMINATION

24 BY MR. BROWN:

25 Q. How are you, Mrs. Kuhn?

MS. KUHN ON CROSS

1 A. I'm fine. How are you?

2 Q. Fine, thank you. Just so I'm clear, your husband
3 is an attorney?

4 A. Yes, sir.

5 Q. He works with Jim Moss?

6 A. Yes, sir.

7 Q. Moss and Kuhn and Fleming?

8 A. Yes, sir.

9 Q. And is it still true or at one point in time Mr.
10 Fleming's wife worked for the Solicitor's Office, in the
11 last little bit?

12 A. Yes, sir.

13 Q. And is that the same firm that represents the
14 Davidsons?

15 A. I believe they do but I am not privy to all of
16 that information.

17 Q. Sure.

18 SOLICITOR: Your Honor, . .

19 THE COURT: Would you all approach?

20 (Conference at the bench between counsel and the
21 Court off the record)

22 THE COURT: Any further questions, Mr. Brown?

23 MR. BROWN: Briefly.

24 BY MR. BROWN

25 Q. I assume you didn't ever give the serial numbers

MS. KUHN ON CROSS

1 of any money to the police?

2 A. No, sir.

3 Q. No further questions.

4 SOLICITOR: Nothing further, Your Honor.

5 May the witness be excused?

6 THE COURT: Any objection?

7 MR. BROWN: No objection.

8 THE COURT: You may be excused, Ms. Kuhn.

9 (Witness excused)

10 THE COURT: Solicitor, would you and Mr. Brown ap-
11 proach?

12 MR. BROWN: I'm sorry. I was conferring with my
13 client.

14 (Conference at the bench between counsel and the
15 Court off the record)

16 THE COURT: Ladies and gentlemen of the jury, I
17 think this is a good time for us to take a lunch break.
18 Respectfully, it's about eight or seven minutes before
19 one o'clock.

20 Let's take a little bit of a shorter lunch break
21 today so we can keep pushing through. I'm going to ask
22 you to be back in the jury room at two o'clock so we can
23 continue the trial of this case.

24 Also, ladies and gentlemen, for planning purposes I
25 will tell you I would like to work if at all possible,

1 the way the witnesses work out, at least until six
2 o'clock tonight.

3 So let me know, number one, if that is a problem
4 for anyone. Whoever the Foreperson is, I would like you
5 to let me know.

6 Then, second, for planning purposes you ought to
7 know that so if you need to arrange or make other ar-
8 rangements you can do that.

9 Lastly, again, you are not to discuss the case not
10 only with each other but with anyone you may meet during
11 the lunch hour or talk to over the lunch hour.

12 Again, you have heard about different places that
13 are involved in this case and it would be inappropriate
14 for you to do any site visits or drive by or anything
15 along those lines.

16 All right, with that said, ladies and gentlemen,
17 have a wonderful lunch and we'll see you all back at
18 two o'clock.

19 (Jury excused from Courtroom at 12:54 P.M.)

20 BAILIFF: The jury is clear, Your Honor.

21 THE COURT: Thank you. Is there anything we need
22 to take up before the lunch hour?

23 SOLICITOR: Not from the State.

24 MR. BROWN: No, Your Honor.

25 THE COURT: Have a nice lunch and I'll see you back

1 at two o'clock.

2 (Whereupon, the Court stood in recess for the lunch
3 period until 2:30 P.M.)

4 THE COURT: Is there anything we need to take up be-
5 fore I bring the jury in?

6 SOLICITOR: Nothing from the State.

7 THE COURT: From the Defense?

8 MR. BROWN: Just a minor issue. Mr. Morrison is
9 back, and at some point in time I would like to request
10 funds. I don't know exactly where he is on that.

11 Our initial request that went to Judge Buckner at
12 the time was done ex parte. What we requested and what
13 we got are not exactly the same thing.

14 There was a provision in there that I could come
15 back and ask for more. Obviously Mr.
16 Morrison has come and gone back and he's come back again,
17 Your Honor.

18 I wanted to do this as early as I can so I'll have
19 a chance to look at it and come back and make that.

20 THE COURT: Well, we're going to have to do it on
21 the back-end. At the conclusion of this case I will en-
22 tertain those kind of things such as expenses involved
23 in the case.

24 So, respectfully, you have noted that for the record
25 during the trial of the case.

1 MR. BROWN: Thank you.

2 THE COURT: It may be something where Dr. Morrison
3 will have to submit his time sheet and we will have to
4 address it after this trial is completed.

5 MR. BROWN: I just wanted to make sure.

6 THE COURT: I have noted it for the record, and I
7 understand you have asked before it has occurred.

8 MR. BROWN: Thank you.

9 THE COURT: Respectfully, Ms. White -- are you
10 Ms. White?

11 MS. WHITE: Yes.

12 THE COURT: Is it Theresa White?

13 MS. WHITE: Yes.

14 THE COURT: Maam, if you would stand, please? Maam,
15 it is my understanding that you were speaking with a
16 juror outside in the parking lot over the lunch hour.

17 One of my bailiffs reported to me that they saw you
18 and the juror.

19 MS. WHITE: I don't remember speaking to a juror.
20 I was talking to a person in the parking lot.

21 THE COURT: What did you talk about?

22 MS. WHITE: I didn't . . .

23 THE COURT: What did you talk to that person in the
24 parking lot about?

25 MS. WHITE: He just asked me if I was having fun,

1 and I had just come out to the car to go to lunch and I
2 was laughing and he asked me if I was having fun.

3 And I said, yeah, this is the first case - first
4 court case I've been to since 1994 when they decided the
5 constitutionality of federal congressional districts in
6 Georgia, and I went on and got in my car and took off.

7 I don't know who he was. Just a person in the park-
8 ing lot.

9 THE COURT: Well, respectfully, maam, I will tell
10 you that he is one of the jurors in the trial of this
11 case, and while I understand you are not a part of the
12 defense team Mr. Brown in fact introduced you during
13 the voir dire in this case, which was inappropriate cer-
14 tainly at the time.

15 The Solicitor didn't make an objection and I de-
16 cided to let it go.

17 Additionally, you were sitting at counsel table
18 at the beginning of the trial, and I asked that you be
19 removed unless you were a part of the defense team, in
20 fact.

21 I want to make sure that is the absolute sum total
22 of your conversation with the juror.

23 MS. WHITE: Yes, it is, but I didn't know who he
24 was.

25 SOLICITOR: Your Honor, I would ask that you ask

1 the juror as well.

2 I don't have any objection to your doing that in
3 Chambers or however you want to do it. I just would
4 like you to ask him what the conversation was about,
5 outside the presence of the other jurors so that he is
6 not embarrassed.

7 THE COURT: All right, and, respectfully, Ms. White,
8 tell me again what your role is?

9 MS. WHITE: I'm just taking notes on the case, and
10 I'm going to write a story and some other stuff on it.

11 THE COURT: Okay, do you work for anyone specifi-
12 cally or are you a free-lancer or . .

13 MS. WHITE: I'm a free-lancer.

14 THE COURT: And are you here of your own choice or
15 volition, or were you asked to be here?

16 MS. WHITE: Both.

17 THE COURT: Both? Okay.

18 MR. BROWN: If it would help, Your Honor, I paid
19 her.

20 THE COURT: You have paid her, Mr. Brown, to be
21 here?

22 MR. BROWN: Uh huh, to determine what's the story
23 on the case.

24 THE COURT: All right. Solicitor, I will go ahead
25 and bring out the juror specifically that was addressed

1 to make sure there was nothing else said.

2 Is there anything further that you would like for
3 me to inquire of this juror?

4 SOLICITOR: No, maam. Thank you.

5 THE COURT: It's a -- do you know who it is?

6 BAILIFF: I am not sure.

7 THE COURT: I believe it was Mr. Piccora.

8 BAILIFF: Mr. Piccora.

9 (Whereupon, Juror Piccora was brought into the
10 Courtroom by the bailiff)

11 THE COURT: Sir, how are you?

12 JUROR: Fine.

13 THE COURT: Good to see you, sir.

14 Mr. Piccora, is that correct?

15 JUROR: Uh hm.

16 THE COURT: I just wanted to check. One of my
17 bailiffs saw you speaking with Ms. White in the parking
18 lot either coming or going from lunch.

19 Of course, no one was there so we don't know the
20 substance of your conversation.

21 JUROR: Okay.

22 THE COURT: So, respectfully, I am just asking whe-
23 ther or not you discussed this case in any way, or whe-
24 ther or not Ms. White made any comments to you or you
25 discussed this case with her?

1 JUROR: No, I went out and I think I saw her coming
2 out to the car with the Defense Attorney, and I said,
3 are you having fun, and she said this is the first time
4 I've covered a trial since -- and she mentioned something
5 that happened -- I believe it was a -- I don't know if
6 it was the Supreme Court made a decision or something
7 like that, and I said -- I don't remember what I said
8 after that, and we just kind of walked away from each
9 other.

10 THE COURT: Okay. I just wanted to make sure that
11 you didn't have any substantive conversation or remarks
12 . .

13 JUROR: No.

14 THE COURT: . . about the case in any way?

15 JUROR: Oh, no. That was it.

16 THE COURT: All right, I appreciate that. I just
17 wanted to make sure that I knew . .

18 JUROR: That's fine. You know, and after I left,
19 I'm saying, you know, should I have even said anything,
20 you know, but . .

21 THE COURT: I don't want you to worry about it,
22 Mr. Piccora. I just had to be absolutely sure that
23 there was no issue whatsoever.

24 JUROR: Okay.

25 THE COURT: Again, I appreciate knowing, and, again,

1 as you know, you are not to speak with anyone that you
2 see involved in this case.

3 I know you've learned a little bit and I appreciate
4 that no one was trying to talk to you, so that was another
5 concern I had.

6 So I appreciate it, sir, and I'm going to ask you
7 to go back to your jury room, and I do not want you to
8 discuss the conversation you and I just had with your
9 fellow jurors.

10 All right, sir?

11 JUROR: Sure.

12 THE COURT: I appreciate it.

13 (Juror excused from Courtroom to return to jury
14 room)

15 THE COURT: Anything further? All right, Solici-
16 tor?

17 SOLICITOR: Your Honor, I'm a little concerned
18 about that. She's going out to her car with the De-
19 fense Lawyer and he asks her if she's having fun.

20 I don't know exactly which way to interpret that,
21 but I do have some concern about it.

22 THE COURT: I'm not concerned about any question he
23 said to her, was she having fun. It was -- I am more
24 concerned about any response she had.

25 SOLICITOR: I'm concerned that he's actually in a

1 conversation with someone he sees with the Defense, when
2 he has been told not to have any contact and they are
3 not to have any contact with him -- any party.

4 He can associate that she is with one of the parties,
5 and a party who was introduced to the jury by Defense
6 Counsel.

7 She is getting out of the car with this attorney
8 and he made contact with her. I just -- I have a con-
9 cern about it.

10 We do have two alternates and that may be the ap-
11 propriate thing to do at this time.

12 THE COURT: Respectfully given the substance of
13 the conversation, I think his comment was an innocent
14 one, just as a response to passing someone in a parking
15 lot.

16 I would have been more concerned if it had been
17 addressed to Mr. Brown or if it was his car she was
18 getting out of, but it doesn't appear that she was. It
19 doesn't appear that he spoke with Mr. Brown in any way.

20 MR. BROWN: I didn't see him.

21 THE COURT: You did not see him, Mr. Brown? Is
22 that correct?

23 MR. BROWN: No.

24 SOLICITOR: I think what he said was he saw her
25 get out of a car with Mr. Brown?

1 MR. BROWN: Right, but I would say that I never
2 saw him.

3 SOLICITOR: Right. I'm not saying he did but Mr.
4 Piccora knows she is with the Defense Attorney and he
5 speaks to her.

6 I have a concern about that, Your Honor.

7 THE COURT: Well, your concern is on the record.
8 I told him not to discuss my conversation with anyone in re-
9 gards to other jurors.

10 At this time I don't see that there is any type of
11 conversation that is a result of this trial or any tes-
12 timony regarding this case.

13 So I will allow him to continue to sit.

14 Okay, anything further?

15 SOLICITOR: Nothing from the State.

16 THE COURT: And, again, it goes without saying for
17 those of you who are here in the Courtroom or either
18 witnesses or participants, you certainly are hearing dis-
19 cussions we are having and no one is to speak to any
20 of the jurors.

21 Maybe out of the abundance of caution, don't say
22 hi to anybody and that way it won't be a problem. All
23 right?

24 My bailiffs are watching and they are doing a very
25 good job to see that nothing inappropriate happens and

1 no juror is tainted in this Courthouse. So I appreciate
2 that, and I commend them for it.

3 With that said, you can bring the jury back in.

4 (Jury returned to Courtroom at 2:42 P.M.)

5 BAILIFF: The Jurors are entering, Your Honor.

6 The Jury is seated.

7 THE COURT: Thank you.

8 Welcome back, ladies and gentlemen. I trust you
9 all had a nice lunch.

10 At this time, Solicitor, you may call your next
11 witness.

12 SOLICITOR: Call Darrell Gruel.

13 DARRELL GRUEL, being duly
14 sworn, testified as follows;

15 BAILIFF: Please have a seat. State your full
16 name and spell our last name.

17 WITNESS: Darrell Gruel, G R U E L.

18 DIRECT EXAMINATION

19 BY SOLICITOR:

20 Q. Good afternoon, Mr. Gruel.

21 A. How are you?

22 Q. Fine. Where are you employed?

23 A. I'm with the Beaufort Police Department.

24 Q. And were you with the Beaufort Police Department in
25 May of 2006?

MR. GRUEL ON DIRECT

1 A. Yes, maam.

2 Q. How long have you been there?

3 A. Ten years.

4 Q. And in what status are you employed with the police
5 department?

6 A. In the Investigations Division.

7 Q. And back in May of 2006, were you involved in the
8 investigation involving Alfonzo Howard?

9 A. Yes.

10 Q. And as part of your investigation, did you collect
11 any items of evidence?

12 A. Yes.

13 Q. And where did you go to collect the items that you
14 collected?

15 A. I went to the Food Lion located on Sams Pointe Road.

16 Q. Why did you go to the Food Lion?

17 A. I was directed there by Investigator Ott. He told
18 me he had . . .

19 MR. BROWN: Objection to hearsay.

20 BY SOLICITOR:

21 Q. When you went in the Food Lion, what were you look-
22 ing for?

23 A. I was looking for surveillance on purchase of panty
24 hose by the suspects.

25 Q. And did you collect those items?

MR. GRUEL ON DIRECT

1 A. I did.

2 SOLICITOR: I show Defense Counsel State's Exhibits
3 38 and 39.

4 May I approach the witness, Your Honor?

5 THE COURT: You may.

6 BY SOLICITOR:

7 Q. Sergeant Gruel, can you identify what has been
8 marked State's Exhibit 39?

9 A. Yes. This is a copy of what they call an electronic
10 journal report in these stores where they log electron-
11 ically all of their purchases.

12 MR. BROWN: Your Honor, I believe . .

13 THE COURT: Objection?

14 MR. BROWN: The witness has to have first hand
15 knowledge of what he's testifying to.

16 THE COURT: Sergeant Gruel, you can answer.

17 BY SOLICITOR:

18 Q. Do you recognize this piece of evidence?

19 A. Yes.

20 Q. Do you know what it is?

21 A. Yes.

22 Q. Can you tell me what it is?

23 A. This is a copy of the . .

24 MR. BROWN: Objection to hearsay.

25 THE COURT: Go ahead and answer.

MR. GRUEL ON DIRECT

1 A. This is a copy of the electronic journal that shows
2 -- electronic journal from Food Lion that shows that it
3 was a purchase for a particular brand of panty hose
4 at a particular time. It shows the register number, and
5 it shows the date and time it was purchased.

6 Q. And who at Food Lion did you collect this from?

7 A. I saw the man on duty at that time who was Bill
8 Clements.

9 SOLICITOR: Your Honor, State moves Exhibit 39 in
10 evidence.

11 THE COURT: Any objection?

12 MR. BROWN: Without objection.

13 THE COURT: Without objection.

14 (Food Lion electronic journal entered in evidence
15 without objection as State's Exhibit 39)

16 BY SOLICITOR:

17 Q. I show you State's Exhibit 38. Can you identify
18 this item?

19 A. Yes.

20 Q. What would item 38 be?

21 A. This is the DVD that contains the video that I
22 collected from there also, from Food Lion.

23 Q. And once you collected it, did you view it?

24 A. Yes.

25 Q. And what you expected to be on the videotape, is

MR. GRUEL ON DIRECT

1 that on the videotape?

2 A. Yes.

3 Q. Thank you, sir.

4 SOLICITOR: Your Honor, State moves 38 in evidence.

5 THE COURT: Any objection?

6 MR. BROWN: Without objection.

7 THE COURT: It's in evidence without objection.

8 (Surveillance DVD from Food Lion entered in evidence
9 without objection as State's Exhibit 38)

10 BY SOLICITOR:

11 Q. Thank you, sir. Please answer anything Mr. Brown
12 asks of you.

13 A. Yes, ma'am.

14 THE COURT: Mr. Brown.

15 MR. BROWN: May it please the Court?

16 THE COURT: Yes.

17 CROSS EXAMINATION

18 BY MR. BROWN:

19 Q. Was the item that you got in the same condition as
20 that one? Is that the same one?

21 A. Is it in the same condition?

22 Q. Number 38.

23 A. This is a dubbed copy I have in my hand.

24 Q. Okay, so it is not exactly what you picked up?

25 A. No.

MR. GRUEL ON CROSS

1 Q. Okay. Now, did you also have some other involvement
2 in this case?

3 A. Yes.

4 Q. Okay, and part of that involved a discussion with
5 Amy Davidson?

6 A. Yes.

7 Q. Okay, and did she tell you as part of her statement
8 that when she was led back to the car that the second
9 suspect fondled her?

10 A. Yes.

11 Q. And did you hear Rico Hicks say that he did that?

12 A. Mr. Hicks? No.

13 Q. You never heard him say that?

14 A. No.

15 Q. And Ms. Davidson was clear the person who had
16 fondled her was not the person who had raped her?

17 A. Correct.

18 Q. I don't have any other questions.

19 THE COURT: Solicitor?

20 SOLICITOR: No further questions.

21 May the witness be excused?

22 MR. BROWN: Without objection.

23 THE COURT: You may be excused, Sergeant Gruel.

24 Thank you.

25 (Witness excused)

1 THE COURT: Solicitor?

2 SOLICITOR: Call Bill Clements.

3 BILL CLEMENTS, being duly
4 sworn, testified as follows:

5 CLERK: Please have a seat. State your full name
6 and spell your last name.

7 WITNESS: Full name is William Wiggins Clements,
8 Second. C L E M E N T S.

9 DIRECT EXAMINATION

10 BY SOLICITOR:

11 Q. Good afternoon. Where are you employed?

12 A. Food Lion. I work for Food Lion.

13 Q. And in what capacity are you employed at Food Lion?

14 A. At the present time, I am a merchandising specialist
15 for the Savannah District.

16 Q. And what do you in that capacity?

17 A. I am responsible for merchandise in our district
18 which ranges from Hilton Head to Waycross, Georgia.

19 Q. And how long have you worked for Food Lion Corpo-
20 ration?

21 A. Fifteen and a half years.

22 Q. And do you have any special training or background
23 with regards to your specialty?

24 A. Yes.

25 Q. What would that be?

MR. CLEMENTS ON DIRECT

1 A. We actually have to go through store manager col-
2 lege. It's ten week process that we go through, and I
3 a store manager for nine years before I was promoted to
4 this position.

5 Q. And what position were you holding on May 26th of
6 2006?

7 A. I was the store manager of the Lady's Island Food
8 Lion.

9 Q. And in your capacity as manager, did you have an
10 opportunity to meet with a Sergeant Gruel from the
11 Beaufort City Police Department?

12 A. Yes.

13 Q. And as a result of your meeting with him, did you
14 provide him with any items?

15 A. Yes, I did.

16 Q. And what items would those be?

17 A. A surveillance videotape and I gave him an electronic
18 journal receipt.

19 Q. And I show you State's Exhibit 39.

20 A. . .

21 SOLICITOR: May I approach the witness?

22 THE COURT: You may.

23 BY SOLICITOR:

24 Q. Do you recognize this item?

25 A. Yes, I do.

MR. CLEMENTS ON DIRECT

1 Q. And what is this item?

2 A. This is a copy of the electronic journal report
3 which is actually a copy of the store receipt plus also
4 a detailed summary for our records.

5 Q. And what kind of information does this report show?

6 A. Pretty much anything we needed to know. Like I
7 said, on the left is the actual cash receipt and on the
8 right is more of a summary of detailed information about
9 the time, the date, location, transaction number.

10 Q. Can you tell me what the item is that is purchased
11 on this report?

12 A. It is Toshika B off-black.

13 Q. What would that be?

14 A. A brand of panty hose.

15 Q. And can you tell me the date and time of the pur-
16 chase?

17 A. Yes, 5 25 06 at 2058.

18 Q. And in people time what -- I don't do military time
19 -- what is that? A.M. or P.M.?

20 A. That is eighty fifty-eight P.M.

21 Q. On the 25th of May?

22 A. Correct.

23 Q. And does it also tell the particular store and the
24 register where it occurs?

25 A. Yes, it occurs on register six.

MR. CLEMENTS ON DIRECT

1 Q. And with this information, can you then go back and
2 pull up the coinciding videotape?

3 A. We can.

4 Q. And did you do that?

5 A. Yes, I did.

6 Q. I show you what has been introduced as State's Ex-
7 hibit 38, if I may approach?

8 THE COURT: You may.

9 BY SOLICITOR:

10 Q. Mr. Clements, this morning did you review that
11 piece of evidence with someone from my office?

12 A. Yes.

13 Q. And is that -- is what is on that video what you
14 are talking about here, this purchase, time and loca-
15 tion?

16 A. Yes.

17 Q. Would you tell us briefly how the camera system
18 worked in that store? What is depicted on this tape?

19 A. Our surveillance system consisted of -- I believe
20 it was twelve or thirteen cameras that were placed around
21 the store.

22 On this video it particularly pertains to the en-
23 trance to the store. You can see anybody that walks in
24 the double doors coming in the store.

25 The register -- there's a video camera on two of

MR. CLEMENTS ON DIRECT

1 the registers in the store, and there is also video cam-
2 eras throughout the different departments in the store,
3 and also the HBC aisle.

4 Q. And what is the HBC aisle?

5 A. Health and beauty care which is your medicines and
6 things of that sort.

7 Q. Is the aisle where the panty hose would have been
8 stocked shown on the video?

9 A. Not the aisle but you can actually look over --
10 the HBC aisle is on aisle nine and the panty hose were
11 actually stocked on aisle eight, and the placement of
12 the camera allows you to view aisle eight as well.

13 SOLICITOR: Your Honor, at this time I'd like to
14 publish for the jury with Mr. Clements' help, the video.
15 If I could have Mr. Clements step down?

16 THE COURT: All right.

17 (Whereupon, surveillance tape from Food Lion shown
18 to the jury)

19 BY SOLICITOR:

20 Q. Mr. Clements, if you could, what area is currently
21 depicted on here?

22 A. This is the front door as you enter the store. The
23 entrance to the store.

24 Q. And does this video include a date and a
25 time?

MR. CLEMENTS ON DIRECT

1 A. Yes, it does. Twenty forty-nine and 5 25, so on
2 5 25 at eight forty-nine P.M.

3 Q. What is depicted in the video?

4 A. This is aisle nine, HBC aisle, with the camera
5 placed directly in this aisle.

6 Q. And can you point in the video
7 where the panty hose would be located?

8 A. Look at the top of aisle nine and right over on the
9 opposite side is where the panty hose are.

10 Q. What kind of items are actually located on this
11 aisle that you can see better?

12 A. This is the medicines, pain relievers, health and
13 beauty care, shampoo, hair dye, razors. Just health and
14 beauty items.

15 Q. You have watched this video. Is this individual
16 who is pictured here in a later shot on the video?

17 A. Yes, he is.

18 Q. Again, this is where?

19 A. This is the front entrance.

20 Q. Is that individual leaving?

21 A. Yes.

22 Q. He's coming back this time with someone?

23 A. Yes.

24 Q. Back to this, is he -- would you say he is in aisle
25 nine?

MR. CLEMENTS ON DIRECT

1 A. Aisle eight.

2 Q. Aisle eight. The end of the aisle?

3 A. Yes.

4 Q. He's with that person's head that just popped up?

5 A. Yes.

6 Q. Is this the front again?

7 A. Yes, it is.

8 Q. And what does this depict?

9 A. This is register six and this is register five,
10 and register six is the place where the transaction took
11 place.

12 Q. And are you able to coincide the time on the video
13 with the time on the register?

14 A. Yes.

15 Q. So is this the point when the panty hose are being
16 bought?

17 A. Yes, it is.

18 Q. And by the individual here in the black clothing?

19 A. Yes, it is.

20 Q. Were any other items purchased at this time or just
21 the panty house?

22 A. Just the panty hose.

23 Q. Thank you, sir. Please take the stand.

24 Thank you, Mr. Clements. Please answer anything
25 Defense Counsel may have.

MR. CLEMENTS ON DIRECT

1 A. Yes, maam.

2 THE COURT: Mr. Brown.

3 CROSS EXAMINATION

4 BY MR. BROWN?

5 Q. I want to make it clear that the time on there is
6 not like twelve thirty A.M.?

7 A. I'm sorry.

8 Q. It is not twelve thirty A.M.?

9 A. No, it's not.

10 Q. It's not two thirty-seven A.M.?

11 A. No, it's not.

12 Q. This is several hours, about six hours, earlier
13 than that?

14 A. Yes, the time of the purchase.

15 Q. Five or six hours before twelve thirty A.M.?

16 A. . .

17 Q. Like eight P.M.?

18 A. Yes.

19 Q. So five or six hours . .

20 A. Closer to nine P.M.

21 Q. Nine P.M., and three hours would be twelve and a
22 couple more to two?

23 A. Yes.

24 Q. Okay, so five hours from the twelve to two range
25 to the eight thirty-nine o'clock range?

MR. CLEMENTS ON CROSS

1 A. Yes.

2 Q. No other questions.

3 THE COURT: Solicitor?

4 SOLICITOR: No, maam. No further questions.

5 THE COURT: You may step down. Any objection to
6 Mr. Clements being excused?

7 SOLICITOR: None from the State.

8 THE COURT: Mr. Brown?

9 MR. BROWN: No objection.

10 THE COURT: You are excused, sir.

11 WITNESS: Thank you.

12 (Witness excused)

13 THE COURT: Solicitor.

14 SOLICITOR: State calls Billy Lewis.

15 BILLY LEWIS, being duly sworn,
16 testified as follows:

17 CLERK: Please have a seat. State your full name
18 and spell your last name.

19 WITNESS: Billy Joe Lewis. Last name is spelled
20 L E W I S.

21 DIRECT EXAMINATION

22 BY SOLICITOR:

23 Q. Good afternoon, Mr. Lewis.

24 A. Good afternoon.

25 Q. Where are you employed?

MR. LEWIS ON DIRECT

1 A. Beaufort Police Department.

2 Q. How long have you been employed there?

3 A. Five years.

4 Q. What are your duties at the Beaufort Police Depart-
5 ment?

6 A. My primary duties right now are traffic officer for
7 the City.

8 Q. And do you have any special training or background
9 for your duties at the police department?

10 A. Yes, maam, numerous certifications from across the
11 State.

12 Q. What are some of those?

13 A. My primary focus is on traffic and impaired traffic
14 enforcement.

15 Q. And what other training do you have?

16 A. Just -- that's my main area of focus, just im-
17 paired driving, traffic and collision reconstruction.

18 Q. Sir, were you working on May 26, 2006?

19 A. I was, yes.

20 Q. Did you have occasion to participate in an investi-
21 gation of a case involving Alfonzo Howard?

22 A. Yes, maam.

23 Q. Sir, were you involved in processing of a vehicle
24 as a part of your duties at the scene?

25 A. Yes, maam.

MR. LEWIS ON DIRECT

1 SOLICITOR: Showing to counsel State's Exhibits 40,
2 41 and 42.

3 May I approach the witness?

4 THE COURT: Yes.

5 BY SOLICITOR:

6 Q. Officer Lewis, if you will first look at State's
7 Exhibit 40 which would be the top photograph?

8 A. Yes, maam.

9 Q. Can you identify that?

10 A. Yes, maam. It's a photograph depicting a vehicle
11 on a dirt path.

12 Q. Is this the vehicle that you were involved with
13 processing?

14 A. Yes, maam.

15 Q. Is that the location where you responded to?

16 A. Yes, maam.

17 SOLICITOR: Your Honor, the State moves 40 into
18 evidence.

19 THE COURT: Any objection?

20 MR. BROWN: Without objection.

21 THE COURT: In evidence, without objection.

22 (Photo of vehicle admitted in evidence without ob-
23 jection as State's Exhibit 40)

24 BY SOLICITOR:

25 Q. Officer Lewis, you were present or involved in the

MR. LEWIS ON DIRECT

1 collection of evidentiary items from this vehicle, is
2 that correct?

3 A. Yes, maam.

4 SOLICITOR: Showing State's Exhibits 43 to Defense
5 Counsel.

6 May I approach the witness, Your Honor?

7 THE COURT: Yes.

8 BY SOLICITOR:

9 Q. I show you State's Exhibit 43. Can you identify this
10 item and I show you this that it's packaged in?

11 A. Yes.

12 Q. Is this one of the items recovered during the pro-
13 cessing of the vehicle?

14 A. Yes, maam.

15 SOLICITOR: Your Honor, the State moves Exhibit 43
16 in evidence.

17 THE COURT: Any objection?

18 MR. BROWN: Without objection.

19 THE COURT: Admitted without objection.

20 (Stocking mask admitted in evidence without objec-
21 tion as State's Exhibit 43)

22 SOLICITOR: May I publish to the jury, Your Honor?

23 THE COURT: You may.

24 BY SOLICITOR:

25 Q. Officer Lewis, also if you would look at State's 41,

MR. LEWIS ON DIRECT

1 which is the second photograph? Are you familiar with
2 the items in that photograph?

3 A. Yes, maam.

4 Q. Is that a fair and accurate depiction of how it ap-
5 peared?

6 A. That's exactly how it appeared.

7 Q. And what does that photograph depict?

8 A. It is a photograph depicting the single glove which
9 is stuck on the top portion of the fence.

10 SOLICITOR: State moves 41 in evidence.

11 THE COURT: Objection?

12 MR. BROWN: Without objection.

13 THE COURT: In without objection.

14 (Photograph showing glove admitted in evidence with-
15 out objection as State's Exhibit 41)

16 BY SOLICITOR:

17 Q. And I hand you Exhibit 42 which would be the third
18 photograph. Is that a fair and accurate depiction of
19 how it appeared?

20 A. Yes, maam.

21 Q. What is depicted in that photograph?

22 A. It is a close-up picture of that same glove, on the
23 fence.

24 Q. And what proximity is that glove -- is it to the
25 vehicle in the photograph?

MR. LEWIS ON DIRECT

1 A. Looking at the photograph, it would be approximately
2 twenty to twenty-five feet from the vehicle.

3 SOLICITOR: State moves 42 in evidence.

4 THE COURT: Mr. Brown?

5 MR. BROWN: Without objection.

6 THE COURT: Admitted without objection.

7 (Closeup photograph of glove entered in evidence
8 without objection as State's Exhibit 42)

9 BY SOLICITOR:

10 Q. Officer Lewis, you were present for and involved in
11 the collection of that item, that glove?

12 A. Yes, maam.

13 SOLICITOR: If I may publish this to the jury, Your
14 Honor?

15 THE COURT: Yes.

16 (Exhibits shown to the jury)

17 SOLICITOR: Let me show Defense Counsel State's
18 64.

19 May I approach the witness?

20 THE COURT: You may.

21 BY SOLICITOR:

22 Q. Officer Lewis, I'm going to show you State's Exhi-
23 bit 64. Can you identify this item?

24 A. It's the same glove.

25 Q. Is this the glove depicted in the photograph?

617

MR. LEWIS ON DIRECT

1 A. Yes, maam.

2 Q. Thank you, sir.

3 SOLICITOR: Your Honor, State moves 64 in evidence.

4 THE COURT: Any objection?

5 MR. BROWN: Without objection.

6 (Glove admitted in evidence without objection as

7 State's Exhibit 64)

8 BY SOLICITOR:

9 Q. Officer Lewis, as a part of the processing of the
10 vehicle, were tests made to get fingerprints from the
11 car?

12 A. Yes, maam.

13 Q. And were you successful in your ability to match
14 those prints up with anyone?

15 A. I was assisting the investigators, so I didn't act-
16 ually take part or have knowledge of that.

17 Q. But attempts were made . . .

18 A. Yes, many, many attempts were made.

19 Q. Following your processing of the vehicle, or it
20 may have been prior to that -- whichever one, did you
21 have contact with the Defendant, Mr. Howard?

22 A. Yes, maam.

23 MR. BROWN: Your Honor, at some point I have a
24 legal matter I'd like to bring up.

25 THE COURT: Okay, let's go ahead and take that up

MR. LEWIS ON DIRECT

1 at this time.

2 Ladies and gentlemen of the jury, I'm going to go
3 ahead and send you back to your jury room.

4 Again, do not begin discussing this case with any-
5 one at this time.

6 We'll be back with you shortly.

7 (Jury excused from Courtroom at 3:14 P.M.)

8 BAILIFF: The jury is clear, Your Honor.

9 THE COURT: Thank you. Before we get to the legal
10 issue, let's take a ten minute break.

11 Sir, you may step down. You are not to discuss
12 your testimony with anyone. As you know, you are still
13 on the stand.

14 WITNESS: Yes, maam.

15 THE COURT: We'll come back and take up the legal
16 issue at that time, Mr. Brown, after a short break.

17 Thank you.

18 (The Court stood in recess until 3:25 P.M., when
19 the matter resumed)

20 THE COURT: Please be seated.

21 Actually, Mr. Lewis, do you mind stepping down
22 while we take up this issue?

23 WITNESS: Yes, maam.

24 THE COURT: Thank you. Does anyone know where Mr.
25 Brown is?

1 (Mr. Brown returning)

2 THE COURT: I apologize, Your Honor.

3 THE COURT: All right. Respectfully, before we get
4 to the legal issue, Mr. Brown, Dr. Smith is now in the
5 back of the Courtroom.

6 MR. BROWN: Thank you so much. That is something I
7 just mentioned to Ms. Tanner, and I think there is a
8 subpoena floating around somewhere in Charleston County,
9 but I phoned Mr. Rowell a few minutes ago.

10 THE COURT: Okay. Respectfully, I want to take up
11 the Dr. Smith issue right now, so we can take care of
12 that and either send him on his way or get that portion
13 done, if necessary.

14 So I'm going to go ahead and ask -- just for the
15 record, yesterday Mr. Brown asked me for some assistance
16 in locating Dr. Smith because I believe he had left some
17 messages with the doctor and his investigator had been
18 attempting to locate him, and he had a subpoena for Dr.
19 Smith but was unable to find and locate him.

20 I believe twice Mr. Brown implored me to help him
21 locate Dr. Smith because Mr. Rowell was spending time
22 and funds trying to hunt down Dr. Smith in Charleston and
23 was not successful in doing that.

24 Of course, as we understand, funds are an issue and
25 Mr. Brown raised that to the Court, so, respectfully,

1 at Mr. Brown's request I called or asked my office to
2 call Dr. Smith. My secretary located him and subsequently
3 he is here.

4 My understanding is he has not been served a sub-
5 poena yet.

6 He did come down at my office's request, as requested
7 by Mr. Brown.

8 Respectfully, we are talking about, I presume, the
9 issue of Mr. Hicks' ability to testify, and, respectfully,
10 I don't know how much Dr. Smith can help us in that re-
11 gard.

12 But he is here, and what I propose to do at this
13 time is put him on the stand and do an in-camera review
14 to hear whether or not he believes Mr. Hicks is competent
15 to testify or if he can even testify to that, in fact.

16 So with that said, I'm going to go ahead and, if
17 there is no objection from either the State or Mr. Brown,
18 bring Dr. Smith forward.

19 MR. BROWN: On the issue of Mr. Hicks' competency,
20 I don't have any objection to Dr. Smith's testifying. I
21 will renew my request -- and, of course, at this time we
22 are encountering an almost impossible situation -- I re-
23 new my request made last week for funds for an expert to
24 assist me in competency issues.

25 THE COURT: Okay. At what point did you make that

1 request?

2 MR. BROWN: After I got the information -- I just
3 last week got the information about Mr. Hicks for certain
4 being a witness.

5 I requested that information before and they said
6 they would give it as soon as they found out he was
7 going to be a witness. I didn't get that until last
8 Wednesday.

9 When I did, I made the request and asked for funds
10 for an expert to assist me to peruse the mental health
11 records of Lorenzo Hicks so I can bring and challenge
12 his competency.

13 Dr. Smith is not my doctor. He is not assisting me
14 or my team.

15 Now, I certainly don't have any objection to hav-
16 ing him opine on the question.

17 THE COURT: Well, respectfully, you are the one who
18 wanted him here, Mr. Brown.

19 MR. BROWN: Yes, I wanted him as a witness, actu-
20 ally.

21 THE COURT: I can tell you, sir, I don't know what
22 he can testify to or if it would even be relevant to
23 this case.

24 I certainly can make a determination and it is my
25 job to make the determination whether I believe Mr.

1 Hicks is competent to testify.

2 So to that end, that possibly Dr. Smith can help me
3 -- and, again, I don't know the answer to that -- but it
4 is for Dr. Smith to tell us.

5 MR. BROWN: I would say . .

6 THE COURT: So, respectfully, we can do one of two
7 things, Mr. Brown.

8 MR. BROWN: Yes, maam.

9 THE COURT: I mean, I am willing to have Dr. Smith
10 come up here and ask him the question of whether or not
11 he can testify to the competency of Mr. Hicks.

12 Again, I don't know the answer to that.

13 MR. BROWN: I understand, and, again, like I told
14 Mr. Rowell on the phone, I really need Dr. Smith for cer-
15 tain tomorrow when my case opens up.

16 THE COURT: But, again, I'm not sure what it is you
17 think he can testify to.

18 MR. BROWN: It -- Your Honor, I can get my rule
19 book, but I pulled my notes on Dr. Smith about Mr. Hicks,
20 and, long story short, there is a statement given on
21 February 19, 2008, by Lorenzo Hicks, and . .

22 THE COURT: To who?

23 MR. BROWN: To Dr. Smith, but it says, quote, . .

24 THE COURT: Hold on a second, Mr. Brown, before
25 you start reading anything into the record, are we

1 talking about Mr. Hicks' M'Naghten competency evalua-
2 tion?

3 MR. BROWN: His criminal responsibility.

4 THE COURT: You're right. I'm sorry. The crim-
5 inal responsibility evaluation. Is that correct?

6 MR. BROWN: Yes, maam.

7 THE COURT: You're talking about specific facts in
8 that report, is that correct?

9 MR. BROWN: A statement made to the State and sent
10 by the State and the Prosecutor to a state agent of Mr.
11 Hicks' quote account of the alleged offense of May 26,
12 2006.

13 THE COURT: Well, respectfully, Mr. Brown, that
14 will not be asked of this doctor, nor will it be pub-
15 lished in the record of this case, because, as you well
16 know, those evaluations are protected.

17 MR. BROWN: The protection -- I now have a copy of
18 it.

19 THE COURT: I understand, but, again, it is pro-
20 tected to the extent that we are not going to discuss
21 it or put it on the record, and you cannot ask this ren-
22 dition of the facts to the doctor at the time he eval-
23 uated him.

24 It's not a relevant account to be used in the trial
25 of the case.

1 MR. BROWN: I know of no rule that says that.

2 THE COURT: Well, respectfully, it cannot be. I am
3 telling you that the form in and of itself and the re-
4 quest in the Order of it states, while there is no
5 doctor-patient confidentiality, that it won't be dis-
6 bursed to anyone other than either just the defense
7 attorney if they are requesting it solely, or to the
8 prosecutor and the defense attorney if it is a joint
9 quest.

10 But, again, it can never be used by the State be-
11 cause in that case you would have the Solicitor using
12 every forensic evaluation against every person who was
13 prosecuted.

14 MR. BROWN: And I have that right now in the case
15 of Woods versus State.

16 THE COURT: And it flies straight in the face of
17 what the evaluation in fact is.

18 MR. BROWN: And I also lost that argument in the
19 last two years in a capital PCR.

20 THE COURT: And I can tell you, respectfully, in my
21 Courtroom it isn't coming in. There is no way that you
22 are going to open up an evaluation where it gives a ren-
23 dition of facts of an event when asking an alleged
24 defendant who is being accused.

25 Why in the world would a defendant ever say anything

1 to any doctor? They would never submit to a competency
2 evaluation.

3 MR. BROWN: And that's a choice of theirs actually.
4 And, Your Honor, if I may, this is under 613, and I have
5 briefed that right because before I could bring in ex-
6 trinsic evidence of a prior inconsistent statement of a
7 witness he has to be told of the date, time and place
8 and deny it.

9 And, of course, Mr. Hicks hasn't taken the stand
10 yet to do that, but under 613 B I am entitled to examine
11 him with extrinsic -- excuse me, prove through extrinsic
12 evidence a prior inconsistent statement, if he denies
13 it.

14 THE COURT: You cannot use that statement to im-
15 peach him.

16 MR. BROWN: Your Honor, I have already talked about
17 it in the opening and they did not object. There was no
18 objection.

19 You all gave me this report. Your Honor ordered
20 that the State give me this report, these two reports,
21 and in Brady requests I got them, and they were very
22 fruitful.

23 They give a different version of events, and they
24 give an incredible amount of information that calls into
25 question Mr. Hicks' reliability as a witness, which is

1 exactly what I'm trying to draw.

2 THE COURT: You are not using that report. You are
3 not using that report, respectfully.

4 MR. BROWN: Well, I need to proffer what would be
5 -- of course, it's not timely because there is this other
6 issue.

7 I have to do it timely, but Mr. Hicks hasn't de-
8 nied it.

9 THE COURT: Mr. Brown, I am not going to use that
10 report when Mr. Hicks is on the stand, asking him ques-
11 tions such as did you tell Dr. Smith X Y and Z in regard
12 to the events of this case. You're not going to ask
13 him that.

14 You can go ahead and come forward, Dr. Smith. I
15 apologize.

16 MR. BROWN: I can't ask him about making a state-
17 ment on that day? It's not a privileged statement.
18 It is not privileged at all.

19 THE COURT: The contents of the statement -- well,
20 you know what? We're going to ask Dr. Smith because
21 that will be the easiest way for me to start.

22 Sir, have you sworn him?

23 CLERK: No, maam.

24 THE COURT: All right, sir. Would you raise your
25 right hand?

1 DR. MICHAEL KEITH SMITH, being
2 duly sworn, testified as follows, out of the presence
3 of the jury:

4 CLERK: Please state your full name and spell your
5 last name.

6 WITNESS: Michael Keith Smith, S M I T H.

7 THE COURT: Dr. Smith, I understand that you were
8 ordered -- and I'm not sure if it was signed by me or
9 someone else . .

10 MR. SMITH: Your Honor, we have witnesses that
11 are under sequestration who are here.

12 THE COURT: All right. May I ask, Corporal Lewis,
13 if you will step out at this time, and I don't know if
14 there is anyone else in here.

15 Not that I know of anything . . .

16 MR. BROWN: I don't either but . .

17 THE COURT: . . that you would have to do with Mr.
18 Hicks.

19 SOLICITOR: Could we keep him in here because he is
20 currently under oath and on the stand, so . .

21 MR. BROWN: And I appreciate that. I'm trying to
22 make sure . .

23 THE COURT: Dr. Smith, it's my understanding that
24 you were asked by Court Order to evaluate Mr. Lorenzo
25 Hicks, and you did that evaluation back on September

DR. SMITH IN CAMERA

1 -- I'm sorry. Back on February 19, 2008. Is that cor-
2 rect, sir?

3 A. Yes.

4 THE COURT: And you were asked to evaluate him
5 under criminal responsibility and a capacity to con-
6 form evaluation.

7 Is that correct, sir?

8 A. Competency to stand trial evaluation, that's cor-
9 rect, . . .

10 THE COURT: Okay.

11 A. . . as well as CRC.

12 THE COURT: Since the M'Naghten standard . .

13 A. And the State v. Blair standard as well.

14 THE COURT: . . as you understand it, and the
15 Blair standard as well.

16 A. Yes.

17 THE COURT: And, sir, in reading your report I am
18 seeing that you did in fact find that he was able to dis-
19 tinguish legal right and moral right and wrong; that at
20 the time of the incident he would have been able to con-
21 form his behavior, and that also at the time of trial
22 he would be able to assist in his defense.

23 Is that correct?

24 A. Well, for -- yes. I want to clarify first. This
25 is most unusual.

1 The last evaluation I did was under -- was in a
2 different trial, and the purpose for which I did the
3 evaluation was very specifically stated to the person
4 -- a different trial and different defendant, and the
5 purpose for which I did the evaluation was very speci-
6 fically stated to the person who was evaluated.

7 Also, in that Court Order, there were specific
8 guidelines that said what would happen to this informa-
9 tion.

10 I feel very uncomfortable even addressing these
11 issues at all with this Court. It is not the case for
12 which I did the evaluation.

13 THE COURT: To that end though, Doctor, have you
14 had an opportunity to review this report that you have
15 issued in reference to . .

16 A. I had a brief opportunity this morning to review
17 the report.

18 THE COURT: Okay, and do you stand by your report?

19 A. I do.

20 THE COURT: And have you met with Mr. Hicks since
21 this time, sir?

22 A. I have not.

23 THE COURT: Okay, so you can't offer anything else
24 as far as any competency at this time. Is that right?

25 A. No, maam. I stand by my report at the time but I

1 cannot offer any new information as to his competency.

2 THE COURT: All right. I appreciate it.

3 All right, I'm going to go ahead and excuse you,
4 sir. I appreciate your being here. I will say to you
5 that you are not under subpoena of Mr. Brown.

6 If you do try to subpoena him in some way, shape or
7 form, I need you to talk to me first.

8 MR. BROWN: There is already a subpoena out there
9 getting served right now.

10 THE COURT: It hasn't been served on him.

11 MR. BROWN: I know, but a member of law enforcement
12 has it or an official process server which is . . .

13 THE COURT: Okay. Sergeant Vaughn, I can quash
14 that subpoena right here right now.

15 MR. BROWN: It is not their agency.

16 THE COURT: Which agency has it?

17 MR. BROWN: Mr. Rowell is giving it to a law en-
18 forcement agency, and I asked Mr. Rowell to come up
19 here and . . .

20 THE COURT: Which agency is that?

21 MR. BROWN: Oh, I don't know. I don't know because
22 he was in Charleston yesterday.

23 THE COURT: Okay. Why don't you call Mr. Rowell?
24 I am going to go ahead and quash that subpoena at this
25 time.

1 And if I do find at any time that Dr. Smith needs
2 to be able to return, although I don't see anything he
3 can testify to, sir, . .

4 MR. BROWN: I am going to have to make a proffer.

5 THE COURT: And you are welcome to do that at the
6 appropriate time. As you stated, it would not be timely
7 until Mr. Hicks takes the stand.

8 MR. BROWN: And, again, I am going to have to re-
9 quest funds for a defense expert, especially now that
10 I have no one else I can put up.

11 THE COURT: Well, respectfully, this case has been
12 set for trial for how long?

13 MR. BROWN: And I only got . .

14 THE COURT: Mr. Brown, Mr. Brown. Don't interrupt
15 me.

16 SOLICITOR: Your Honor, I believe back in December
17 or November the Honorable Judge Buckner issued an Order
18 setting this case.

19 THE COURT: All right.

20 MR. BROWN: And, Your Honor, I need to put on the
21 record I received the mental health evaluation only . .

22 THE COURT: Mr. Brown, Mr. Brown. You put that
23 on the record just five minutes ago. You stated you got
24 it last week pursuant to my Order.

25 MR. BROWN: And Mr. Hicks was a Codefendant in

1 this trial and not a witness until last Wednesday --
2 one week.

3 THE COURT: All right. Respectfully, you always
4 knew there was a chance and an opportunity Mr. Hicks
5 would end up being a witness in this case because you,
6 yourself, requested me and were asking me to compel the
7 Solicitor's Office to give you any negotiations or at-
8 tempts at negotiation . .

9 MR. BROWN: And you denied it.

10 THE COURT: . . with Mr. Hicks.

11 Yes, sir, I did, but that shows that you in fact
12 knew that he could be called as a witness.

13 MR. BROWN: And, Your Honor, . .

14 THE COURT: Mr. Brown, Mr. Brown, don't interrupt
15 me.

16 Additionally, sir, . .

17 MR. BROWN: Your Honor, . .

18 THE COURT: Mr. Brown, . .

19 MR. BROWN: . . there is no way I can . .

20 THE COURT: . . Mr. Brown, sit down, sit down. Sir,
21 you were provided other statements in the Rule Five Brady
22 material in this case.

23 You knew that Mr. Hicks was a potential witness in
24 this case. So, respectfully, sir, I deny your motion
25 again.

1 Dr. Smith, you are excused. I am quashing the sub-
2 poena. I understand it hasn't even been served yet,
3 but, Dr. Smith, if for some reason you are issued a sub-
4 poena -- I believe my secretary has your phone number
5 or your office phone number -- I would ask, respectfully,
6 sir, that if my office calls you back to speak with you
7 that you just return our phone call to the office.

8 All right, Dr. Smith. Thank you for being here,
9 sir.

10 (Dr. Smith excused)

11 MR. BROWN: I'm going to ask to withdraw. I cannot
12 be an effective lawyer for my client.

13 THE COURT: Motion denied.

14 MR. BROWN: I cannot go forward . .

15 THE COURT: Mr. Brown, . . .

16 (Mr. Brown speaking at the same time as the Judge
17 is speaking)

18 MR. BROWN: I cannot go forward.

19 THE COURT: Corporal Lewis, you can come back to
20 the stand.

21 MR. BROWN: Your Honor, I cannot go forward.

22 THE COURT: Do you need a break?

23 MR. BROWN: I cannot go forward.

24 THE COURT: Respectfully, Mr. Brown, I'm going
25 to give this Court a fifteen minute break. We will be

1 back at four ten.

2 For everyone present, we will continue this trial
3 of this case.

4 I'll see you all back then. We're in recess until
5 then.

6 (Court stood in recess from 3:54 until 4:21 P.M.,
7 when the Judge resumed the Bench)

8 THE COURT: All right. Where is Mr. Brown?

9 MR. BROWN: I'm here. Your Honor, I would ask for
10 time to talk to my malpractice attorney.

11 THE COURT: Okay. Respectfully, Mr. Brown, you can
12 go ahead and have a seat.

13 MR. BROWN: I'm sorry, but one of the attorneys I've
14 asked to call me back, Mr. Savage, is calling me right
15 now.

16 THE COURT: Well, respectfully, sir, you can call
17 Mr. Savage back. I'm going to give you the opportunity
18 to do that, but if you would go ahead and have a seat
19 for me.

20 Mr. Brown, you made a motion to be relieved as coun-
21 sel?

22 MR. BROWN: Yes, maam.

23 THE COURT: And I believe you consulted with your
24 client before doing that?

25 Of course, you know you cannot make a unilateral

1 motion to be relieved as counsel.

2 Additionally, Mr. Brown, just because I ruled ad-
3 versely on one issue to you does not mean you are entit-
4 led to be relieved as counsel.

5 If that were the case, we would never have an
6 attorney in a Courtroom because any time there is any
7 motion someone prevails and someone loses.

8 Sir, you took an oath as a lawyer, sir, and I be-
9 lieve you honor that oath.

10 We're going to go forward in this case. You have
11 worked very hard, as you've told the Court repeatedly,
12 and you have spent a lot of hours preparing for this case,
13 and I think it would be an injustice not only to you but
14 specifically to your client for this case not to go for-
15 ward.

16 I will give you the time you need, Mr. Brown, right
17 now to go back and speak with Mr. Savage or any other
18 lawyer that you have, and, respectfully, we need to try
19 this case.

20 You made a motion last week to be relieved as well,
21 and, again, I cannot relieve every attorney who has a
22 ruling adverse to them.

23 Mr. Brown, I'm going to give you another ten minutes
24 to go and talk with Mr. Savage. At that point, sir,
25 we're going to come back in the Courtroom and we're going

1 to continue the trial of this case.

2 We'll be at ease for ten minutes. Thank you.

3 (Court stood in recess from 4:25 to 4:38 P.M., when
4 the matter resumed)

5 THE COURT: All right. Thank you, please be seated.

6 MR. BROWN: Your Honor, at this time I have spoken
7 to Mr. Savage, and he has agreed to represent me.

8 He has asked me to tell you that he is at the Brig
9 in Charleston on an enemy combatant case, and he will be
10 here the first thing in the morning to represent me as my
11 lawyer on this issue.

12 I have his phone numbers before me. I just got off
13 the phone when he said that he would certainly talk right
14 now any way we could do it, but he cannot be here because
15 he is at the Brig in Charleston until first thing in the
16 morning.

17 He is representing me on this issue right now --
18 Andy Savage -- and he asked me to ask for a continuance
19 so that he can represent me on this issue.

20 THE COURT: What issue specifically are we talking
21 about?

22 MR. BROWN: The issue of me committing malpractice
23 by going forward now, given the fact that I don't have
24 funds to present the case that I presented to the jurors
25 in my opening.

1 THE COURT: Okay. Well, respectfully, sir, that is
2 not an issue that is even before this Court. You made a
3 motion for me to give you funds to hire a psychological
4 expert. I deny that motion.

5 We're going to go forward at this time. As I told
6 you, that is not a basis for you being relieved as coun-
7 sel.

8 Respectfully, sir, my denying your motion for funds
9 for a psychological expert is not a grounds for malpract-
10 ice, which is also a civil action.

11 So, respectfully, sir, this has nothing to do with
12 malpractice insurance. This is an appointed case. As
13 you . . .

14 MR. BROWN: Your Honor, . . .

15 THE COURT: Mr. Brown, respectfully, you have noted
16 for the record your objection which, even if malpractice
17 insurance applied in this case which it doesn't -- you
18 have protected the record. You have not committed any
19 malpractice.

20 You made the motion, and I have denied it. If I was
21 wrong, you can appeal to the Supreme Court to take up
22 that issue.

23 But at this point, sir, there is no malpractice issue
24 involved.

25 MR. BROWN: Your Honor, and one thing that he asked

1 me to ask is the ability to make the record on the entire
2 issue.

3 That I should ask for time to make the record as
4 fully and completely as I could do so.

5 THE COURT: And I will tell you for appeal purposes,
6 . . .

7 MR. BROWN: Yes, maam.

8 THE COURT: . . . that you have fully and completely
9 made your record that you would like a forensic evalua-
10 tion, psychiatric or otherwise, to evaluation Mr. Lorenzo
11 Hicks' ability to be able to present competent testimony.

12 That is my understanding, and you have made a full
13 record. You have protected Mr. Howard on that issue. I
14 have ruled on it, so we are going to move on.

15 You have done your job. You have done your duty.
16 You have represented your client.

17 So, respectfully, at this time as to that issue we
18 are done. We are now going to address the issue that
19 you have with Lance Corporal Lewis.

20 My understanding is you said you had we had a matter
21 of law to take up with regards to Lance Corporal Lewis'
22 testimony, or is that the issue that we just discussed?

23 MR. BROWN: The issue with Mr. Lewis did not have
24 to do with this issue.

25 THE COURT: Okay.

1 MR. BROWN: Your Honor, I have to be now -- the sub-
2 poena for Dr. Smith has been quashed. I now have to en-
3 ter a proffer of what I would have sought to bring out
4 from his testimony as a witness in the proceeding.

5 Not as an expert regarding competency. I have been
6 asked to enter these by my lawyer . .

7 THE COURT: Respectfully, Mr. Brown, your case isn't
8 up yet. The Solicitor hasn't rested.

9 MR. BROWN: This is specific regarding the quashing
10 of the subpoena.

11 THE COURT: Sir, you can make that report a Court's
12 Exhibit and I will attach it right now as a Court's Ex-
13 hibit.

14 You aren't even putting up your case. This is the
15 Solicitor's case.

16 You will be able to make a full and complete proffer
17 at the time that you would call Dr. Smith, and no one is
18 going to prevent you from making your proffer.

19 I ask, respectfully, that you give Ronda a copy of
20 the evaluation if there is anything on it that you believe
21 you need to make a full and complete record.

22 And that is Court's Exhibit Number . .

23 REPORTER: Number 4 and Number 5.

24 THE COURT: Number 4 and Number 5. All right. We
25 have taken care of this issue, Mr. Brown, for appellate

1 purposes.

2 (Evaluations of Mr. Hicks by Dr. Smith marked for
3 identification purposes as Court's Exhibits 4 and 5)

4 THE COURT: What is your legal issue as to Lance
5 Corporal Lewis?

6 MR. BROWN: The questioning of my client in viola-
7 tion of his Miranda Rights and his right to remain silent.

8 SOLICITOR: Mr. Brown and I actually talked about
9 that earlier at the first break.

10 I do not intend to ask Mr. Lewis about any statement
11 that Mr. Howard made or any questions he asked of Mr.
12 Howard.

13 He actually transported Mr. Howard to the Detention
14 Center and collected his clothing, and that is the extent
15 of the State's direct of Mr. Lewis.

16 We're not going to ask him about any questions he
17 asked him as far as anything. Any questions or any com-
18 ments.

19 THE COURT: Okay.

20 SOLICITOR: I will not be asking that of this wit-
21 ness.

22 THE COURT: Okay, Mr. Brown. Anything further?

23 MR. BROWN: Yes, maam. Again, I would ask for a
24 continuance. I would ask for funds to hire a psychiatric
25 expert.

1 THE COURT: Well, respectfully, sir, . .

2 MR. BROWN: In view of Mr. Hicks' record, . .

3 THE COURT: Mr. Brown. I have ruled on that motion.

4 Again, you have preserved it.

5 Go ahead and sit down. Solicitor, sit down.

6 Corporal, come and take the stand. We're going to

7 continue with the Direct Examination of Lance Corporal

8 Lewis. Mr. Brown, you may cross examine him, and we

9 will go to the next witness.

10 SOLICITOR: Yes, maam.

11 MR. BROWN: Your Honor, I would just note that I've

12 requested to have my attorney here first.

13 THE COURT: Again, give me a legal basis for having

14 your attorney here.

15 I have not held you in contempt of Court. You do

16 not require . .

17 MR. BROWN: I ask . .

18 THE COURT: . . any protection at this point.

19 MR. BROWN: Your Honor, my lawyer asked me to ask.

20 That was his advice toward me. I'm following my lawyer's

21 advice.

22 THE COURT: Respectfully, sir, Mr. Savage knows my

23 phone number and . .

24 MR. BROWN: He may . .

25 THE COURT: . . he can . .

1 MR. BROWN: Your Honor, he gave me these numbers
2 and said this was a way of reaching him immediately. He
3 is in the Brig and literally . .

4 THE COURT: Respectfully, sir, we're going to go
5 forward with the trial of this case. I'm not going to
6 address any issues with regard to any alleged malpractice
7 that has absolutely nothing whatever to do with this.

8 MR. BROWN: Your Honor, and I am also operating un-
9 der a previous threat of being held in contempt of Court
10 in this same proceeding.

11 THE COURT: Respectfully, sir, if you are in contempt
12 of Court and your actions require me to hold you in con-
13 tempt of Court, then that is of your choosing, not mine.

14 MR. BROWN: And I cannot direct a response back to
15 the Court without my lawyer here.

16 I cannot . .

17 THE COURT: Mr. Brown, there is no response to be
18 made.

19 MR. BROWN: I cannot . .

20 THE COURT: Mr. Brown, . .

21 MR. BROWN: I have spoken to a lawyer, Your Honor,
22 and I have asked him to represent me here.

23 I mean, I have now hired a lawyer and I have asked
24 for him to come here and represent me.

25 THE COURT: All right. Respectfully, we are going

1 to go ahead and adjourn for the day.

2 You're going to sit down. Bring the jury back in.

3 SOLICITOR: Your Honor, . .

4 THE COURT: Yes, maam.

5 SOLICITOR: Can we approach? There is a jury issue.

6 THE COURT: Hold on, Norman.

7 (Conference at the bench between counsel and the
8 Court off the record)

9 THE COURT: Sir, are you Mr. Boston?

10 Would you please come forward?

11 Sir, are you Mr. Boston?

12 MR. BOSTON: Yes, I am.

13 THE COURT: Please come forward.

14 (Gentleman coming before the Court)

15 THE COURT: Mr. Boston, it has come to my attention
16 that you may be related to one of the jurors on the trial
17 of this case.

18 MR. BOSTON: Yes, maam.

19 THE COURT: Is that correct?

20 MR. BOSTON: Not related -- married to.

21 THE COURT: That's about as related as you can get.

22 All right, respectfully, sir, I want to make absolutely
23 certain that anything you have heard in this Courtroom
24 you have not discussed with your wife.

25 MR. BOSTON: Absolutely.

1 THE COURT: Sir, were you here yesterday as well?

2 MR. BOSTON: Yes, maam.

3 THE COURT: All right. Respectfully, sir, I want
4 to make sure that you last night did not have any discus-
5 sions whatsoever with your wife in regards to this case?

6 CLERK: Judge, would you like me to pur Mr. Boston
7 under oath?

8 THE COURT: Thank you. I appreciate that, Madam
9 Clerk.

10 CLERK: Mr. Boston, come around and be sworn, sir.

11 J. R. MARSHALL BOSTON, being
12 duly sworn, answered as follows:

13 CLERK: Sir, would you state your full name.

14 MR. BOSTON: J. R. Marshall Boston.

15 CLERK: Mr. Boston, would you say your wife's name?

16 MR. BOSTON: Mary Elizabeth Boston.

17 CLERK: Is your wife on the jury panel in this
18 case?

19 MR. BOSTON: Yes, maam.

20 CLERK: Thank you, Judge.

21 THE COURT: Mr. Boston, under oath, sir, I just
22 want to make absolutely sure that you and your wife have
23 had no discussions with regard to this case.

24 MR. BOSTON: We have -- I know we have only talked
25 about nothing really pertaining to the case. It is just

1 that my wife, she is here, and I don't understand.

2 THE COURT: Well, sir, I need you to -- you just took
3 an oath, and I need you to be completely truthful, sir.

4 Have you discussed anything having anything to do
5 with this case?

6 MR. BOSTON: Only just -- well, I don't know. We
7 haven't discussed anything pertinent. I don't understand
8 this.

9 THE COURT: Well, tell me what you have discussed,
10 sir.

11 What did you talk about?

12 MR. BOSTON: Only that just she told me how the jury
13 woman was picked; that . . .

14 THE COURT: Okay.

15 MR. BOSTON: And I talked to the bailiff about that
16 this morning, and she just said the way he was picked, he
17 was the last man entered, you know.

18 THE COURT: Okay. Anything else you discussed about
19 this case with your wife?

20 MR. BOSTON: Not really.

21 THE COURT: You say not really. To me that indicates
22 you have spoken somewhat about this case with her.

23 MR. BOSTON: Yes, maam. Just that -- nothing that
24 I would say had any really bearing on the facts.

25 THE COURT: Well, sir, can you tell me what you all

1 discussed?

2 MR. BOSTON: Well, I just -- we just in general talk
3 with each other about all kinds of things.

4 THE COURT: About the case in general?

5 MR. BOSTON: Yes, maam.

6 THE COURT: All right, sir. Can you give me any spe-
7 cifics about what you discussed?

8 MR. BOSTON: Well, I know one thing I asked her, did
9 she notice who the lady was that was beside Mrs. Davidson;
10 that she looked like a lady that we exercise with over at
11 -- we belong to an exercise club over at the hotel over
12 there.

13 It looked like a lady that was over there exercising.
14 I know we talked about that.

15 But other than any specifics, not really. I don't
16 really understand. We haven't really talked about any
17 details.

18 This is really -- you know, really involved and
19 complicated, you know. I really hate to see things like
20 this happen. You know, I mean, about the -- about what
21 the trial is about.

22 THE COURT: Okay. Just have Mr. Boston go and sit
23 with the bailiff, and we'll have Mrs. Boston come in.

24 We'll do it that way. Thank you.

25 Mr. Boston, I'm going to have one of the bailiffs

1 or deputies go ahead and escort you out of the Courtroom
2 at this time, and just wait back there, sir.

3 What I am respectfully asking is that you don't speak
4 with anyone while you are out there.

5 All right, sir?

6 MR. BOSTON: Yes, maam.

7 THE COURT: I appreciate that.

8 (Mr. Boston escorted from the Courtroom)

9 (Mrs. Boston brought into Courtroom)

10 THE COURT: Norman, would you bring Mrs. Boston out,
11 please?

12 BAILIFF: Yes, maam.

13 THE COURT: Lance Corporal, go sit down.

14 (Witness excused from stand)

15 BAILIFF: Here is Ms. Boston.

16 THE COURT: Mrs. Boston, how are you, maam?

17 MRS. BOSTON: Would you come up to this microphone
18 for me?

19 Maam, I just have a couple of questions I need to
20 ask you, and I'm going to put her under oath.

21 MARY ELIZABETH BOSTON, being
22 duly sworn, answered as follows:

23 THE COURT: Ms. Boston, it has come to my attention
24 that your better half has been sitting in the Courtroom
25 listening to the trial of this case.

1 Is that correct?

2 MRS. BOSTON: Yes.

3 THE COURT: Maam, respectfully, when you have gone
4 home at night or during any of the breaks for the lunch
5 hour, have you and your husband discussed this case?

6 MRS. BOSTON: No, we haven't.

7 THE COURT: Not at all?

8 MRS. BOSTON: No.

9 THE COURT: You are absolutely sure? You haven't
10 even remotely discussed the facts surrounding this case?

11 MRS. BOSTON: No, maam.

12 THE COURT: Or even what type of case it is?

13 MRS. BOSTON: No, maam.

14 THE COURT: Are you sure of that?

15 MRS. BOSTON: I'm sure.

16 THE COURT: Well, respectfully, Mrs. Boston, did you
17 and Mr. Boston talk or coordinate about how you were get-
18 ting here? Did you all come together?

19 MRS. BOSTON: Yes. We go home after it gets dark,
20 and I can't drive after dark. So he brings me in case
21 it runs late.

22 THE COURT: I understand. I will tell you, maam,
23 that I did ask your husband whether or not you had dis-
24 cussed the case, and he did say that you had talked some-
25 what about the nature of the charges.

1 Just generally what happened, and would that be
2 correct?

3 MRS. BOSTON: Just generally as to what it's about,
4 but not any -- we haven't discussed any of the details
5 of it or anything.

6 THE COURT: All right, Solicitor. Is there anything
7 you'd like to ask Mrs. Boston?

8 SOLICITOR: Specifically, has there been any discus-
9 sion about any testimony or anything that occurred inside
10 the Courtroom?

11 That would obviously be of concern.

12 MRS. BOSTON: No, we haven't.

13 THE COURT: Mr. Brown, anything you would like to
14 ask her?

15 MR. BROWN: I cannot at this time, Your Honor. I
16 have the issue about my attorney.

17 THE COURT: Okay. All right, respectfully, Mrs.
18 Boston, what I'm going to do is this. Out of an abundance
19 of caution, I'm going to go ahead and remove you from the
20 jury in this case.

21 I think because your husband has been present during
22 conversations that did occur outside the presence of the
23 jury, and we did talk about legal matters -- much as I
24 told you at the beginning of this trial, when I send you
25 all out it is not because we're trying to hide anything

1 from you, but simply because sometimes I may comment on
2 the facts when I have to rule on a matter of law, and I
3 again would not ever want anything I ever said to influ-
4 ence a jury in any way.

5 Your husband has stated to me on the record and un-
6 der oath that you did have just general conversations,
7 and, additionally, Mrs. Boston, at the beginning of the
8 trial you will recall when I sent you home the very first
9 night I stated to you all that you were not to discuss
10 the case with anyone, even including your spouse, and I
11 did not even want you to discuss what the charges were
12 that were involved.

13 Just that you were on a jury in a criminal case, and
14 you were not even to discuss the matters of the case.

15 So I will tell you this. Out of an abundance of cau-
16 tion, because I have two alternates, I am going to go
17 ahead and relieve you.

18 But I want you to know that I appreciate your being
19 here, and I know you didn't do anything wrong, and I do
20 appreciate it.

21 I also need to be sure that anything you and your
22 husband may have talked about you did not discuss with
23 any other jurors.

24 MRS. BOSTON: No, maam.

25 THE COURT: Okay, all right.

1 CLERK: You know, Mrs. Boston, this does bring up a
2 good point in further jury selections, that for someone
3 like you who has a problem driving at night, that we
4 should make clear to jurors that if they have any driving
5 disabilities that the Sheriff's Department can provide
6 transportation.

7 I feel that I have to take responsibility for not
8 giving that information to you which would have averted
9 this problem all together.

10 My apologies to you and your husband, and to the
11 Court.

12 MRS. BROWN: We did ask a bailiff I believe when we
13 first came if it was all right if he sat in the gallery
14 and we was told yes.

15 CLERK: Again, Mrs. Boston, as the Clerk that must
16 be my responsibility. In no way did my bailiff do any-
17 thing wrong. This is my omission, and you have my sin-
18 cere apology.

19 THE COURT: Thank you. We're going to go ahead and
20 excuse you. You are free to leave and your husband is
21 out in the corridor. If you want to go home, you are
22 welcome to go, maam.

23 Thank you, maam.

24 (Juror excused)

25 THE COURT: Respectfully, we are going to be in

1 recess until eight thirty.

2 Mr. Brown, if you would let your attorney know.

3 MR. BROWN: He has already been notified.

4 SOLICITOR: Are we going to bring the jury back
5 in?

6 THE COURT: We are, and I apologize. I completely
7 forgot.

8 SOLICITOR: Are we going to go ahead and put the
9 alternate on the jury?

10 THE COURT: I will go ahead and do that.

11 SOLICITOR: Ms. Bailey was the first alternate.

12 THE COURT: Let's bring the jury in.

13 (Jury returned to Courtroom at 5:07 P.M.)

14 BAILIFF: The Jury is here, Your Honor.

15 The jury is seated.

16 THE COURT: Thank you. Welcome back, ladies and
17 gentlemen of the jury.

18 You are fine right where you are, maam. You can
19 stay seated. The rest of you are okay.

20 Ladies and gentlemen, I have let Ms. Boston go as a
21 juror, so, Ms. Mary Bailey, I'm going to go ahead and
22 seat you as the alternate.

23 You will become an actual member of this jury, so,
24 again, when you come back I'm going to ask you to take
25 the last seat here, but you are fine right where you are

1 for now.

2 Ladies and gentlemen, we have some legal matters
3 that I have to take up with the attorneys, and rather
4 than just have you sit back there and wait on us, it is
5 better for me to go ahead and take care of all of them
6 I can this evening so we can hit the ground running to-
7 morrow.

8 With that said, ladies and gentlemen, I'm going to
9 go ahead and send you home for the evening.

10 Again, I would caution you -- and I need you to fol-
11 low my orders -- you are not to read or view or listen
12 to anything about this case.

13 That means, again, a newspaper, the Internet or on
14 the radio or on television.

15 Additionally, you heard testimony in regards to dif-
16 ferent locations. It is not appropriate for you to go
17 and do any of your own investigation or drive to any of
18 these places.

19 Lastly, you are not to discuss this case with any-
20 one, and that includes your spouse or any other family,
21 friends or loved ones.

22 Again, the only thing you are allowed to do or to
23 say is that I am sitting on a criminal jury. That is
24 the extent of it.

25 Ladies and gentlemen, I will tell you at the end

1 of the case it will be up to you whether or not you dis-
2 cuss this case with no one or any one. That will be
3 your province at that point.

4 But at this time I am ordering you not to discuss
5 the case with anyone. We do not want the province of
6 the jury to be infiltrated, and it is so important that
7 you don't discuss this case with anyone.

8 All right? With that said, ladies and gentlemen,
9 I am going to ask that you all be back tomorrow at nine
10 thirty where, again, we are going to continue the trial
11 of this case, and we will work through. All right?

12 With that said, ladies and gentlemen, have a won-
13 derful evening. I don't know if it's yet gotten
14 dark out or not, but if anyone needs an escort to their
15 car they are welcome to have someone do that. Just
16 ask Al or one of the bailiffs and they will walk you
17 out.

18 I'll see you all in the morning at nine thirty.

19 Thank you.

20 (Jury excused for the evening at 5:10 P.M.)

21 BAILIFF: Jury is clear, Your Honor.

22 THE COURT: All right. Again, I will see you
23 here tomorrow morning, Mr. Brown, with your attorney, Mr.
24 Savage.

25 You have told me repeatedly you will not go

1 forward, and while I do not believe we will have time
2 in the morning to have any type of proceeding, respect-
3 fully, I'm not sure what Mr. Savage is coming and rep-
4 resenting you on at this time.

5 Would you state that to me for the record again?
6 Please articulate that again.

7 MR. BROWN: Without my attorney here, I would rather
8 not say.

9 THE COURT: All right. Respectfully, I look forward
10 to seeing you here tomorrow morning along with Mr.
11 Savage.

12 See you at eight thirty.

13 MR. BROWN: Thank you.

14 SOLICITOR: Your Honor, witnesses to be here at
15 nine thirty?

16 THE COURT: Yes.

17 (Whereupon, the Court stood in recess until Feb-
18 ruary 26, 2009, at 8:34 A.M., when the matter was re-
19 sumed.)

20 THE COURT: Thank you, and please be seated. Good
21 morning.

22 MR. SAVAGE: Good morning, Judge.

23 THE COURT: Mr. Savage, I don't know how much of
24 the accounts of what has taken place that you have been
25 presented.

1 MR. SAVAGE: I have been presented very little, Your
2 Honor, frankly.

3 I got a call yesterday when I was at the Naval Brig.
4 I had an opportunity to meet with Jim between the airport
5 and your Courtroom this morning.

6 The reason I'm here is to try and help not only Jim
7 but to help the Court, and it appears to me that Jim has
8 been under significant stress on a Court-appointed case
9 in which he has plowed a lot of his time, energy and ef-
10 fort on behalf of his client.

11 We all know the structure of the financial status
12 with indigent defense. I am a member of the Indigent
13 Defense Commission which is why I believe that Jim
14 called me.

15 So I know that there is in any trial a lot of stress
16 and this trial may have presented him with even greater
17 stress.

18 He tells me that his client is one of two Defendants
19 in a very serious matter that took place in Beaufort some
20 time ago, a violent offense.

21 I know that a Codefendant has already entered into
22 an agreement with the Government with a particular sen-
23 tence if that person is truthful in his testimony against
24 his client.

25 He tells me that person has a long history of mental

1 illness, and that there was a competency and NGRI eval-
2 uation at the Medical University some time ago, and that
3 during the discovery process the Solicitor provided him
4 with a written account of that evaluation or protocol.

5 He tells me that based on that, in his opening state-
6 ment he anticipated -- he told the jury he anticipated
7 that testimony would be presented by this witness and
8 whatever was said about his ability to recall, his be-
9 lievability and credibility may come into question.

10 I think that is what happened.

11 He has asked the Court for permission to retain an
12 expert witness regarding this person's ability to have
13 recall, untainted recall, and that was denied.

14 It seems to me that the issue that he has at this
15 time -- that Mr. Brown has at this time may not be ripe
16 as that witness has not testified.

17 It seems to me that if this witness testifies and
18 Mr. Brown has an opportunity to cross examine him and
19 that witness admits that he has difficulties that may
20 affect his credibility and believability and ability to
21 recall, then there is no issue.

22 And so . .

23 THE COURT: That is a fair account of what has oc-
24 curred.

25 MR. SAVAGE: And so I don't think we're there yet.

1 I don't know whether the State will present this witness
2 or not. If the State doesn't present the witness there
3 is no problem.

4 If the witness is presented, Mr. Brown cross examines
5 him and he admits to misconduct and it may have affected
6 his ability to recall and admits that he perhaps made in-
7 consistent statements, there is no issue.

8 I think, being the good lawyer that Mr. Brown is,
9 he is anticipating some future problem that really isn't
10 a problem right now.

11 That's how I see it.

12 THE COURT: I can tell you, Mr. Savage, I agree with
13 everything you just said. My concern and issue is at
14 this point, I have obviously made my ruling.

15 Mr. Brown first asked me for funds to hire a psychia-
16 tric expert last Wednesday or Thursday. Obviously this
17 trial and this case is over five hundred days old. It
18 was put on schedule and Mr. Brown is going to say he did
19 not even receive the report of psychiatric record until
20 last week when I ordered it produced.

21 But, respectfully, the issue is not whether or not
22 I ruled it admissible, inadmissible, as far as fees for
23 an expert. It has to do with that at any point that Mr.
24 Brown does not appear to be getting his way he attempts
25 to withdraw as counsel.

1 And he did this, Mr. Savage, last week during a
2 hearing. He first asked me to go ahead and raise the cap
3 on this case. He initially asked me to raise the hourly
4 fees on this case, and I told him that at the end of the
5 case I would entertain that, when we knew at the end of
6 the case the amount of time and effort expended.

7 And I appreciate the difficulty in this case. I
8 told him I would entertain that and it would be done at
9 the appropriate time, but I also realized this is Wednes-
10 day or Thursday before a long and complicated long trial
11 for which he needs to get ready.

12 We didn't need to be speaking about and having hear-
13 ings about whether or not I would raise the monetary cap.
14 We need to try the case, and I assured him I would visit
15 that.

16 Like anyone else, I appreciate the position everyone
17 is in, and particularly Court-appointed lawyers. Two and
18 a half years ago I sat in Mr. Brown's chair, doing the
19 same thing for free.

20 So I appreciate and understand his plight, but what
21 I can't have, Mr. Savage, is when I rule against him his
22 saying he is going to withdraw as counsel.

23 He's done that three times, and he's sat down and re-
24 fused to proceed with the case. That is simply not pro-
25 fessional. It is not consistent with his oath.

1 We've done everything we can to continue this case
2 and to preserve it and move on, and that's what I am try-
3 ing to do.

4 And, respectfully, sir, if I was not concerned about
5 moving this case along I would have held him in contempt
6 last week. He has consistently refused at different
7 points throughout the pre-hearing trial and now during
8 the trial of this case to continue and has sat down, and
9 he himself has made that motion, without consulting
10 with his client, and he has been sitting here doing it in
11 open Court and you know that is not appropriate, Mr.
12 Savage.

13 I don't have any doubt in my mind that you would
14 never do that. I have no doubt in my mind, nor would any
15 other lawyer.

16 My concern now is what kind of stress is Mr. Brown
17 under and can he effectively represent his client.

18 That is now becoming a question. That is now my con-
19 cern. My job here is to protect this trial, protect the
20 record and protect Mr. Howard.

21 That is where my concern comes in. I can't have a
22 lawyer who gets an adverse ruling from me who is going
23 to withdraw because of that.

24 Mr. Brown has made his record. He has adequately
25 made his record. I can tell you he has voiced all of his

1 objections, has placed them on the record. I have ruled,
2 and he has insisted on saying it two and three times.

3 You understand. I've ruled. It's preserved for the
4 record, and we move on. He knows that.

5 What I am concerned about now is that Mr. Brown's
6 ambit and posture is getting in the way of trying this
7 case, and if he is adequately representing his client.
8 That's where we are right now.

9 I can tell you that as to the issue of Dr. Smith
10 and any other testimony on that forensic evaluation, you
11 are absolutely right. It isn't ripe.

12 We haven't gotten there. I have the ability to call
13 Dr. Smith and bring him back if I need to. No one is
14 precluding Mr. Brown from doing his job.

15 Instead, Mr. Brown is getting in the way of himself
16 doing his job, and that is what concerns me.

17 I just want to make absolutely sure when we continue
18 this case, if we do in fact continue this case, that he
19 will continue and adequately represent his client, and
20 not on a whim when I rule against him on any particular
21 motion decide he's going to sit down and go no further
22 on the case.

23 Mr. Savage, around three or three thirty yesterday
24 he decided he wasn't going to do anything more. I told
25 him we were going to go forward, and he said no.

1 He said he wanted his counsel here. Respectfully,
2 I adjourned for the day.

3 I don't know, sir, at this point in time if he's
4 posturing for a mistrial. It could possibly be that is
5 what he is, but, as I explained to both these attorneys
6 at the beginning of this case, I know this is a difficult
7 case for Mr. Brown. I know it's a sensitive case.

8 I know Mr. Brown has made various motions for fees
9 and experts, and we have done everything we can to insure
10 that Mr. Brown is paid.

11 I can tell you that I personally have called and
12 begged to have Mr. Brown paid for this case. Judge Buchner
13 has done the same thing.

14 I have approved myself fees for an investigator, and
15 just last week Judge Buchner has approved fees for a DNA
16 expert.

17 We are not in any way trying to tie Mr. Brown's
18 hands. To the opposite, we are bending over backwards to
19 assist Mr. Brown in getting what he needs to be able to
20 adequately represent Mr. Howard.

21 But I am to the point where I am in fact frustrated.
22 We need to move forward with this trial, and I cannot
23 have Mr. Brown dictating whether or not the trial goes
24 forward if he gets to a point during the trial that he
25 feels like he doesn't want to go forward, and that is

1 truly what is happening.

2 MR. SAVAGE: Your Honor, I'm here to help if I can.
3 I don't know what the Court's schedule is this morning,
4 but I haven't spoken with Mr. Brown's client. I don't
5 know what he's been informed of or what my client's posi-
6 tion is.

7 I know Mr. Brown to be a good and strong advocate.
8 I believe that he is trying to extend a vigorous defense
9 on behalf of his client.

10 I don't question his motives but . . .

11 THE COURT: I agree with you, Mr. Savage.

12 MR. SAVAGE: But there are also other lawyers in
13 Columbia that, if you and Mr. Brown have a disagreement,
14 they can resolve that difference.

15 THE COURT: Exactly.

16 MR. SAVAGE: I would bet my reputation that Mr.
17 Brown would not knowingly and intentionally be disre-
18 spectful to this Court or to any Court.

19 If I could just have a little time, I would appre-
20 ciate it. I don't know if ten or fifteen minutes would
21 be satisfactory to the Court, so -- I would like to try
22 to resolve what are not legal issues but appear to be
23 other issues this morning.

24 THE COURT: Well, I can tell you that the jury is
25 coming back at nine thirty, which is about forty-five

1 minutes. You can have all the time in the world.

2 Again, I have made every effort to keep this trial
3 going, both for Mr. Howard's sake and the State's sake and
4 the victims' sake.

5 Everybody needs this to go forward and, as you said,
6 if there is a mistake I have made or that Mr. Brown has
7 made, that can be taken up by a later Court. It is not
8 up to Mr. Brown to stand up and say, subject to malpractice
9 he is going to stop.

10 Again, respectfully, I want to continue with this
11 trial. I have tried so hard to keep things moving.

12 What I need from him is a firm commitment, and I ask
13 that you discuss with him that he is going to go forward,
14 that he is going to continue this case, and that he is
15 going to finish this case.

16 I expect him to do his job. I expect him to zeal-
17 ously represent his client. I expect him to make his
18 record, but I expect him to honor his oath and to be
19 professional.

20 And when I rule on a matter, he must accept my rul-
21 ing and move on. It is as simple as that.

22 We must all work under the rules of evidence and
23 procedure and everything else. We just have to follow
24 the rules, and that's what I am asking Mr. Brown to do.

25 So I am happy to give you forty-five minutes, or

1 if you need longer that is fine by me too. Hopefully,
2 you all can reach some type of agreement on whether or
3 not Mr. Brown is comfortable to proceed.

4 What I will do, Mr. Savage, is go back in Chambers.
5 We'll just take a recess, and then if you would let me
6 know when you have reached some type of decision.

7 Again, I also appreciate your speaking with Mr.
8 Howard to discuss with him any concerns he potentially
9 may have as well, because, of course, we are here to pro-
10 tect his rights.

11 So, ladies and gentlemen, we will go ahead and take
12 a recess. Please let me know when you are ready.

13 MR. SAVAGE: Thank you.

14 THE COURT: Thank you.

15 (Whereupon, the Court was in recess from 8:47 A.M.
16 until 9:29 A.M., when the matter was resumed)

17 THE COURT: Thank you. Please be seated.

18 Mr. Savage, have you had an opportunity to speak
19 with both Mr. Brown and Mr. Howard?

20 MR. SAVAGE: I have, Your Honor, and thank you for
21 that opportunity.

22 I did meet with Mr. Howard this morning, and he
23 told me Mr. Brown provided his clothing. He is very
24 happy with Mr. Brown's representation.

25 Mr. Brown, he believes, has done an excellent job

1 of preparing his case for trial, and he realizes that
2 there have been issues but he intends to move forward.
3 There is no issue of a mistrial at this time.

4 There is nothing that has happened to date in this
5 case that either Mr. Brown or his client believe require
6 even requesting a mistrial.

7 We've reviewed some things with Mr. Brown about
8 Courtroom decorum and the proper ways of making motions
9 and documenting the record so that if there are any ap-
10 pellate issues they are preserved.

11 His client is satisfied with that. Is that correct?

12 DEFENDANT: Yes, sir.

13 MR. SAVAGE: They are ready to move forward.

14 If there is an issue regarding cross examination
15 of proposed testimony, Mr. Brown is willing to respect-
16 fully place -- respectfully place those matters on the
17 record and move on.

18 THE COURT: I appreciate that, Mr. Savage.

19 I will tell you at this point in the trial there
20 are not many appealable issues at this point that I can
21 see.

22 So with that said, let's keep going ahead, and I
23 will tell you that I appreciate very much your coming
24 down, along with Sheryl, and speaking with Mr. Brown and
25 representing him. I do appreciate your assistance to the
666

1 Court.

2 MR. SAVAGE: I think you will find Mr. Brown to be
3 an aggressive advocate but respectful at all times to
4 the Court.

5 THE COURT: Thank you. I appreciate that. Thank
6 you all for being here.

7 Mr. Brown, are you ready to go forward with no prob-
8 lems?

9 MR. BROWN: We are ready, Your Honor.

10 THE COURT: Thank you, Mr. Brown. I appreciate that.

11 MR. SAVAGE: Then we'll be on our way, Judge.

12 THE COURT: Thank you, sir.

13 (Mr. Savage leaving the Courtroom)

14 THE COURT: Is there anything we need to take up be-
15 fore we bring the jury?

16 I understand we do have one juror problem.

17 Anything from the State?

18 SOLICITOR: Nothing from the State, Your Honor.

19 THE COURT: Mr. Brown?

20 MR. BROWN: Frankly, Your Honor, we are recharged.

21 The State has cited the Turner case, and I have a case
22 from the Fourth Circuit, U. S. versus Sigma and other
23 Defendants, on the issue of impeachment of the chief
24 government witness.

25 If I could just hand up that case?

1 THE COURT: Thank you.

2 Anything further from anyone else?

3 SOLICITOR: Nothing from the State.

4 BAILIFF: We're still missing one juror, Judge.

5 THE COURT: All right. Let me know when the juror
6 arrives and we'll proceed.

7 (Brief pause in the proceeding)

8 THE COURT: Let's go on the record, Ronda.

9 One of the jurors that ended up being seated in
10 this case was a John Barton, and he has been requesting
11 that he have protection for tomorrow, and we anticipate
12 this case going into tomorrow.

13 Correct me if I'm wrong, but we will be going at
14 least into tomorrow. Is that correct, from your view-
15 point, Solicitor?

16 SOLICITOR: From my viewpoint, yes, maam.

17 THE COURT: Mr. Brown, would you agree?

18 MR. BROWN: I would have to agree. My witnesses
19 are not going to be very long but I know there are a few
20 of them and, obviously, the logistics of putting up wit-
21 nesses takes a little transition time.

22 I would agree with the Solicitor.

23 THE COURT: Okay, what do you propose? What do you
24 all propose to do with Mr. Barton?

25 I can bring him out here and ask him. Do we know

1 what his issue is?

2 Was he taking his wife to MUSC? Is that what . .

3 BAILIFF: I think it is something like that, if I
4 remember correctly, Judge.

5 Would you like me to bring him out?

6 THE COURT: In just a minute. Solicitor, when do
7 you believe you will be done with your case?

8 SOLICITOR: I hope today.

9 THE COURT: Okay.

10 SOLICITOR: I have two witnesses left that I be-
11 lieve will be lengthy. I have six witnesses total besides
12 the one that will return to the stand this morning. I
13 believe two of those will have lengthy cross examination,
14 one being the DNA expert and the other being the Codefen-
15 dant.

16 THE COURT: Okay. I ask that because I had origin-
17 ally told the panel that their services would not be
18 needed past Friday, and I wonder if there are going to
19 be issues with any other jurors if we go into Saturday.

20 This is why I asked, respectfully.

21 SOLICITOR: We've been averaging seven or eight wit-
22 nesses a day, and if we stay on that I will be finished
23 today.

24 THE COURT: We're going to try to do that.

25 MR. BROWN: Your Honor, with all due respect, I do

1 not think my case will take more than a day. I'd like to
2 tell you it will take half a day for all of my witnesses
3 but I just cannot -- I do not want to shorten it any.

4 THE COURT: I understand. Did you find which juror
5 this is, when he was seated?

6 MR. BROWN: He was the first one seated, I do be-
7 lieve. I have no recollection of who he is, and I don't
8 know what the Court wants to do.

9 THE COURT: I would be inclined if it is what I be-
10 lieve it is -- I believe he's taking his wife to MUSC
11 for some type of medical procedure, and I do think the
12 better thing would be to excuse him because if she is un-
13 dergoing a medical procedure and he's sitting here -- but
14 I don't know.

15 What I would propose to do is bring him out here and
16 question him as to what it is, but if there is no objec-
17 tion from either one of you I think we should go ahead
18 and seat the second alternate.

19 Okay?

20 MR. BROWN: We don't have any problem, and I have
21 consulted Mr. Howard about that and about moving the al-
22 ternate up. So that's fine.

23 THE COURT: Let's go ahead and bring him out.

24 BAILIFF: Yes, maam. His name is what?

25 THE COURT: His name is John Barton.

1 BAILIFF: John Barton. Yes, maam.

2 (Juror Barton brought into the Courtroom at 9:39
3 A.M.)

4 THE COURT: Mr. Barton, good morning. How are you,
5 sir?

6 JUROR: Fine, thank you.

7 THE COURT: I know you discussed with me at the be-
8 ginning of this week -- correct me if I'm wrong. What
9 was it? You were having to take your wife . .

10 JUROR: To MUSC.

11 THE COURT: Is it for an appointment or a procedure,
12 sir?

13 JUROR: Both, correct. Cancer surgery for skin
14 cancers.

15 THE COURT: And is the surgery scheduled?

16 JUROR: Yes. They're going to do burn-offs and
17 cuts and so forth.

18 THE COURT: Sir, I am trying very hard -- I'm a
19 little concerned right now because we do have one juror
20 evidently who is missing and we have already seated one
21 alternate.

22 I'm doing everything I can to get you excused, but
23 I need to first make sure I have the alternate to seat
24 that I am missing right now here.

25 JUROR: Yes, maam.

1 THE COURT: We are still waiting on one juror this
2 morning.

3 JUROR: I know.

4 THE COURT: That's what they tell me. So if you
5 don't mind, just out of caution I'm going to ask that
6 you stay. I apologize profusely. I know what I told
7 you, and I had no idea the case would go into Friday.

8 As I said, if you don't mind go back and don't dis-
9 cuss this with the jurors back there in any way.

10 JUROR: Yes, maam.

11 THE COURT: Let me just find out where this juror
12 is that we cannot find, if possible, because it does sound
13 like it is a medical procedure that is significant and
14 you should be able to be there.

15 JUROR: Right.

16 THE COURT: I appreciate your patience, sir. Thank
17 you.

18 (Juror Barton out at 9:41 A.M.)

19 THE COURT: All right, see if you can find out which
20 juror is missing.

21 CLERK: Yes, maam.

22 THE COURT: When we find the juror who is not here--
23 as long as I have twelve I will go ahead and replace Mr.
24 Barton.

25 With that said, is there anything else we need to

1 take up out of the presence of the jury?

2 For the State?

3 SOLICITOR: Nothing from the State.

4 THE COURT: From the Defense?

5 MR. BROWN: Nothing from the Defense, Your Honor.

6 THE COURT: I'm going to step down, and if you need
7 anything get word to the bailiff who will get me and we
8 will take it up.

9 (There was a short break in the proceeding, and the
10 matter resumed)

11 THE COURT: Who is the missing juror?

12 BAILIFF: Stephenie Griffin is the one that's miss-
13 ing. Mr. Sorrels is in the process of trying to call
14 her cel phone number.

15 THE COURT: Thank you.

16 We will sit tight and if there is any evidence that
17 hasn't been marked yet, go ahead with what you can agree
18 on. Now would be a good time to do it.

19 Let me know and I'll come back when our juror is
20 here.

21 (Brief break in the proceeding)

22 THE COURT: I understand our last juror is here. I
23 propose to go ahead and replace Mr. Barton with our alter-
24 nate.

25 Solicitor and Mr. Brown, as I said, I propose to go

1 ahead and remove Mr. Barton and seat the second altern-
2 ate.

3 Does anyone have an objection?

4 SOLICITOR: Your Honor, I believe we'll be out of al-
5 ternates, and I understand Mr. Barton's situation and I
6 am sympathetic to that.

7 With the way the trial is going, you know, we've lost
8 two jurors, and I -- I'm not trying to be callous but I
9 am concerned if someone else can drive her there.

10 Again, I'm not trying to be callous. I am concerned
11 with the way this trial has gone. I still have an issue
12 with Mr. Piccora from yesterday, about him still remain-
13 ing on the jury.

14 Maybe if we can wait until the end of the day, we
15 . .

16 THE COURT: We certainly can do that and see if there
17 is an issue. He can certainly stay until the end of
18 the day.

19 I would want to bring him out and explain that to
20 him though so he will know what's going on. Let's go
21 ahead and do that.

22 Would you bring in Mr. Barton just briefly?

23 SOLICITOR: Thank you.

24 (Juror Barton brought into Courtroom)

25 BAILIFF: Mr. Barton, Judge.

1 THE COURT: Thank you. Mr. Barton, I see that our
2 alternate came this morning, and I will tell you that
3 we are concerned.

4 You know, always during the course of a trial it
5 could be that we lose people, so this is what we are pro-
6 posing to do.

7 I would like you to stay today, if you would.

8 JUROR: Okay.

9 THE COURT: And let me reevaluate at the end of the
10 day. All right, sir?

11 I appreciate and understand, and I want you to know
12 that we all absolutely understand.

13 We have to have twelve people to go to a jury on a
14 case, and certainly, as you well know, after all the ef-
15 forts of all the parties, I wouldn't want to not have
16 all that I need to be able to send the case to the jury.

17 So, if that is fine with you, I'm going to keep you
18 through today and let me just reevaluate and see where we
19 are then.

20 All right, sir?

21 JUROR: Yes, maam.

22 THE COURT: I appreciate it. Thank you.

23 (Juror Barton excused from Courtroom)

24 THE COURT: Go ahead and bring them in.

25 Mr. Lewis, please come back on the stand, sir.

1 (Witness Lewis re-taking the stand)

2 THE COURT: Mike, I'm going to ask out of an abundance of caution if you would re-swear him.

4 CLERK: Yes, maam. (Witness Lewis resworn)

5 (Jury returned to Courtroom at 9:52 A.M.)

6 BAILIFF: Jurors entering, Your Honor.

7 The jury is seated.

8 THE COURT: Thank you. Good morning, and welcome back.

10 At this time, Solicitor, you may continue your Direct Examination of Mr. Lewis.

12 SOLICITOR: Thank you, Your Honor.

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR:

15 Q. Officer Lewis, I think yesterday when we left off we were discussing your processing of the vehicle.

17 A. Yes, maam.

18 Q. And I believe you found a glove on a fence, is that correct?

20 A. That is correct.

21 Q. And we also discussing efforts that were made to get fingerprints from the car. Is that correct?

23 A. Yes, maam.

24 Q. Following your processing of the vehicle, did you have any contact with the Defendant in the case?

25

MR. LEWIS ON DIRECT

1 A. I did, yes, maam.

2 Q. And what was your role involving contact with the
3 Defendant?

4 A. My role is after being interviewed by detectives
5 from the Department to transport them
6 to the Detention Center.

7 Q. Did you transport Codefendant Lorenzo Hicks to the
8 Detention Center?

9 A. Yes, maam.

10 Q. While at the Detention Center, did you do anything
11 or collect anything from Mr. Hicks?

12 A. Yes, maam. I collected all items of clothing.

13 Q. Okay.

14 SOLICITOR: I show Defense Counsel State's 48, 49,
15 and 74.

16 MR. BROWN: Thank you.

17 SOLICITOR: May I approach the witness, Your Honor?

18 THE COURT: You may.

19 BY SOLICITOR:

20 Q. First, Officer Lewis, I show you State's Exhibit --
21 if you would get that open -- get a good look at what
22 is down in there.

23 A. Okay.

24 Q. Can you identify what's in State's Exhibit 48?

25 A. Yes, maam. This is a box sweater.

MR. LEWIS ON DIRECT

1 Q. And is that a sweater you collected?

2 A. Yes, maam.

3 Q. Who did you collect the sweater from?

4 A. I collected it at the Detention Center from Mr.
5 Hicks.

6 SOLICITOR: Your Honor, State moves Exhibit 48 into
7 evidence.

8 MR. BROWN: Without objection.

9 THE COURT: Admitted, without objection.

10 (Exhibit 48, sweater, admitted in evidence without
11 objection)

12 BY SOLICITOR:

13 Q. What was the condition of the sweater when you col-
14 lected it?

15 A. It was -- when it was collected from Mr. Hicks, it
16 was very wet. It was very gritty, being that it had
17 sand on it, and it was -- it looked like it was not like
18 a normal sweater. It was kind of like the fibers weren't
19 intact. It was kind of stretched out a little bit.

20 SOLICITOR: Can I ask Mr. Lewis to publish it to the
21 jury, just from the stand?

22 (Item shown to jury)

23 Q. If you would shove that back in the bag.

24 A. Put it back in the bag? Yes, maam.

25 Q. Officer Lewis, I show you State's Exhibit 49. Can

MR. LEWIS ON DIRECT

1 you identify that?

2 A. . .

3 Q. You may also cut that bag open.

4 A. Okay. This is the underclothes of Mr. Hicks.

5 Q. And what else is contained within that bag?

6 A. A pair of sock and boxers, if you will.

7 Q. Okay.

8 A. A lot of sand. Two pairs of socks.

9 Q. Are those items you collected from Mr. Hicks?

10 A. Yes, maam.

11 SOLICITOR: Move 49 into evidence.

12 MR. BROWN: Without objection.

13 THE COURT: It's in evidence without objection.

14 (Socks and underwear in bag admitted in evidence
15 without objection as State's Exhibit 49)

16 SOLICITOR: We would ask that he publish them from
17 where he is to the jury.

18 THE COURT: He may.

19 A. Two pairs of socks and underwear. (Showing items
20 to jury)

21 Q. Two pairs of socks and underwear?

22 A. Yes, maam. Boxers. There is a lot of sand now all
23 over the desk.

24 BY SOLICITOR:

25 Q. Please return those to their bag.

MR. LEWIS ON DIRECT

1 Thank you, sir.

2 A. You're welcome.

3 Q. I show you State's Exhibit 74. Can you identify
4 State's Exhibit 74?

5 A. Upon first glance, it is a bag that I placed an item
6 of clothes in. I believe that's his jeans.

7 Q. Where did you collect this?

8 A. The Detention Center.

9 Q. From who?

10 A. Mr. Hicks.

11 SOLICITOR: Your Honor, State moves 74 into evi-
12 dence.

13 MR. BROWN: Without objection.

14 THE COURT: Admitted without objection.

15 SOLICITOR: May he publish these items to the jury.

16 A. Now I can fully observe what it is. It is his blue
17 jeans. Mr. Hicks' jeans, with a brown in color vest.

18 (Showing items to jury)

19 BY SOLICITOR:

20 Q. All right. Thank you, Office Lewis. You may re-
21 turn those to the bag.

22 Officer, it looks like you did the same thing with
23 the Defendant, Alfonzo Howard?

24 A. Yes, maam. I transported him as well, and I took
25 the items of clothing that he was wearing.

MR. LEWIS ON DIRECT

1 SOLICITOR: Showing Defense Counsel State's Exhibits
2 46 and 47.

3 MR. BROWN: Thank you.

4 SOLICITOR: May I approach the witness?

5 THE COURT: You may.

6 BY SOLICITOR:

7 Q. Showing you State's Exhibits 46 and 47. I'll start
8 with 47 here.

9 A. With 47?

10 Q. Yes. Can you identify what is in that bag?

11 A. Yes, maam. It's several pairs of socks which I'll
12 count when I take them out, and a pair of underwear.

13 Q. Who did you collect those items from?

14 A. Mr. Howard. Four pairs of socks.

15 SOLICITOR: Your Honor, State moves 47 in evidence.

16 MR. BROWN: Without objection.

17 THE COURT: Entered without objection.

18 (Socks and underwear in bag entered in evidence
19 without objection as State's Exhibit 47.

20 SOLICITOR: Publish to the jury.

21 THE COURT: Yes.

22 (Items shown to jury by witness)

23 BY SOLICITOR:

24 Q. You said four pairs of socks?

25 A. Yes, maam.

MR. LEWIS ON DIRECT

1 Q. Four pairs?

2 A. Yes, maam, from Mr. Howard.

3 Q. You said you took them from Mr. Howard, but was he
4 wearing all four at the same time?

5 A. Yes, maam, and a pair of boxers.

6 Q. Thank you, sir. All right, item 46 -- can you iden-
7 tify this item?

8 A. This was taken from Mr. Howard, and these were the
9 blue jeans, if I'm not mistaken, that Mr. Howard was wear-
10 ing.

11 SOLICITOR: Move State's 46 in evidence.

12 MR. BROWN: Without objection.

13 THE COURT: Admitted without objection.

14 (Blue jeans in bag admitted in evidence without
15 objection as State's Exhibit 46)

16 BY SOLICITOR:

17 Q. What condition were they in?

18 A. They were damp as well. They are blue jeans but they
19 are shorts.

20 Q. Okay. What was the condition of all the items
21 from Mr. Howard, the shorts, underwear and socks?

22 A. The condition of the socks, underwear and the shorts
23 from Mr. Howard were the same as those from Mr. Hicks.
24 Wet, smelled like it had some sort of algae on them and
25 very gritty also with sand.

MR. LEWIS ON DIRECT

1 Q. Were you present when Mr. Howard's outer layer of
2 pants were collected?

3 A. I collected all items at the Detention Center and
4 then I transported them back to the police department
5 for safekeeping.

6 Q. So you were in the last round of clothes collect-
7 ing?

8 A. I collected all the clothes and brought them back
9 . . .

10 Q. That you just named?

11 A. Yes, maam, and I brought them back to the poolice
12 department.

13 Q. I have no further questions. Please answer any-
14 thing Defense Counsel may ask.

15 THE COURT: Mr. Brown.

16 MR. BROWN: May it please the Court?

17 CROSS EXAMINATION

18 BY MR. BROWN:

19 Q. Just to make sure I understand, Officer Lewis, there
20 was a search for a used condom?

21 A. There was a search for a used condom.

22 Q. Is that right?

23 A. There was a search for many items, sir.

24 Q. And was one of those items a used condom?

25 A. I believe so.

MR. LEWIS ON CROSS

1 Q. And you searched Mr. Howard and his belongings for
2 that used condom?

3 A. I collected all the evidence. I didn't find a used
4 condom.

5 Q. Okay, and did you tell Detective Ott that you had
6 searched for the used condom but did not find it?

7 A. I did not find a used condom. I . . .

8 Q. Is that what you told him?

9 A. I did not tell him anything of that matter.

10 Q. You didn't tell him -- let me make sure I under-
11 stand this.

12 At a date later than seven o'clock on May 26th, 2006,
13 that no condom was found on Howard?

14 A. My duties were to collect all the clothing items
15 and bring them back to the department.

16 I did not find a used condom.

17 Q. I understand, but I'm just trying to make sure. I
18 don't know the location. All I know is at a time later
19 than seven ten on May 26, 2006, was there a statement
20 made that, quote, no condom was found on Howard, from
21 you to Detective Ott?

22 A. . .

23 Q. That is all I'm trying to find out, if you made
24 that statement.

25 A. It's possible I made that statement. I do not

MR. LEWIS ON CROSS

1 recollect that, but no condom, no used condom, was found.

2 Q. And, of course, Ms. Tanner didn't ask you that ques-
3 tion?

4 A. No.

5 Q. Okay, and do you have a copy of your report?

6 A. I do not have one with me.

7 Q. Do you see that statement listed in your report?

8 A. It does state I collected evidence on Mr. Howard.

9 Q. What I'm asking you is, in that report did you tell
10 Detective Ott no condom was found on Howard?

11 That's what I'm asking you. Did you put that in
12 your report?

13 A. Yes, sir. Let me just -- there is no such statement
14 in my report.

15 Q. Now that you've read that to refresh your recollec-
16 tion, do you dispute whether you told Detective Ott that
17 no condom was found on Howard?

18 A. . .

19 Q. Talking about a used condom.

20 A. A used condom was not collected from Mr. Howard.

21 Q. And you looked for it?

22 A. I collected all the evidence -- all the items of
23 clothing.

24 Q. And you would consider that evidence?

25 A. Anything that was on Mr. Howard, on his person, I

MR. LEWIS ON CROSS

1 collected that.

2 Q. And you would consider a used condom to be evidence?

3 A. I would, yes.

4 Q. Okay, and you talked to Detective Ott about that?

5 A. . .

6 Q. Specifically about a used condom?

7 A. When I went back to the police department and I
8 gave the evidence technician the items of clothing, I do
9 not recollect that I talked to Mr. Ott about a used
10 condom.

11 Q. I want to make sure I understand. Was there a sup-
12 plemental report which referenced a used condom search of
13 Mr. Howard?

14 A. Not written by me.

15 MR. BROWN: May we approach?

16 THE COURT: You may.

17 (Conference at the bench between counsel and the
18 Court off the record)

19 MR. BROWN: Thank you, Your Honor.

20 BY MR. BROWN:

21 Q. Whether or not there was a supplemental report, or
22 whether or not you had discussions with Ott about a sup-
23 plemental report or about a used condom, you didn't find
24 a used condom in the belongings given to you by the
25 jailer?

MR. LEWIS ON CROSS

1 A. No, Mr. Brown. I did not find a used condom and I
2 did not write a supplemental report stating anywhere about
3 a used condom.

4 Q. Okay, thank you.

5 MR. BROWN: No other questions.

6 THE COURT: Solicitor?

7 SOLICITOR: Nothing further.

8 THE COURT: You may step down.

9 SOLICITOR: May the witness be excused?

10 MR. BROWN: No objection.

11 THE COURT: You may be excused. Thank you.

12 (Witness excused)

13 THE COURT: Solicitor, call your next witness.

14 SOLICITOR: Thank you. Call Robert Carson to the
15 stand.

16 ROBERT CARSON, being duly
17 sworn, testified as follows:

18 CLERK: Have a seat, and please state your full name.
19 Spell your last name.

20 WITNESS: Robert Carson.

21 THE COURT: Solicitor, Mr. Brown, please approach.

22 (Conference at the bench between counsel and the
23 Court off the record)

24 DIRECT EXAMINATION

25 BY SOLICITOR:

MR. CARSON ON DIRECT

1 Q. Good morning, Mr. Carson.

2 A. Good morning.

3 Q. Where are you employed?

4 A. Beaufort City Police Department.

5 Q. And how long have you been with the City Police
6 Department?

7 A. I've been there for ten years, and before that five
8 years with the Orangeburg Department of Public Safety.

9 Q. So you have fifteen years of law enforcement exper-
10 ience?

11 A. Yes, maam.

12 Q. And what are your duties or responsibilities with
13 the City Police Department?

14 A. I am the administrative lieutenant. At the current
15 time I check reports and insure that our software and
16 computer technologies are applied properly, and if there
17 are any issues with the underlying services of the police
18 department in terms of reports and technology, hurricane
19 preparedness, different things in the administrative sec-
20 tion.

21 Q. Back in May of 2006, did you have any duties in-
22 volving the investigation of Alfonzo Howard?

23 A. I did, maam. That morning about five in the morning
24 I was on the way to the jail and I heard radio traffic
25 with the Sheriff's Office in the vicinity of the downtown

MR. CARSON ON DIRECT

1 so I proceeded to that area and met with Lieutenant
2 McDormet and determined that there had been an incident
3 there, so I assisted as a perimeter unit.

4 Q. And did you do anything besides assisting as a peri-
5 meter unit that day?

6 A. Yes, maam. At a certain point in time that morn-
7 ing, I along with First Sergeant Schultz of the Beaufort
8 City Police Department went to search the area of the Woods
9 Bridge for evidence.

10 Q. And you say you searched the area of the Woods
11 Bridge. Was that on the bridge or beside the bridge,
12 below the bridge?

13 Where are you searching, or was it all of it?

14 A. It was all of it, maam. The incident of the search-
15 ing actually started at the base of the bridge for myself,
16 and particularly on the downtown side of the Woods Bridge,
17 so we actually searched on the bridge and proceeded to
18 the other side of the bridge, on both sides.

19 Q. And how do you conduct that type of search? Are
20 you on foot or are you in a patrol vehicle?

21 How does that work?

22 A. We pick a pre-determined location and park our pa-
23 trol car and at that point we take evidence collection
24 paraphernalia such as bags, a camera, those things of that
25 nature.

MR. CARSON ON DIRECT

1 We actually park a patrol car and start from that
2 point and walk and come back; then move the car to
3 another location and do the same thing repeatedly until
4 you have completed the search area that we're looking
5 at.

6 Q. Did you do that that day on the Woods Bridge and
7 around the Woods Bridge?

8 A. Yes.

9 Q. And during your search, did you locate any items of
10 evidence related to this case?

11 A. I did in particular. The first item I visually ob-
12 served was a black colored shirt that was floating in the
13 water edge where it was touching a rock that was on the
14 Lady's Island side of the Woods Bridge.

15 That shirt was actually underneath the bridge so we
16 were visibly underneath of the bridge holding on the em-
17 bankment rocks that were underneath of that bridge.

18 Q. And about what time -- was this still May 26?

19 A. Yes.

20 Q. Do you recall around what time you discovered the
21 shirt?

22 A. I do not recall the time but at that particular time
23 of morning it was daylight hours.

24 SOLICITOR: Your Honor, I show Defense Counsel Ex-
25 hibits 50, 51, 52.

MR. CARSON ON DIRECT

1 May I approach the witness?

2 THE COURT: You may.

3 BY SOLICITOR:

4 Q. Lieutenant Carson, I show you State's Exhibits 50,
5 51 and 52. Can you identify the item in those three
6 photographs?

7 A. Yes, maam. This is the item that I described as
8 the shirt that I saw that particular morning. I directed
9 my identification of this item to a person who was not
10 standing next to me but in proximity so we could do a
11 more thorough search and cover more area. That was
12 First Sergeant Shultz.

13 I directed him to the location of the shirt but I
14 did not touch it.

15 Q. Is that a fair and accurate depiction of it as you
16 observed it on that day?

17 A. Yes.

18 SOLICITOR: Move State's Exhibits 50, 51 and 52 into
19 evidence.

20 MR. BROWN: Without objection.

21 THE COURT: Without objection.

22 (Photographs showing shirt admitted in evidence with-
23 out objection as State's Exhibits 50, 51 and 52)

24 SOLICITOR: Permission to publish.

25 THE COURT: Yes.

MR. CARSON ON DIRECT

1 (Exhibits 50, 51 and 52 shown to the jury)

2 BY SOLICITOR:

3 Q. Officer Carson, State's 52 has something a little
4 bit extra in it that the other ones don't have?

5 A. It does.

6 Q. What does that indicate?

7 A. This is one of the items that we use in evidence.

8 It was one of the items we collected to bring with us so
9 we wouldn't be running back and forth. We knew typically
10 what we would need for evidence collection, documentation
11 and preservation.

12 This is a number system is what we use to place a
13 placquard with a number so we can correllate that items
14 that is in our police report later which also ties in the
15 photographs, to accurate track the evidence as we had
16 found it.

17 Q. Thank you.

18 A. Yes, maam.

19 Q. Lieutenant Carson, did you find another item?

20 A. Yes. In pointing out that first item to First Ser-
21 geant Shultz, I continued a track underneath of the
22 bridge toward the hospital direction. From the left side
23 of the bridge if you were standing on it facing Lady's
24 Island I was underneath in the direction toward the hos-
25 pital.

MR. CARSON ON DIRECT

1 I proceeded under the bridge and along the water
2 line on the rocks I was actually walking on those rocks
3 that you saw on the photograph.

4 And I looked over to my left and there was a wet,
5 dark in color wallet sitting on top of some rocks.

6 Q. Did you document the location of that item?

7 A. I did. I directed again Sergeant Shultz, whose job
8 primarily was to identify, mark and collect the evidence,
9 where this evidence was.

10 Again, I did not touch it. I simply indicated I had
11 found it, and he proceeded to take care of that.

12 But I did see it and point it out to Sergeant Shultz.

13 SOLICITOR: I show Exhibits 53, 54 and 55 to De-
14 fense Counsel.

15 May I approach the witness?

16 THE COURT: You may.

17 BY SOLICITOR:

18 Q. At this time I show you a series of photographs, and
19 if you could will you identify what is shown in those
20 photographs?

21 A. The photograph marked 53 is a shot of the rocks and
22 one of the bridge supports. I actually was down in that
23 area on the west side of the rocks and in the direction
24 this photograph was taken.

25 The second photograph contains a dark colored wallet

MR. CARSON ON DIRECT

1 resting on the rocks which I observed at that place.

2 Next to it in this photograph is a placquard mark-
3 ing the item with the number two, and it is item 54.

4 And the photograph marked Exhibit 55 is a tall shot,
5 if you will, of the wallet on the rock with the number
6 two placquard, the dark colored wallet I saw and pointed
7 out to First Sergeant Shultz.

8 Q. And is that a fair and accurate depiction of how you
9 found it that day?

10 A. Yes, maam.

11 SOLICITOR: Your Honor, the State moves 53, 54 and
12 55 into evidence.

13 MR. BROWN No objection.

14 THE COURT: Admitted without objection.

15 (Photographs of wallet admitted in evidence as
16 State's Exhibits 53, 54, 55 without objection)

17 SOLICITOR: Permission to publish?

18 THE COURT: Yes.

19 (Photographs shown to jury)

20 BY SOLICITOR:

21 Q. Next I . .

22 SOLICITOR: Your Honor, these are small photographs.
23 May I have Lieutenant Carson come down from the stand
24 and actually publish to the jury where the wallet is
25 located?

MR. CARSON ON DIRECT

1 MR. BROWN: No objection.

2 THE COURT: He can do that.

3 BY SOLICITOR:

4 Q. Let's do it like on each end. Would you point to
5 the location of the discovery of the wallet?

6 A. In this particular photo, ladies and gentlemen, it
7 is a little bit hard to see, but you can see the shadow
8 cast from this support pillow.

9 Q. Show them the general area of the location of the
10 wallet.

11 A. This location here. You can see the depiction of the
12 shadow. See the shadow here? The sunlight behind this
13 support depicts the area.

14 Q. In State's 54 can you show the jury what is in this
15 photograph here?

16 A. This is the dark colored wallet that I saw and that
17 I directed Sergeant Shultz to.

18 Q. Again, here?

19 A. Here is the dark colored wallet located right here.

20 Q. In State's Exhibit 55, is this a view of the bridge?

21 A. You can see the base of the bridge here, these pil-
22 lows of the bridge and the support here.

23 Here is placquard number two, and just to the right
24 of the placquard is the actual wallet.

25 Q. Which way is it to Beaufort? Can you see Beaufort

MR. CARSON ON DIRECT

1 in this photograph?

2 A. You can. You can make out the outline of downtown
3 Beaufort, and what you're actually seeing there is the
4 waterfront park. The water front park is located right
5 there.

6 Q. Okay, if you would describe it on this end.

7 A. Okay, here you've got the bridge, the bridge sup-
8 port and the bridge support here, and here is placquard
9 number two.

10 On this side of the bridge you can make out the
11 downtown area, the waterfront park area.

12 Q. Thank you. You may return to the stand.

13 A. Yes, maam.

14 Q. Did you continue conducting your search, Lieutenant,
15 once these two items were located?

16 A. I did, maam.

17 Q. And was there another item located?

18 A. Yes. A black in color -- at that time all I knew it
19 to be was a pistol.

20 Q. Where was that located?

21 A. It was located -- if you were on the bridge facing
22 Lady's Island, it would be to the right side of the bridge
23 in between the bridge and the direction of the hospital.

24 So you'd have to be facing Lady's Island on the
25 bridge, the right side of the bridge, and between the

MR. CARSON ON DIRECT.

1 bridge and the hospital. That is where it was found on
2 the rocks.

3 SOLICITOR: Showing Defense Counsel 56, 57, 58, 59
4 and 60.

5 May I approach the witness?

6 THE COURT: You may.

7 BY SOLICITOR:

8 Q. Lieutenant Carson, I ask you to look through those
9 photographs and tell me if you can identify what these
10 photographs depict?

11 A. Yes, maam. This is the side of the bridge. As
12 you are traveling toward Lady's Island, the right side
13 of the bridge, the embankment -- just underneath that is
14 depicted in the first photo -- the causeway is what they
15 call it..

16 The gray and white rocks along the side of the
17 bridge with some shrubbery there, and as I've addressed
18 in these photos, looking at a photo with placquard number
19 four, the yellow placquard number four, next to a black
20 in color pistol leaning against a rock that I located
21 that morning.

22 SOLICITOR: Your Honor, the State moves the remain-
23 ing photographs, 56 through 60, into evidence.

24 MR. BROWN: No objection.

25 THE COURT: They are in evidence without objection.

MR. CARSON ON DIRECT

1 (Photographs admitted in evidence without objection
2 as State's Exhibits 56, 57, 58, 59 and 60)

3 BY SOLICITOR:

4 Q. Thank you, sir. Please answer any questions Defense
5 Counsel has.

6 A. Yes, maam.

7 THE COURT: Mr. Brown.

8 MR. BROWN: May it please the Court?

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION

11 BY MR. BROWN:

12 Q. How are you this morning?

13 A. Fine, sir. How are you?

14 Q. Do you work sometimes down at Lowe's too?

15 A. I do. I work there part time.

16 Q. I think you've helped me there at times.

17 A. No problem.

18 Q. Approximately how many law enforcement officers
19 were out that morning looking for items?

20 A. That, sir, I cannot tell you. I do know myself,
21 First Sergeant Shultz were working that morning, and I
22 do know there were others out there.

23 Q. Was significant law enforcement present?

24 A. Everyone that was available was there. That's all
25 I know.

MR. CARSON ON CROSS

1 Q. Multiple agencies?

2 A. Yes.

3 Q. Including Port Royal, the Highway Patrol?

4 A. That I cannot tell you.

5 Q. At least the Sheriff's Department and the City?

6 A. At least.

7 Q. And you and Investigator Shultz worked together,
8 and is it safe to say that you have pretty much the same
9 knowledge of what was going on?

10 A. Yes, sir. Similar knowledge.

11 Q. Similar knowledge. Okay, and ...

12 MR. BROWN: Beg the Court's indulgence.

13 Q. Were you and Investigator Shultz a team, or how would
14 you describe it?

15 A. . .

16 Q. Were the two of you working as a pair?

17 A. We were basically a pair together.

18 Q. All right. Is it fair to say that Rico Hicks told
19 you all where to go to look for that gun?

20 A. I didn't get any knowledge about what the Defendants
21 were telling anyone. I simply was just doing a search
22 of the base of the bridge. That was my whole role, a
23 very simple role that morning for me.

24 Q. Do you know whether information about where the pis-
25 tol could be located was given to Shultz?

MR. CARSON ON CROSS

1 A. I have no knowledge of that. I simply was just
2 doing a search of the bridge.

3 Q. You don't know that that didn't happen either?

4 A. I don't know, sir.

5 Q. So that could very well be how you all were directed
6 there?

7 A. It's possible. I simply was direct to start at the
8 base of the bridge and work my way over.

9 Q. No further questions. Thank you.

10 THE COURT: Solicitor?

11 SOLICITOR: Just one.

12 REDIRECT EXAMINATION

13 BY SOLICITOR:

14 Q. Lieutenant, in the photographs are placquards two,
15 three and four. Do you know what one would have been?

16 A. I do not, maam. That particular morning I basic-
17 ally was a searcher of evidence, and when I located evi-
18 dence I simply directed the collector, which was that
19 morning First Sergeant Shultz.

20 I did not know the numbering system. I only iden-
21 tified evidence and left it in place.

22 Q. Thank you, sir.

23 THE COURT: Mr. Brown?

24 MR. BROWN: Nothing further.

25 THE COURT: You may step down.

1 SOLICITOR: May this witness be excused?

2 MR. BROWN: No objection.

3 THE COURT: You are excused sir.

4 (Witness excused)

5 THE COURT: Solicitor, call your next witness.

6 SOLICITOR: Call Officer Shultz.

7 CARL WAYNE SHULTZ, being duly
8 sworn, testified as follows:

9 CLERK: Please have a seat. State your full name
10 and spell your last name.

11 WITNESS: Carl Wayne Shultz, S H U L T Z.

12 DIRECT EXAMINATION

13 BY SOLICITOR:

14 Q. Good morning.

15 A. Good morning.

16 Q. Where are you employed, Mr. Shultz?

17 A. Orangeburg County Department of Public Safety.

18 Q. What is your job there?

19 A. I'm a sergeant in forensics and crime scene investi-
20 gator.

21 Q. And where were you employed prior to going to Orange-
22 burg?

23 A. Beaufort Police Department.

24 Q. What were you doing for the Beaufort Police Depart-
25 ment?

MR. SHULTZ ON DIRECT

1 A. I was an investigator for approximately seven years
2 and I was also a training officer.

3 Q. How many years total in law enforcement do you
4 have?

5 A. Fifteen.

6 Q. I'm going to talk about May 26, 2006. At that time
7 were you working for Beaufort City?

8 A. Yes.

9 Q. And did you respond to the area of B B and T located
10 downtown?

11 A. I did.

12 Q. Who did you come in contact with in that area?

13 A. I met with officers on the scene that morning.
14 Lieutenant McDermot actually called me to the scene.

15 Q. And did you speak with Officer O'Neill?

16 A. He was at the scene, yes.

17 Q. And as a result, did you collect any items from
18 that area?

19 A. He pointed out a black shirt.

20 Q. And that was taken into evidence by you?

21 A. Yes.

22 Q. Sergeant Shultz, upon the collection of the T-shirt
23 at B B and T, did you then -- were you a part of the
24 collection of any other items?

25 A. Yes.

MR. SHULTZ ON DIRECT

1 Q. And from what area?

2 A. Under the bridge.

3 Q. What bridge would that be?

4 A. It would be Woods Bridge downtown.

5 Q. And who was with you during your collection of the
6 items of evidence?

7 A. Lieutenant Carson.

8 Q. And did you collect any clothing from that area?

9 A. We did.

10 Q. What would that be?

11 A. A black tee shirt.

12 Q. Did you actually collect that item?

13 A. I did.

14 Q. And once you collected those items, what did you do
15 with them?

16 A. They were bagged.

17 SOLICITOR: I show Defense Counsel State's Exhibits
18 75 and 76.

19 May I approach the witness?

20 THE COURT: You may

21 BY SOLICITOR:

22 Q. Sergeant Shultz, I show you State's Exhibit 75. Can
23 you identify this item?

24 A. Yes, it's a black tee shirt.

25 Q. And did you collect that?

MR. SHULTZ ON DIRECT

1 Q. Yes, I did.

2 Q. Where did you collect this item from?

3 A. The tee shirt was in the water.

4 Q. And would this be a tee shirt you located alongside
5 Lieutenant Carson?

6 A. Yes.

7 SOLICITOR: State moves 75 into evidence.

8 THE COURT: Mr. Brown?

9 MR. BROWN: Is that short sleeved?

10 SOLICITOR: It is the short sleeve.

11 MR. BROWN: No objection.

12 THE COURT: In evidence without objection.

13 (State's Exhibit 75, black tee shirt, short sleeved,
14 admitted in evidence without objection)

15 BY SOLICITOR:

16 Q. And just so we're clear, Sergeant, I'm going to show
17 you State's Exhibit 55, and ask you if State's 55 coin-
18 cides with State's 75, the black tee shirt?

19 A. Yes, it does.

20 Q. Is this the location from which you gathered this
21 shirt?

22 A. It is.

23 Q. Thank you.

24 SOLICITOR: May I publish to the jury?

25 THE COURT: You may.

MR. SHULTZ ON DIRECT

1 (Exhibit 75 shown to the jury)

2 BY SOLICITOR:

3 Q. Showing you State's Exhibit 76, can you identify
4 this item?

5 A. A second black shirt.

6 Q. And did you collect that?

7 A. Yes, I did.

8 Q. Where did you collect that item from?

9 A. Behind the BB and T Bank.

10 SOLICITOR: State moves 76 in evidence.

11 MR. BROWN: Without objection.

12 THE COURT: In evidence without objection.

13 (Long sleeve black shirt admitted in evidence with-
14 out objection as State's Exhibit 76)

15 BY SOLICITOR:

16 Q. What condition was Exhibit 76 in when you collected
17 it?

18 A. It was slightly damp.

19 Q. And we heard 75 came from the water?

20 A. Yes, 75 was in the water.

21 SOLICITOR: Publish to the jury, Your Honor.

22 THE COURT: You may.

23 (Exhibit 76 shown to the jury)

24 BY SOLICITOR:

25 Q. Sergeant Shultz, were you actually directed to 76

MR. SHULTZ ON DIRECT

1 by Mr. O'Neill?

2 A. I was.

3 Q. Thank you, sir. Sergeant Shultz, were you involved
4 in the collection of any other items in the bridge area?

5 A. Yes, I was.

6 Q. What would that be?

7 A. One wallet and a pistol.

8 Q. Let's start with the wallet. I show you State's Ex-
9 hibit 61. Do you recognize that?

10 SOLICITOR: May I approach the witness?

11 THE COURT: You may.

12 Q. Can you identify that?

13 A. Yes.

14 Q. And can you identify the contents of 61?

15 A. Yes, ma'am. This is a black wallet and numerous
16 cards.

17 Q. Is this the wallet you found under the bridge?

18 A. It is.

19 Q. Let me show you State's Exhibit 54. Does State's
20 Exhibit 54 coincide with State's Exhibit 61?

21 A. It does.

22 Q. Is that the location where you discovered the wallet?

23 A. It is.

24 Q. And did you collect this wallet?

25 A. I did.

MR. SHULTZ ON DIRECT

1 Q. What condition was the wallet in when you discov-
2 ered it?

3 A. It was wet sa well.

4 Q. And were those items inside the wallet?

5 A. Yes, they were.

6 SOLICITOR: Your Honor, State moves 61 into evidence.

7 MR. BROWN: No objection.

8 THE COURT: In evidence without objection.

9 (Wallet and contents entered in evidence without
10 objection as State's Exhibit 61)

11 BY SOLICITOR:

12 Q. Sergeant Shultz, can you describe for the jury some
13 of the contents of the wallet?

14 A. Inside the wallet was a condom, a South Carolina
15 Beginner's Permit of Alfonzo Gerome Howard, an identifica-
16 tion card of Alfonzo Gerome Howard, miscellaneous busi-
17 ness cards, a bank card for Mr. Alfonzo Howard, a social
18 security card for Mr. Alfonzo Gerome Howard.

19 Q. All these items were inside the wallet that you found
20 under the bridge?

21 A. They were.

22 SOLICITOR: May I publish to the jury?

23 THE COURT: You may.

24 (Items shown to jury)

25 BY SOLICITOR:

MR. SHULTZ ON DIRECT

1 Q. Sergeant Shultz, you did collect one other item, is
2 that correct?

3 A. Yes.

4 Q. But was there anything else inside the wallet that
5 you collected?

6 A. There was also a Hundred Forty Dollars in cash in
7 Twenty Dollar bills.

8 Q. I show you State's Exhibit 62.

9 SOLICITOR: May I approach the witness?

10 THE COURT: You may.

11 Q. Can you identify that?

12 A. A Hundred Forty Dollars in Twenty Dollar bills that
13 was recovered from the wallet. It has my name on it as I
14 sealed the money.

15 Q. And why would it be removed from the other contents
16 of the wallet?

17 A. Money -- anything of value, money, guns, drugs, is
18 kept separately in the evidence room for security and ac-
19 countability.

20 SOLICITOR: State moves 62 in evidence.

21 MR. BROWN: Without objection.

22 THE COURT: Admitted, without objection.

23 (Cash money admitted in evidence without objection
24 as State's Exhibit 62.

25 BY SOLICITOR:

MR. SHULTZ ON DIRECT

1 SOLICITOR: Showing Defense Counsel State's Exhibit

2 63.

3 May I approach the witness?

4 THE COURT: You may.

5 BY SOLICITOR:

6 Q. Can you identify State's Exhibit 63?

7 A. Yes, it's a black Crossman B.B. pistol that was
8 recovered from the bridge.

9 Q. Is this the one you recovered on May 26?

10 A. It is.

11 Q. Is it a B.B. gun?

12 A. It is a B.B. pistol, yes.

13 Q. How long have you been employed in law enforcement?

14 A. Fifteen years.

15 Q. Would that pass as a real gun?

16 A. It certainly would. It resembles a Mathieu 11 A one
17 Colt.

18 Q. A Colt?

19 A. Yes, a Colt 45.

20 SOLICITOR: Your Honor, move State's Exhibit 63 in
21 evidence.

22 MR. BROWN: No objection.

23 THE COURT: Admitted without objection, and you may
24 publish it.

25 (State's Exhibit 63, B.B. pistol, admitted in evidence

MR. SHULTZ ON DIRECT

1 and shown to the jury)

2 BY SOLICITOR:

3 Q. Sergeant Shultz, these three items, the gun, the
4 wallet, the black tee shirt in the water, that you col-
5 lected, how close in proximity were they to each other
6 under the bridge?

7 A. The black shirt and the wallet were maybe within a
8 foot of each other along the water line. The pistol was
9 approximately twenty yards in the rocks from the shirt
10 and the wallet.

11 Q. So they all . .

12 A. In close proximity, yes.

13 Q. Please answer anything that Defense Counsel has.

14 THE COURT: Mr. Brown.

15 MR. BROWN: May it please the Court?

16 THE COURT: Yes, sir.

17 CROSS EXAMINATION

18 BY MR. BROWN:

19 Q. Do you have a copy of your report?

20 A. Yes.

21 Q. And have you had a chance to take a look at that
22 before you came to Court today?

23 A. Yes.

24 Q. And do you recall a conversation with Detective Ott
25 regarding Rico Hicks and the location of the B.B. gun

MR. SHULTZ ON CROSS

1 under the bridge?

2 A. I was advised that the suspect went in that direc-
3 tion and there may be items there.

4 Q. And at some point in time was your information from
5 Sergeant Ott given to you, Sergeant Shultz, the informa-
6 tion received from Rico Hicks, that the gun could be lo-
7 cated under the bridge?

8 A. I do not remember that. My report says I was advised
9 there were items under the bridge.

10 Q. And that would have been from Detective Ott?

11 A. There were a lot of officers on the scene. I don't
12 remember who told me exactly, but it may very well be, as
13 he was on the investigation.

14 Q. Okay. You were given information they were under
15 the bridge?

16 A. That there may possibly be items.

17 Q. Okay, and for all you know it could have come from
18 Rico Hicks?

19 A. It could have, yes.

20 Q. And your report doesn't note it?

21 A. That's correct.

22 Q. You wouldn't dispute that Sergeant Ott told you
23 Rico Hicks said they were under the bridge?

24 A. Someone told us, yes, there were items under the
25 bridge.

MR. SHULTZ ON CROSS

1 Q. Okay.

2 A. Or evidence under the bridge.

3 Q. You don't know that it was Rico Hicks that told you
4 that?

5 A. No, I don't.

6 Q. Do you know how many officers were out there search-
7 ing?

8 A. I do not. I can give you an approximation.

9 Q. Let me ask you about this long sleeve shirt that
10 was found.

11 A. Yes, sir.

12 Q. You mentioned it was damp?

13 A. Yes, sir.

14 Q. That item -- you say damp as opposed to wet?

15 A. Yes.

16 Q. Did that item go to SLED for DNA processing
17 that you are aware of?

18 A. I did not send it.

19 Q. Okay.

20 MR. BROWN: Beg the Court's indulgence.

21 (Brief pause in the proceeding)

22 MR. BROWN: No further questions.

23 THE COURT: Anything further?

24 SOLICITOR: No, Your Honor. May this witness be
25 excused?

1 MR. BROWN: No objection.

2 THE COURT: You are excused. Thank you.

3 (Witness excused)

4 THE COURT: Solicitor, call your next witness.

5 SOLICITOR: Thank you, Your Honor. The State calls
6 Patty Ruff.

7 PATTY RUFF, being duly sworn,
8 testified as follows:

9 CLERK: Have a seat and state your full name. Spell
10 your last name.

11 WITNESS: Patty Browning Ruff, R U F F.

12 DIRECT EXAMINATION

13 BY SOLICITOR:

14 Q. Good afternoon, Ms. Ruff. Where are you employed?

15 A. I'm employed with the South Carolina Law Enforce-
16 ment Division, more commonly known as SLED.

17 Q. What are your duties and responsibilities at SLED?

18 A. I've been at SLED for approximately twenty-six years,
19 and I was an evidence processing technician, forensic evi-
20 dence technician for sixteen years.

21 For the past year, I have been on the Intelligence
22 Division.

23 I was forensic evidence technician at the time of
24 this case.

25 Q. Back in May of 2006, you were an evidence

MS. RUFF ON DIRECT

1 technician?

2 A. Yes.

3 Q. What does that mean?

4 A. I was responsible for processing evidence at that
5 time. For example, I don't exactly do an analysis. I
6 do a procedure that involves the collection of evidence.

7 For example, if it's just a request for hair, I do
8 like a visual exam. If it resembles a hair, I would
9 collect it and send it to the DNA Department for further
10 testing.

11 If it is a request for bodily fluids of any kind, I
12 usually use an alternate slight source for an area that
13 would fluoresce such as semen fluoresces and several
14 things fluoresce.

15 I would circle that area and then do a chemical test.
16 If the stain reacted to this chemical test I would get a
17 sample or a cutting and send it to the DNA Department for
18 further testing.

19 If it is a request for blood, I do a visual exam.
20 If the stain appears to be blood, I do another chemical
21 test, and if it reacts to the chemical I will take a swab
22 or cut that sample and send it to DNA for further test-
23 ing.

24 There is another thing that we do, and it is like
25 epithelial skin cells, and you don't actually see them,

MS. RUFF ON DIRECT

1 of course, but when you scrape an item down in an area
2 that is kept very clean and sterile and we put a piece
3 of clean white paper down and scrape it with a disposable
4 scapel that we use.

5 Then we get a swab and actually wipe the paper down
6 and we may not even see anything. But you get a swab and
7 wipe that paper down and send it to DNA for further test-
8 ing. It may not even be obvious to the naked eye.

9 Q. And did you do that in relation to the case of
10 Alfonzo Howard?

11 A. Yes.

12 Q. I hand you State's 45. Can you identify State's
13 Exhibit 45 that has been entered previously?

14 A. Yes, my initials are on the outside, and it was en-
15 tered in our numbering system. When an item of evidence
16 is brought to SLED, it is given a number. This item num-
17 ber of 48 was assigned by SLED.

18 When I collect evidence off of this it would be a
19 sub item. For instance, like 48 point one or 48 point
20 two, three, four, and so on.

21 This is a pair of gloves that I examined, and my
22 initials are on the packaging.

23 Q. What kind of processing did you perform on this
24 item?

25 A. On this item 48?

MS. RUFF ON DIRECT

1 Q. On this item 48, what type of processing did you
2 perform on this item?

3 A. I did an exam where I was looking for any possible
4 DNA, so I got swabs and scrappings, and since these gloves
5 were packaged together I had to assume things could have
6 broke off on the other.

7 So I scraped both of the gloves and I swabbed the
8 scrappings and sent it to the DNA Department for any
9 possible DNA.

10 I noticed on one pair of gloves the green coating.
11 There was an area that tested possible for blood, so I
12 made a cutting from that and sent it to DNA for further
13 testing.

14 That was item 48 point two. On 48 point three I made
15 a cutting from the palm area and sent that to the DNA
16 Department, and I cut the palm area of the other glove
17 and sent it to the DNA Department for testing.

18 The reason I do that is that is -- we scrape it and
19 do an extra thing in case we got nothing from the swab.
20 That is the area, I guess, you get more friction from or
21 possible epithelial cells from.

22 Q. You are talking about the inside rim of the glove?

23 A. Yes.

24 Q. So you're looking for DNA evidence from the
25 wearer of the glove?

MS. RUFF ON DIRECT

1 A. Yes.

2 SOLICITOR: I show Defense Counsel State's Exhibits
3 68, 69, 70 and 71.

4 May I approach the witness, Your Honor.

5 THE COURT: You may.

6 BY SOLICITOR:

7 Q. What are these items, first State's Exhibit 68. I
8 believe that is your item 48 point one?

9 A. Yes, maam.

10 Q. What would be inside that little envelope?

11 A. This is the swab I was talking about earlier from
12 the scrappings on both the gloves. The swab was inside
13 this envelope. I created this envelope and it has my
14 initials on the outside.

15 Q. What do you do with that envelope?

16 A. I put it in a heat-sealed pouch and send it to the
17 DNA Department for further testing.

18 Q. I will ask you to look at State's Exhibit 69, which
19 would be your 48 point two.

20 A. This is a cutting from the glove that I got posi-
21 tive phenol testing on, and that means there is a possi-
22 bility that is blood.

23 Q. Did you have the same procedure with that item as
24 you did with the first one?

25 A. Yes, put it in an envelope, seal it and put it in

717

MS. RUFF ON DIRECT

1 the heat sealed pouch.

2 Q. State's Exhibit 70 is your 48 point three.

3 A. Yes, this is a cutting from the palm of the blue
4 glove or the glove with blue coating, and once again I
5 created this envelope, sealed it, and initialed it and
6 put it in a heat-sealed pouch.

7 Q. State's Exhibit 71 which is your 48 point four.

8 A. This was a cutting from the palm area of the other
9 glove that I processed. I put it inside the envelope,
10 sealed it, initialed it and put it in a heat sealed pouch
11 as well.

12 SOLICITOR: Your Honor, State moves Exhibits 68, 69,
13 70 and 71 in evidence.

14 MR. BROWN: Without objection.

15 THE COURT: Admitted, without objection.

16 (Small envelopes described admitted in evidence
17 without objection as State's Exhibits 68, 69, 70 and 71)
18 BY SOLICITOR:

19 Q. Ms. Ruff, the gloves themselves that have your mark-
20 ings, do you see where you have made cuttings on them?

21 A. Yes.

22 Q. Could you hold those up for the jury to indicate
23 where you have made cuttings and markings?

24 A. As you can see, this is the palm of this glove,
25 and I actually cut out this area and put it in this

MS. RUFF ON DIRECT

1 envelope and sent it to DNA for further testing.

2 These other areas you see that I've marked, they
3 flouresced with an alternate light source so I did
4 testing on these gloves and did not find it.

5 Q. All right. I'm going to show you what's been marked
6 as our State's 43. This is entered in evidence earlier
7 as State's 43.

8 Can you identify this item or have you had any con-
9 tact with that?

10 A. Once again, my initials are outside with the case
11 number, and inside is another bag, again with my initials,
12 the date and the item number, and inside is a black
13 stocking.

14 Q. Did you perform any processing on this item?

15 A. Yes, I did. I looked for hairs on this item, plus
16 I put it under the alternate light source and several of
17 the areas did flouresce.

18 So instead of doing a cutting on this item I went
19 ahead and sent the entire item to the DNA Department.

20 Q. Did you take any swabs of this item?

21 A. Yes, from scrapping the item I did collect swabs and
22 that is swab two point one.

23 SOLICITOR: I show Defense Counsel State's 65.

24 May I approach the witness?

25 THE COURT: You may.

MS. RUFF ON DIRECT

1 BY SOLICITOR:

2 Q. This is State's 65, and I believe it is your two
3 point one?

4 A. Yes, it is, and it is once again an envelope that
5 I created, put a swab inside it, labeled it and put my
6 initials on it.

7 Q. Is this a swab from that . .

8 A. It is from scrapping it with a disposable scapel and
9 then whatever falls on the white paper I swab the area
10 and that's the swab from that.

11 Q. Thank you, maam.

12 I show you State's Exhibit 64.

13 A. I recognize that. It has my initials and the date
14 and the item number on it. This is my item number three
15 which is a white glove with green trim. Again my initials,
16 item number, date, lab number.

17 This is actually the white paper I was talking to
18 you about that I actually got the swab from the scrap-
19 pings. I saved that.

20 Q. That's item three, is that correct?

21 A. Yes, it is.

22 Q. Scrappings from item three?

23 A. Yes.

24 Q. Okay.

25 A. Then this is the glove that I processed. As you

MS. RUFF ON DIRECT

1 can see, this is another area missing right here, from
2 the palm area. This is the area I cut and sent to the
3 DNA Department for further testing.

4 And that is marked for either possible semen or
5 possible blood. I put a negative sign by it.

6 Q. You didn't find any of those?

7 A. No, I did not.

8 SOLICITOR: I show Defense Counsel State's Exhibit
9 66 and 67.

10 May I approach the witness, Your Honor?

11 THE COURT: You may.

12 BY SOLICITOR:

13 Q. I show you State's Exhibits 66 and 67, which is
14 your three point one and three point two.

15 A. Yes, it is. Three point one is the swab of the
16 scrappings from the glove. Again, my initials and date
17 there.

18 This is my three point two, the cutting from the
19 palm area of the glove, with my initials and date.

20 Q. And, Ms. Ruff, given that you did not find blood or
21 semen, would you still then send it to DNA for testing,
22 or would that be the end of that piece of evidence?

23 A. Like if I found an area that was positive, I would
24 make a cutting and send it to the DNA Department, but I
25 also do the scrappings for the epithelial skin cells

MS. RUFF ON DIRECT

1 -- even if I don't see anything, I always do that, not
2 knowing if I got anything or not.

3 SOLICITOR: Your Honor, State moves 66 and 67 in evi-
4 dence.

5 MR. BROWN: Without objection.

6 THE COURT: Admitted, without objection.

7 (Small envelopes described above admitted into evi-
8 dence without objection as State's Exhibits 66 and 67)

9 BY SOLICITOR:

10 Q. Those are all the questions I have. Please answer
11 anything Defense counsel has for you.

12 MR. BROWN: May it please the Court?

13 CROSS EXAMINATION

14 BY MR. BROWN:

15 Q. Agent . .

16 A. No, sir.

17 Q. What is the correct title?

18 A. Patty Ruff.

19 Q. Patty -- well, okay. How about Ms. Ruff?

20 A. Either is fine.

21 Q. Okay. You talked about an area that is clean and
22 sterile. Is it clean and sterile when you do this?

23 A. Yes, sir.

24 Q. And that sterility is there to prevent cross-
25 contamination?

MS. RUFF ON CROSS

1 A. That's correct.

2 Q. Would you take items from -- like an item from a
3 glove and an item from a hat and scrape out all the skin
4 stuff onto the table at the same time?

5 A. No, sir.

6 Q. And you wouldn't -- you certainly wouldn't take
7 something from this case and scrape it out on a table
8 and something from another case and scrape it out on the
9 same table?

10 A. Absolutely not, no, sir.

11 Q. And would you put a piece of paper out on the table
12 and scrape an item onto that piece of paper from a case,
13 and then take items from another case and scrape it onto
14 that same paper?

15 A. No. We wash the table down in between items with a
16 solution, and we use disposable scapels that we scrape
17 the items down with or disposable spatulas. So each
18 case is sterile.

19 Q. It's kind of like when you go to a doctor's office.
20 They have an exam table and they pull out that sheet of
21 paper and when that person leaves they throw that one
22 away and . . .

23 A. Yeah.

24 Q. . . pull down another paper. They certainly don't
25 use the same sheet of paper for another exam?

MS. RUFF ON CROSS

1 A. That's correct.

2 Q. Because that questions the integrity of the evidence,
3 if there has been some commingling?

4 A. Correct.

5 Q. Okay, and are there some areas that may not have
6 had the evidence removed for the DNA process?

7 A. . .

8 Q. I mean, is there a chance that there is some type
9 of biological matter on there that either did not fall
10 off or something of that nature?

11 A. To my knowledge, no. Like I say, when I'm col-
12 lecting epithelial cells I cannot tell you I did not
13 leave an epithelial skin cell on that glove.

14 Q. Okay, and let me ask you this. Epithelial skin cells
15 are like when I touch something?

16 A. Yes.

17 Q. And skin just . . .

18 A. Yes, it sluffs off.

19 Q. What is the word you used?

20 A. Sluffs off.

21 Q. Okay, I've heard that before. It just comes off?

22 A. Yes.

23 Q. You are using skin and it kind of regenerates itself
24 when it does fall off?

25 A. Correct.

MS. RUFF ON CROSS

1 Q. If somebody took a pair of panty hose and ripped them
2 in half -- you know, took them out of the package and
3 ripped them in half, obviously on both halves you would
4 expect there are epithelial cells?

5 A. There is always a possibility.

6 Q. Because that is why you looked at them, and how about
7 cigarette butts?

8 A. There is always a possibility.

9 Q. Okay, so you can even look for DNA evidence . .

10 A. Or saliva.

11 Q. . . or saliva even on cigarette butts, and for
12 skin cells wherever they have touched their hands at
13 that time?

14 A. Yes.

15 Q. Okay, and can you have DNA multiple contributors on
16 the same item?

17 A. Do what?

18 Q. Can you?

19 A. That is probably more of a question for the DNA ana-
20 lyst.

21 Q. Okay.

22 A. Yes, sir.

23 Q. But if a skin cell came off of someone into -- came
24 off into a glove when someone was wearing a glove, it
25 could be there for you to scrape out?

MS. RUFF ON CROSS

1 A. Common sense, yes.

2 Q. And so if I wore a pair of shoes today and my skin
3 cells sluff off into the shoe, and then somebody else
4 wore my shoe and their skin cells also sluffed off inside
5 the shoe, in that case there would be two different . .

6 A. Yes, sir.

7 Q. . . sets of evidence inside that item?

8 A. That's correct.

9 Q. Is there any way to date deposits of DNA?

10 A. Not in my profession, no.

11 Q. Okay. So you don't know -- you can't say this is
12 a first layer? It's not like archeology where you go
13 down and look at the dirt and it's in different layers . .

14 A. No, sir.

15 Q. . . and you have what's on top and . .

16 A. No, sir.

17 Q. And it would be nice if you could get a top line on
18 evidence?

19 A. Yes, sir.

20 Q. And if you could do that, you all would?

21 A. Most likely we would, yes, but I've never heard of
22 that.

23 Q. Okay. Did you fill out a report in this case?

24 A. Yes, I did.

25 Q. Did you take a look at -- did you take a look at .

MS. RUFF ON CROSS

1 any of the items contained in State's Exhibit 61?

2 A. . . .

3 Q. That is our number and I can show it to you.

4 A. You mean like the cards and things? No, sir, I did
5 not.

6 Q. You didn't look at this?

7 A. No, sir.

8 Q. Or swab it down?

9 A. No.

10 Q. And an area like a leather wallet could be swabbed
11 to see if somebody's DNA was on top of it, is that cor-
12 rect?

13 A. That is a possibility.

14 Q. Or skin cells?

15 A. Sometimes what they do, and I don't know if it was
16 done in this case, you may have to draw -- you make a de-
17 cision whether you want to do latent prints or epithelial
18 skin cells because you can't do both always.

19 You have to make a decision which would be most prob-
20 ative in the case.

21 I don't know anything about that sample.

22 Q. You don't do anything with prints?

23 A. No, sir, I don't.

24 Q. You aren't a print person?

25 A. . . .

1 MR. BROWN: Beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 BY MR. BROWN:

4 Q. And just briefly, the department that you work in or
5 that at the time you worked in, what was that called again?

6 A. Evidence processing department.

7 Q. And that would be -- sometimes SLED does reports for
8 different departments, and it will say what department?
9 Does it say that on there?

10 A. Yes, sir, it should.

11 MR. BROWN: No further questions, Your Honor. Thank
12 you.

13 THE COURT: Solicitor.

14 SOLICITOR: Nothing further, Your Honor. May this
15 witness be excused?

16 MR. BROWN: Without objection.

17 THE COURT: You are excused.

18 (Witness excused)

19 THE COURT: We're going to go ahead and take a ten
20 minute break. You all go back and refresh yourselves
21 again.

22 Do not begin discussing this case. It would not be
23 appropriate to do so. You haven't heard all the evidence.
24 You haven't heard the arguments of counsel nor my charge
25 on the law.

1 So go on back to your jury room, and we will be
2 with you shortly.

3 Thank you.

4 (Jury excused from Courtroom at 11:16 A.M.)

5 BAILIFF: Your Honor, the jury is clear.

6 THE COURT: Thank you.

7 Anything we need to take up for the State before
8 we go back?

9 SOLICITOR: Nothing for the State.

10 THE COURT: Mr. Brown?

11 MR. BROWN: Nothing new, Your Honor.

12 THE COURT: All right. Let's go ahead and take
13 a ten minute break.

14 (Whereupon, there was a brief recess, after which
15 the matter resumed)

16 THE COURT: State ready to go?

17 SOLICITOR: Yes, maam.

18 THE COURT: Defense ready to go?

19 MR. BROWN: Ready, Your Honor.

20 THE COURT: All right. Let's bring them in.

21 SOLICITOR: Your Honor, I have received Laura Mills'
22 CD to give to Mr. Brown. He asked that I provide it.

23 MR. BROWN: And, Your Honor, there is one issue. We
24 don't necessarily have to do it right now, but obviously
25 it's something that went on yesterday evening.

1 There was a juror issue that came up, that of Mr.
2 Boston, and one question that I think should have been
3 asked is how that issue came up.

4 In other words, who realized it and what is the po-
5 tential that other jurors had been tainted through any
6 communications from Ms. Boston to Mr. Boston about the
7 trial, and whatever their general discussions were.

8 THE COURT: I asked her whether or not she had any
9 discussions with any of her fellow jurors in regards to
10 anything he may have heard that she could not hear.

11 MR. BROWN: I don't know whether the fact that her
12 husband was here was made known to the Court via a juror.

13 THE COURT: No. It was brought to my attention by
14 . . .

15 SOLICITOR: May I?

16 THE COURT: Okay.

17 SOLICITOR: It was brought to my attention by Of-
18 ficer Jamison, Deputy Jamison, and I brought it to your
19 attention.

20 MR. BROWN: I'm trying to get back to the source.

21 THE COURT: It appears that Deputy Jamison figured
22 it out.

23 Let's wait until -- the jury is coming in.

24 MR. BROWN: We can take it up at the next break,
25 Your Honor.

1 THE COURT: Okay.

2 (Jury returned to Courtroom)

3 BAILIFF: Jury is entering.

4 Your Honor, the jury is seated.

5 THE COURT: Welcome back, ladies and gentlemen.

6 THE COURT: Solicitor, you may call your next wit-
7 ness.

8 SOLICITOR: Thank you, Your Honor.

9 The State calls Laura Mills.

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1 SOLICITOR: Laura Mills, would you
2 please come forward and be sworn?

3 CLERK: You'll have to speak up.

4 Laura Mills, being duly sworn,
5 testified as follows:

6 CLERK: Please be seated and state
7 your full name and spell your last name.

8 A. My name is Laura Mills. M I L L S.

9 DIRECT EXAMINATION

10 BY SOLICITOR:

11 Q. Good afternoon, Ms. Mills.

12 A. Good afternoon.

13 Q. Where are you employed?

14 A. I'm employed at the DNA and Serology Department
15 at the South Carolina Law Enforcement Division, more
16 commonly known as SLED.

17 Q. And how long have you worked there?

18 A. I've been employed at SLED since September of
19 2004, so approximately four and a half years.

20 Q. And what kind of training and background do you
21 need to have to hold your job at SLED?

22 A. Well, I have a Bachelor's Degree in Chemistry
23 which I received from the Honor's College at Clemson
24 University. And I also have a PHD degree in basic
25 pharmaceutical sciences which I received

DR. MILLS ON DIRECT

1 from the University of South Carolina. During my
2 time at Clemson and at USC I had the equivalent of
3 publishing several scientific papers in peer review
4 journals.

5 Following the completion of these two degrees, I
6 worked for approximately one year in a biology lab at
7 the University of South Carolina doing biology
8 research before I became employed at SLED.

9 After I became employed at SLED, I did train for
10 approximately one year under the direct guidance and
11 supervision of a court qualified DNA analyst who also
12 held a PHD degree.

13 Q. And Doctor Mills, have you ever testified in
14 Court regarding your work at SLED?

15 A. Yes, I have.

16 Q. And what -- How do you explain your work? You
17 are a DNA analyst. What is a DNA analyst?

18 A. Well, we do DNA and serology testing. What
19 happens typically is that we get evidence submitted
20 to SLED in a criminal investigation. These can be
21 swabs from pores, cuttings from clothes, rape kits.
22 Anything that has the potential of holding biological
23 evidence.

24 What we first have to determine is what body
25 fluid we are looking for. Is it saliva? Is it

DR. MILLS ON DIRECT

1 semen? Is it blood? Is it skin cells? So that's
2 the serology portion of my work. First we determine
3 what body fluids are present. Once we know what body
4 fluid we are looking for, then we proceed with the
5 DNA analysis portion of our work.

6 What that is is that we take the cutting or we
7 take the swab and we send it through a series of
8 steps in the process where we extract or pull out the
9 DNA from those particular pieces of evidence. Once
10 we pull out that DNA we are able to get a DNA profile
11 from that evidence which we then can compare to the
12 DNA profile of a particular person, whether it be a
13 victim or a subject. We can look and see who left or
14 who did not leave the evidence DNA versus the
15 standards that we get from the victims or subjects.

16 Q. And how is it possible to use DNA or maybe
17 better - what is DNA that allows it to be used as an
18 identifier of an individual?

19 A. Well, DNA stands for Deoxyribonucleic acid.
20 It's a chemical found in virtually every cell of the
21 human body. And virtually every one's DNA is the
22 same. Because it all codes for, you know, arms and
23 legs and stuff that every human needs. However,
24 there is a very small portion of DNA that differs
25 from individual to individual and that small

DR. MILLS ON DIRECT

1 portion of the DNA is what we as forensic scientists
2 use to discriminate one person from another. No two
3 people will have the same DNA profile unless you are
4 an identical twin.

5 Therefore when we develop a DNA profile, that
6 profile is unique to one and only one individual
7 unless you are a twin and so we are able to match the
8 DNA profile from evidence and say, yes it would be
9 the same as the profile from the subject or the
10 victim.

11 Q. You said you look for things such as blood,
12 semen, saliva, skin cells. All of those things. Is
13 the same DNA in each one of those items even though
14 technically they are different?

15 A. Yes. Your DNA wouldn't change just because it
16 may be your skin cells or blood or semen. You would
17 have the same profile in all of your biological
18 fluids.

19 Q. Now, Doctor Mills, have you testified before
20 regarding DNA in a courtroom of law?

21 A. Yes, I have.

22 Q. And have you been declared an expert in DNA
23 analysis?

24 A. Yes, I have.

25 SOLICITOR: Your Honor, at this time

DR. MILLS ON DIRECT

1 the State moves to have Doctor Mills declared an
2 expert in DNA analysis.

3 THE COURT: Mr. Brown, do you need to
4 voir dire, sir?

5 MR. BROWN: May I briefly voir dire?

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. BROWN:

9 Q. Agent Mills, have you testified as an expert
10 witness in previous cases?

11 A. Yes, I have.

12 Q. Okay. And is one of those cases an L065342?

13 A. Yes, it was.

14 Q. Okay. And when you were qualified as an expert
15 in that case, did you tell that Court that there had
16 been contamination with your work during the
17 processing of that evidence?

18 A. They allowed me to get qualified for the DNA
19 expert and that was not relevant to me being
20 qualified as an expert witness in it.

21 Q. So the Court that qualified you as an expert at
22 that time did not know that there had been
23 contamination regarding that very case you were
24 testifying in?

25 A. Not to qualify me as an expert witness. No.

DR. MILLS ON CROSS

1 Q. Okay. They did not know that?

2 A. No.

3 Q. Did the other attorney - the attorney for the
4 Defendant know that?

5 A. I would assume no.

6 Q. Okay. And you never told them. Did you ever
7 tell them there was contamination in that case?

8 A. I would have to go back and look at my records
9 for this particular case but I think there was
10 discussion with the solicitors on this particular
11 case but I don't have my records from that case.

12 Q. Okay. So you told the prosecutor about the
13 contamination; did you also tell the defense
14 attorney?

15 A. I would have to look at my records for that
16 case, sir.

17 Q. And, in fact, do you usually tell the defense
18 attorney anything or do you go through the
19 prosecutor?

20 A. We - normally when we are called by a defense
21 attorney, we go through the solicitor to make sure
22 that we can talk to the defense attorney. Do they
23 want to be present while we talk to them? Just to
24 get their okay before we talk to them but we do on
25 very many occasions talk to the defense

1 attorneys. Yes.

2 Q. And would the discussion with the defense
3 attorney about the contamination occurring in that
4 case be a significant discussion?

5 A. It could have been. The - what you are
6 referring to - the contamination in that case did not
7 result in incorrectly putting out a report so there
8 would not have been discussion because the report
9 that was issued on that case was correct.

10 Q. So I assume that means no. You were qualified
11 and the defense attorney in that case did not know
12 about the contamination.

13 A. I would assume not. No.

14 Q. And did the other cases that you were proposed
15 as an expert in and subsequently qualified, did they
16 know about your qualification in this case - that
17 case I mentioned L065302?

18 A. Did they know about my qualifications?

19 Q. Did you say I've been qualified in this previous
20 case?

21 A. Absolutely. Any time I go to Court I always
22 stress about how many times I've qualified as an
23 expert witness and have had no trouble being
24 qualified as an expert witness.

25 Q. And so when you were qualifying in

DR. MILLS ON CROSS

1 these subsequent cases as a DNA expert and relying
2 upon your previous qualification, did you tell them,
3 by the way when I was previously qualified, however,
4 I did not tell the Court or the defense attorney that
5 there had been contamination in that case?

6 A. It's not relevant. The DNA - an expert in the
7 field of DNA analysis is simply somebody that knows
8 more than the average person about DNA analysis.
9 Therefore, whether or not there was contamination or
10 procedures or protocol is not relevant. It's whether
11 or not my background in DNA analysis and Serology is
12 enough to qualify me as an expert witness knowing
13 that I know more than the average person.

14 Q. So it's how smart you are that makes you an
15 expert?

16 A. Not how smart I am. No, sir. It's whether or
17 not I know based on my education, my experience, the
18 hundreds of cases that I have performed DNA and
19 Serology testing on, whether or not that allows me to
20 know more than simply somebody that, you know, has a
21 completely different background.

22 Q. But this is no doubt the first time hearing
23 qualifications that contamination has been discussed
24 in Court?

25 A. During my qualifications, yes.

1 Q. And this is the first time you've told somebody
2 that there has been some contamination that's . .

3 A. No, sir. It's not.

4 Q. The first time you've told the defense attorney?

5 A. It's the first time that I've talked to the
6 defense attorney about it. Yes.

7 Q. Have you told the other defense attorneys about
8 the contamination in those other cases?

9 A. Those other cases if there were problems in the
10 case they were fixed prior to reports being issued
11 out, meaning that once the report is issued it's
12 completely clean. It's completely clear. The
13 results are what they are and we stand by those.
14 There is no evidence of any sort of problem in the
15 other reports that were put out.

16 Q. So I take it that's a no?

17 A. You'd have to repeat your question.

18 Q. Okay. So you didn't tell the other defense
19 attorneys about the contamination before the
20 qualification?

21 A. No, sir. We don't . .

22 Q. This is the first time that you've told a
23 defense attorney about contamination prior to you
24 being offered as an expert witness?

25 A. Yes.

DR. MILLS ON CROSS

1 Q. Okay.

2 MR. BROWN: Your Honor, at this time
3 we would oppose her qualifications and renew our
4 previous objections as to two previous motions
5 regarding the DNA, the DNA evidence, and the DNA
6 testimony and we propose that the prior
7 qualifications do not count as supporting the
8 qualification here because those were done and the
9 Judge was blind to the contamination and the defense
10 attorneys were blind to the previous contamination.

11 THE COURT: Respectfully, sir, I would
12 deny your previous motions as well as your renewed
13 motions. Ladies and gentlemen, normally a person
14 cannot give what is called opinion testimony. As a
15 general rule, when a person testifies they must
16 testify as to what they saw, heard, or sensed by
17 smell or something of that nature.

18 However, there is an exception when someone is
19 qualified because of education or experience. They
20 are permitted to give their opinion in certain areas
21 if the Court qualifies them that way. In this case,
22 Ms. Mills is going to be qualified in the area of DNA
23 analysis.

24 Ladies and gentlemen, the witness has been
25 qualified as an expert. This does not mean that

DR. MILLS ON REDIRECT

1 you must accept the opinion but it's evidence for you
2 to utilize in any way you see fit. Solicitor?

3 SOLICITOR: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY SOLICITOR:

6 Q. Doctor Mills, before you were talking about
7 that. What is contamination? I know that's a big
8 word and can mean lots of things. In your line of
9 work, what could that or does that mean?

10 A. Certainly. We work with extremely small amounts
11 of DNA. A contamination or cross-over event
12 typically occurs when samples with very, very, very
13 low levels of DNA. It may be a sample that had a
14 high amount of DNA inadvertently got into the tube
15 containing the sample with the small amount of DNA.

16 So that when we run the profiles we might see a
17 mixture and that mixture could be contributed to an
18 outside source. In this particular case, maybe
19 another case sample got into those tubes but we do
20 have very rigorous guidelines and strict protocols
21 for detecting any sort of contamination or any sort
22 of problem associated with our casework.

23 Q. In other words, because you said DNA is so
24 individual that we all have different DNA across the
25 world, if a contamination does occur are

DR. MILLS ON REDIRECT

1 you then able to go back in and separate it back out
2 to where it belongs?

3 A. A lot of times we are. Yes. A lot of times we
4 can - if we have a mixture of two people. Maybe one
5 person's DNA is at a much higher level than another
6 person's DNA, it may be that's major or what we would
7 call a major profile. The person who left the most
8 DNA maybe we can contribute that back to maybe an
9 analyst, his own DNA, or DNA from another case
10 accidentally getting into a tube from another case.
11 We do have procedures and protocols in place to
12 prevent this from happening and we have very strict
13 guidelines for detecting any sort of problem or
14 contamination that could occur in the lab.

15 Q. And Doctor Mills, earlier Ms. Ruff
16 testified about scrapings and she indicated the
17 evidence was not even--could not even be seen by the
18 naked eye. Does that contribute to the possibility
19 of contamination? You said it was small. How small
20 are we talking?

21 A. Well, we could get, you know, essentially -
22 somebody could touch --like I could touch this piece
23 of wood and you could come back and swab it for my
24 skin cells and there is a possibility that you could,
25 in fact, pick up my DNA profile.

DR. MILLS ON REDIRECT

1 Because we are working with DNA which you cannot
2 see with the naked eye, there is always the
3 possibility of something getting into the tubes that
4 you are working with. Contamination is something
5 that is dealt with worldwide. It's not something
6 that just our DNA lab at SLED has to deal with. It
7 happens all across the world. It is something that
8 every DNA analyst comes across.

9 MR. BROWN: Your Honor, I object.
10 She's not qualified as a lab analyst. We know that
11 from prior qualifications. She was not offered as an
12 analyst about the statistical rate of contamination
13 that she's certainly providing tonight with her
14 testimony about the amount of contamination that
15 exists quote worldwide.

16 THE COURT: Okay. I've respectfully
17 overruled. Let's go ahead and move on, Solicitor.
18 Q. Doctor Mills, let's go to this particular case.
19 This is the state of South Carolina versus Alfonzo
20 Howard. Were you involved in analyzing items related
21 to this case?

22 A. Yes, I was.

23 Q. And as we heard from Ms. Ruff, you guys have
24 your own numbering system?

25 A. That's correct. Yes.

DR. MILLS ON REDIRECT

1 Q. How do you designate it? I call it the state of
2 South Carolina versus Alfonzo Howard. What do you
3 call this case?

4 A. We call this case L06-7960. It's a unique
5 identifier to this case that we are able to take that
6 number L06 meaning it happened in the year 2006 and
7 it was the seven thousand, nine hundred and sixtieth
8 case that came in SLED that year. So it's our own
9 unique identifier.

10 Q. So, by May of 2006 you had already had eight
11 thousand cases at SLED. Is that correct? If this is
12 7960 . .

13 MR. BROWN: Your Honor, I object.
14 Leading. The question is not she had nine thousand
15 cases.

16 THE COURT: Solicitor, if you want to
17 go ahead and rephrase the question.

18 Q. Doctor Mills, this case came to you what time of
19 year in 2006? Do you know?

20 A. I was - this case was received at SLED on June
21 sixth of 2006 and I would have been assigned this
22 case shortly after.

23 Q. And what case number was this case given?

24 A. L06-7960.

25 Q. And what does the 7960 indicate?

DR. MILLS ON REDIRECT

1 A. That it was the seven thousandth, nine hundred
2 and sixtieth case that came into SLED's forensic
3 building that year.

4 Q. Thank you. How many items did you actually
5 analyze as part of this case?

6 A. A full 54 items of evidence.

7 Q. Is that a highly irregular number for review
8 with regards to the ...

9 MR. BROWN: Your Honor, objection.

10 Relevancy. Whether the number of items were a lot in
11 this case or not a lot for another case.

12 THE COURT: Overruled.

13 A. We consider that a large amount. Typically we
14 deal with ten items or less per case.

15 Q. In this case you were presented you said fifty-
16 four items from the law enforcement in this case.

17 A. That's correct.

18 Q. Now, since earlier we were already talking about
19 contamination, is there an issue in this case with
20 one of the fifty-four items involving a contamination
21 event?

22 A. Yes, there was. The fingernail scrapings. Item
23 1.8.

24 Q. And what is item 1.8?

25 A. Certainly. Item 1.8 are fingernail scrapings

DR. MILLS ON REDIRECT

1 from the sexual assault evidence collection kit. The
2 kit is actually item one and then everything within
3 the kit, like blood would be 1.1, 1.2, 1.3. So
4 that's how our in-house numbering system works. So,
5 to say 1.8 means that it was part of the sexual
6 assault kit because it's designated with a one and
7 then the .8 means that it's fingernail scrapings from
8 the right and left hand of the victim.

9 Q. And what happened to these fingernail scrapings
10 that would constitute referring to it as a
11 contamination event?

12 A. Certainly. The fingernail scrapings were found
13 to have a profile from another case in them.
14 Therefore, we rendered this sample inconclusive
15 meaning that we could not interpret this sample. It
16 was at what we term a cross-over event meaning that
17 when we looked at how much DNA was extracted under
18 these fingernail scrapings it was a low level of DNA
19 and a sample with a much higher amount of DNA crossed
20 over or somehow inadvertently got into the tube with
21 the fingernail scrapings. Our in-house system caught
22 this. We were able to figure out exactly where this
23 contaminant came from. We went back to the report,
24 issued a new report, and stand by the results.

25 MR. BROWN: Objection. Testimony

DR. MILLS ON REDIRECT

1 contradicts prior testimony and it raises a different
2 question because the response was, we know exactly
3 where it came from.

4 THE COURT: Okay. Respectfully, sir,
5 at cross examination you'll be able to ask her about
6 that. You can continue, Solicitor.

7 Q. Thank you, Your Honor. Doctor Mills, you said
8 you know where the contaminant came from. How do you
9 know that? How do you know that it's not just some
10 unknown source that relates to this case?

11 A. Well, when we do DNA testing in the lab it is
12 not possible to just do one case at a time. There is
13 just not enough time to do that so what we do is we
14 actually batch our cases. We do several cases at
15 once. When the fingernail scrapings profile came
16 out, I did have an unknown profile that was in the
17 fingernail scrapings.

18 We were able after unfortunately the first
19 report was sent out. We were able to trace that that
20 profile that was in the fingernail scrapings actually
21 came from another case and it did, in fact, match
22 fully a profile from another case and therefore,
23 that's how we say we know. We may not know exactly
24 how it got into the tube but we know the case that it
25 came from and the profile of the person that it

DR. MILLS ON REDIRECT

1 came from and we know that without a doubt.

2 Q. Are you able to identify that person who was
3 misplaced into this case?

4 A. Yes.

5 Q. And who was that person?

6 A. It was a person that was-I believe it was a
7 victim in another case and was a deceased person.

8 Q. Okay. Was that person actually deceased at the
9 time when this crime occurred in our case?

10 A. Yes. And had been dead for quite some time.

11 Q. So there is no way that the contamination that
12 appears in the fingernail scrapings was in any way
13 related to this case?

14 A. Absolutely not.

15 Q. Out of fifty-four items, that's one item that
16 was contaminated. Could that have affected the other
17 fifty-three items in this case?

18 A. No. This was an independent event. It was an
19 unfortunate event but those fingernail scrapings were
20 run by themselves. No other piece of evidence in
21 this case was run alongside the fingernail scrapings.

22 Q. So, the other fifty-three are - are you saying
23 there are not even in the area of these fingernail
24 scrapings when that test was run?

25 A. When the fingernail scrapings were run,

1 they were run by themselves. They may have been run
2 in a batch with other cases but they were the only
3 piece of evidence from this particular case run at
4 that particular time. So, you know, items outside of
5 this that I may not have even had at the time,
6 certainly wouldn't have been open at the time. We
7 keep all our evidence in heat sealed pouches sealed
8 so they would not even have been open or anywhere
9 around the tube of fingernail scrapings.

10 Q. And you've been asked -- this deceased person
11 who winds up in the fingernail scrapings, did that
12 DNA contaminate any other tests that were run at the
13 same time as these fingernails were run?

14 A. It was - I'd have to go back and look at the
15 actual report that was issued but I believe that it
16 may have ended up in another tube also from another
17 case.

18 Q. But the only item in this case that was affected
19 were fingernail scrapings?

20 A. From that particular crossover event? Yes.

21 Q. Is there also another form of contamination
22 within a DNA lab? Such as, does your DNA ever wind
23 up in anything?

24 A. Yes, it does.

25 Q. And how does that happen?

DR. MILLS ON REDIRECT

1 A. Again as we said, you know, we work on very,
2 very small amounts of DNA. You can't see it. You
3 don't know where it is. We take very strong
4 precautions to prevent our DNA from inadvertently
5 getting into a tube but you could breathe.

6 You could have skin cells that are sloughed off
7 that you don't see and even though you clean
8 everything with bleach or Bromicide or you UV it
9 which will hopefully kill all the DNA in your work
10 area, you can't be a hundred percent sure when you
11 are working with something you can't see so after we
12 run tests the very first thing we always do when we
13 get an unknown profile now is that we look.

14 We have a database of every analyst and
15 virtually everybody that would ever handle evidence
16 in our building and we look through that list to make
17 sure that our profile is not in any evidence and if
18 it is then we make note of that, we alert our
19 Supervisor to that, and we go back and we rerun the
20 evidence.

21 Q. And out of these fifty-four items, did your DNA
22 come in contact with one of these items?

23 A. Yes, it did.

24 Q. And which item was that?

25 A. It was our item number 19, which was a swab from

1 the outside passenger door handle behind the driver's
2 door of the Lexus.

3 Q. So, your sample showed up in that item?

4 A. Yes.

5 Q. Did anyone else's sample show up?

6 A. No, those were the only problems.

7 Q. Now, you said unfortunately you had issued a
8 report prior to finding the contamination?

9 A. Yes.

10 Q. When was that report issued?

11 A. The very first report was issued on November
12 twentieth of 2006.

13 Q. And how long after that report was issued did
14 you discover the contamination?

15 A. I believe that it was within eight days.

16 Q. And what is the protocol or what is the process
17 for actually catching it? You said you had stringent
18 protocols and things like that - procedures set up.
19 What actually happened? How did this come about?

20 A. This actually we found out about this
21 contaminant because it was a close hit, meaning our
22 database where samples from other cases are put in
23 to search against convicted offenders to see if we
24 can determine the unknown source of the DNA profile.

25 I actually had this case and another

DR. MILLS ON REDIRECT

1 case hit against each other which as soon as these
2 two cases hit they were totally unrelated and it made
3 us go back and reevaluate the cases to see if they
4 really were irrelevant or whether or not there was a
5 potential source of contamination that occurred at
6 these two cases.

7 As soon as we discovered that there was a
8 problem we immediately started investigating the
9 entire case over. Every single sample that was run
10 in this case was reevaluated and relooked at and that
11 was done by me. That was done by my supervisor who
12 also holds a PHD degree and we did, in fact, issue a
13 new report and stand by that report one hundred
14 percent. There's no other source of contamination or
15 errors in the updated report.

16 Q. When did you issue the updated report with the
17 clean information?

18 A. The updated report was issued July eleventh of
19 2008.

20 Q. And you said the contamination event would have
21 had to have occurred prior to the November of 2006
22 report?

23 A. That is correct.

24 Q. When did you actually receive Alfonzo Howard's
25 blood sample in your lab?

1 A. Alfonzo Howard's blood standard which was our
2 item number 54. The very last piece of evidence that
3 I analyzed in this case came through the doors of
4 SLED on May eleventh of 2008. I mean 2007. I'm
5 sorry.

6 Q. So nearly a year after the contamination event
7 had first arrived into the lab.

8 So, any items that had his DNA on them prior to
9 May of 2007 were not involved in the contaminated
10 event. Is that correct?

11 MR. BROWN: Your Honor, I would
12 object. She refers to items with his DNA on it.
13 There's no basis for that. There's no basis for the
14 items.

15 SOLICITOR: We're getting to that.

16 THE COURT: Okay. Just put it
17 together, Solicitor.

18 SOLICITOR: Yes, ma'am.

19 Q. Doctor Mills, during your analysis of all of the
20 pieces of evidence in this case, did you locate
21 Alfonzo Howard's DNA on any items that were sent to
22 you in this case?

23 A. Yes, I did.

24 Q. And you had those items prior - did you have
25 those items prior to his sample arriving in

DR. MILLS ON REDIRECT

1 May of 2007?

2 A. Yes, these items where we got his profile off of
3 were ran and completely finished. The analysis on
4 these items were completely finished before I
5 analyzed Alfonzo Howard's blood standard.

6 Q. And how does that work? If we send you a piece
7 of evidence, what do you do? Do you develop a
8 profile on that item and then go back and compare?

9 A. Yes, well, a lot of times the standards will
10 arrive with the evidence or a lot of times we'll get
11 the evidence in without exactly knowing who the
12 suspects are. Part of our protocol is that we do not
13 have standards and evidence mixed together. They are
14 supposed to be separated at all times.

15 Therefore, evidence should be run with evidence
16 and standards run with standards. So, when I ran
17 the items of evidence where I got Alfonzo Howard's
18 standard and got his profile from, they were run by
19 themselves. They were run in an evidence batch
20 meaning that it was a group of items that was just
21 evidence.

22 His blood standard would have been run after it
23 came in the door by itself because you don't want to
24 potentially contaminate the evidence with the
25 standard which in this case there was no

1 indication of that whatsoever.

2 Q. So let me make sure I understand in layman's
3 terms. If you are given a piece of evidence, are you
4 actually able to see a DNA profile on that piece of
5 evidence? You just don't have his name for it yet.
6 Is that how it works?

7 A. Well, you can develop the DNA profile from that
8 and then we will go back and look at the DNA profiles
9 from the standards and match it or exclude it that
10 way.

11 Q. Maybe you can clarify. What is a known standard
12 and an unknown sample?

13 A. A known standard is just simply if I were to
14 come to one of you and draw your blood or take a swab
15 of your mouth I can say this belongs to you. This is
16 your blood. This is your buccal swab which is a
17 slide swabbed from your mouth. So that when I
18 develop my profile I can come back and say, this is
19 your profile.

20 When we develop a profile from evidence, if we
21 don't have anything to compare it to at the time we
22 have to call it an unidentified profile. Once we get
23 somebody's standard and once we get their blood or
24 their slide and then we can go back and compare it
25 and say, does this blood on this evidence item

DR. MILLS ON REDIRECT

1 match the known standard from the particular subject
2 or the particular victim in this case.

3 SOLICITOR: May I approach the
4 witness, Your Honor?

5 THE COURT: All right.

6 Q. I'm going to show you what's been entered
7 already as State's 34 and 80. Start with 34. If you
8 can identify State's 34. Is that something you have
9 received?

10 A. Yes, this would be the blood standard from
11 Alfonso Howard.

12 Q. And is that what you are referring to as a
13 known?

14 A. Yes, it is.

15 Q. When you get it you know that it's Alfonso
16 Howard's blood?

17 A. Yes, I do. It's in a purple topped tube of
18 blood and it's hard to see through the heat-filled
19 patch but this is actually the label that came off of
20 the blood. And it will have his name, which it does.
21 And so we actually take label off the tube of blood,
22 put in onto this envelope. When we pour the blood
23 out in liquid form into a dry form, to stabilize it
24 to be able to keep the blood row for a much longer
25 time. We know that that blood came from that

1 particular person. When we get the DNA profile from
2 this blood I know that this is the DNA profile of
3 Alfonzo Howard.

4 Q. And if somebody has a pair of scissors we can
5 actually open that. Can you just point out to the
6 Jury what you are talking about?

7 A. Sure. This would be the envelope. Inside this
8 envelope is actually a piece of paper with dried
9 blood on it. This blood came from the purple-topped
10 tube of blood that was taken from Alfonzo Howard.
11 This label that you see taped onto the corner of the
12 envelope is the actual label that came off of the
13 tube of blood.

14 Therefore, we can trace this particular piece of
15 blood back to Alfonzo Howard. It's got our case
16 number - L06-7960. It's been labeled as blood and
17 item number fifty-four Alfonzo Howard. It's got my
18 initials and date on the back of this envelope
19 meaning that I poured this blood on this paper and I
20 know that this is the person that this blood came
21 from.

22 Q. Thank you , ma'am. And State's Exhibit 80. Can
23 you identify what's in that item?

24 A. This would be the oral swabs from Lorenzo Hicks.
25 It's the same thing as the blood swab;

DR. MILLS ON REDIRECT

1 I'd like to say that it does but it doesn't. It's
2 going to depend on how much DNA the person leaves.
3 Whether they sloughed off a mass of skin cells and
4 we're looking for touch DNA or whether there is
5 enough blood there to get the DNA profile from but we
6 do not always get a profile.

7 Q. This has been entered as State's 66 and 67.
8 It's been identified as SLED's 3.1 and 3.2. Did you
9 perform an analysis on those items?

10 A. Yes. Item 3.1 which also has our SLED lab
11 number, the item number which is 3.1, the description
12 is a swab from a glove and it's got initials sealing
13 the back of it indicating that both Patty Ruth and I
14 did, in fact, work with this particular piece of
15 evidence.

16 Item 3.2 is also - this is instead of a swab
17 this is just a cutting from the glove and it also has
18 the exact same description as the item number, the
19 lab number, the glove, and it's got initials on the
20 back.

21 Q. Those small items that you have, those came from
22 Patty Ruff's item 3. Is that correct?

23 A. Yes. It's essentially the same numbering system
24 as with the sexual assault kit. They are labeled 3.1
25 because the actual glove was item three so

1 instead of actually drawing blood, they swabbed the
2 inside of his mouth. Inside of this carton would be
3 swabs that were taken from Lorenzo Hick's mouth.

4 It's got his name on envelope and when I received
5 this, the integrity seals would have been in place.

6 Q. And then did you do the same thing as far as
7 developing a known standard for Lorenzo Hicks?

8 A. Absolutely. It doesn't matter if it is blood or
9 saliva. It's still the exact same procedure and we
10 end up with a profile from either one. If I were to
11 go back and do the blood instead of the buccal swab,
12 we would end up with the same printout.

13 Q. There's probably about fifty-four separate
14 items. I want to talk about a couple in particular.
15 You said you analyzed a sexual assault kit. It was
16 your item one. Is that correct?

17 A. That's correct.

18 Q. Did you discover any DNA other than the victims'
19 in that rape kit?

20 A. . . .

21 Q. And by the victims, I mean Amy and Phillip
22 Davidson.

23 A. The only other source of DNA was the female
24 scrapings that we've already talked about with the
25 contaminant.

DR. MILLS ON REDIRECT

1 Q. And Doctor Mills, would a condom if the
2 assailant had been wearing a condom, would that have
3 prevented transfer of DNA?

4 A. Absolutely yes, it could.

5 Q. Some of the other items we had discussed,
6 State's Exhibit 43. I may approach, Your Honor.

7 THE COURT: You may.

8 Q. Item here. You need to tell the Court if you
9 performed an analysis on that item. This may be your
10 two.

11 A. Yes, this would be the black pantyhose stocking
12 cap that's got again the case number. It's got
13 initials and it's got our item number at the top
14 which is L and an identifier.

15 Q. And also, State's 65?

16 A. Yes, this is swabs that were taken from the
17 pantyhose stocking cap so I was actually sent the
18 stocking cap as well as swabs that were taken from
19 the stocking cap. Again, it's got our case number at
20 the top, item number, it's sealed, and who took the
21 actual swabs - their initials are actually on the
22 tape sealing the envelope.

23 Q. And would that be Patty Ruff?

24 A. Yes, it would.

25 Q. And did you discover anything in a profile

1 on those items?

2 A. Yes, I did.

3 Q. And who, in your opinion, did that DNA profile
4 belong to?

5 A. The DNA profiles developed from both of these
6 items, item two which was the stocking cap and item
7 2.1 which was the swab from the stocking cap, were
8 mixtures and a mixture simply means that there is
9 more than one person's DNA on that particular
10 evidence. But the DNA profile developed from the
11 major contributor to these mixtures matches the DNA
12 profile of Lorenzo Hicks.

13 Q. And what is a difference between a major and a
14 minor contributor?

15 A. When we look at a DNA profile, a lot of times we
16 can figure out the person who left the majority or
17 the most amount of DNA on that particular piece of
18 evidence. In this case, the person who left the
19 higher amount of DNA on these particular items was
20 Lorenzo Hicks.

21 Q. And everywhere DNA is left, are you able to get
22 a sample? I'm sorry. A profile out of a sample that
23 you will be able to identify every time. Does it
24 work like that?

25 A. No, it doesn't. It does not work every time.

DR. MILLS ON REDIRECT

1 anything additional with that glove, a cutting, a
2 swab, a scraping, would be 3.1, 3.2, 3.3. So that's
3 how we get the 3.1 and the 3.2. And those for the
4 record are consistent with State's 64, which would be
5 this item.

6 Q. Did you develop a profile from those items?

7 A. Item 3.1, which was the swab from the glove I
8 did and it was a mixture of more than two individuals
9 and Lorenzo Hicks cannot be excluded as a possible
10 contributor to this mixture.

11 I could not say on the 3.1, which was the swab;
12 I made no statement regarding the inclusion or
13 exclusion of Philip and Amy Davidson to this mixture
14 and Alfonzo Howard is excluded as contributing to
15 this mixture.

16 Q. I'll show you the State's 68, 69, 70, and 71 but
17 SLED's 48.1, .2, .3, and .4. Did you perform an
18 analysis on those four items?

19 A. Yes, I did. Again, it's got the same numbering
20 system with the lab number, the item number, and it's
21 got our initials on the back of every envelope.

22 Q. And Doctor Mills, those four items would have
23 come from SLED item 48, which is State's Exhibit 45.
24 Is that correct?

25 A. That's correct. Since they are point 1 and

1 point 2, it means that the pair of items would be
2 item 48 which were gloves.

3 Q. And Doctor Mills, did you develop a DNA profile
4 from these items?

5 A. Yes, I did.

6 Q. All right. Starting with 4.1, in your opinion
7 whose profile was on that item?

8 A. On 48.1?

9 Q. Yes, ma'am.

10 A. 48.1 is a swab from both gloves and 48.1 is a
11 mixture of at least two individuals. The major
12 contributor to this mixture also matched the DNA
13 profile of Alfonzo Howard.

14 Q. And 48.3?

15 A. That is also a mixture with the major
16 contributor matching the DNA profile of Alfonzo
17 Howard.

18 Q. 48.4?

19 A. Also a mixture. The major contributor to this
20 mixture also matched the DNA profile of Alfonzo
21 Howard.

22 Q. And back to 48.2? Is that a swab or a cutting?

23 A. 48.2 was a cutting from a glove.

24 Q. And did you get a DNA profile on that item?

25 A. Yes, in fact, on this particular piece

DR. MILLS ON REDIRECT

1 of evidence, blood was indicated. I did get a single
2 force profile off of this particular piece of
3 evidence. The profile matched the DNA profile of
4 Alfonzo Howard.

5 Q. And in your analysis, do you do any kind of
6 quantification of the strength of that profile?

7 A. Yes. We would say that the probability of
8 randomly selecting an unrelated individual having a
9 DNA profile matching this item is approximately 1 in
10 830 quadrillion.

11 Q. How many zeros is that? A lot?

12 A. It's a lot. Yes.

13 Q. Are there that many people on the Earth right
14 now?

15 A. No, there are not.

16 Q. Did you prepare a report with regards to your
17 findings on these analyses of these items?

18 A. Yes, I did.

19 Q. And also, this is State's Exhibit 72. If you
20 can identify this item and the items contained
21 within?

22 A. Yes, these are extracted and dried DNA samples.
23 When we get through with a case, if we think that
24 it's no sample remaining on these particular items
25 and that there is ample sample to save in

DR. MILLS ON REDIRECT

1 liquid form, what we will do is we will dry the
2 sample down so that the DNA is in dried form in the
3 tube and we will send these particular pieces of
4 evidence back to the submitting agency so that if the
5 defense or anybody else wants to have these items re-
6 tested they are available for doing so.

7 Q. Thank you. At this time the State moves 72 into
8 evidence.

9 THE COURT: Any objection?

10 MR. BROWN: Without objection.

11 THE COURT: Into evidence without
12 objection.

13 (State's Exhibit 72 in evidence without objection)

14 Q. Back to my earlier question, Doctor Mills, you
15 prepared a report regarding your findings in this
16 case?

17 A. Yes, I did.

18 Q. May I approach the witness, Your Honor?

19 THE COURT: You may.

20 Q. This is State's 77 which a copy has been
21 previously been provided to the Defense counsel. Is
22 this your report?

23 A. Yes, it is.

24 Q. And did you prepare this report yourself?

25 A. Yes, I did.

DR. MILLS ON REDIRECT

1 SOLICITOR: Your Honor, the State
2 moves 77 into evidence.

3 MR. BROWN: Your Honor, thus far all
4 the items that have been entered we have spoken
5 before about having a running objection.

6 THE COURT: Subject to your earlier
7 objection. Yes, sir.

8 MR. BROWN: Thank you.

9 THE COURT: It's noted for the record.
10 It's in evidence. Thank you.

11 (Report entered as State's 77 in evidence over objection)

12 Q. Thank you, Doctor Mills. Please answer anything
13 the defense counsel has.

14 CROSS EXAMINATION

15 BY MR. BROWN:

16 Q. Agent Mills, let me ask you about what you
17 identified as items 48.1, 48.2, 48.3, and 48.4? What
18 type of statement did you make regarding the mixtures
19 on those items, the gloves, in Lorenzo Hicks,
20 do you have?

21 A. My exact statement from my report is that the
22 DNA profiles developed from items 48.1, 48.3, and
23 48.4 are mixtures of at least two individuals. The
24 DNA profiles developed from the major contributor to
25 these mixtures also matches the DNA profile

1 of Alfonzo Howard. No statement can be made
2 regarding the inclusion or exclusion of Philip and
3 Amy Davidson to these mixtures.

4 Q. And again, what statement can you make regarding
5 Lorenzo Hicks?

6 A. I did not make a statement regarding Lorenzo
7 Hicks on these items.

8 Q. What statement can you make?

9 A. On item 48.1, which is a swab from both gloves,
10 Alfonzo Hicks is excluded.

11 Q. Which of these is he excluded?

12 A. He would be excluded at D21S11.

13 Q. And -- Sorry.

14 A. Would you like me to list them all?

15 Q. Go ahead. Go ahead. On this one. Not all of
16 the different items. Any that were there.

17 A. One of his -- Mr. Hicks does not show up at
18 D3S1358.

19 Q. Yeah. What doesn't show . . .

20 A. I would have to -- It's hard. Our DNA profiles
21 are a series of numbers but these numbers don't
22 exactly correspond to the peaks that we get, that we
23 are able to pull out major amount of contributors
24 from. I would have to go back and actually look and
25 sit down and actually make a opinion as to

DR. MILLS ON RECROSS

1 whether or not he was included or excluded.

2 It's not really something that I can just look
3 off at a chart of and just say, well he was not
4 there. I actually have to go back through my case
5 file, look at his profile, compare it back to this
6 evidence and I'm certainly willing to do that but I
7 would certainly need some time in order to do so.

8 It's not something that I can just look at the chart
9 real quick and do.

10 Q. Do you have your charts?

11 A. I do.

12 Q. Okay. That's something that you can actually go
13 back and look at?

14 A. Yes, it is.

15 Q. And how long are we talking about?

16 A. Four pieces of evidence. You know, it's
17 something I could go back and do. I would probably
18 have to have somebody also go behind me and review
19 that too. When we issue a DNA report, it's not just
20 my opinion. I have to actually have somebody else
21 agree with my conclusions which is called a technical
22 review. They actually look at my data that's coming
23 off of the instruments. They look at the entire case
24 file. They agree with it. They sign off on it, then
25 it goes through one more step which is

DR. MILLS ON RECROSS

1 called an administrative review, where one of our
2 team members - our lieutenant - actually looks at the
3 report again and agrees with my conclusions.

4 Q. So how long would that take?

5 A. It would take -- I do not have a technical
6 reviewer here so I would have to call my supervisor
7 to see if I could just give you my opinion on it
8 without having it reviewed since it's not in the
9 report form.

10 Q. How long would it take to do it the formal way
11 you usually do it?

12 A. It could take - something like this I could do
13 it in a day.

14 Q. Certainly in thirty-three months you could have
15 done it?

16 A. Yes.

17 Q. Especially if somebody said that Rico Hicks
18 said he wore those gloves and if that was told to
19 multiple police officers. That would be something
20 important?

21 A. I'm not sure who Rico Hicks is.

22 Q. Lorenzo Rico Hicks.

23 A. Okay.

24 Q. The alias off his rap sheet.

25 A. It could have been. Yes.

1 Q. Okay. There was plenty of time in the thirty-
2 three months.

3 A. It could have been. Yes.

4 Q. Okay. And isn't it true that when you have a
5 mixture, that part of the nature of a mixture is that
6 some items are literally on top of another item? I
7 mean there is actually some substance that has gotten
8 on top of another or mixed in with another substance.

9 A. Mixtures can be several things. It can be
10 mixtures of blood and saliva. Mixtures of two
11 people's touched DNA. Virtually mixtures of anything
12 that has biological fluids. We can't say, you know,
13 blood is on top of saliva or, you know, it's two
14 people's touched DNA, one on top of the other. It's
15 just a mixture. We don't know if it is on top of one
16 another. We don't know if they were deposited one
17 before the other at the same time.

18 There's no way DNA can tell you that. It can
19 tell you when you look at that stain to see who the
20 mixture is, it can tell you who left the most amount
21 of DNA in that particular stain but it can't tell you
22 the source of the mixture or how it got there or what
23 the mixture actually is.

24 Q. So, again, there is some material on top of some
25 other material?

DR. MILLS ON RECROSS

1 A. It's a biological -- Mixtures are biological
2 fluids mixed together.

3 Q. Such as one material on top of another.

4 A. I'm not going to say it's material. It's
5 biological fluids mixed together.

6 Q. And if it was skin, would it still be fluid?

7 A. It would be biological -- If you want to say
8 biological material, it can be skin cells combined
9 with skin cells mixed up. Not necessarily I'm going
10 to touch this and somebody is going to come behind me
11 and touch it again. We could get a mixture but you
12 certainly wouldn't be able to say I was the first
13 person to touch it.

14 Q. Okay. So again some material on top of some
15 other material.

16 A. Biological fluid on top of or mixed in with
17 biological fluid or biological material.

18 Q. And part of the issue in a mixture is that some
19 masking can occur at different or real spots.

20 A. Masking can occur, yes.

21 Q. And does the masking dynamic prove difficult
22 matching profiles?

23 A. It's a sample by sample issue you have to deal
24 with. Masking can occur. Masking is simply, you
25 know, if you have a lot of DNA or if you have

DR. MILLS ON RECROSS

1 mixtures. You have minor profiles that are showing
2 up and a lot of times you are not able to exactly say
3 that the minor contributors are there or they're not
4 there. Some of the major contributor's profile could
5 be masking the other profiles. It's a sample by
6 sample basis.

7 We don't always see it. It's something that
8 analysts will run into and we interpret it and that's
9 why we have technical reviews that other analysts -
10 other Court qualified analysts - have to agree with
11 our conclusions. We certainly talk among ourselves
12 before, you know, if we have issues or we think maybe
13 some masking is occurring or not occurring.

14 We are certainly available to help everyone in
15 the lab to decipher mixtures and pull out the major
16 contributors and possibly some minor contributors.
17 But it's not something that we see all the time.

18 Q. Is that technical review done before the report
19 is issued?

20 A. Yes, it is.

21 Q. Okay. And what's your name for the November
22 20th, 2006 report?

23 A. We don't have names for our reports.

24 Q. All right. But this one here is November 20, 2006, and
25 then there is report on July eleventh 2008.

DR. MILLS ON RECROSS

1 A. Correct.

2 Q. And how do you refer to that first report?

3 A. That's the November twentieth, 2006 report.

4 Q. And that had a technical review?

5 A. Yes, it did.

6 Q. And typically you do whose run before the fourth
7 issue if it can help you find the contamination?

8 A. No, sir. Our CODIS - the way we enter into
9 CODIS and the way we search in CODIS now is
10 completely different than what it was when this
11 report was issued. Routinely when we enter now a
12 sample into CODIS, it is not searched until after the
13 report has been technically reviewed.

14 When this particular case was put out for review
15 we were actually entering samples into CODIS and they
16 were being searched before the technical review took
17 place, which is how the problem was found. It was
18 found with a CODIS hit after the report went out.

19 Q. All right. So that report sent out information
20 that said a profile, for example, from a dead guy was
21 under her fingernails. That's the November 20, 2006,
22 report.

23 A. No, sir. It did not say a profile from a dead
24 guy was under her fingernails.

25 Q. It said a profile which when the numbers

DR. MILLS ON RECROSS

1 were all put on the chart, you say it came from a
2 dead guy. It's not in the report that it came from a
3 dead guy.

4 A. Not in the report.

5 Q. Came from a profile that they were -- Let me
6 back up on 1.8R and 1.8L on the November 20th, 2006
7 report. You give a profile of a major contributor,
8 don't you?

9 A. Yes, and I can read the exact paragraph from my
10 first report if you would like that. Exactly
11 verbatim to what it said.

12 Q. And we're talking about that but there is a
13 profile that you generated that you put down November
14 20th of 2006.

15 A. Yes, there was a major profile from underneath
16 the fingernail scrapings that was in the original
17 report dated November 20th of 2006, that said it had
18 been entered into CODIS, which is the Combined DNA
19 Index System.

20 Q. And that report was reviewed by your technical
21 advisor?

22 A. It wasn't an advisor. A technical review is
23 done by another Court qualified DNA analyst. I
24 technically review my co-workers reports as well. We
25 all technically review one another's reports.

1 The administrative review is done by a superior.

2 Q. Was that done on that November 20th of 2006
3 report?

4 A. Yes, it was.

5 Q. And none of that review or any precautions that
6 you took prevented you from stating that I'm assuming
7 Mr. - I think his name was Cook Senior. Ricky Cook
8 Senior. None of that. None of those precautions
9 kept you from saying that the profile which you later
10 matched to Ricky Cook Senior was under Amy Davidson's
11 fingernails.

12 A. No, it was traced back to a source of
13 contamination which I should have caught before the
14 report was issued. It should have been caught. It
15 was not. When we found out that it was contaminated
16 we immediately started an investigation and put out a
17 supplemental, a corrected report, stating what, in
18 fact, the new results were.

19 Q. Well, let's ask about that. You're talking
20 about it immediately corrected. You're talking
21 about the report of July of 2008 that came out like
22 twenty months later. Is that the immediately
23 corrected report?

24 A. We immediately corrected the problem. The
25 samples were removed from CODIS. When we put

DR. MILLS ON RECROSS

1 out a case of this magnitude as we stated earlier, it
2 had fifty-four pieces of evidence which we consider a
3 lot of pieces of evidence. Every single piece of
4 evidence in this case was looked at. That's not
5 something that can be done in a day.

6 You're talking about months and months and
7 months worth of work that was gone back by my PHD
8 technical reader, was reviewed extensively. Was
9 relooked at, was reanalyzed. An investigation was
10 undertaken into this matter.

11 During this time I also received Alfonzo
12 Howard's blood standard that I had to compare to the
13 additional fifty-three pieces of evidence that was
14 submitted in this case. As you just saw it's not
15 something that I can look at a chart and do in five
16 minutes. It takes a lot of time with mixtures and a
17 lot of times with single source profiles to go back
18 and compare fifty-three pieces of evidence to a
19 standard and as I stated earlier we don't work on one
20 case at a time.

21 We work on many cases at a time so while this
22 case was going on I also had several other cases that
23 I was working on but fifty-four pieces of evidence to
24 relook at and reanalyze all the data takes a lot of
25 time and when we felt certain that we

DR. MILLS ON RE CROSS

1 had corrected and fixed all the problems, we issued a
2 supplemental report. Corrected and supplemental
3 report which we stand by one hundred percent.

4 Q. So that's the immediately corrected report?

5 A. We immediately fixed the problem. We alerted
6 the Solicitor's office. We told them what was going
7 on. We were in the process of fixing that. The
8 issued report takes time as I've stated.

9 It's not something -- If we would have corrected
10 it in a day or a week we wouldn't have been doing our
11 job. We wouldn't have been thoroughly investigating
12 that. We did our job by taking our time and making
13 sure that the matches that we got were, in fact, true
14 matches.

15 Q. So, you immediately alerted the Solicitor's
16 office about the problem?

17 A. I called the Solicitor's office at some point.
18 My supervisors were immediately alerted. At some
19 point . .

20 Q. Are we talking about like immediate is something
21 that has a different connotation? What are you
22 talking about between . .

23 A. Within eight days of this first report being
24 issued, an investigation was undertaken in-house at
25 SLED by my superiors. Within eight days.

DR. MILLS ON RECROSS

1 Q. And when did you tell anybody else about this
2 problem?

3 A. I would have to go back and look at my records.
4 I do have phone records from where I notified once we
5 knew what was going on and once we knew there was a
6 source of potential contamination I was required by
7 my supervisors, by my Captains to immediately alert
8 the Solicitor's office. Immediately alert those
9 people that needed to be alerted and to let them know
10 that there was going to be at some point a new report
11 issued.

12 We don't have a timeframe. This new report also
13 had to be technically reviewed, which means another
14 analyst had to go back through it and agree with the
15 new conclusions and it had to be administratively
16 reviewed again so just to let somebody know that
17 there would be a new report coming. We didn't
18 necessarily have a timeframe but we knew that there
19 would eventually be a report coming and there was.

20 Q. So, between November twentieth when you sent out
21 a report that I assumed sent out to be published to
22 the Defense attorney for Mr. Howard and was it eight
23 days when you realized that there has been some - at
24 least one contamination event on one item or two,
25 items there, you did immediately call the

DR. MILLS ON RECROSS

1 Prosecutor's office?

2 A. I don't know that we immediately called the
3 Prosecutor's office. We immediately alerted the in-
4 house people that needed to be alerted.

5 Q. Okay.

6 A. And began the investigation. We did notify the
7 Solicitor's office at some point. I don't know the
8 exact day.

9 Q. Do you have notice of that?

10 A. I'm not sure that I actually have our phone
11 records on the exact time that I alerted the
12 Solicitor's office. Those aren't typically a part of
13 our case files. They're stored on our computer
14 system at SLED.

15 Q. Do you recall when you sent a documentation of
16 corrected report to the Solicitor's office?

17 A. I don't have the documentation for when. It was
18 within the past couple of weeks that we sent that --
19 after it was requested by the defense we did, in
20 fact, provide and issue that to the Defense.

21 Q. And actually that was after that specific report
22 was requested?

23 A. That's correct. Normally when we are asked for
24 our case files, we - whatever is in our case files we
25 make copies of and we send to the Defense

DR. MILLS ON RECROSS

1 because the Solicitor also furnishes to the Defense.
2 The contaminated report is an in-house documentation
3 stating what occurred, what actions were taken, who
4 was alerted, and it is signed by several people.

5 Several supervisors, I was counseled on this
6 particular incident and then that is stored in-house.
7 It is not actually considered part of the case file
8 so when we go to make copies of the case for the
9 Defense or for the Solicitor's office, that is not
10 something that is considered routinely part of the
11 case file so it's not made available. If the Defense
12 specifically requests that report it can be furnished
13 and was done so in this case.

14 Q. So, I want to make sure I understood. You sent
15 out a package that looked kind of like this?

16 A. Yes.

17 Q. For the Defense to look at. Over an inch thick
18 of documents.

19 A. Yes.

20 Q. And it did not include any explanation of any
21 contaminating cross-over events, did it?

22 A. It did not have the explanation. That would
23 have been in the in-house forms that SLED keeps that
24 were furnished to the Defense when asked.

25 Q. If I may mark this at this time as an

DR. MILLS ON RECROSS

1 exhibit. I want to show you what has been marked as
2 Defense Exhibit 2. Where in there as an attorney can
3 I find an explanation of the cross-over
4 contamination?

5 A. This is what we call our case file. This is all
6 of our forms that are sent to SLED, incident reports,
7 police reports. It's our reports. It's our
8 extractions sheets for the agents that we used. The
9 profiles that are developed.

10 There's no explanation in a case file. A case
11 file is all of the papers. All of the reports,
12 statistics. Anything that you did to reach the
13 conclusions on a report. There is no additional
14 information or as he's referred to, contaminated
15 reports.

16 These are in-house. It is stored separate from
17 the case file. So when our case file is requested by
18 the Defense, this is what routinely we make copies of
19 and furnish. If we are asked for anything additional
20 we do provide that and it was done in this case.

21 Q. And already three months into this investigation
22 you decide to tell us about contamination that
23 occurred prior to November twentieth of 2006.

24 A. That was never specifically brought to my
25 attention as being requested by anybody

DR. MILLS ON RECROSS

1 until it was done so was in the past month. Those
2 forms were never specifically requested. When they
3 were done so they were immediately faxed over to be
4 furnished to the Defense.

5 Q. So this is a buyer's beware. You don't ask, we
6 don't tell about our problems.

7 A. We furnish to the Defense what is asked to us.
8 If they ask for contaminated reports or contamination
9 laws or protocols, then we'd certainly furnish that.
10 We don't routinely furnish protocols. Those are
11 readily available. We don't readily furnish our
12 maintenance logs where our instruments are calibrated
13 and maintained on a daily basis.

14 Those are all available and are certainly
15 available to be copied and made available to the
16 Defense if they request them, if they ask for them.
17 In this case, my understanding was that they were
18 requesting the case file which was done. It was
19 copied and it was sent to them.

20 Q. And did you at some point in time have a
21 conversation with a Roger Morrison?

22 A. Yes, I did. I was requested to call Roger
23 Morrison who I was told was a expert. I did, in
24 fact, on SLED's own time, on my time called the
25 Defense and did, in fact, have a

DR. MILLS ON RECROSS

1 conversation with him on my results of this case,
2 what happened during the contamination. At no point
3 did he request protocols or maintenance logs or any
4 other form of documentation. He was not aware of a
5 contaminated report that had been sent to - under my
6 understanding - had been sent to the Defense. I was
7 not aware that he did not see . .

8 Q. Who?

9 A. The Defense. I was not aware that the
10 faxes from SLED to the Solicitor to be faxed to the
11 Defense did not go through. I was not aware of that.
12 When Mr. Morrison told me that he did not receive it
13 as soon as I got off the phone with Mr. Morrison, I
14 immediately re-faxed that information so that he
15 could have it.

16 I never received any sort of phone call back
17 from Mr. Morrison or from the Defense saying that
18 they needed more information or that they needed to
19 talk to me again. I was certainly available. Never
20 got any sort of call for want of more information or
21 for any other opinion of mine after the initial
22 conversation with Mr. Morrison.

23 Q. So, a request from the Defense attorney well
24 into the first year of this case for all reports,
25 scientific and otherwise, regarding this

DR. MILLS ON RECROSS

1 case didn't get me the information about that

2 corrected, that contamination event, did it?

3 A. No, but -- what we routinely furnish.

4 Q. And Doctor Mills, when a request was made for

5 the DNA file -- specifically DNA file -- file on the

6 DNA analysis in this case and that inch thick or more

7 worth of material came, it still did not include the

8 information about the contamination cross-over, did

9 it?

10 A. This is the DNA file which was requested and was

11 sent to the Defense.

12 Q. And it's only after Mr. Howard had a lawyer who

13 hired the DNA expert who talks to you that we get

14 that report thirty-three months into this case.

15 Isn't that true?

16 A. It had nothing to do with the hiring of the

17 Defense expert. All that had to have been done was

18 simply asking.

19 Q. So somebody had to know what they were asking

20 for, didn't they?

21 A. You could certainly have said, we need

22 everything that could have potentially dealt with on

23 this case. We don't know when you ask for something

24 if you want protocols, if you want maintenance logs,

25 if you want everything that's ever been done

DR. MILLS ON RECROSS

1 with my name on it. We have to know specifically
2 because this is a lot of information to be sent. We
3 were requested the DNA file and this was sent to the
4 Defense.

5 Q. And so when there's a request to inspect and
6 copy any result or reports of physical examinations
7 or scientific tests or experiments, we don't even
8 get that other file. The inch thick file. We had to
9 make a request for that file.

10 A. You do. The Defense just doesn't routinely get
11 this. We do have to have a request in writing to get
12 this case file.

13 Q. And that request didn't give these reports, did
14 it?

15 A. No. Those are considered internal
16 documentation. It's part of a in-house folder. It's
17 certainly available. We don't just hand-pick what's
18 being sent to the Defense. We have to know what they
19 need and what is being requested. This typically is
20 what we sent to Defense lawyers. We routinely do not
21 have problems sending the case file with our, you
22 know.

23 Q. May I approach?

24 A. . . agents that we use with the data from the DNA
25 profiles. This is what's typically sent.

DR. MILLS ON RECROSS

1 This is what was sent.

2 Q. And if you'll take a look at this item. It
3 looks like a copy of a fax header. What's the date
4 on that?

5 A. Are you referring to . . .

6 Q. Either date. Either date on the fax.

7 A. February twelfth of 2009. I did not-- If this
8 is from you, I did not fax this to you.

9 Q. I agree. I understand. But what date is on the
10 fax header?

11 A. February twelfth of 2009.

12 Q. Is there any date earlier than that?

13 A. November twenty-eighth of 2006. Which is when
14 the investigation began.

15 Q. And your job -- So November twenty-eighth, 2006,
16 ya'll started an investigation. When's the date that
17 that report was transmitted out of that office? Out
18 of your office?

19 A. I don't know.

20 Q. The only date on there says it was transmitted
21 out.

22 A. I don't know that this is what I physically
23 faxed. The date on this fax which I don't know where
24 this is faxed from is February twelfth of 2009.

25 Q. The number is on there. You don't

DR. MILLS ON RECROSS

1 recognize any of these fax numbers?

2 A. 7 5 4 1 -- this would be our fax number.

3 Q. And what's the date?

4 A. February twelfth, 2009.

5 Q. That's when it came out of your office?

6 A. Yes.

7 Q. Now, let's talk about that 1.8 R and that 1.8 L.

8 Now, in the November 20, 2006, report you mentioned
9 that you have a paragraph describing your examination
10 results.

11 Can you read that for the jury?

12 A. Where do you want me to read?

13 Q. Begin with fingernail scrapings.

14 A. The DNA profile developed from her fingernail
15 scrapings, items 1.8 right and 1.8 left are mixtures.

16 The DNA profile developed from the major contri-
17 butor to this mixture is from an unknown male individ-
18 ual and has been entered into the combined DNA index
19 system for comparison purposes.

20 So partial DNA profiles developed from the minor
21 contributors to this mixture are from unknown individ-
22 uals and are unsuitable for entry into CODIS.

23 Q. And did any information regarding the contamina-
24 tion or the reported source of the major
25 contributor found in 1.8 L and 1.8 R go to the

DR. MILLS ON RECROSS

1 Prosecutor's office or to the Defense attorney prior
2 to May of 2007?

3 A. What do you-- You'll have to clarify..

4 Q. In report form and any information sending form.
5 Carrier pigeon, smoke signals, anything?

6 A. The new report was issued July eleventh of 2008.
7 That was the corrected and that's where we reissued
8 our statement on exactly what now we said the
9 fingernail scrapings are. I did talk with the
10 Solicitor and let them know that a report would be
11 coming, that there was a contamination issue we were
12 fixing.

13 That's not something we would call up the
14 Defense and say, you know, you've got a new report
15 coming because we are working for the State. We deal
16 with the Solicitor's office. We did call and alert
17 them that a new report would be coming.

18 A new report did come. It stated July eleventh
19 of 2008 the problem or the supplemental to the first
20 report are clearly marked in this report and this is
21 now a correction to the first report identifying that
22 there was problems with two of the samples and were
23 now rendering those two profiles inconclusive.

24 Q. Let's go back to my question. And so were any
25 of that information conveyed either to the

DR. MILLS ON RECROSS

1 Solicitor's office or to the Defense attorney before
2 May 2007?

3 A. There would have been no reason to alert the
4 Defense attorney because a lot of times we don't know
5 who that is until the trial comes up. If there is a
6 problem, yes, we do notify the Solicitor's office.

7 I don't know the exact date that I alerted the
8 Solicitor's office that a new report would be coming
9 but there would be no reason that we would alert the
10 Defense attorney because the case has not come up for
11 Court yet so to the best of our knowledge, it doesn't
12 have a Defense attorney associated with it. A lot of
13 times those change so we wouldn't normally just call
14 a Defense attorney and let them know something else
15 was coming.

16 We would call the Solicitor's office to alert
17 them to know that something new, something additional
18 is on the way. I don't the exact date of that but
19 July eleventh, 2008, was the date that the new report
20 was approved by my supervisor.

21 Q. And I'm going to try on the third time.

22 SOLICITOR: Your Honor, objection.

23 The question has been answered.

24 MR. BROWN: There is no answer.

25 THE COURT: All right.

DR. MILLS ON RECROSS

1 MR. BROWN: But I'm going to try to
2 get - did she tell the Prosecutor or the Defense
3 attorney prior to May 2007? Either a yes or a no.

4 THE COURT: Ma'am, you need to just
5 answer yes or no and then you can explain your
6 answer.

7 A. I don't know the date that I alerted the
8 Solicitor's office.

9 MR. BROWN: And , Your Honor, I now
10 have a legal issue I'd like to bring up.

11 THE COURT: If you will approach.

12 MR. BROWN: Yes, ma'am.

13 (Discussion at the bench off the record)

14 THE COURT: Ladies and gentlemen of
15 the Jury, I took the liberty of going ahead and
16 ordering pizza for lunch today. I apologize that it
17 isn't steak but we are working on a budget here. So,
18 respectfully, there is pizza back in the Jury room
19 for you. I've done this so we can as soon as you are
20 finished move this case along and continue with the
21 testimony. So that's what I'm hopeful that we will
22 do. Respectfully I am going to send you back to the
23 Jury room to eat lunch. Mr. Foreperson, when you all
24 are finished, just knock on the door and we will
25 bring you back into the Courtroom, where we will

1 continue the trial of this case.

2 Again, as I tell you every time we part, do not
3 discuss this case with each other. Again, it is not
4 appropriate for you to do so at this time.

5 All right. Have a nice lunch and we will be back
6 with you shortly.

7 (Jury excused from the Courtroom for the lunch
8 period at 1:02 P.M.)

9 BAILIFF: The jury is clear, Your Honor.

10 THE COURT: Thank you. Mr. Brown?

11 MR. BROWN: Yes, maam.

12 THE COURT: We had a very brief bench conference
13 in reference to your objection, sir.

14 We need to go ahead and put it on the record at
15 this time.

16 MR. BROWN: Please. I'm now alluding to exclude
17 -- talking about excluding by striking and securing
18 an instruction to the jury to ignore any information
19 about DNA that was linked to any blood standard from
20 Alfonso Howard.

21 And the basis of that information is the Schmerber
22 Hearing which was held back in -- and I can give you
23 the exact date -- in this Courtroom in April of 2007
24 following my appointment which was before Judge King.

25 We objected to the drawing of his blood, and I
don't mean to get too much into the law involved but

1 there's a balancing test and some of the things that
2 balanced or whether it's an intrusive procedure in
3 drawing blood.

4 It was found to be intrusive balanced against
5 the need and the need issue is what now has come up
6 here because we now know that the State in some form
7 or government in some form of the letter SOG, whether
8 it's a formal state of the Prosecutor or some agent
9 of the State or government knew that the report that
10 I had been given as his lawyer and that was presented
11 to Judge King to make his decision after deliberation
12 after the presentation made by the State and their
13 showing of need was based on information that the
14 State knew was not good.

15 THE COURT: And this was the hearing
16 that was held when?

17 MR. BROWN: I can give you - it's
18 going to take a minute more to find notes from that
19 hearing and there has not been a transcript
20 requested.

21 THE COURT: Counselor, the date of the
22 hearing, please.

23 MR. BROWN: I know . . .

24 SOLICITOR: The order is signed April
25 twenty-fifth, 2007, Your Honor.

1 MR. BROWN: Beg the Court's
2 indulgence so I can find it in my notes.

3 SOLICITOR: April twenty-fifth, 2007.
4 I can provide a copy of the Order to the Court.

5 MR. BROWN: I've got April twenty-
6 third of '07 as the Schmerber hearing date.

7 THE COURT: Okay, and the Order was?

8 SOLICITOR: April twenty-fifth of
9 2007.

10 MR. BROWN: And that's the signing
11 date?

12 SOLICITOR: Right.

13 MR. BROWN: Okay. I've got the
14 hearing on the twenty-third as my notes. Also, in my
15 notes what I have in there is that, Your Honor, they
16 weren't compared to and the top item is item 1.8.

17 So there was a presentation in this Courtroom
18 and they didn't compare the item 1.8 on April twenty-
19 third of 2007 while the entire time I don't know who
20 knows but I know somebody in the State government
21 knows that item 1.8 is not a proper showing of need
22 because of the admitted contamination.

23 And I've asked to try to find out if there
24 was any notification for other attorneys on this
25 case.

1 THE COURT: What other items do they
2 establish for need other than 1.8?

3 MR. BROWN: As of my notes, Your
4 Honor, and, you know, I would ask the record trump my
5 notes if they were wrong. You know that.

6 THE COURT: Of course.

7 MR. BROWN: And I don't want to inject
8 something that's going to . .

9 THE COURT: You just said the top
10 items. This tells me that there must be further
11 items.

12 MR. BROWN: There are. There are.

13 THE COURT: What items?

14 MR. BROWN: Items 1.8, Item 4, Item
15 15, and Items 48.1, 2, 3, and 4. And Your Honor,
16 one's a swab from a Ford Tempo, one's a cigarette
17 butt, one's a fingernail scraping, and of course the
18 48.1, 2, 3, and 4 are the items.

19 THE COURT: Okay. All right.
20 Solicitor, why don't you try seeing about those other
21 items?

22 SOLICITOR: Yes, ma'am. The language
23 of the Schmerber motion and hearing is that we
24 request a sample to not only include but exclude a
25 suspect. Therefore, had it been compared to

1 1.8 and the contamination never discovered, it would
2 have excluded Alfonso Howard. There's no prejudice
3 at all.

4 Also, there has already been a ruling in this
5 case that the DNA evidence should not be excluded
6 because of the contamination and that will go back
7 all the way to the beginning to this case. It is not
8 excluded now after discovery of the contamination;
9 then it wouldn't go back in time prior to that
10 either.

11 But, if his argument is that at the time the
12 hearing was held we were not aware of contamination
13 and we based it on something that was in that report,
14 again, there is no prejudice to the Defendant. He
15 would have been excluded from that item. The
16 languages include or exclude which would have gone
17 both ways and we would have been given the sample
18 regardless of the information we have now or the
19 information we had then.

20 MR. BROWN: And briefly, Your Honor,
21 I'm going to reference the testimony from the earlier
22 hearing with Mr. Morrison to tie this back in. We
23 would have had that contamination information I'm
24 certain if we would have requested an expert to
25 review it and our expert would have testified

1 consistently as Mr. Morrison did that the entire set
2 of evidence is unreliable and that he has no
3 confidence in any of it and that we would have
4 presented that to the Judge and he would have had to
5 consider that for their showing of need.

6 Now, again, I'm just stating obviously what Mr.
7 Morrison said about the report and his feelings of
8 reliability and confidence in the record but we
9 believe that it - that we would have presented such a
10 showing in opposition of their showing of need and
11 that Judge King would have considered that. The
12 scoreboard is more or less like a search warrant,
13 Your Honor.

14 THE COURT: I understand. Let me ask
15 you. Mr. Morrison had not been hired at that point.
16 Correct?

17 MR. BROWN: He had not been hired,
18 Your Honor. In fact, Your Honor, I had been on a --
19 and this is all in his works file. Again, I say this
20 because it's been disjointed between judges.

21 I received a letter and this is with all due
22 respect to the Prosecutor - I received a letter from
23 the Prosecutor saying - in January of 2007 - saying
24 we're going to need to have a Schmerber Hearing for
25 your client Alfonzo Howard.

1 I wrote back because I was getting ready for a
2 Capital PCR in Greenville, I don't represent Mr.
3 Howard. And there was a response back and forth and
4 to make a long story short I did not get an
5 appointment over until March of 2007 and I don't
6 know--in fact, I think I cc'd the clerk's office with
7 letters that I don't represent this guy.

8 And, you know, because without a Court
9 appointment I can't show up. In fact it would be
10 improper for me to show up on behalf of somebody
11 without it or and with all due respect to the
12 Prosecutor I don't mean that. She got my name and
13 maybe rightfully so. I mean, I may have been the
14 next one on the list and they didn't send me anything
15 until March.

16 THE COURT: Mr. Brown, let me ask you
17 this. When we're talking about the need base for Mr.
18 Howard's blood standard pursuant to the Schmerber
19 Hearing, isn't there still a need regardless of the
20 contamination items? Because again you would need it
21 for the other and I don't know how many it is,
22 roughly, items that were not contaminated.

23 MR. BROWN: Except my expert and I'm
24 assuming when he testified consistently back in April
25 of '07 and he said that he has no confidence

1 in any of the results because of the excessive
2 contamination and I can certainly call him up and ask
3 him for his opinion. Obviously that's not the expert
4 I had then because I had no expert on the case. If I
5 had had notification of contamination, you can bet
6 your bottom dollar I'd have gotten an expert to tell
7 me what that meant.

8 THE COURT: Okay.

9 SOLICITOR: And Your Honor, as argued
10 before, that information goes to the weight of the
11 evidence and not its admissibility.

12 MR. BROWN: And Your Honor, the Franks
13 versus Delaware case in the United States Supreme
14 Court and that case deals with search warrants. The
15 over-riding theme is the same. That the Court has to
16 have all information both good and bad at the time it
17 makes its decision.

18 And under the Franks' case, you have to go back
19 and excise the faulty information to see what's left,
20 and I think that's exactly what Your Honor is trying
21 to do by saying that there is information and all we
22 thought before that is that we were to put forth at
23 that hearing where we are allowed to present -- like
24 search warrants, we were to put forth the information
25 that none of it should be considered.

1 THE COURT: Okay. Respectfully, I
2 have found that this expert qualified as an expert
3 and I do believe that she will assist the jury in
4 looking at this information. I think this goes as to
5 the weight that the Jury can give it and I don't
6 think in any way it changes the need that Judge
7 Howard had in requesting a blood standard pursuant to
8 a Schmerber hearing.

9 MR. BROWN: And Your Honor, I
10 understand where you're at. That's what already -- of
11 course I don't know what -- I know it's said under the
12 4th Amendment, the 5th Amendment, the 6th Amendment,
13 the 14th Amendment, and the comparable forces of the
14 South Carolina Constitution, for instance, Article
15 one. In this case it would be article one, section
16 three. Article one, section fourteen. We would ask
17 that it be excluded because of the failure to
18 disclose the information the State had at the time.
19 Thank you, Your Honor.

20 THE COURT: Okay. I appreciate that,
21 and respectfully again as we talked about it that
22 scientific evidence is admissible based on its re-
23 liability and we'll keep the Jones factors as I
24 originally did when I originally ruled that the DNA
25 evidence is admissible. Again, I think that

1 the underlying science is definitely reliable. I
2 think she's testified adequately that there are
3 checks and balances and in fact has testified that
4 the error was caught within eight days.
5 Respectfully, I think it's a Jury issue for them to
6 weigh and the DNA evidence is properly before and
7 should be before the Jury.

8 MR. BROWN: Yes, ma'am. And I'm not
9 trying to argue but I would like to say that our
10 issue we're raising right now has got to do with Mr.
11 Howard's and we're trying to ...

12 THE COURT: Procuring Mr. Howard's
13 blood standard and again respectfully I do find that
14 there was a need based on, and I understand that you
15 say it was based on error information as to item 1.8,
16 but that doesn't exclude all the other items so there
17 would be a need based on any other uncontaminated
18 items; therefore, I do find that there was a proper
19 need and the Schmerber order was properly issued.
20 Regardless, if Judge King was given or not given I
21 guess a piece of information . .

22 MR. BROWN: And again, as obviously
23 like I said, we would have asserted an expert's
24 testimony consistent with what we do have now, now
25 that we have found that out and obviously we also

1 would say that there was certainly something they
2 were ultimately seeking to repress here.

3 THE COURT: So it was the entire contam-
4 ination is what you are trying to say?

5 MR. BROWN: The linking is wrong.

6 THE COURT: But, again, that is for the
7 experts to discuss, which is why you hire DNA experts.
8 You explain if that occurred or could it have occurred,
9 so that it is for your expert to address certainly in
10 your case.

11 Respectfully, I do find that there was
12 a need for the blood standard and, again, I do find
13 that the DNA evidence as procured by Ms. Mills is
14 proper to come before the jury and that they can do
15 with it as they see fit.

16 MR. BROWN: Thank you, Your Honor.

17 THE COURT: Anything further?

18 SOLICITOR: Thank you, Your Honor.

19 Nothing from the State.

20 THE COURT: Anything, Mr. Brown?

21 MR. BROWN: Nothing, Your Honor, but,
22 again, I would like to preserve the objection, as
23 there's this case out there that says when you are
24 ready to go forward that you waive the previous objec-
25 tions, but, as I said, I'm ready to go forward.

1 I'm not trying to waive any other objections.

2 THE COURT: I understand and, you
3 know, we're going to note that for the record for the
4 remainder of the trial.

5 MR. BROWN: And I appreciate . . .

6 THE COURT: And I understand that you
7 feel like you have to renew it each time and I
8 understand that there is an issue as to whether or
9 not it is waived and again, you're doing an excellent
10 job preserving the record, Mr. Brown.

11 MR. BROWN: Thank you, Your Honor.

12 THE COURT: At that point, ya'll, this
13 Jury was back there eating so why don't ya'll go take
14 , if you can, about thirty minutes or so and come
15 back and let's go ahead as quickly as possible, get a
16 bite to eat, come back in. We're going to continue
17 with this case and we're going to press on - unless
18 someone has another reason not to - very hard this
19 evening. Solicitor, do you anticipate that you will
20 finish your case today?

21 SOLICITOR: I think so.

22 THE COURT: Okay.

23 SOLICITOR: I intend to. I have two
24 more witnesses after this one when the cross lasts.

25 THE COURT: All right. Okay.

1 Ms. Mills, obviously you are still on the stand. You
2 are not to discuss your testimony not only with the
3 Solicitor but with anyone else involved or in the
4 room. This has dried blood in it. I just want any
5 of the Jury members if they need to touch it, it
6 needs to be done with gloves because it does have
7 dried blood in it so be very careful.

8 SOLICITOR: Okay.

9 THE COURT: I'll see you back in about
10 a half hour. Okay?

11 (Court recessed for lunch)

12 (Court resumed at 2:07 PM)

13 THE COURT: Let's get back on the
14 record.

15 MR. BROWN: I was going to try to
16 finish exploring a little bit that issue we had
17 spoken about the juror.

18 THE COURT: Yes, sir. Yes, sir.
19 Absolutely.

20 MR. BROWN: And I guess my
21 understanding is that it went to the Court's
22 attention. Ms. Tanner had been informed by the
23 officer - the security officer and we were all trying
24 to get it back to the juror. In other words, I
25 understand how the information got to the

1 Court since it went from Ms. Tanner from the officer
2 and then I think it made one more step or so about
3 how he found out, I guess.

4 THE COURT: Did you go ask who he is?

5 MR. BROWN: I already found when
6 General Sessions Court was going on. I discreetly
7 went down to the Courtroom and asked him what he was
8 there for and he said he was here to watch his wife
9 who was a juror. I think that finishes the loop on
10 it.

11 THE COURT: I appreciate that. One of
12 the things that I was concerned about is after you
13 raised the issue I believe it was two days ago about
14 what witnesses that were sequestered that maybe you
15 and I didn't know who they were but the Solicitor did
16 so we wanted to make sure so I did ask particularly
17 Sergeant Vaughn and I'm sure he told everyone else.

18 To just make sure we knew who was in the
19 Courtroom to make sure that there wasn't
20 inadvertently a potential witness who happened to
21 come and that was what my real concern was. But of
22 course they went one step further and found out that
23 it was a juror's husband so I do think appropriately
24 he should have or she should have been taken off
25 the jury panel.

1 Based on his answers and not necessarily hers
2 but again I think it was appropriate to do so and ...

3 MR. BROWN: And there is no objection
4 from us - from the defense on that.

5 THE COURT: Okay.

6 MR. BROWN: I just wanted to close the
7 loop on how the information came out.

8 THE COURT: All right. Anything
9 further from anyone?

10 SOLICITOR: Nothing from the State.

11 THE COURT: Mr. Brown?

12 MR. BROWN: We're ready to proceed,
13 Your Honor, again without waiving any of our previous
14 objections.

15 THE COURT: Okay. All right. Is Ms.
16 Mills still here? I believe she is still on the
17 stand. Let's get her back on the stand. Ms. Mills,
18 if you will please come forward and just retake the
19 stand. I will remind you, ma'am, that you are still
20 under oath. Bring the Jury in.

21 (The Jury entered the Courtroom at 2:12 PM)

22 THE COURT: Welcome back, ladies and
23 gentlemen of the Jury. At this time if you would
24 continue your cross-examination of Ms. Mills, Mr.
25 Brown?

1 MR. BROWN: May it please the Court?

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION contd.

4 BY MR. BROWN:

5 Q. Agent Mills, we were talking about the timing of
6 the realization of the contamination and the
7 notification. I want to ask you a little bit about
8 some cases and so I'm going to use some case numbers
9 here. You mentioned that the case number in this
10 case was L067960. Does that sound correct?

11 A. That's right. Yes.

12 Q. And the other case numbers that might be listed
13 in some reports regarding this investigation would be
14 L065342. Does that sound correct?

15 A. Correct. I don't believe I have a copy of the
16 actual in-house report that went out so I don't think
17 I have a list of exactly those cases. I'll just have
18 to remember it off the top of my head.

19 Q. If you had a copy would it refresh your
20 recollection?

21 A. Absolutely.

22 MR. BROWN: May I approach?

23 THE COURT: You may.

24 Q. I want to show you what's been marked as
25 Defendant's Exhibit three and on top of

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- 1 that stack of materials is an item entitled,
2 Documentation of Corrected Report.
- 3 A. That is correct.
- 4 Q. Okay. And that report is a few pages ...
- 5 A. It's three pages long.
- 6 Q. Okay. And what's the date of the signing of the
7 signatures on the third page?
- 8 A. The departmental supervisor signed this report
9 July eleventh of 2008. The captain of the
10 departmental supervisor signed this report July
11 fourteenth of 2008. Our quality manager captain
12 signed this report July eleventh of 2008 and the
13 major laboratory director signed this report July
14 fifteenth of 2008.
- 15 Q. Now, besides the case number for this case which
16 is L067960, there is also case number L065342. Isn't
17 there?
- 18 A. That's correct.
- 19 Q. There's also case numbered L and I believe it
20 should be 0514126.
- 21 A. That's correct.
- 22 Q. And is there also a case that's got a number on
23 it 8041?
- 24 A. ...
- 25 Q. L068041?

DR. MILLS ON RECROSS

1 A. Yes, there's an L06-8041.

2 Q. Okay. Now, isn't it true that contamination was
3 noted in the L068041 case as early as July of 2006?

4 A. I'm sorry. Which case were you referring to?

5 Q. 068041.

6 A. In July of 2006, there was contamination noted
7 in this particular sample where it was caught by our
8 checks and balances that are in place. I went back
9 to this particular piece of evidence, which is
10 protocol, and I re-extracted and got a clean profile.
11 No problem was noted with this case. The report went
12 out which was completely correct.

13 Q. And contamination in the case, L068041, was
14 linked to what other lab case?

15 A. It was linked to L05-14126.

16 Q. Is that the dead man's case?

17 A. L05-14126 was a case involving -- I like to put
18 a name with the victim, Ricky Cook, Sr.

19 Q. And Mr. Cook was deceased?

20 A. Yes, he was.

21 Q. So, in July '06, the deceased Mr. Cook's DNA
22 ends up in case L068041.

23 A. Yes. And this was all part of the established
24 contamination. What took place? We went back, made
25 a complete date analysis. What went

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1 on, when it happened, where it could have possibly
2 happened. A very detailed chronological detail of
3 what went on in this case. We're not trying to hide
4 anything. It's a very explicit - the cases that were
5 involved we published it. This is the report, this
6 is what we feel happened, these are the cases
7 involved and it's all in this report in writing.

8 Q. So, I ask again, July of 2006 somehow the
9 deceased Mr. Cook's DNA ends up in some other case
10 DNA.

11 A. In July of 2006, it was noted that a sample from
12 another case because you've got to remember that we
13 batch our cases. We run several cases at one time.
14 These cases were obviously run together. The same
15 thing occurred.

16 A portion or quantity of DNA from the tube where
17 Allen's DNA was present somehow inadvertently,
18 accidentally got into a tube with another case number.
19 It was caught. It was dealt with when it was caught
20 prior to a report being issued.

21 The problem with this particular case was the
22 problem was found after the report was issued. Had
23 we caught it in-house, we would not have felt the
24 need to issue a supplemental corrected report. We
25 would have dealt with it before the

DR. MILLS ON RECROSS

1 first report ever went out. That's the problem. We
2 didn't catch it before. We caught it unfortunately
3 eight days after the first report went out.

4 Q. I want to make sure I understand. Mr. Allen is
5 8041?

6 A. Allen's standard appears to be from case L06-
7 8041.

8 Q. And that's a standard?

9 A. Yes.

10 Q. And that standard ended up in an evidence file?

11 A. The exact statement from this report says that
12 the Allen standard, which was extracted and
13 quantitated separately from all cases, showed
14 contamination with another case. I recognized this
15 and re-extracted the sample. It's not something --
16 When we get something contaminated, we can't always ...

17 We have several steps in the process of DNA
18 analysis. We can't always pinpoint the exact time
19 and location that a contamination occurred. It says
20 in writing that this standard when it was extracted
21 was handled separately from all cases but somehow
22 evidence from this case and this case didn't involve
23 just a standard. But the profile that matched his
24 standard appeared in evidence sample.

25 Q. Now, let me go back to some

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1 testimony that you gave on direct and you mentioned
2 there are two things that are standards that are
3 looked at and there is evidence items. Is that
4 right?

5 A. That's correct too.

6 Q. Those are not analyzed together?

7 A. They're not. When we cut out evidence, you
8 know, it's swabs or it's blood standards and we are
9 never allowed to have evidence open at the same time
10 as standards. They are always handled separately.
11 Once we get them into the tubes they are extracted
12 separately, they are never at the same time.

13 We are required by protocol never to have a tube
14 with a known standard open at the same time as
15 evidence tubes. That is our protocol. It's called
16 separation by time and/ or space. They're not next
17 to each other on a rack of tubes. They may be in the
18 same one on the instrument but they are not extracted
19 together. They are not cut out together. They are
20 not in tubes next to one another.

21 We have very strict protocols in place for when
22 and how we handle evidence associated with standards.
23 So they may eventually end up on an instrument that
24 can tell you how much DNA is in 96 samples and it may
25 end up that you do all of your

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1 evidence first and then you come behind with
2 standards. They are not extracted together. They
3 are not cut out together.

4 They may eventually wind up on an instrument
5 together but they are always separated by that tube
6 by some sort of barrier. They are never placed
7 together.

8 Q. All right. Let's try again. The 8041 case was
9 an Allen standard. Is that correct?

10 A. I do not have the case jacket for L068041. I
11 wasn't asked to bring that so I can't particularly
12 tell you the specifics of this case or the evidence
13 that was associated with this case. Obviously if I
14 had a standard associated with this case, I also had
15 evidence associated with this case.

16 From what I recollect about -- You know,
17 honestly L068041, we do hundreds and hundreds and
18 hundreds of cases a year so for me to just remember a
19 case that I did in 2006 just talking to you I'm
20 saying I can't. I would have to go back to the lab
21 and pull the case jacket just like this one to see
22 exactly what evidence was associated with that case,
23 what standards were associated with that case. I'm
24 not able to tell you that on the stand so I don't
25 exactly know what's in that case.

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1 SOLICITOR: Your Honor, may we
2 approach?

3 THE COURT: Yes.

4 (Brief discussion at the bench/off the record)

5 Q. If you'll look at the second page of the
6 documentation of corrected report. Now, is Allen a
7 gentleman's name?

8 A. Yes, when we call something a standard a lot of
9 times we will put a name associated with it.

10 Q. So Allen is not like allen wrench or something.
11 It's Allen standard as in the standard for Mr. Allen.

12 A. That is correct.

13 Q. Or Mrs. Allen. So, about the paragraph numbers
14 or anything else but about forty percent of the way
15 down on the second page of the documentation of the
16 corrected report, does it not say L068041 Allen
17 standard?

18 A. It says Allen standard showed contamination with
19 LSI-141267.

20 Q. All right. Now, L0514126 is the deceased Mr.
21 Cook, is it not?

22 A. Again, I'm sorry for the delay. I don't have
23 these case files with me so I'm having to look
24 through the report. LSI-14126 was Ricky Cook senior.

25 Q. And was that a standard?

DR. MILLS ON RECROSS

1 A. Again, we don't get just standards so we had
2 standards associated with that case and we had
3 evidence associated with that case.

4 Q. And does this say that that's a standard?

5 A. Where are you referring to? At what particular
6 point?

7 Q. Anywhere does it say that the L0514126 was a
8 standard?

9 A. It says that it matched the profile with Ricky
10 Cook, Sr, item 1. Again, I don't know what item 1
11 was. I didn't write -- This is not my document. I
12 did not write this document. I did not sign this
13 document.

14 Q. And how about that same line you read where it
15 says, L068041 Allen's standard showed contamination
16 with L0514126 7F?

17 A. That's correct.

18 Q. Which is not the same as one?

19 A. I said that the contamination matched L068041
20 with item 1. Ricky Cook. Item 1.

21 Q. And then if you will look down about three
22 percent of the way down and there is no other way for
23 you to do it -- And as that pointed out - does that
24 not say that L068041 Allen's standard showed
25 contamination with

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1 L0514126 7F?

2 A. Yes, it does and it does explain that in further
3 detail in a separate corrected report. In the
4 documentation of the corrected report that follows.

5 Q. And what is 7F?

6 A. It would have been an evidence sample and it
7 does explain that.

8 Q. Okay, so according to that own report, there was
9 contamination between a standard and an item of
10 evidence.

11 A. And it does explain that that - let me find the
12 - and it says upon examination it was established
13 that the source of contamination was not an
14 extraction since the contaminated samples were not
15 extracted at the same time.

16 Q. And again, that seems to indicate there is
17 cross- contamination between a standard and an
18 evidence item which is a non-standard.

19 A. That's correct. It didn't happen at the
20 extraction because again standards and evidence
21 aren't extracted together. They may be put on the
22 final instrumentation together, which is proper
23 procedure, but again they are not next to one another
24 and again we can't always explain how samples may
25 cross-over into other samples because

DR. MILLS ON RECROSS

1 we can't see DNA.

2 Q. Now, we can see what happens in a lab simply
3 with a video camera that records what you do. Just
4 like a security camera from in a convenience store.

5 A. Yes, sir. But there's no way to tell what's in
6 a tube. A tube of DNA looks like a small tube of
7 water. If you were to walk into my lab you would
8 have even with me right there recording everything on
9 you wouldn't be able to tell if I was pipetting water
10 or if I was pipetting DNA. There's just no way for
11 you to see DNA with the naked eye.

12 Q. Now, let me go back to the testimony under
13 Direct where you said, standards and evidence items
14 are not done at the same time to prevent cross-
15 contamination.

16 A. The extraction where we actually cut them out to
17 the point that we actually have the DNA in the tube
18 they are not run together. They may be put on the
19 same run for what we call the thermo-cycler, which is
20 a fancy copy machine that just copies the DNA but
21 before we have the DNA in the tube, they are never
22 placed together.

23 Once the DNA is in the tube, evidence is
24 completely separate from standards and if standards
25 are going to be run with evidence

DR. MILLS ON RECROSS

1 then most of the time, the standards are put on very
2 last so there is no possibility or we lowered the
3 possibility of potential contamination between a
4 standard and a piece of evidence.

5 Q. You had items from Eddie Howard's car, a Ford
6 Tempo, in your lab. Did you not?

7 A. I had swabs from a Ford Tempo. I do not know
8 who they belonged to. They just labeled to me as
9 swabs from a Ford Tempo.

10 Q. Okay. And if Al Howard's DNA was on a Ford
11 Tempo along with his father and that DNA came into
12 your lab during some point of the extraction
13 ramification time, you would have his DNA in your lab
14 prior to having the standard in the lab, would you
15 not?

16 A. I would but I did not have his standard - I did
17 not have his DNA profile on the swabs from the Tempo
18 which I did run, which I did get a profile from.
19 None of the evidence shows his standard that I can
20 pull out and say it's him.

21 Q. And that's according to the November twentieth,
22 2006, report. Isn't it?

23 A. That's correct.

24 Q. And that's the report that's wrong, isn't it?

25 A. It is an incorrect report with regard

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1 only to the fingernail scrapings, which we've talked
2 about, and to that swab from the Lexus that showed no
3 profile. No problems, whatsoever, with the other
4 pieces of evidence in that particular case so
5 everything from that first report still stands minus
6 the fingernail scrapings and the swab from the Lexus.
7 Those other items of evidence that I got the profiles
8 from are, in fact, the true profiles that belong to
9 that evidence.

10 Q. Now, let's talk a little bit about the case,
11 5342, and that's a case belonging to a Billy Shirar.

12 A. Again, I don't have the case jacket with me so I
13 can just go by L065342.

14 Q. And if you look at the second page at the
15 documentation of the corrected report about the
16 middle of the page and it has, L065342, and it has in
17 parentheses the name. Billy Shirar.

18 A. I don't see parentheses. I see L065342 2.1 and
19 Shirar standard.

20 Q. S H I R A R?

21 A. Yes.

22 Q. And it doesn't say Billy beside it?

23 A. Not where I'm looking at. No.

24 Q. So, we've got a Cook DNA case. We have a Shirar
25 DNA case. We have a Howard DNA case.

DR. MILLS ON RECROSS

1 And we have an Allen DNA case. And they are all
2 listed in this report regarding contamination per Mr.
3 Howard's case, aren't they?

4 A. That is correct. This is the documentation of
5 corrected report documenting what we felt happened
6 during this particular case dealing with the evidence
7 that we've already discussed.

8 Q. And ya'll say how these four different DNA cases
9 crossed?

10 A. We can speculate as to what happened. I
11 certainly went through a counseling period after this
12 incident happened. We discussed my techniques, my
13 protocols, what could have potentially happened but
14 again, since we cannot see DNA we don't at what point
15 in the process up from me initialing getting the swab
16 to the final point where I developed the DNA profile.

17 We can't ultimately pinpoint the exact time and
18 location of the contaminant. But once we discovered
19 there was one, we went back, thoroughly investigated
20 how I cut out evidence, how I handled evidence, how I
21 handled standards. Certainly had many discussions
22 with my Lieutenant and the problem was fixed, saw no
23 need for anything extra on this case. The results
24 that we matched to Howard matched Howard. I did not
25 have his blood standard

DR. MILLS ON RECROSS

1 anywhere in the lab when doing this evidence that
2 matched to him.

3 Q. Now, do we know what Mr. Shirar or Mr. Allen
4 were accused of doing?

5 A. Again, I do not have those case reports with me
6 and was not asked to bring them so I can't tell you
7 the nature of those cases or exactly what happened in
8 those cases. It happened two years ago so as I've
9 said, I've done hundreds and hundreds of cases since
10 then so I can't just go off of numbers.

11 Q. This is the case for Mr. Howard that we're here
12 for today. Right?

13 A. It is the case for Mr. Howard that I was
14 prepared to testify on, yes.

15 Q. And that includes this report because at the top
16 of this report, doesn't it say L067960?

17 A. Yes, it does.

18 Q. Okay. So, all this information and all of these
19 cases is related because of this contamination. So
20 it's related now to Mr. Howard's case, isn't it?

21 A. They are all documented in this case as to the
22 exact cause of the contamination. How we think it
23 occurred, where it might have occurred, the samples
24 from the other cases that might have potentially
25 crossed over into this case.

DR. MILLS ON RECROSS

1 We documented everything. Certainly not trying
2 to hide anything. It's all explicitly explained and
3 explicitly detailed in chronological order onto
4 everything that could potentially have happened and
5 the cases that were involved with this particular
6 case.

7 Q. Now, in Mr. Cook's case you mentioned that he
8 was the victim.

9 A. I believe he was the victim. Again, I do not
10 have that case file with me. I'm just going off of
11 my memory. I believe he was the victim.

12 Q. He was the victim of a sodomy and a killing.

13 A. To my knowledge, I have no knowledge that he was
14 the victim of a sodomy. No.

15 SOLICITOR: Your Honor, I object to
16 this line of questioning. It's irrelevant.

17 MR. BROWN: I'll certainly tie it in.

18 THE COURT: Okay, you can keep going,

19 Mr. Brown.

20 MR. BROWN: Thank you.

21 Q. And the item that you've got on here regarding
22 Mr. Cook's case doesn't say standard beside it, does
23 it?

24 A. Are you referring to item one?

25 Q. According to L0514126 7F.

DR. MILLS ON RECROSS

1 A. That would have been -- The F just means a
2 female fraction. When we do -- when we're looking for
3 sperm or semen, we have to do what's called a
4 differential extraction. And the F simply means that
5 it's the female fraction, which is where if you take
6 a vaginal swab you will find the skin cells from the
7 woman's vagina. The male, which we would label as M,
8 is where we would expect to find a DNA profile from
9 the semen. So that's where the F is referring to the
10 female fraction.

11 Q. I'm a little confused because I thought Ricky
12 Cook, Sr. was the victim. Why would you have a
13 vaginal swab?

14 A. I don't have a vaginal swab.

15 Q. In a male victim?

16 A. I was simply explaining what F and M would mean
17 for your understanding. What an F beside an item.
18 Certainly in this case it was probably a rectal swab
19 since this is coming from a male victim. It's the
20 exact same thing. If we're looking for semen in a
21 man who was potentially raped, the female fraction we
22 would still call . . .

23 We might term it the epithelial cell extraction.
24 Female extraction has got several different names.
25 It just means that those are going to be the

DR. MILLS ON RE-CROSS

1 epithelial skin cells. The M or male fraction or
2 sperm cell fraction or sperm fraction would contain
3 the semen, the profile from the semen.

4 Q. And so F doesn't mean it's a female's DNA.

5 A. No. F and M just means that F would be
6 referring to the epithelial and we term it epithelial
7 now. It's the skin cells that you would expect from
8 a vaginal or an anal swab. It would be the skin
9 cells of that particular victim.

10 The M, which we would call male or sperm or
11 semen fraction, is where we expect in a non-
12 vasectomized male individual to find the DNA profile
13 from the semen because the semen which contains the
14 sperm heads. Sperm makes up semen. Sperm have
15 different properties than epithelial skin cells and
16 so that's how we take advantage and are able to
17 separate out two different people from a vaginal or
18 rectal or even an oral swab.

19 Q. So, when it says L0514126 and it does not say
20 Cook standard but instead it says 7F and the item of
21 that is 7 and F means not it's female but it has some
22 other connotation like skin cell.

23 A. 7F would be the female fraction from item 7.

24 Q. Let's make sure we understand. Not female as in
25 a female's DNA, but the female

DR. MILLS ON RECROSS

1 fraction.

2 A. The female fraction and in this case it's
3 probably easier to refer to it as epithelial cell
4 fraction.

5 Q. Okay. So it really means is that a non-standard
6 evidence item of skin from L0514126 has somehow
7 become contaminated with L068041, which is the Allen
8 standard. That's what that line says about forty
9 percent of the way down on the second page of
10 documentation of the corrected report.

11 A. Correct. It says Allen standard showed
12 contamination with L05-14126 7F.

13 Q. Can you tell me here today under oath that the
14 contributor of 7F was deceased on May 26, 2006?

15 A. I would have to have my case jacket. I don't
16 have what L05-14126 was. If I had read the incident
17 report from that and if you give me a minute I'll
18 look through this and see if I can determine.
19 I believe at the time of the incident when the
20 victim, when Ms. Davidson was supposedly raped the
21 person who inadvertently got into the fingernail
22 scrapings.

23 Q. Who was that person?

24 A. I believe that it was Ricky Cook, Senior. Item
25 one.

DR. MILLS ON RECROSS

1 Q. Would he be the standard in his own test. In
2 other words, could ..

3 A. Yes.

4 Q. Okay.

5 A. Yes.

6 Q. The 7F is not a standard. Is it?

7 A. No.

8 Q. Mr. Cook was deceased.

9 A. Mr. Cook was -- Again, you know, I'm doing this
10 from memory. I believe that 14126, Ricky Cook,
11 Senior, was deceased at the time.

12 Q. But you can't tell me whether the contributor of
13 7F and L0514126 was deceased on May 26, 2006?

14 A. I'd have to get my case jacket but I think that
15 the profile from 7F matched Ricky Cook Senior. It
16 was ..

17 Q. Out of all of the thousands of cases that have
18 come through your lab without bringing the paperwork
19 and reviewing it here today, you can tell me that
20 from memory?

21 A. I just talked to your defense expert about a
22 week ago on this particular case and I believe we did
23 look up L0514126 and it was determined that Ricky
24 Cook, Senior, was in fact dead at the particular time
25 that this incident occurred in 2006.

DR. MILLS ON RECROSS

1 On May 26, 2006.

2 Q. Obviously in your lab there had to be some
3 suspicion of a crime, I would assume.

4 A. Yes.

5 Q. If ya'll are a law enforcement division agency..

6 A. Yes. We are a South Carolina Law Enforcement
7 Division. We accept casework from crimes all over
8 the state of South Carolina. We don't accept just
9 standards. There just has to be just cause why we
10 would need to pursue the DNA analysis of a particular
11 case. So, it doesn't come through our doors unless
12 there is evidence or suspected evidence of a crime.

13 Q. So, this is not accidentally somebody's paternity
14 case. Ya'll do paternity testing for family court?

15 A. We don't do it for family courts but we do do
16 criminal paternity testing. Yes.

17 Q. In criminal cases.

18 A. Yes.

19 Q. When there has been allegations that somebody
20 has done something illegal or netharius.

21 A. Well everything that we do involves somebody
22 doing something illegal so to come through our doors
23 there is an indication that somebody has broken the
24 law.

25 Q. Now, let's talk about the Lexus

DR. MILLS ON RECROSS

- 1 sample.
- 2 A. Okay.
- 3 Q. And that had its own contamination, doesn't it?
- 4 A. Yes, as I stated earlier that was my profile
- 5 that showed up in that swab from the Lexus.
- 6 Q. And obviously ya'll keep your own DNA into the
- 7 system to note when that comes up. Right?
- 8 A. Absolutely. Yes.
- 9 Q. Okay. And actually that was noted as earlier as
- 10 July fifth, 2006, wasn't it?
- 11 A. It was - we didn't notice it on July fifth. The
- 12 actual report says that this item 19, which yielded
- 13 my own profile, was analyzed and I did not recognize
- 14 the contamination. Which I'm human and everyone
- 15 makes mistakes. I should have caught it. I should
- 16 have caught that it was my profile. I did not. I
- 17 did not recognize this contamination.
- 18 I reported it as the incorrect genotype, the
- 19 incorrect profile. When it was discovered that it
- 20 was my profile, it was fixed. It was dealt with. It
- 21 was detailed in the corrected and supplemental report
- 22 dated July eleventh of 2008.
- 23 Q. How long have you been with SLED?
- 24 A. I've been employed with SLED since September of
- 25 2004.

DR. MILLS ON RECROSS

1 Q. Okay. And so at the time of this first report,
2 you had been there a little less than two years.

3 A. Yes, because the first year or little over a
4 year is training under a court qualified DNA analyst
5 in the lab. I also went through the police academy
6 which was approximately twelve weeks of training at
7 the South Carolina Criminal Justice Academy so I
8 wasn't taking casework during this time. Then I was
9 extensively trained by another analyst. I was taught
10 how to cut out evidence, how to run profiles, and how
11 to check for contamination. Which again, I should
12 have caught this. It was my mistake. I'm human and
13 I did not catch it.

14 Q. Now, did they teach you in the lab or training
15 at SLED to take a piece of tissue and take the top
16 off the vial and put it down into the same tissue and
17 then do that with another item and put it on the same
18 tissue from another case?

19 A. What he's referring to is when we have the tubes
20 that we were using at this particular time had screw
21 tops, meaning that it's a small cylindrical tube and
22 you actually have to screw the lid on. We lay what
23 is called a Kim-wipe, which just looks a Kleenex
24 tissue. We will lay it down on our bench top and
25 then we can place the tube maybe face down

DR. MILLS ON RECROSS

1 on that tissue and then we're able to place it back
2 onto the tube. It's a little bit cumbersome to try
3 to work with pipette tip and the tube and unscrewing
4 a screw top tube.

5 So at the time we would and this is one
6 possibility - we don't know if this is where the
7 contamination occurred. It's a possibility. That a
8 lid was laid on a napkin and inadvertently I might
9 have laid another lid on the same napkin. Since this
10 time, I've disregarded the use of screw-top tubes. I
11 don't use them anymore.

12 I use pop-top tubes which means the lid is
13 attached to the tube so I don't have that problem
14 anymore. This was part of the counseling that I had
15 after this incident occurred. It is one possible
16 source of contamination. Again, we can't see DNA so
17 that may have been where it occurred. It may not
18 have been where it occurred.

19 Q. And the laying of screw-top lids from different
20 cases on the same napkin, is that part of your
21 training procedure that you were taught to do?

22 A. I don't know that my particular trainer trained
23 me. It's up to each analyst how they handle tubes.
24 Certainly we try to lay it down and I've always tried
25 to lay tube lids down on a clean

DR. MILLS ON RECROSS

1 napkin. I had no knowledge, no reason to believe
2 that that napkin was in any way, shape, or form
3 contaminated or had any DNA evidence on it. Before
4 we take any sample out of a tube we always put it
5 into a centrifuge and spin it down so that all the
6 liquid is on the bottom of the tube.

7 Taking the top of the tube and placing it in a
8 napkin there should have been no DNA on that
9 particular lid. There's only one lid off of a tube
10 at any one time. So, that lid would come off. It
11 may touch the napkin but it goes right back on the
12 exact same tube. There's no switching of tubes.
13 There's no two tubes open at the same time.

14 Inadvertently, maybe a drop from the lid maybe
15 wasn't spun down all the way could have inadvertently
16 been transferred to that napkin and gotten on the lid
17 of another tube. It's a possibility. We can't say
18 for certain that that's how the contamination
19 occurred but it's a possibility.

20 Q. And are you taught to put different lids from
21 different cases onto the same napkin?

22 A. It's not something you exactly teach somebody.
23 It's up to each analyst to decide how they handle
24 their own tubes. You can't teach somebody
25 everything. It's just what you're

1 comfortable with. That napkin, you know, certainly
2 we are taught to put Kim-wipes or to put Kleenex down
3 in the hood so that we are not always working
4 directly on our hood. That we have a barrier that we
5 can then throw away when we're finished with the
6 procedure.

7 Q. And the reason you use the napkin is because
8 after the sample that's used there is put on it, it
9 can be thrown away and you can get another one.

10 A. That ...

11 Q. So you can keep it clean and sterile.

12 A. Correct.

13 Q. So you are not taught to use the same napkin an
14 place the caps from different cases on it. Are you?

15 A. Probably not from different cases. No.

16 Q. And so that would also be improper technique and
17 procedure on your part in this case, wouldn't it?

18 A. It would be on those particular samples that
19 I've admitted to accidentally contaminating. I take
20 full responsibility for them. I don't know how it
21 occurred but that's a possibility. Certainly I do
22 not do that anymore. Now, it's always a clean Kim-
23 wipe that goes underneath the hood. Don't use screw-
24 tops anymore. So I do not have a problem with that
25 anymore.

DR. MILLS ON RECROSS

1 Q. Did you rerun the items on this case?

2 A. There was no need to rerun any items of evidence
3 that had evidence remaining on them. There was no
4 need to. Certainly if the fingernail scrapings would
5 have had sample remaining, I would have gladly gone
6 back and recut and rerun those.

7 When somebody at the hospital for a rape kit,
8 their fingernail scrapings are taken usually with
9 something that kind of looks like a toothpick and
10 they're rubbed underneath the fingernails. We then
11 cut the end of that scraper off to get the DNA off of
12 so I don't have any sample remaining to go back to.

13 Had I noticed that there was a problem with any
14 of the other evidences, especially the items of
15 evidence where I matched Alfonzo Howard to them, I
16 certainly would have gone back and re-extracted and
17 reran those samples but I did not feel there was a
18 need to.

19 My supervisor did not feel that there was a need
20 to and these reports have been extensively looked at
21 and extensively researched, thoroughly investigated
22 by my superiors and certainly these reports are
23 available to all of our auditors that come into the
24 lab. Never has there been a problem that arose out
25 of these findings.

DR. MILLS ON RECROSS

1 Q. So, you went into the lab with the focus on
2 suspect, Al Howard, and you got a result that
3 confirmed your initial hypothesis of Al Howard.
4 You're satisfied with it.

5 A. No, sir. We're never biased when we do these
6 cases. We certainly, certainly have plenty of cases
7 where we exonerate people. The profiles don't match,
8 the standards don't match.

9 I got Alfonzo Howard's profile off of a
10 particular piece of evidence before, way before his
11 standard ever entered our laboratory. The only way
12 his DNA could have shown up on the gloves was if his
13 profile was on those gloves. There's no way that his
14 standard in any way, shape, or form could have
15 contaminated anything in this case. I did not even
16 have it in my possession or in the laboratory
17 whatsoever. And my analysis is certainly available
18 to be retested by the defense.

19 Q. Let's talk about that. Would ya'll let me into
20 your lab?

21 A. No, sir. We do not let - because of what I've
22 already talked about - the extreme sensitivity of our
23 DNA analysis, we try not to let anybody outside of
24 laboratory personnel into the lab. We do on occasion
25 have to admit newspaper reporters

DR. MILLS ON RECROSS

1 or that such but we always counsel them to be
2 extremely careful when they are around the evidence
3 or anywhere in the lab so we typically do not let any
4 solicitors in the laboratory. Defense attorneys are
5 not allowed in the lab. Only the forensic personnel
6 that are required to be in that laboratory need to be
7 in that laboratory.

8 Q. So, as the defense attorney for Mr. Howard, I
9 would need to go collect the evidence in this case
10 and bring it to Jim Brown's lab or Al Albert's lab.
11 Is that what you're telling me?

12 A. There are plenty of private labs all across the
13 United States that do DNA testing. That's why we
14 save the items of evidence in a case, the tubes that
15 I showed you earlier that would drive down DNA or
16 even the particular piece of evidence. The gloves or
17 the swabs from the Tempo. Those are all available
18 for the defense to send to an outside lab to be
19 tested.

20 Once we sign our report, it is SLED policy that
21 we do not go back in and retest stuff for the
22 defense. That's just our policy. Once we get our
23 report issue. Once we do all the DNA associated with
24 the case we have our matches or we have our
25 exclusions.

DR.M ILLS ON RECROSS

1 That's our report and, in fact, on our report
2 there is a statement that says, This is an official
3 report of the South Carolina Law Enforcement Division
4 Forensic Services Laboratory and is to be used in
5 conjunction with an official criminal investigation.
6 These examinations were conducted under your
7 assurance that no previous examination of person or
8 evidence submitted in this case have been or will be
9 conducted by any other laboratory or agency.

10 The defense has the responsibility to send - if
11 they have a question on a particular piece of
12 evidence - they are responsible for sending that
13 evidence to a private lab to be retested and that
14 certainly has been done on cases at SLED before. It
15 was not done in this case.

16 Q. Let me make sure we understand this. So, now
17 the burden has been shifted to the defense to prove
18 their innocence in this case, Ms. Mills?

19 A. No, sir. All I'm simply saying is that those
20 items are available. We've got the profiles, we've
21 stated the matches, we've stated the exclusions.
22 There is evidence in this case that I can say that he
23 can't - he's not on. So I'm not being biased in any
24 way, shape, or form. I don't know anybody in this
25 investigation.

DR. MILLS ON RECROSS

1 I have no reason to be biased towards one person
2 or the other person. That is our statement. That we
3 do the evidence. That we don't get evidence back in
4 to retest. It's certainly available if retesting
5 needs to be done or if there is an issue raised but
6 as I've stated, no other particular piece of evidence
7 in this case showed any sort of contamination. Any
8 sort of problems whatsoever.

9 It was agreed by me, by my supervisor, who also
10 holds a PHD degree, and by superiors other than him
11 in our laboratory at SLED. No other problems were
12 found with any of the other evidence so there would
13 be no reason for us to feel like we would need to go
14 back and retest items of evidence.

15 Q. There's no question that you are law
16 enforcement. You have a badge.

17 A. Yes, sir. I do.

18 Q. So, you say you are not biased in a case where
19 the police are against a person. Just tell the
20 truth.

21 A. Yes, sir. It's true. We don't know these
22 people that we get into our labs. We're never biased
23 towards ...

24 Q. Then why wouldn't you give this evidence as
25 blind evidence. Why would it have

DR. MILLS ON RECROSS

1 people's names on it?

2 A. Well, sir ...

3 Q. And doesn't it say suspect and have Howard
4 beside it?

5 A. Certainly. We have to know for our
6 investigative purposes who we're looking at. Are
7 they subjects or are they victims?

8 Q. Why wouldn't you just have a number? Item from
9 person number four? I mean you had him listed as
10 suspect Howard, don't you?

11 A. In every investigation that is submitted at
12 SLED, we always have names associated with it. We
13 have to know what the evidence is. We can't just get
14 a swab in and say, Do I test for blood? Do I test
15 for semen? We have to know what occurred. As
16 investigators in the lab we have to know what we are
17 looking for. Are we looking for blood on this knife?
18 Do you think the victim got stabbed? Or if it's a
19 home burglary, we get standards in from the people
20 who own the home so we can say, That profile doesn't
21 belong to them. It must be the perpetrator. Then we
22 can search it.

23 Q. Can't you search it regardless of whether you
24 know whether it's a stabbing or a bar fight?

25 A. The problem with searching it is

DR. MILLS ON RECROSS

1 that we have to know when we get a particular piece
2 of evidence from a crime scene that that DNA is
3 attributable to the perpetrator. It cannot be and it
4 is strictly disallowed that we enter any type of a
5 victim profile into our database. We have to be one
6 hundred percent sure when we enter that profile
7 that it does not belong to a victim from the case;
8 therefore, we have to know who the victims are. We
9 have to know who the suspects are. It doesn't make
10 us biased. We don't know these people. We don't
11 know the case. We know just what's written on ...

12 Q. Okay.

13 A. It doesn't belong to the victim. That's
14 got to be the subject for a perpetrator's DNA. Then
15 we can enter it into our database to search. If we
16 have the subject's standard to compare it to, then
17 that's important to us because if it's victim's
18 clothing and we get a profile - blood profile or
19 profile off the victim's clothing - we can say that
20 belongs to that subject so we can place them
21 together. We have to know for the purposes of our
22 investigation - our in-house investigation of the
23 crime of what we are looking for. It's not possible
24 to do it all blindly. We have to have knowledge of
25 the crime scene. We have to know

DR. MILS ON RECROSS

1 what body fluids we're looking for. We have to know
2 the scenario behind the incident.

3 Q. Well, let's look at that Agent Mills. Let's
4 take item five why don't you.

5 A. The swab from the outside rear door handle
6 behind driver's door of Tempo.

7 Q. Okay. And did that get entered into CODIS?
8 Entered and run in CODIS?

9 A. Item five says the DNA profile developed from
10 item five is a mixture. The DNA profile developed
11 from a major contributor. This mixture is from an
12 unknown female individual. The partial DNA profile
13 developed from the minor contributor to this mixture
14 is too weak to reliably interpret.

15 Q. Okay. And how do you know it was an unknown
16 female?

17 A. To answer your question, item five was not
18 entered into our database.

19 Q. How do you know it was an unknown female?

20 A. Because when we had Amy Davidson, who was the
21 only female listed in this case, when we saw it
22 didn't match her we don't know who we matched so we
23 call it an unidentified or unknown profile because
24 it's a profile from somebody we just don't know who.

25 Q. Let's talk about item fifteen.

DR. MILLS ON RECROSS

1 A. Item fifteen is a swab from the front of the
2 driver's headrest of the Tempo.

3 Q. And does it not say that that has been entered
4 into CODIS for comparison purposes? On May 7 on your
5 July eleventh, 2008, report.

6 A. The DNA profile developed from item fifteen is
7 a mixture of partial DNA profile from the major
8 contributor to this mixture is from an unknown male
9 individual and has been entered into CODIS.

10 Q. That was entered into CODIS and run?

11 A. Yes, it was.

12 Q. Who was that before you entered it into that
13 system because you can't enter it into unless you
14 know they're a suspect?

15 A. It's not that we know they are a suspect; it's
16 that we know that it's not the victim. In the case
17 of a violent crime, a lot of times the suspects
18 haven't been caught or they're not willing to give
19 their DNA sample to us.

20 We have very strict procedures for how we enter
21 something into CODIS. We have a lieutenant that is
22 over the CODIS section. We have very strict
23 procedures and protocols that we have to adhere to in
24 order to enter something into our database. This is
25 what ...

DR. MILLS ON RECROSS

1 Q. Now how did I ... I'm sorry.

2 A. This is what we would consider a violent crime.
3 We didn't have all the subject's standards in at the
4 particular time that I got the profiles from this
5 particular item. I did not have Alfonzo Howard's
6 standard in. I didn't know if he was in CODIS at the
7 time. We can search it.

8 Certainly anything that ever gets entered into
9 CODIS that shouldn't have been there is always or can
10 be removed. If we inadvertently, you know, in a
11 violent crime where we don't initially have the
12 subject's standard or we don't have the victim's
13 standard, it's something that's put into CODIS and we
14 later determine that it shouldn't have been in there.
15 Maybe it was the victim's husband. We immediately
16 take it out of CODIS and delete any record of that
17 item being in there.

18 So if it ends up in CODIS, that means that there
19 was enough evidence or enough for us to believe that
20 that, in fact, that profile could be contributed to
21 one of the spec sets so we enter it hoping to yield
22 what we call a hit that comes back and says this is
23 who left that stain and this is who you need to go
24 look for.

25 Q. Okay.

DR. MILLS ON RECROSS

1 A. It's an investigative tool.

2 Q. So major contributor of item fifteen, that's a
3 male profile that was blindly entered into the CODIS
4 of this case, wasn't it?

5 A. Item fifteen was entered ...

6 Q. That was a blind entry, wasn't it?

7 A. You would have to explain what you mean by a
8 blind entry.

9 Q. Blind in the sense like a blind stone where the
10 examiner in a scientific experiment is blind to the
11 contributors or to the predicted or assumed outcome
12 of the scientific experiment that's going on in a
13 lab. That's what keeps science pure and true, isn't
14 it, Agent Mills?

15 A. Well, sir, to answer your question about item
16 fifteen - item fifteen was entered because we didn't
17 have Alfonzo Howard's standard at the time. It was a
18 male profile. We know from reading the incident
19 reports that they were looking for male individuals.
20 It wouldn't - the female profile that was not entered
21 was not entered because I'm assuming it was a female
22 profile. This profile was entered in search so that
23 ... The car was abandoned. They didn't know - it's my
24 assumption that they did not exactly know maybe who
25 was driving or ... It's an investigative tool

DR. MILLS ON RECROSS

1 that is not the sole basis for arresting somebody.
2 It's an investigative tool that says this person left
3 DNA on this item of evidence. You might want to find
4 them and go talk to them. They may have something to
5 do with this crime. It doesn't always end up that
6 way. Certainly we have deleted many profiles from
7 CODIS but, again, we have very, very rigorous
8 standards for what we can and cannot enter into our
9 database.

10 Q. But it can be done blind? There's nothing
11 technologically that prevents that from happening.

12 A. I think I'm getting what you're asking. If your
13 saying blindness as in there has been a crime
14 committed, there's a swab of DNA that you know is not
15 the victim's. We enter that into CODIS in hopes of
16 aiding in the investigation. If that's what you are
17 referring to as blind. We don't always have subject
18 standards in before we enter it into CODIS because
19 they need to locate that person right away.

20 Q. I'm talking about your research in that nothing
21 else in this case was contaminated because it didn't
22 come up with any results that your investigations on
23 behalf of the state of South Carolina Law Enforcement
24 did not find it strange to what they wanted the
25 result to be.

DR. MILLS ON RECROSS

1 A. No, sir. They didn't ...

2 Q. Then why wasn't it done blindly is my question?

3 A. We ...

4 Q. Why isn't there a blind run? Why do you need to
5 know whether one of them is Coke or one of them is
6 Coke diet. I mean, if you've got the label when you
7 drink it you know which one is diet and which one is
8 not.

9 SOLICITOR: I'm going to object. This
10 has been asked and it has been answered.

11 MR. BROWN: I will move on.

12 THE COURT: Okay.

13 Q. Now, let's talk a little bit about these other
14 labs briefly. There are independent labs and the
15 state of South Carolina could have paid an
16 independent lab to run this very same evidence,
17 couldn't they? To confirm these results if they are
18 so reliable.

19 A. No, sir. We don't pay as our statement on our
20 report says. We don't send our evidence that we've
21 already tested out for somebody in another lab to
22 repeat our analysis.

23 Q. So, it's up to Jim Brown's lab or Al Howard's
24 lab to run this stuff to prove his innocence unlike
25 what we know a trial does to prove

DR. MILLS ON RECROSS

1 guilt?

2 A. No, sir. My results are what they are. I've
3 said that there was blood on the glove that matched
4 Alfonzo Howard. There is no need. If I were to do
5 that I would have to go back and rerun every sample
6 from every case that I've ever done that I ever get a
7 match on.

8 Q. I'm talking about all the contaminated cases.
9 When you ...

10 A. Certainly the contaminated cases were ...

11 Q. ... have a problem why don't you stop and let
12 somebody else investigate it ...

13 THE COURT: All right. Ya'll do not
14 talk over each other. My Court Reporter can't take
15 down everything both of you say at the same time so
16 respectfully, Mr. Brown, ask the question and Ms.
17 Mills answer it.

18 Q. So when you realize there is a problem to make
19 sure the results are beyond reproach, why don't you
20 then have an outside agency come in and run this? If
21 you're not willing to rerun it yourself?

22 A. Because I am one hundred percent behind the
23 results I've got. What I've got we stand behind. We
24 say it is a match to Alfonzo Howard. There is no
25 doubt in our mind as court

DR. MILLS ON RECROSS

1 qualified DNA analysts working in a laboratory that
2 has been repeatedly accredited by the American
3 Society of Crime Laboratory Directors, a laboratory
4 accreditation board which holds us to extremely high
5 standards and ...

6 Q. What's the name of that agency?

7 A. The American Society of Crime Laboratory
8 Directors, laboratory accreditation board.

9 Q. And so that acronym is ASLAB.

10 A. ASCLAB.

11 Q. And so ASCLAB can send auditors out to review
12 the last technique?

13 A. Absolutely, we are routinely reviewed. We have
14 auditors - we just had an audit last year in fact.
15 We have audits all the time that certainly they look
16 at our protocols. They look at our procedures. They
17 look at what we do. There's never been a major
18 source of error found which is why we are always
19 accredited. We always renew our accreditation.
20 We're held to very high standards within the
21 laboratory.

22 Q. And so ya'll turned this report into ASCLAB
23 because they make you do this, don't you?

24 A. I'm not ... This is not a report I issued. I'm
25 not the supervisor of the department

DR. MILLS ON RE CROSS

1 so where and who this report went to would have to
2 come from my lieutenant at the time because I don't
3 know where this report was.

4 Q. Does ASCLAB require you to do a corrected report
5 when there is contamination in the lab?

6 A. Yes, sir. And we did.

7 Q. They consider it serious business, don't they?

8 A. I consider it very serious business which is why
9 we went extensively into detail as to why this
10 happened, how it happened, how it could have
11 potentially have occurred, what I can do as an
12 analyst to prevent it and ...

13 Q. And then you hid it from me.

14 A. No, sir. I did not hide anything from you.
15 What you asked was furnished to you. What was asked
16 was the case file. As soon as I was aware that the
17 documentation of the internal corrective action was
18 needed, I certainly faxed it. I sent it. It was
19 made available. I made myself which I did not have
20 to do legally, I made myself available to talk to his
21 DNA expert witness which I did freely and did in fact
22 talk to him about the contamination in the presence
23 of my lieutenant at the time or who is still my
24 lieutenant about what could have occurred, what could
25 potentially have occurred. I wasn't

DR. MILLS ON RECROSS

1 required by any law to do that. I did that to say
2 that we're not hiding anything. The State is not
3 hiding anything.

4 This is what it is. We have evidence matching
5 the suspect. No source of contamination on those
6 items were noted at all. The swabs from the glove.
7 There is no mistake with those items. There is no
8 error. There is no contamination whatsoever and it's
9 my opinion, it was my supervisor's opinion, my
10 technical leader's opinion and ...

11 Q. What do you mean you are not required to legally
12 to make yourself available?

13 A. I was not required to talk to him. I was asked
14 to talk to him which ...

15 Q. You were required by this Judge to talk to me.

16 A. I was required from my understanding to talk to
17 you. I never received a phone call from the defense
18 attorney, Mr. Brown.

19 Q. You don't recall the lab setting up a conference
20 in June ...

21 A. The only phone call I received from Mr. Brown
22 was last Wednesday. It was the first time I have
23 ever spoken to him. I spoke to his defense expert
24 but I have never, since he was made available these
25 reports. I have never spoken to

DR. MILLS ON RECROSS

1 Mr. Brown. He has had my phone number. He has had
2 my contact information. Never have received word
3 from him to contact him ...

4 Q. You received a subpoena from me, didn't you?

5 A. I received a subpoena from Mr. Brown on Tuesday
6 and ...

7 Q. And you didn't honor and called me and told me
8 that you were not going to come in, didn't you?

9 SOLICITOR: Your Honor?

10 THE COURT: Okay. Respectfully, both
11 are continuing to talk over each other. I think now
12 is a good time to take a break. Ladies and gentlemen
13 of the Jury, I'm going to send you back to the jury
14 room. Again do not begin discussing this case. It
15 wouldn't be appropriate to do so at this time and
16 we'll be back with you shortly. Thank you.

17 (Jury leaves the courtroom at 3:12 PM)

18 CLERK: The Jury is cleared, Your
19 Honor.

20 THE COURT: Thank you. Number one,
21 this witness has no basis for saying whether or not
22 she is legally required to do anything because she
23 doesn't understand the logistics of any of this.
24 Respectfully, Agent Mills, that's a determination for
25 the Court and for the lawyers and not for

DR. MILLS ON RECROSS

1 you.

2 MR. BROWN: I didn't ask that
3 question. I'm sorry.

4 THE COURT: But the problem is that
5 the question you asked did and while I don't think it
6 was pointed to that directly, it was obviously broad
7 enough to open the door to get her to start
8 discussing it and whether or not and how it came
9 about Mr. Morrison spoke with you, their DNA expert.

10 It's not relevant to this case. It may be
11 relevant to your theory that this is a government
12 conspiracy in some way but it's not relevant to this
13 case and what you're doing is continuing to go down
14 this same road and I have given you a large leeway,
15 Mr. Brown, and you have asked the same question over
16 and over and over again.

17 The Solicitor has not raised an objection as to
18 asked and answered as to this line of questioning
19 although I think we've done this line of questioning.
20 I think we need to move on to whatever to whatever
21 your next issue is with Ms. Mills.

22 MR. BROWN: I surely will and Your
23 Honor if it may be noted now that we are talking it.
24 I have done a fair job, at least, of asking what I
25 considered leading questions.

1 Now, I don't believe leading questions have to be
2 answered yes or no as Your Honor I guess has
3 instructed me many times to answer yes or no and
4 sometimes I get it in a longer answer than the Court
5 may have asked. However ...

6 THE COURT: No, Mr. Brown, what I
7 expect is a responsive answer from you and that's
8 where it seems sometimes you have difficulty.

9 MR. BROWN: And that's the difficulty
10 I'm having with this witness right here, Your Honor.
11 And so I would believe that the editorialization is
12 coming from the witness stand and not from my
13 questions.

14 THE COURT: Okay. Well, respectfully,
15 we went ahead and took a break because it was getting
16 to the point that it was a bit heated. We did have a
17 bench conference earlier where the Solicitor asked to
18 approach and Solicitor you can go ahead and put it on
19 the record as to - I believe you were concerned with
20 Mr. Brown's disrespect of the witness. I believe you
21 stated that he was sitting in his chair while waiting
22 for the answer and I will tell you that I was looking
23 down reading a proposed jury charge at the time and I
24 did not see that Mr. Brown was sitting down at the
25 time. Am I correct in that

1 statement of the bench conference, Solicitor?

2 SOLICITOR: That's correct, Your
3 Honor. Mr. Brown asked Dr. Mills a questions and Dr.
4 Mills then turned towards the Jury to answer the
5 question and while she was answering the question he
6 returns to his table and sits down. When she
7 finishes her answer and turns back towards him he
8 gets up and he asks another question. She turns back
9 to the Jury to answer and he goes back to his tables
10 and sits down again. So when she finished and turned
11 back toward Mr. Brown when he stood up again, that's
12 when I asked to approach because he had done it
13 twice. I had assumed he would be doing it for a
14 third time. That's when I brought it to the Court's
15 attention. I thought it was extremely disrespectful
16 to the witness and to this Court to be acting like
17 that.

18 THE COURT: Well, respectfully, as you
19 well know, you have the floor and you speak and you
20 stand. Anyone in this Courtroom other than myself
21 when you're speaking, you're standing and as I told
22 Mr. Brown at the bench conference, had I seen him do
23 that and had he done that I would have presumed he
24 was done with his cross- examination and would have
25 let the witness leave the stand.

1 So, respectfully, ya'll again, we're just trying to
2 get through this trial and I'm asking it of everybody
3 to take a deep breath, ask the questions you need to
4 for cross-examination, sir, make your point and move
5 on.

6 MR. BROWN: Yes, ma'am.

7 THE COURT: And that's where we're
8 going here. We'll take about a five minute break,
9 ya'll, and if you all would collect your thoughts and
10 then let's see if we can get through this witness and
11 the next one. Yes, Solicitor.

12 SOLICITOR: Your Honor, I'm going to
13 object to any further questions about the subpoena
14 and the issue of her not appearing. We handled that
15 in the pre-trial hearing last week. The subpoena was
16 quashed and Mr. Brown was fully aware that she was
17 unavailable. It's just unnecessary and completely
18 irrelevant to go down that road any further and I
19 would ask that that line of questioning be ...

20 MR. BROWN: I have no problem with
21 that. The witness volunteered that she was not
22 required to speak to me.

23 SOLICITOR: Okay.

24 THE COURT: Well, respectfully, then
25 we're not going to go down that

1 line. Mr. Brown, you're going to get to your next
2 issue, sir.

3 MR. BROWN: Yes, ma'am.

4 THE COURT: Just roll into this case.

5 MR. BROWN: Yes, ma'am.

6 THE COURT: Anything else ya'll need
7 to bring up before we go ahead and take five minutes.

8 SOLICITOR: Nothing from the State.

9 MR. BROWN: No.

10 THE COURT: Okay. Well, let's go
11 ahead and take a five minute break.

12 (The Court takes a short recess at 3:20 PM)

13 (The Court resumes at 3:33 PM)

14 THE COURT: Are you ready, Solicitor?

15 SOLICITOR: State's ready, Your Honor.

16 THE COURT: Is the defense ready?

17 MR. BROWN: We're ready without
18 waiving any of our prior objections.

19 (The Jury returns at 3:34 PM)

20 THE COURT: Mr. Brown?

21 MR. BROWN: May it please the Court?

22 THE COURT: Yes, sir.

23 Q. Agent Mills, under caution I'm going to make
24 sure we answered this question. ASCLAB is the
25 certification agency or auditing agency

DR. MILLS ON RECROSS

- 1 for labs such as SLED?
- 2 A. That's correct.
- 3 Q. You qualified as an ASCLAB DNA lab inspector.
- 4 A. No, but we do have several people in our
- 5 laboratory that are, in fact, auditors.
- 6 Q. But you're not?
- 7 A. I am not. No.
- 8 Q. You haven't been to any FDA or FBI auditor
- 9 training or ASCLAB auditor training?
- 10 A. I have not yet. I will be going sometime in the
- 11 future but have not yet.
- 12 Q. And let's talk a little bit about the statement
- 13 that appears on page seven of twelve from the
- 14 November twentieth, 2006, report. And have you got
- 15 that portion?
- 16 A. I have pages seven through twelve. Yes.
- 17 Q. Okay. And when you looked at the fingernail
- 18 scrapings, 1.8R and L, at that time it produced a
- 19 mixture profile. Did it not?
- 20 A. At the time the November twentieth, 2006, report
- 21 came out this is prior to us knowing that the
- 22 fingernail scrapings, 1.8, were, in fact,
- 23 contaminated with another case so the particular
- 24 item, 1.8, in this report which we then later on go
- 25 back and clarify says that the profiles

DR. MILLS ON RECROSS

1 developed from the fingernail scrapings are mixtures.

2 Q. And the major contributor was a male?

3 A. That is correct. It was the male contaminant
4 from the other case which was already discussed.

5 Q. All right. And the minor contributor also
6 exhibits male partial profile, does it not?

7 A. No, sir. What I said in this statement was the
8 partial DNA profiles developed from the minor
9 contributors - and we're not always able to tell with
10 minor contributors whether they are male or whether
11 they are female. If we've got - since I've already
12 pulled out a male as the major contributor there is
13 already a Y there. Meaning an XY would be a male and
14 XX would be a female.

15 So, when you have unidentified minor profiles,
16 we can't always say if it's male or female. All I
17 said with regards to this particular item were that
18 the DNA profiles developed from the minor
19 contributors to these mixtures are from unknown
20 individuals and they were not suitable for entry into
21 CODIS.

22 Q. They were not suitable because you didn't have
23 the complete profile. Is that right?

24 A. They were not suitable because they were
25 mixtures and again, like I've already

DR. MILLS ON RECROSS

1 said, we have very strict requirements for how we
2 enter something into the CODIS system. It has to
3 have a certain number of amount of the DNA profile
4 showing up for us to enter it into CODIS. If there
5 is an indication that the minor profile is more than
6 one person, it's a mixture of two people, it may not
7 be suitable for CODIS. Meaning that it's a mixture
8 and again, we have strict requirements for how
9 something with a mixture is even entered in. This
10 particular minor profile did not meet our
11 requirements, meaning that I could not put it into
12 search.

13 Q. Now, which one is that? 1.8R or 1.8L.

14 A. It was the partial DNA profiles from the minor
15 contributors to both 1.8R, which simply means the
16 right hand and 1.8 left. I could not enter the DNA
17 profiles from the minor contributors because they did
18 not meet our requirements for entering it into the
19 database.

20 Q. And let's just take a look briefly at the
21 profile for 1.8R and 1.8L. They're not the same
22 across all.

23 A. No, they are not.

24 Q. Which means that they could be not only a major
25 contributor but also more than one

DR. MILLS ON RECROSS

1 minor contributor under that fingernail sample.

2 A. And that's what my statement said. It said that
3 the partial DNA profiles developed from the minor
4 contributors meaning that, yes, there is potentially
5 more than one contributor that is the minor
6 contributor and those were not suitable for entry
7 into our CODIS.

8 Q. Now, let's talk a little bit about what you
9 believe happened to compromise 1.8L and 1.8R. You
10 mentioned that Mr. Cook's case - L0514126 - that you
11 believe that case was the source of the contribution
12 to the major contributor.

13 A. Yes.

14 Q. So what's your explanation for the source of the
15 minor contributors?

16 A. We do not have a source for the minor
17 contributors. Once we determine that those
18 fingernail scrapings are contaminated, once we
19 determine that there is another profile in it we went
20 back and then said that those profiles are now
21 inconclusive. Meaning that we can't say that
22 somebody is there or we can't say that somebody is
23 not there. We just say that they're inconclusive.
24 We know that the person who left the major
25 contributor was, in fact, the

DR. MILS ON RECROSS

1 contaminant and we did trace it to the case that it
2 came from. The minor contributors, we were not able
3 to do that with. It could have been ... It's not
4 uncommon at all to find DNA under somebody's
5 fingernails.

6 Q. And so the contamination from that other case is
7 not the source of the DNA of the minor contributors?

8 A. The ...

9 Q. The Cook case is not the source of the minor
10 contributor DNA according to your version of what
11 happened.

12 A. My version says that the major contributor was
13 the evidence from Ricky Cook's case, which was
14 L0514126.

15 Q. But it's not the explanation for the minor
16 contributor source, is it?

17 A. The major contributor source so no, it would not
18 be the minor contributor source as well.

19 Q. And what's your explanation of the minor
20 contributors source?

21 A. It's impossible for us to tell. It could have
22 been a friend under her fingernail scrapings that she
23 had casual contact with the day before. It could
24 have been somebody that she encountered that she just
25 scratched the skin on. There's no

DR. MILLS ON RE CROSS

1 way for us to tell how DNA got to where it got.

2 We're able to match it or exclude somebody but
3 how it got there, how long it's been there, we can't
4 tell that especially something like underneath the
5 fingernail scrapings. Even if there could be blood
6 on this piece of wood we can't come back a week later
7 and say that is a week old blood stain. DNA can tell
8 is who left the stain, who left the DNA but it can't
9 tell us how long it's been there so there's no
10 explanation for us of who's DNA that is or how it got
11 there.

12 Q. And we do know a little bit of information about
13 the minor contributors. We know it's not Rico
14 Hicks, don't we?

15 A. In my original report I said that the minor
16 contributors were unknown individuals, which meant I
17 would have compared it to the standards I had at the
18 time which were Amy Davidson and Mr. Hicks and by
19 saying that it's an unknown or unidentified profile
20 means that it would not have been the standards I had
21 at the time which would have been Hicks and Amy
22 Davidson.

23 Q. Let's make sure I understand. Rico Hicks is
24 excluded from being the minor contributor of the DNA
25 found in the fingernail scrapings.

DR. MILLS ON RE CROSS

1 A. Yes.

2 Q. And Mr. Davidson is excluded from being the
3 contributor of the minor portion of the DNA profile
4 found in the fingernail scrapings.

5 A. Yes, I also had Philip Davidson's DNA profile.
6 I'm sorry. And again, by saying it's unknown or
7 unidentified profiles means that it did not belong to
8 one of the subject standards I had in at the time but
9 again, these were the contaminated samples that we
10 did come back and call inconclusive.

11 Q. And now that you have Mr. Howard's DNA profile,
12 he's also excluded as the contributor of the minor
13 portion of the mixture found in the 1.8 L and R
14 fingernail scrapings, isn't he?

15 A. That was not part of my original comparison so
16 you'll have to give me a minute to actually look at
17 the profiles.

18 Q. Certainly.

19 A. I'm sorry. Since it wasn't a part of my
20 original report I had to go back and actually look at
21 his standards. Once we got his standard in we then
22 called the evidence inconclusive so no comparison was
23 ever done with Howard to these particular fingernail
24 scrapings but going back and actually looking at the
25 original report it does look like he would

DR. MILLS ON RECROSS

1 be excluded as being the minor contributor.

2 Q. Which again we don't know where the minor
3 contributor

4 A. No.

5 Q. How the DNA got in there?

6 A. No, sir. Like I've stated, it could have been
7 there for days. It could have been there from casual
8 contact with somebody else. We don't know how it got
9 there.

10 Q. Now, let me move to a discussion briefly of item
11 3.1 and 3.2 and if you'll recall the prosecutor
12 asking you about that being related to a glove? This
13 glove?

14 A. I never ... In my department we get the cuttings
15 and the scrapings. We never physically see the item
16 that it came from so I never saw that glove. As part
17 of the evidence processing which you heard from
18 earlier, Patty Ruff would have physically seen the
19 item of evidence.

20 Q. May I approach?

21 THE COURT: You may.

22 Q. And if I can show you the wrapping with that
23 item, does it have Ms. Ruff's initials on it?

24 A. It appears to have PBR which are her initials.
25 Again, I haven't seen this and it's

DR. MILLS ON RE CROSS

1 not in my report as item three. I can just go off of
2 what I see here. It does have the case number and it
3 does have the item number but I don't have a
4 description of what's in there on my report.

5 Q. What do you have on there?

6 A. I have items 3.1 and items 3.2 which were a swab
7 and a cutting from whatever is in this envelope.

8 Q. And what does it say on your report it is?

9 A. It says that it is a swab from the glove and a
10 cutting from the glove. Again, I don't see that item
11 so for me to sit here and tell you that I can
12 identify this - I can't because I never had my hands
13 on this glove. All I can go off of is items 3.1 and
14 3.2 which were the swabs and the cuttings which I
15 physically dealt with which I handled.

16 Q. And does this glove clearly say item 3.0?

17 A. It does say item 3.0.

18 Q. And that would be consistent with the swab and
19 the cutting 3.1 and 3.2?

20 A. That would be my assumption that 3.1 would be a
21 swab from item 3, which this is the first time I've
22 seen the glove which I would have heard that is the
23 particular glove if it was labeled item 3 with the
24 case number.

25 MR. BROWN: And Your

DR. MILLS ON RECROSS

1 Honor, may I relay this to the Jury?

2 THE COURT: No.

3 MR. BROWN: I think it's already been
4 entered into evidence by the State.

5 Q. Now, you don't know where this glove was found,
6 do you?

7 A. No, sir. We a lot of times get the evidence
8 into the lab without knowing where it came from or
9 where it's been collected from. If there is
10 questions, certainly we can call the investigators
11 and ask but ...

12 Q. Okay. Well, we know this much. Alfonzo Howard
13 - his DNA is not on the cutting swab from item 3.0.

14 A. I never had a 3.0.

15 Q. 3.1 and 3.2.

16 A. The DNA profile developed from item 3.1 is a
17 mixture of more than two individuals. Lorenzo Hicks
18 cannot be excluded as a possible contributor to this
19 mixture. No statement can be made regarding the
20 inclusion or exclusion of Philip and Amy Davidson to
21 this mixture and Alfonzo Howard is excluded as being
22 a contributor to this mixture.

23 Q. Okay. So, item 3.1 and that's the swab I
24 believe ... Again, 3.1 being the swab and the swab
25 would include among other things

DR. MILLS ON RECRSS

1 a swab or epithelial or skin cells?

2 A. When we take a swab from a particular piece of
3 evidence, we're just taking a swab. It could be
4 blood. It could be semen. It could be skin cells.
5 And the person that actually physically has the glove
6 that's testing for the glove originally makes the
7 determination based upon what they see on the
8 particular glove, whether they see a red stain.

9 They use special lights to look at it to see if
10 anything fluorescence, meaning there is some sort of
11 biological fluid present there or potentially if it's
12 just an item that's worn. It's real common with tee
13 shirts or pants or gloves to swab that particular
14 item or scrape that particular item for the recovery
15 of epithelial cells to see who wore that glove or who
16 at some point wore that particular piece of clothing.

17 Q. And the swab from item 3 excludes Alfonso Howard
18 from this glove, doesn't it?

19 A. From that particular glove, yes.

20 Q. Okay. And item 3.2 which is a cutting has no
21 DNA in their profile.

22 A. No. As I stated earlier, we don't always get a
23 profile from items where we are testing for
24 epithelial skin cells. It's just going to determine
25 - it's an amount of skin cells

DR.MILLS ON RECROSS

1 that you slough off and sometimes there is just not
2 enough there to get a profile from. On 3.2 that was
3 of this occasion. There was no FTR DNA profile that
4 was developed from this item.

5 Q. Now, do you know what the FBI standard for a
6 statement of identity is?

7 A. No, sir.

8 Q. It's between one and three hundred billion.

9 A. I'm not sure I understand what you're asking.
10 For exclusion?

11 Q. Generally accepted FBI standard for statement of
12 identity. What probability for the FBI? What
13 probability level is it? If you know?

14 A. I don't think I understand what you're asking.
15 We quote a probability in our lab that the way we
16 word it is the probability of randomly selecting -
17 meaning you go out in the population and you just
18 randomly pull somebody out of the population who
19 would have a profile that matched the profile that we
20 get from that evidence is one in one hundred billion
21 or one in this case, one in a hundred and ninety.

22 Q. A hundred and ninety people or a hundred and
23 ninety billion?

24 A. One in one hundred and ninety.

25 Q. Okay. And is the FBI standard of

1 identity not one in three hundred billion?

2 A. I'm not aware of what the FBI standard is for
3 statement of identity. I know what my statistics are
4 for this particular case and the probability of
5 selecting an unrelated individual from the population
6 who could have contributed to the mixture which was
7 on the swab from that particular glove was one in a
8 hundred and ninety.

9 Q. Okay. And so if an unrelated person that could
10 match that profile in counties such as Beaufort that
11 has a hundred thousand people and half are female.
12 That's fifty thousand males. Let's just - we're
13 talking about seven thousand people who are unrelated
14 that could also have that statement attached to it.

15 A. When we say approximately one in a hundred and
16 ninety, if it is a mixture it means that you could
17 find somebody out in the population who also could
18 have contributed to the mixture that was found on a
19 particular piece of evidence but again, these are
20 just part of the investigation. These other people
21 out in the entire city of Beaufort would have had to
22 have access to that particular glove, would have had
23 to have access to where the glove was located.
24 Certainly if the glove was recovered in a certain
25 timeframe, somebody that may be unable

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1 to contribute to this mixture if they were in
2 California certainly they could be excluded based on
3 location and ...

4 Q. And the one in one hundred and ninety
5 probability, that's based upon unrelated people. If
6 there's a relative then there's even a greater
7 possibility that it could be someone else, isn't it?

8 A. We don't make any sort of statement about
9 relatedness or statistics. Strictly say unrelated
10 and that is the statement we go by. That is the
11 statement that we publish and report in our findings.
12 That it is an unrelated. Related individuals can
13 have very similar profiles and they can have
14 completely unrelated profiles. It's a matter of
15 inheritance.

16 You get half your DNA from your Mom and you get
17 half your DNA from your Dad. If you have a brother
18 you could have inherited the same thing from Mom and
19 Dad and you may share absolutely nothing in common.
20 There's just no way to say if for certain if Hicks
21 had a brother or sister that they're going to have a
22 greater probability than one in one-ninety. They
23 may, they may not.

24 Q. And I'm going to conclude here by asking you a
25 couple of questions. Do we know who is

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1 excluded from being a minor contributor to 1.8L and
2 1.8R?

3 A. Based on the original report that I've already
4 stated was contaminated that we went back and fixed,
5 if you look at the profile from the original report
6 we can exclude people but we did go back and reissue
7 a new statement with regards to this particular piece
8 of evidence.

9 Q. And the new statement doesn't bring Mr. Howard,
10 Ringo Hicks, or Mr. Davidson into it, does it?

11 A. Not from the fingernail scrapings alone. No.

12 Q. All right. And that's what we're talking about.
13 There's a minor contributor found in the fingernail
14 scrapings and so we know that those three people are
15 excluded from a profile developed and reported in the
16 November twentieth, 2006, report.

17 A. Yes.

18 Q. And is that fingernail scraping material
19 available for testing by the defense at my lab, Mr.
20 Howard's lab, or any other lab in this world?

21 A. The extracted samples were dried down. I'm not
22 sure if they were in that particular coin envelope
23 but as I talked about earlier, when the fingernail
24 scrapings are cut for DNA analysis unfortunately a
25 lot of times we do have to consume all

DR. MILLS ON RECROSS

1 of the fingernail scrapings so in this particular
2 case it was noted that no sample remained on these
3 particular items which is why I have to go back and
4 say that these profiles are inconclusive.

5 Certainly if there would have been sample
6 remaining I would have had that evidence resubmitted
7 to SLED. I would have gone back. I would have re-
8 cut and re-extracted those samples. There wasn't
9 sample remaining meaning we just had to work with
10 what we had which was a profile that we knew the
11 major contributor was a contaminant. So in working
12 with that and knowing that we didn't have any sample
13 remaining it was an accident that happened in the
14 lab, we now had to just call that profile
15 inconclusive. There's no sample remaining for
16 outside testing.

17 Q. So, because of the contamination and the fact
18 that the sample has been consumed before the defense
19 even knew about the results, Mr. Howard cannot show
20 this Court and this Jury who the identity is. The
21 true DNA profile of that minor contributor.

22 A. No, sir. And as I stated it could have, you
23 know, the profile from underneath her fingernail
24 scrapings had nothing to do with the profile from the
25 blood recovered from the glove

DR. MILLS ON RECROSS

1 that matched Mr. Howard. The profile from underneath
2 her fingernail scrapings certainly didn't match any
3 of the people that were submitted - the standards.
4 But it could just as easily have been a friend of
5 hers or an acquaintance of hers.

6 Just because somebody is underneath the
7 fingernail scrapings, if they don't admittedly say
8 that they scratched their assailant it very well
9 could have been a friend or an acquaintance that just
10 happened to be underneath her fingernail scrapings.
11 Again, we can't say how long it's been there or when
12 it got there or how it got there.

13 Q. And because of the contamination, we will never.

14 A. Certainly the minor profile is there. There is
15 no sample to go back to regrettably. We don't know
16 whose profile that is. We've called it inconclusive.
17 Certainly the minor profile did not match the three
18 people or the four people's standards that I had at
19 the time. A lot of times we don't know who is
20 underneath the fingernail scrapings because there is
21 no way to tell who you come in contact with days or
22 hours leading up to a particular crime occurring.
23 Q. But you understand that there is more than one
24 minor contributor profile that has been lost by
25 contamination.

DR. MILLS ON RECROSS

1 A. You say it's lost but it's still there. But
2 again it doesn't match the minor profile or profiles.
3 It doesn't match the standards that I had in the lab.
4 It doesn't mean that whoever she casually came in
5 contact with or whoever was underneath her fingernail
6 scrapings, that doesn't mean that they're the ones
7 that committed the crime. DNA can't tell us that.

8 We know that there was DNA underneath the
9 fingernails that we regrettably cannot trace to the
10 source of where that DNA came from but we know
11 without a doubt whose DNA was on that glove and we
12 can say that that DNA from that blood on that glove
13 was Alfonzo Howards.

14 Q. Again, as you already said it, that's not a
15 suitable as a profile to enter into CODIS.

16 A. Sometimes minor profiles can be entered into
17 CODIS but the minor profiles recovered from the
18 fingernail scrapings without going into a lot of
19 detail on CODIS and what's allowed in CODIS and the
20 low side of what you have to look at. We have strict
21 requirements and all I can say is this did not meet
22 those requirements for entering into CODIS,
23 therefore, I could not enter them in.

24 Q. And so the contamination has now forever lost
25 the ability to link the profiles of the

DR. MILLS ON RECROSS

1 minor contributors to a person.

2 A. Regrettably we will not know who left those
3 minor contributors. Again, it doesn't matter ... It's
4 regrettably lost. Yes, we will never know. Probably
5 will never know who was under the minor contributors.
6 Who was under her fingernail scrapings. It doesn't
7 mean that whoever was underneath those fingernail
8 scrapings committed this crime. It doesn't mean that
9 at all. We have evidence in this case. We've
10 presented it. We have DNA matches with good ...

11 MR. BROWN: Your Honor, I object. She
12 didn't present any evidence that was presented by the
13 State. She's made it very clear that she is not the
14 Prosecutor.

15 THE COURT: Okay. Let's go ahead.
16 You've asked the question and now let's get past it.

17 MR. BROWN: I have no further
18 questions, Your Honor.

19 THE COURT: Thank you.

20 SOLICITOR: I have no further
21 questions. May this witness be excused?

22 THE COURT: Any objection to Ms. Mills
23 being excused?

24 MR. BROWN: She is on subpoena by me.
25 She is on telephone stand-by. I don't mind if

1 she goes back to Columbia but I want to actually ask
2 that the subpoena stay in place.

3 THE COURT: Okay. My understanding is
4 that you can still get hold of her and she is
5 currently under subpoena so we will leave the
6 subpoena intact. You will notify her by phone if you
7 need to call her.

8 MR. BROWN: As soon as I know. Yes,
9 ma'am.

10 THE COURT: Okay. All right. You may
11 go back to Columbia. Mr. Brown, may I see you for a
12 moment?

13 MR. BROWN: Yes, ma'am.

14 (Conversation at the bench off the record)

15 THE COURT: Ladies and gentlemen of
16 the Jury, at this time not only is it a good time for
17 a break but I need to take up a matter of law with
18 the attorneys so I can do both of those while you all
19 are refreshing yourselves. Again, do not begin
20 discussing this case as it is not appropriate to do
21 so. We'll be back with you shortly. Thank you.

22 (Jury excused for a break at 4:02 PM)

23 THE COURT: Madame Clerk?

24 CLERK: Yes, Your Honor, it came to my
25 attention the witnesses in this case prior to

1 testifying have been pretty much seated in the Jury's
2 or what's normally the Jury's room. There is a lady
3 who is under subpoena and is here from Virginia
4 Beach, I believe. And she's pregnant and she and her
5 husband have been here every day. Anyway, the trial
6 has progressed in a way that has meant that this gal
7 who is going to have a baby in the end of June has
8 been here every day with her husband.

9 I want to ask the Court's permission and the
10 lawyer's permission if it's necessary if we can
11 accommodate this particular witness and her - at this
12 point - very burdensome expenses through the witness
13 fund that is given as a portion of the clerk's fees
14 per month. It's held by the County. It's a line
15 item of the County. It's utilized for situations
16 like this and I just wanted to because she got here
17 Sunday night.

18 THE COURT: My understanding is
19 originally Mr. Brown had asked us to have a subpoena
20 domesticated because it was an out of state subpoena
21 and I agreed to do that. Then he was asking for
22 funds to domesticate that subpoena. In the meantime,
23 I believe he got in contact with Mrs. Clingon - is
24 that correct?

25 MR. BROWN: Yes, ma'am.

1 THE COURT: She was the former nurse
2 at the Beaufort Memorial Hospital who took care of Ms.
3 Davidson after this incident and my understanding is
4 that Mr. Brown got hold of her and she willingly came
5 to South Carolina. When she came to South Carolina
6 on Sunday or Monday, they did, in fact, serve a South
7 Carolina subpoena on her and unfortunately she's been
8 sitting here since Sunday night ...

9 MR. BROWN: Yes, ma'am ...

10 THE COURT: And not yet, of course,
11 been called in the defense case. It raises a good
12 question of scheduling and bringing witnesses in when
13 we all knew we weren't going to start this trial at
14 the minimum until Tuesday.

15 I don't know if there was a problem with your
16 conversation with her that she didn't understand but
17 I will tell you that she has appeared at the Clerk's
18 office so now my secretary got involved because she
19 was asking to see me and was very concerned because
20 she was six months pregnant and just didn't have the
21 money to stay at a hotel and was very upset about it
22 and wanted to leave.

23 I believe that was an issue that Mr. Brown also
24 brought out too is I've got this woman under
25 subpoena and she's telling me she's going to

1 leave and her husband is telling me she's going to
2 leave.

3 And because the witnesses were sequestered in
4 this case, they haven't even been allowed in the
5 Courtroom all week so I think they felt a little bit
6 like they couldn't get to me so certainly I asked our
7 Clerk if there was any fund or anything we could do
8 to assist this woman and her husband and she
9 graciously stated that as long as it wasn't too much
10 but, of course, she stated to me that we need to be
11 mindful about when we subpoena people into this State
12 and subject them to just sitting here that we are
13 mindful at the way - even though none of us know how
14 a trial progresses - we all knew that the Jury was
15 polling on Monday and it was easily a guess that the
16 Solicitor's office would not be finished in a day so
17 it's just regrettable that this poor woman has been
18 sitting here all that time.

19 So, again I just want everyone to be careful and
20 mindful about just going and slapping subpoenas on
21 people. They don't really understand what they're
22 getting into. I don't know if it's a communication
23 problem but I just remind the lawyers again that
24 these are lay people and they don't understand so we
25 need to make an effort to explain to them what it is

1 we need, when we need it, and give them an
2 opportunity to cooperate because quite frankly this
3 woman did just that. She cooperated and because of
4 it she's been here for a week so ...

5 MR. BROWN: May I respond briefly,
6 Your Honor?

7 THE COURT: Yes, sir.

8 MR. BROWN: You're exactly right. We
9 contacted her and I was not aware that the trial
10 would not start on Monday. I didn't know we had pre-
11 trial motions. I also didn't know that the Jury had
12 been moved from 2 to 10th and certainly I told her
13 through my investigators - I did not speak to her
14 ever. Our practice tries not to so that nobody can
15 say that I've coached a witness, especially this kind
16 of witness and the first I spoke to her was when she
17 was here in the Courtroom trying to talk about this
18 issue.

19 I told my investigator that I didn't need her
20 until Tuesday and probably not even the earliest
21 until Tuesday afternoon. Not knowing that we were
22 going to start at 10:45 when the Jury was picked or
23 whenever it was and I said that because I've been on
24 the other end when I had a Judge tell me, your
25 witnesses aren't here.

1 You know, they were coming from Charleston and
2 Greenville and I've had the other end of that
3 experience so I told her Tuesday. My investigator
4 said they would rather travel on Sunday and no
5 question that the events that I've heard since then
6 because I told them they were welcome to go back and
7 come back when I want them to. They don't have the
8 means to do that and I certainly understand that. We
9 didn't ask them to come Sunday. We asked them to
10 come Tuesday.

11 THE COURT: Well, Mr. Brown, as you
12 know, you are responsible for anything the
13 investigator that you hired does on this case and I
14 just want to make sure that we are all just very
15 mindful of these people.

16 I will also note that I understand the
17 information that was sent to the Doctor Smith in this
18 case who had done the original evaluation. My
19 understanding from him was that the messages that
20 were left were things that he couldn't interpret or
21 understand. It was, please call me. I'm an
22 investigator and I'm handling the case of Alfonzo
23 Howard which means absolutely nothing to him because
24 he never evaluated anyone in that way so his response
25 to me when I asked, why are you not

1 responding is, I have no idea what anyone is talking
2 about so I just want everyone to be mindful that, of
3 course, we all get involved and know what we're doing
4 and know what's going on in the case but remember
5 everyone on the outside doesn't necessarily so I'm
6 just stating that everyone needs to just be very
7 careful of everyone's time and certainly of
8 everyone's lack of possible knowledge of what's going
9 on.

10 MR. BROWN: And, Your Honor, I will
11 respond to that respectfully I received one phone
12 number. My investigator and I only had one phone
13 number for this doctor. I called and clearly said
14 that I represented Mr. Howard. That was my message
15 and that he had done an evaluation of Mr. Hicks who
16 was a witness in the case.

17 I also called and contacted the doctor - I want
18 to say it was Tuesday - and we were in a lunch break.
19 Mr. Rowell, my investigator, was behind me. We called
20 the exact same number and the first time I got a
21 person to answer the number and I said, Doctor Smith?
22 And he said, no this is Doctor Midoll. And I put
23 that on the record before and come to find out that
24 number that I called somebody answered and it's still
25 Doctor Smith's number. I don't know if he gave his

1 phone to someone else or he was not accurately
2 reflecting his identity on the phone but I pointed
3 that out and to top it off, I got an email from Andy
4 Savage's office for this doctor and I emailed him a
5 subpoena which reflected what we needed and
6 everything else.

7 It was actually an unsigned and unstamped
8 subpoena which said, please call. We're trying to
9 get in touch with you. This is what we're trying to
10 get in touch with you about. And it was again an
11 unstamped copy because we just had a blank that we
12 converted to a PDF, attached to the email and sent to
13 him. Never got a response from the doctor. Also
14 left repeated messages and I don't know whether Mr.
15 Raoul got a response but he left repeated messages.
16 The one phone call with a person who claimed to be
17 someone else answering Doctor Smith's phone number.
18 I only had one number.

19 THE COURT: Okay. Well, we've all
20 noted it for the record. Again, I just ask again
21 that people be mindful of other's time and their lack
22 of knowledge of what we are all doing down here. So
23 with that said let's go and take five minutes and
24 we'll be back.

25 SOLICITOR: Your Honor?

1 THE COURT: Yes, ma'am.

2 SOLICITOR: My next witness is Lorenzo
3 Hicks which there is obviously a pre-trial issue
4 about that.

5 THE COURT: Yes.

6 SOLICITOR: And when he is called to
7 the stand, I would ask that prior to the Jury coming
8 in he be allowed to take the stand. He will be in
9 leg irons. I don't want him traipsing all the way
10 across the Courtroom in front of the Jury if that's
11 okay. Since they are already out, if we could have
12 him go ahead and take the stand. I would ask that
13 his handcuffs be removed. I will be handing him
14 evidentiary items.

15 He will remain in his leg irons. I will leave
16 that up to security that obviously that and Your
17 Honor's decision but I don't see him as a threat to
18 flee. He is wearing his leg irons. There is only
19 one time, I believe, I will ask him to come off the
20 stand and that will be to view video tape. I will
21 keep him standing right beside the stand and have the
22 monitor pushed back as far as possible but other than
23 that he would be right in that area and even if you
24 wanted to move an officer to that side but I would
25 ask just because he will be holding things

1 and pointing that his handcuffs be removed.

2 MR. BROWN: It doesn't matter to me
3 one way or the other. I may ask him to step down for
4 demonstrative purpose which has nothing to do with
5 whether he has irons on or not.

6 THE COURT: Okay. Well, gentlemen,
7 are you fine with that?

8 UNIDENTIFIED: Yes, ma'am.

9 THE COURT: All right. We'll do what
10 we have to do to keep his leg irons on but we'll undo
11 his hands. Let's go ahead and bring him over. We're
12 just going to take five minutes. Are you going to
13 challenge his competency, sir?

14 MR. BROWN: Well, Your Honor, that
15 raises another issue. I guess I'll give you my
16 request for funds for psychiatric expert to assist
17 me. I would briefly like to explore it with you
18 because otherwise I have not had an expert to consult
19 the records and I understand Doctor Smith said he was
20 competent under the M'Naughton standard last year.
21 I'm just a lawyer and not a psychiatrist so I would
22 like at least the opportunity to see because I do
23 have serious concerns at least the same concerns that
24 the prosecutor and his attorney raised when they
25 raised the question of competency to

1 Your Honor and you signed an order asking that they
2 explore it and I would just like to have the
3 opportunity to explore it too.

4 THE COURT: Well, respectfully, I
5 think that I need to get a competency evaluation to
6 assure myself that I believe he is competent to
7 testify because as you all know it is an important
8 determination.

9 MR. BROWN: Yes, ma'am.

10 THE COURT: So, I will go ahead and I
11 will do that. I may or may not open it up to you,
12 Mr. Brown, depending on if I have any concerns. I'm
13 going to give you some leeway ...

14 MR. BROWN: Yes, ma'am.

15 THE COURT: Just don't go for -- you
16 will have your chance to cross.

17 MR. BROWN: Oh, no, it's not a cross
18 examination.

19 THE COURT: Exactly.

20 MR. BROWN: And certainly I don't want
21 to ... Right now it's strategy reasons. I wouldn't go
22 over my cross examination without the Jury here
23 either.

24 THE COURT: I understand.

25 MR. BROWN: Thank you.

1 THE COURT: Okay.

2 SOLICITOR: I sent for Mr. Deysach.
3 was Mr. Hick's attorney who would like to be present
4 during this. He told me earlier today that he is
5 still under subpoena by the defense counsel but I
6 believe he does have a right to be present during his
7 client's testimony.

8 THE COURT: He in fact does. Actually
9 he is required to be here during his client's
10 testimony.

11 MR. BROWN: And I understand that if
12 he is under subpoena we can still call him as a
13 witness according to how the case does but right now
14 we wouldn't but I certainly understand the Court's
15 ruling on that.

16 THE COURT: He needs to be here when
17 his client is testifying as you both know so ...

18 MR. BROWN: I understand there is
19 exceptions that have been made.

20 THE COURT: With that said, we're
21 going to go ahead and ... No, there haven't been any
22 other exceptions made. In this case it's just
23 because he's entitled to have his counsel here with
24 him when testifying.

25 MR. BROWN: Only with the

1 investigating officer is what I'm talking. I
2 understand that's the normal.

3 THE COURT: Okay. That's why I want
4 to be sure.

5 MR. BROWN: I'm sorry. That's not
6 what I meant. I understand you've been doing this
7 for a few years and there are exceptions that are
8 made.

9 THE COURT: Okay. Let's go ahead.
10 You're okay to sit tight. We are going to take about
11 five minutes before we begin with Mr. Hicks and we'll
12 take five minutes.

13 (The Court takes a short recess at 4:15 PM)

14 (Court resumes at 4:25 PM)

15 THE COURT: Do you have his handcuffs
16 off, gentlemen? All right.

17 MR. BROWN: Your Honor, before the
18 Jury comes in Mr. Morrison, my DNA person, has a
19 question. One was a scheduling question and one was
20 another question. I just asked him to be in here and
21 I'm assuming he had to leave. He was right there
22 when I walked in the room. Mr. Morrison?

23 THE COURT: Sir, if he wants to ask a
24 scheduling question of you he's welcome to ...

25 MR. BROWN: The question was,

1 that he had booked a - he has an airline flight and
2 asked if he was going to make it. I told him
3 unlikely given the state of where we are. His second
4 concern had to do with making sure that he was not
5 doing this on just --on gratis at this point and Your
6 Honor ...

7 THE COURT: And again we've talked
8 about this at length. I'm going to visit this at the
9 end of the trial and I will do everything I possibly
10 can given that I am not allowed to pay for it myself
11 personally because that would be an ethical violation
12 but I am going to do everything I can to find the
13 money now but again, the budget is so bad and I know
14 you understand that but right now we're just going to
15 get through this trial and he has come now not once
16 but twice so he is here so he is going to testify and
17 I don't know when that is going to be but I can tell
18 you that we are plowing through this trial and we are
19 going to get done.

20 It doesn't matter if it's tomorrow, Saturday,
21 Sunday whenever we finish, we're finishing. So as far
22 as scheduling is concerned, of course it's depending
23 on how long you are going to take with this witness,
24 so how many witnesses do you have after Mr. Hicks?

25 SOLICITOR: Just one and

1 he is waiting out there. He is from Columbia and I'd
2 like to get to him tonight obviously but again, that
3 depends on the cross examination of Mr. Hicks.

4 THE COURT: Well, I can tell you all
5 right now I am hopeful that we can finish the State's
6 case tonight and I am willing to stay and press on as
7 long as every one else in the Courtroom is fine to do
8 that. I think we need to do that. Unless my Jury
9 tells me they just can't. So with that said.

10 MR. BROWN: Yes, Your Honor. Just on
11 that, Mr. Morrison had said that he wanted funding or
12 he may be getting on that plane. And ...

13 THE COURT: Mr. Brown, that cannot be
14 a threat to the Court. And you ...

15 MR. BROWN: It is not ...

16 THE COURT: ... you've been using it on
17 your behalf as a threat to the Court and I can't have
18 it on behalf of an expert witness. I can tell you
19 that Judge Buckner already fronted a specific amount
20 and there is nothing more I can do to this point but
21 I assure you we will revisit this issue afterwards,
22 but I can't have an expert threatening that they're
23 going to leave based on whether or not their
24 testimony is going to get up today. So, please
25 understand that. You know what your

1 obligation is. We're going to go forward right now.
2 We're not going to have any more discussions about
3 this. You can deal with the scheduling of your
4 expert witness with your expert witness.

5 At this time, sir, it is my understanding that
6 you have a question as to the competency of Mr. Hicks
7 so, sir, I'd like to do an evaluation of him so I am
8 confident and comfortable that he can give testimony.
9 And at that point I will allow you to do some
10 questioning. Respectfully, Mike, will you swear in
11 Mr. Hicks?

12 Lorenzo Hicks, being duly sworn,
13 testified as follows; out of the presence of the jury:

14 COMPETENCY EXAMINATION

15 BY THE COURT:

16 A. Lorenzo Hicks.

17 Q. Mr. Hicks, before we start, I want you to
18 understand this is a Court of record and the court
19 reporter is taking down everything both you and I say
20 and everyone in this Courtroom needs to be able to
21 hear you. Do you understand that?

22 A. Yes.

23 Q. All right. So I'm going to ask that you speak
24 into the microphone and if you have any problems
25 doing that I need you to let me know. Do

VOL. V

MR. HICKS IN CAMERA

1 you understand?

2 A. Yes.

3 Q. All right. I tend to talk a little fast so if
4 you need me to slow down, ask me to slow down. All
5 right, sir?

6 A. Yes.

7 Q. All right. Sir, can you tell me for the record
8 what your full name is?

9 A. Lorenzo Hicks.

10 Q. How old are you sir?

11 A. Twenty-eight.

12 Q. How far did you go in school?

13 A. Eleventh grade.

14 Q. When did you drop out of the eleventh grade?

15 A. When they kicked me out of school.

16 Q. Okay. What school did you go to?

17 A. Beaufort High.

18 Q. Where, sir?

19 A. Beaufort High.

20 Q. Beaufort High?

21 A. Yes.

22 Q. All right, sir. Again, I'm going to have to ask
23 you to speak up. I'm having a hard time hearing
24 you. Sir, do you have any vocational or technical
25 training?

MR. HICKS IN CAMERA

- 1 A. Yes.
- 2 Q. What is it, sir?
- 3 A. Culinary arts, brick masonry, child care.
- 4 Q. All right, sir. And have you held any jobs?
- 5 A. Yes, ma'am.
- 6 Q. What type of jobs, sir?
- 7 A. Cooking.
- 8 Q. Sir?
- 9 A. Cooking.
- 10 Q. Oh, as a cook.
- 11 A. Yes.
- 12 Q. What places have you held jobs, sir?
- 13 A. McDonalds, Huddle House.
- 14 Q. Did you get a paycheck for those jobs?
- 15 A. Yes.
- 16 Q. And, sir, did you or have you ever maintained a
- 17 bank account?
- 18 A. In Maryland.
- 19 Q. Sir, are you currently taking any medications?
- 20 A. No, ma'am.
- 21 Q. Have you taken medication in the past?
- 22 A. Yes.
- 23 Q. Currently, sir, are you suffering from any type
- 24 of hallucinations either auditory, where you hear
- 25 people saying anything to you, or visually?

MR. HICKS IN CAMERA

1 A. Schizophrenia.

2 Q. Okay. Schizophrenia. You've had schizophrenia
3 in the past. Is that correct?

4 A. Yes.

5 Q. And have you been diagnosed with schizophrenia?

6 A. Yes.

7 Q. Sir, I want to know right now have you or are
8 you experiencing any hallucinations?

9 A. No, ma'am.

10 Q. Sir, do you know who I am?

11 A. Yes.

12 Q. Who am I?

13 A. Ms. Walden - Judge.

14 Q. All right. And on Monday you were before me, do
15 you remember that in Courtroom three?

16 A. Yes.

17 Q. And what were you doing on Monday in my
18 Courtroom?

19 A. Something about a plea. Plea offer.

20 Q. Okay. And you entered a plea. Is that correct
21 in front of me?

22 A. Yes.

23 Q. All right. And do you understand what you were
24 doing then?

25 A. Yes.

MR. HICKS IN CAMERA

1 Q. Sir, you've had an opportunity to talk with Mr.
2 Deysach, your attorney, to determine what you are doing
3 here.

4 A. Yes.

5 Q. Sir, do you know the difference between right
6 and wrong?

7 A. Yes.

8 Q. Do you know what it means to tell a lie?

9 A. Yes.

10 Q. What does it mean to tell a lie, sir?

11 A. Telling something that's not true.

12 Q. Sir, are you competent that you can give
13 truthful and accurate testimony here today?

14 A. Yes.

15 Q. And, sir, if for some reason any question that
16 you are asked you don't understand, will you ask that
17 it be repeated?

18 A. Yes.

19 THE COURT: Mr. Brown, I'm going to go
20 ahead and let you do some voir dire of him.

21 MR. BROWN: Thank you. May it please
22 the Court.

23 THE COURT: Yes, sir.

24 VOIR DIRE (Out of the presence of the Jury)

25 BY MR. BROWN:

MR. HICKS IN CAMERA

1 Q. Mr. Hicks?

2 A. Yes.

3 Q. Did you fail the test to join the Navy?

4 A. Yes.

5 Q. And so they told you you weren't sufficient to
6 function in the Navy or go into the Navy at all?

7 A. Yes.

8 Q. You weren't trying to go into the Officer's
9 program or anything?

10 A. No.

11 Q. You were just trying to get on board a boat?

12 A. Yes.

13 Q. Okay. And they told you you couldn't do that?

14 A. Um-hmm.

15 Q. And in the past you heard voices?

16 A. Yes.

17 Q. And did you see colors?

18 A. Every now and then.

19 Q. And unicorns?

20 A. Every now and then.

21 Q. And when is the last now and then did you see
22 some unicorns?

23 A. Couple of months.

24 Q. In the last couple of months you've seen
25 unicorns?

MR. HICKS IN CAMERA

1 A. Yes.

2 Q. And were you taking your medication when you saw
3 the unicorns?

4 A. No.

5 Q. And how about when you were hearing the voices
6 that told you to hurt people?

7 A. No.

8 Q. You weren't taking your medicine then?

9 A. No.

10 Q. And have you had any head injuries in the past?

11 A. Yes.

12 Q. Can you explain that to the Court?

13 A. I was in Memphis, Tennessee around 1993. I was
14 walking towards a building and I hit on a brick and..

15 Q. You were hit with a brick?

16 A. Yes.

17 Q. Have you ever been stabbed?

18 A. Yes.

19 Q. Was it a demon?

20 A. No.

21 Q. Tell me about any demons that stabbed you or
22 demons that you've seen?

23 SOLICITOR: Your Honor, I'm going to
24 object to Mr. Brown's reading from the competency
25 evaluation report which is inappropriate

MR. HICKS IN CAMERA

1 as means to question a witness.

2 MR. BROWN: I'm ...

3 THE COURT: Respectfully, right now
4 what we are trying to determine is competency of him
5 and that is a whole other issue that we're also going
6 to have to discuss very briefly after this. Do you
7 have any more questions, Mr. Brown ...

8 MR. BROWN: Three.

9 THE COURT: ... With regards to
10 specifically his competency here today?

11 MR. BROWN: Yes, ma'am. Briefly.

12 Q. You received social security checks for your low
13 intellectual functioning?

14 A. Yes.

15 Q. And what was it that you told the government was
16 your reason that you needed that check?

17 A. I can't recall.

18 Q. And do you know how many times you've been
19 hospitalized?

20 A. Four or five times.

21 Q. Do you remember the last time?

22 A. ...

23 Q. About how long ago?

24 A. Excuse me. Say that again?

25 Q. How long ago was that? Before you were

MR. HICKS IN CAMERA

1 locked up, how long before you were locked up?

2 A. '99 or 2000.

3 Q. Okay. 2005 when you went back to the hospital
4 after stealing a fireman's truck. Was that here in
5 Beaufort?

6 A. Yes, sir.

7 Q. Okay. Why didn't you mention that?

8 A. Didn't cross my mind.

9 Q. Okay. You didn't remember. I'm just asking.
10 Do you have memory problems?

11 A. Sometimes.

12 Q. You can't recall things. I'm sorry but it has
13 to be an auditory answer. I noticed that you just
14 nodded your head but is that a yes that you have
15 memory problems sometimes?

16 A. Yes.

17 Q. And that affects your ability to recall things?

18 A. Sometimes.

19 THE COURT: Mr. Brown ...

20 MR. BROWN: I don't have any other
21 questions but I would like to renew my request for
22 funds for a psychiatrist to explore this as well as
23 present testimony regarding evidence of his recall
24 ability and credibility. Believability. To be a
25 competent witness both here and for

1 credibility purposes before the Jury.

2 THE COURT: Well, respectfully, the
3 issue of whether or not he is competent to be a
4 witness in this case we all know under South Carolina
5 Rule of Evidence 601 a, every witness is deemed to be
6 competent unless shown otherwise. Obviously to be
7 able to be competent he's just got to be able to
8 perceive the event that he's talking about. With a
9 substantial degree of accuracy, remembered,
10 communicated, and told intelligently and understand
11 right from wrong.

12 I will tell you then in response to your
13 questions, Mr. Brown, he is clearly admitted things
14 on his competency evaluation and accurately agreed
15 with you and has been more than truthful, I believe.
16 Additionally I've had the opportunity to observe Mr.
17 Hicks both in about a forty-five minute guilty plea
18 that we did last Monday or this past Monday wherein
19 he responded to a number of my questions.

20 Additionally he also gave an earlier testimony
21 in this case if I am correct and as well was able to
22 respond well to the questions. Of course, one of the
23 things that we look at with a witness is to make sure
24 that whatever testimony they give can aid the Jury
25 and the Jury can understand it and I have

1 no problem following Mr. Hicks. He certainly is
2 clear and can speak clearly in regards to events. I
3 believe that what we're going to do here is I'm going
4 to find you qualified and competent to - not
5 qualified - but competent to testify. Of course, what
6 the Jury does with that testimony is up to them.

7 Solicitor, I will tell you this though. I'm
8 going to give Mr. Brown a lot of leeway in being able
9 to examine and question him and cross-examine him on
10 these prior past issues that he has had in regards to
11 hallucinations or anything else. Of course, you're
12 going to have to redirect and do your best to bring
13 it back.

14 SOLICITOR: Your Honor, I don't have
15 any objection to him asking about his mental health
16 history such as his hospitalization or medication but
17 when he starts quoting from the reports statements
18 given to the examiners such as, have you seen any
19 unicorns or do you see the devil standing here or
20 whatever it was, those are quotes out of the mental
21 health report. That goes outside and beyond any
22 questions about his competence. He is now asking him
23 specific questions that were given to that examiner
24 and that examiner only.

25 THE COURT: No, at that point we

1 are outside of competency and now we're getting to
2 the credibility of his testimony. I think he's
3 allowed to do that. I can tell you that I have
4 reviewed the case law that you provided to me, the
5 Turner case as well as the Sigma case and I can tell
6 you that what's different in this case as we've
7 talked about is that he is not the defendant in this
8 case. He is the co-defendant and he is giving
9 testimony against Mr. Howard and I believe Mr.
10 Howard's confrontation rights allows Mr. Brown to
11 attack his credibility. So I am going to give him
12 leeway. I would respectfully ask this, sir.

13 MR. BROWN: Yes, sir.

14 THE COURT: Instead of just reading
15 the report when doing this, you can ask the statement
16 and you don't even have to say it came from a report.
17 You can just say, is it true that you've seen
18 unicorns in the past. Yes. Of course. And that's
19 where we're at and then after he testifies, we'll
20 address the Doctor Smith issue or anything else in
21 regards to the report. We'll let's go ahead and -
22 first again, Solicitor, I'm going to allow him to
23 address his credibility because I truly do believe it
24 is important in this case. It certainly is one of
25 the-assuming from what I've seen thus

1 far in the State's case, it is an important part of
2 your case.

3 SOLICITOR: Yes, ma'am. I don't agree
4 with the credibility issue but my problem is when
5 he's using quotes from that report which we have
6 already discussed and brought up that he can't ...

7 THE COURT: And I've stated to him
8 that he can't say that it's coming from a report but
9 if he wants to ask if you've ever seen unicorns, he
10 can ask that. I do think it goes to his credibility.
11 All right. So, respectfully, are we all on the same
12 page and understand Mr. Brown that if you go too far
13 I'm going to stop you. Okay?

14 MR. BROWN: Yes, ma'am. And I would
15 like a little clarification because it sounds like
16 there's been some change because I would like to
17 under rule 613 go into a prior statement. I'm not
18 trying to prove it extrinsically unless it falls
19 under the 613b rule but I'd like to be able to at
20 least ask if he had said this before or said that
21 before and I think before I can prove ...

22 THE COURT: But that would only be if
23 he contradicts himself. A previous statement though.

24 MR. BROWN: Well, that's correct and
25 what I'm trying to get at is if he

1 gives testimony that contradicts a previous statement
2 that he's given and I'm just trying to paraphrase it,
3 he had one written statement by the police that he
4 signed. He have a statement to Doctor Smith, which for
5 whatever it's worth, I have had that information and
6 he gave other statements that were recorded through
7 police reports which give me a good basis to ask
8 these other questions so we know he gave according to
9 the police, three statements before or by July tenth
10 of 2006 plus he gave the statement to Doctor Smith in
11 2008.

12 So I've got at least four statements that he has
13 given related to questioning about this case and so
14 with that in mind, that's the inconsistency and
15 there's a case is just not on point but it goes right
16 to this issue which is Riddle v. State, capital PCR,
17 and it was a Brady violation to cover up.

18 What I want to consider to be multiple smaller
19 inconsistencies that the Court found enough to
20 reverse a death sentence and a murder conviction
21 because there were small differences about who picked
22 them up after the murder and where they went after
23 the murder and how long they'd been there during the
24 murder.

25 Not about the substance of who did the

1 killing but there's other minor inconsistencies
2 when they were all put together that was a Brady
3 violation that I turned over on minor inconsistencies.
4 If that's a Brady violation not to turn them over,
5 then I would at least suggest that the Court take
6 those type inconsistencies or significant key witness
7 to that case, Your Honor, involved a State's witness
8 or co-defendant. That was the very heart of
9 committing a murder. This is the very heart of
10 committing a rape.

11 Then that's why I would suggest that given those
12 four statements we have some similarities and some
13 differences that bases inconsistencies and again,
14 Your Honor, I'm not seeking the floor on mental
15 health reform. I will not refer him to say it. But
16 I do consider that and that one and at least the
17 other three police statements, the four statements
18 that I have the basis to ask him questions of. Of
19 whether the statements have changed, whether his
20 statements are consistent on details which I believe
21 the Jury should know.

22 THE COURT: Well, obviously we all
23 know what the purpose is of these mental health
24 evaluations. They clearly state in my order ordering
25 the mental health evaluation, clearly stated it

1 was just to determine his competency to stand trial.
2 However, Solicitor, we do have an unusual issue where
3 his statement is not being used against him. He has
4 already pled guilty to the charges that he was
5 facing.

6 In effect, it's to use against the co-defendant
7 who is the defendant on trial and again I think when
8 looking at the totality of the circumstances, I
9 certainly don't want anyone walking out of here with
10 some broad-based idea that we're going to turn over
11 competency to stand trial evaluations because as I
12 said yesterday, this is a very slippery sled that
13 again both the defense bar and the solicitor's office
14 would have huge concerns and could be used against
15 the defendants. But because this case does not - is
16 not against Mr. Hicks, I am going to allow you to do
17 it as I said.

18 MR. BROWN: Yes, ma'am.

19 THE COURT: But you just need to
20 obviously keep yourself within check, Mr. Brown.
21 That's all I'm going to tell you. Okay. All right.
22 Are ya'll ready to bring the Jury in?

23 SOLICITOR: The State's ready, Your
24 Honor.

25 THE COURT: Mr. Brown?

1 MR. BROWN: Yes, ma'am. We're ready
2 again subject to all the objections and motions we've
3 previously made.

4 THE COURT: Noted for the record.
5 Ya'll, we're going to plow through and we are going
6 to get this witness up and down today so ...

7 MR. BROWN: And, Your Honor, I
8 certainly respect the idea that I'm in charge of my
9 witnesses. Certainly not to try to beat the charge.
10 I'm just trying to relive the concern about my
11 witness because I don't owe him anything else like
12 that, Your Honor, and I understand that and of course
13 these other witnesses had issues about me bringing
14 them here as well so I'm just trying to make sure
15 that I'm clear of conduit as I can be so I'm not
16 going to dam the channel.

17 (The Jury returns at 4:46 PM)

18 SOLICITOR: Your Honor, I want to go
19 ahead and make a Court's Exhibit in this case, Mr.
20 Hick's mental evaluation. It's something that I also
21 use in the lines.

22 MR. BROWN: And Your Honor, I would
23 also ask that both of them are. I think they were
24 already put in as Court's Exhibits four and five.

25 THE COURT: Okay. This would be

1 my evaluation and that would be just ...

2 MR. BROWN: And again, Your Honor,
3 four and five if you'd like to reference them as
4 yours or the two different ones. They're just plain
5 copies that I gave the Court.

6 THE COURT: The same thing?

7 MR. BROWN: Yes, ma'am. And you are
8 welcome to look at them. They are clean and ...

9 THE COURT: Okay. Just go ahead and
10 mark that then. That's fine. If you've got a clean
11 copy. Please bring in the jury.

12 (Jury returned to Courtroom at 1:46 P.M.)

13 THE COURT: Welcome back, ladies and
14 gentlemen. Solicitor, at this time will you call
15 your next witness.

16 SOLICITOR: Thank you, Your Honor.
17 The State calls Lorenzo Hicks.

18 THE COURT: Mr. Hicks, the clerk is
19 going to go ahead and swear you in.

20 Lorenzo Hicks, being duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY SOLICITOR:

24 A. Lorenzo Hicks. H-I-C-K-S.

25 Q. Good afternoon, Mr. Hicks.

MR. HICKS ON DIRECT

1 A. Good afternoon.

2 Q. You and I are both going to be accused of
3 talking too soft at times. I'm going to try and move
4 the microphone so that we can all hear you. Mr.
5 Hicks, isn't it true that you were charged in a case
6 involving a robbery and kidnapping and a sexual
7 assault of a couple by the name of Davidson?

8 A. Yes.

9 Q. And you have since entered a guilty plea and
10 admitted your part in that crime. Is that correct?

11 A. Yes.

12 Q. And as part of your guilty plea you have
13 negotiated with the State in exchange for your
14 testimony today. You have received somewhat of a
15 plea negotiation. Is that correct?

16 A. Yes.

17 Q. And what would your negotiation be with the
18 State?

19 A. To testify.

20 Q. And what else? What do you get out of it?

21 A. Twenty years.

22 Q. And you have pled guilty to two counts of Armed
23 Robbery. Is that correct?

24 A. Yes.

25 Q. Two counts of Kidnapping. Is that correct?

MR. HICKS ON DIRECT

1 A. Yes.

2 Q. One count of Car Jacking?

3 A. Yes.

4 Q. And one count of assault with intent to commit a
5 Criminal Sexual Assault. Is that correct?

6 A. Yes.

7 Q. And Mr. Hicks, you understand here today that
8 you are to testify truthfully about your knowledge of
9 this crime. Is that correct?

10 A. Yes.

11 Q. All right. Mr. Hicks, do you know Alfonzo
12 Howard?

13 A. Can you ask that one more time?

14 Q. Do you know who Alfonzo Howard is?

15 A. Yes.

16 Q. And do you see him in the Courtroom today?

17 A. Yes.

18 Q. Where do you see him? Just point to him?

19 A. ... (Gesturing)

20 Q. For the record he's indicated the defendant.

21 And when did you first meet Alfonzo Howard?

22 A. Around April sometime. Middle week of April.

23 Q. So if this crime took place May twenty-fifth ,
24 twenty-sixth, you met him when - about a month or so
25 before?

MR. HICKS ON DIRECT

1 A. Yes.

2 Q. And do you remember how you met him? Where you
3 met him?

4 A. At a friend's house.

5 Q. And would you have called Mr. Howard a friend
6 back then?

7 A. Yes.

8 Q. How often would you have seen Mr. Howard back
9 then before the crime was committed?

10 A. Every four days.

11 Q. And when you saw him, what would you guys do?
12 Would you go to your house or his house?

13 A. We would be out at a friend's house.

14 Q. All right. Well, let's talk about the evening
15 of May twenty-fifth before this crime was committed.
16 Did you see him that day?

17 A. Yes.

18 Q. When's the first time you saw him on the twenty-
19 fifth?

20 A. 10:45 in the morning.

21 Q. And where did you see him?

22 A. On Seaside Road.

23 Q. And what were you doing?

24 A. Coming from one of my friend's house.

25 Q. And where were you going?

MR. HICKS ON DIRECT

1 A. Back home.

2 Q. And where was Mr. Howard when you saw him?

3 A. Coming from the Sea Island parkway, the side of
4 Seaside Road.

5 Q. And were you walking or driving?

6 A. Walking.

7 Q. And was Mr. Howard walking or driving?

8 A. Driving.

9 Q. And what was he driving?

10 A. A white Ford Tempo.

11 Q. And so how did you hook up with him that day?

12 A. I was coming from my friend's house and he was
13 coming down Seaside, he stopped and he asked me if I
14 knew where a pawn shop was at. I said, yeah, and he
15 said he had some items that he needed to pawn so that
16 he could get some money. So he had some things to
17 pawn.

18 We went to a place called Fast Freddie's Pawn
19 shop. We went there and while we was there he never
20 did get nothing. We left there and went to Hess gas
21 station. Got two beers and left there and he went to
22 Piggly Wiggly to talk to a friend he knew. Left
23 there and he had a few dollars.

24 Went to the Shell gas station. After the
25 Shell gas station, left there and he

MR. HICKS ON DIRECT

1 dropped me off back at St. Helena at the mini-market.
2 From there he went home. I walked to my friend's
3 house and when I got to my friend's house, my ex-
4 girlfriend, a cousin of mine and my friend was there.
5 They were drinking, you know, and we started smoking
6 weed and drinking, you know. A couple of hours later
7 Howard came and my ex-girlfriend said something about
8 she wanted to do something so she called me Ri:
9 You know, that's what everyone knows me as.

10 And then he looked at me - Mr. Howard - and said
11 let's do something. I said, no because I was at
12 Gregory's house and one thing led to another ...

13 Q. Let's go back. You said, you were going to go
14 get some money.

15 A. Right.

16 Q. And he looked at you. What does that mean? Did
17 you mean get some money? Were you going to go get a
18 job that night?

19 A. No.

20 Q. How were you going to get money that night?

21 A. Find somebody to - do something.

22 Q. So that's a conversation that you and Mr. Howard
23 had?

24 A. Well, that was a little small conversation me
25 and my ex-girlfriend had when she was talking

MR. HICKS ON DIRECT

1 to me and he looked at me like, let's go do
2 something.

3 Q. Okay. Now, did you - do you call Alfonzo Howard
4 Mr. Howard or ...

5 A. Al.

6 Q. You call him Al?

7 A. Um-hmm.

8 Q. Okay. So at some point do you and Al leave the
9 house together?

10 A. Um-hmm.

11 Q. And when you leave are you planning to go get
12 some money?

13 A. Me personally, yes.

14 Q. And how about Mr. Howard?

15 A. Yes.

16 Q. When you leave your friend's house, what do
17 ya'll leave in? Do ya'll walk?

18 A. We walk.

19 Q. Okay. And where did you walk to?

20 A. Howard's house.

21 Q. And when you get there, what did you do?

22 A. His Dad wasn't home so he said he knew where his
23 Dad was at so we walked halfway down Seaside towards
24 ball park and caught a ride with a guy in a black
25 truck. He gave us a ride to the ball park

MR. HICKS ON DIRECT

1 and we walked from the curve to his Dad's friend
2 house.

3 Q. And did you see his Dad that day?

4 A. No.

5 Q. Did you ever catch another ride or get a car?

6 A. Yes.

7 Q. And how did you do that?

8 A. Well, when we went to his Dad's friend house his
9 Dad was there. They started talking and he said he
10 needed the car to do some work. Some painting. A
11 paint job and his Dad looked at his clock and was
12 just like, what time do you got to do it and he said,
13 nine o'clock. So his Dad said, well it's almost nine
14 o'clock. So we waited and he gave the keys and we
15 left.

16 Q. And nine o'clock. Is that daytime or nighttime?

17 A. Nighttime.

18 Q. So, nine PM on the twenty-fifth.

19 A. Yes.

20 Q. Almost?

21 A. Yes.

22 Q. All right. Once you guys get the car where did
23 you go?

24 A. Went to a store.

25 Q. Where do you end up? What's your first

MR. HICKS ON DIRECT

1 stop?

2 A. Food Lion.

3 Q. All right. And what's the purpose of going to
4 the Food Lion?

5 A. He said he needed some woman's stockings.

6 Q. Did he tell you what he wanted stockings for?

7 A. No.

8 Q. And did you guys get some stockings?

9 A. Yes.

10 Q. How did that happen?

11 A. I don't know. He gave me some dollars and told
12 me to go in and get them.

13 Q. Did you go do that?

14 A. Yes and no.

15 Q. All right. Describe that for me then.

16 A. Well, we walked in and just walked through the
17 aisle and I looked for nothing. I stayed there for a
18 few seconds and walked out. I told him — I said I
19 couldn't find them. He said, well, I know where
20 they're at. He got them and he told me to pay for
21 them and he walked out. I paid for them and I left.

22 SOLICITOR: At this time, Your Honor,
23 I'd like to show the video of Mr. Hicks standing
24 right here while the video can play. Mr. Hicks, if
25 you will come and stand right here for me.

MR. HICKS ON DIRECT

1 THE COURT: Mr. Brown, of course you are
2 welcome to move.

3 MR. BROWN: Thank you so much. I just
4 want to be sure to protect the jury and make sure
5 that obviously photos are not taken of jurors.

6 THE COURT: Respectfully, I will protect
7 the jurors. Don't you worry about it.

8 I can tell you the photographer that is
9 in here has been in the Courtroom for numerous trials
10 with me. I have total confidence that he is a profes-
11 sional and that there will not be any of the jurors, so
12 I want you all to rest assured.

13 Thank you, Mr. Brown.

14 MR. BROWN: Thank you.

15 (Whereupon, the video was played for the jury)

16 Q. Mr. Hicks, I want you to get where you can see
17 this video. Can you see this? I'm going to play it
18 and ask you what is going on and who is in it. Okay?
19 Do you know what this area is? What is this?

20 A. . .

21 REPORTER? I can't hear him. I'm sorry.

22 THE COURT: You will have to talk louder
23 for the Court Reporter. She is behind the screen.

24 A. . .

25 Q. The front area of the Food Lion. Is

ME. HICKS ON DIRECT

- 1 that what you said?
- 2 A. Yes.
- 3 Q. Who is this here?
- 4 A. That's me.
- 5 Q. That's you. And where are you headed?
- 6 A. Into the store.
- 7 Q. Do you know what kind of items are on this aisle
- 8 here?
- 9 A. That's items (inaudible - not loud enough)
- 10 associated with this.
- 11 Q. And tell me at what point if at any point you
- 12 see yourself in this video again. Okay?
- 13 A. Um-hmm. Right here.
- 14 Q. Is that you?
- 15 A. Yes.
- 16 Q. And what are you doing?
- 17 A. Just walking around. That's me.
- 18 Q. That's you again?
- 19 A. Um-hmm.
- 20 Q. Are you still wandering around?
- 21 A. Yes.
- 22 Q. And you said Al had given you some money?
- 23 A. Yes.
- 24 Q. How much money did he give you?
- 25 A. Twenty dollars.

MR. HICKS ON DIRECT

- 1 Q. And what were your instructions?
- 2 A. To get some pantyhose.
- 3 Q. Where are you now? What are you doing?
- 4 A. Just walking around.
- 5 Q. Are you looking for the pantyhose?
- 6 A. No.
- 7 Q. What were you wearing that night, Mr. Hicks?
- 8 A. (inaudible) pants and a white (inaudible) shirt
- 9 and a black sweater. That's me.
- 10 Q. This is you right here.
- 11 A. Yes.
- 12 Q. Are you looking for the pantyhose now?
- 13 A. No. Just looking.
- 14 Q. What are you looking for?
- 15 A. Nothing.
- 16 Q. Just looking.
- 17 A. Yes.
- 18 Q. All right. At any point did you look for the
- 19 pantyhose? To try to find them?
- 20 A. No.
- 21 Q. We're back at the front.
- 22 A. That's me there.
- 23 Q. All right. Where are you going?
- 24 A. To talk with Howard.
- 25 Q. And did you talk to him outside?

MR. HICKS. ON DIRECT

- 1 A. Yes.
- 2 Q. And what do ya'll talk about?
- 3 A. That's it.
- 4 Q. And do you know these guys?
- 5 A. No.
- 6 Q. Is that him?
- 7 A. No.
- 8 Q. And him?
- 9 A. No.
- 10 Q. All right. Who is here?
- 11 A. Howard and me.
- 12 Q. Which one is you?
- 13 A. The one behind.
- 14 Q. This one?
- 15 A. Yes.
- 16 Q. And who is this?
- 17 A. Howard.
- 18 Q. This one right here. And where are ya'll
- 19 headed?
- 20 A. Into the store.
- 21 Q. And what kind of conversation did you have
- 22 before you reentered the store? What did ya'll talk
- 23 about? What did he say?
- 24 A. He said that he knew where they were at.
- 25 Q. And once you get back inside, where did

MR. HICKS ON DIRECT

- 1 you guys go?
- 2 A. To the aisle where they had the merchandise.
- 3 Q. And this is the aisle you were on earlier?
- 4 A. Right.
- 5 Q. Is that where you'd go?
- 6 A. No. This next one.
- 7 Q. This next one here.
- 8 A. Yes.
- 9 Q. Is that you?
- 10 A. No.
- 11 Q. Is that Howard?
- 12 A. Yes.
- 13 Q. What are ya'll doing over here?
- 14 A. He's just showing me the pantyhose and he said
- 15 he was going and for me to get it.
- 16 Q. And you wound up paying for it?
- 17 A. Yes.
- 18 Q. And what did he do? Did he go up there with you
- 19 to pay for them?
- 20 A. He walked half the way and then walked out.
- 21 Q. All right.
- 22 A. He walked out.
- 23 Q. That's him right there leaving.
- 24 A. Right.
- 25 Q. Okay. When he leaves where are you?

MR. HICKS ON DIRECT.

- 1 A. At the cash register.
- 2 Q. All right. Right here. Is that you?
- 3 A. ...
- 4 Q. And what are you doing?
- 5 A. Paying for those.
- 6 Q. Did you buy anything else besides pantyhose that
- 7 night?
- 8 A. No.
- 9 Q. How many pairs did you buy?
- 10 A. One.
- 11 Q. And once you buy these pantyhose, what did you
- 12 guys do with them?
- 13 A. Um, in his hands he tore them off ...
- 14 Q. When you say he tore them off, what do you
- 15 think ...
- 16 A. Just tore them apart.
- 17 Q. Now what was the point of buying pantyhose and
- 18 tearing them up? Why would you be doing that that
- 19 night? What were you going to use it for?
- 20 A. I was going to use it somewhere.
- 21 Q. Were you the only one that had torn pantyhose?
- 22 A. No.
- 23 Q. How'd that work?
- 24 A. It wasn't too long before (inaudible - mumbling
- 25 and not loud enough).

MR. HICKS ON DIRECT

1 Q. Now are we talking about full length pantyhose
2 or are we talking about little knee-high pantyhose or
3 these full leg pantyhose? Do you know the
4 difference?

5 A. Me -- not really.

6 Q. Once you finished paying, what did you do?

7 A. I went out to where Howard and all his friends
8 were at. They were talking about something and I got
9 a cigarette.

10 Q. Did you get back in the car with Al?

11 A. Yes.

12 Q. When you got back in the car with Al, was
13 anybody else in the car with you too?

14 A. No.

15 Q. Just you?

16 A. Yes.

17 Q. Okay. You can go back to the stand, sir.

18 Mr. Hicks, I'm going to show you what's been marked
19 as State's Exhibit 43. Does that look familiar?

20 A. Yes.

21 Q. What is it?

22 A. Stocking mask.

23 Q. Is this what you had to do with the pantyhose?

24 A. Yes.

25 Q. And what would you have done with this?

MR. HICKS ON DIRECT

- 1 A. Cover the face.
- 2 Q. And did you use this that night?
- 3 A. Yes.
- 4 Q. During the robbery?
- 5 A. Yes.
- 6 Q. Did Alfonzo Howard use one during the robbery?
- 7 A. Yes.
- 8 Q. When it's on can you see through it?
- 9 A. No.
- 10 Q. Not real good.
- 11 A. No.
- 12 Q. Did you keep it on the whole time?
- 13 A. No.
- 14 Q. All right. Once you've got your pantyhose
- 15 ready, where do you guys head to?
- 16 A. Cross and Games in Beaufort.
- 17 Q. In downtown Beaufort?
- 18 A. Yes.
- 19 Q. And once you get to Beaufort, what do you do?
- 20 A. We get to Beaufort Inn.
- 21 Q. All right. And what did you do at the Beaufort
- 22 Inn?
- 23 A. Sat down and waited on some people.
- 24 Q. And why are you waiting on some people?
- 25 A. I guess to rob somebody.

MR. HICKS ON DIRECT

- 1 Q. And did you rob anybody at the Beaufort Inn?
- 2 A. No.
- 3 Q. Did you see any people?
- 4 A. Yes.
- 5 Q. Did you talk about robbing some people?
- 6 A. No.
- 7 Q. Now, where were you waiting - while you were
- 8 waiting to rob some people - where were you? Were
- 9 you still in the car?
- 10 A. In the back of the car. I was watching the back
- 11 and the side of the steps.
- 12 Q. And how long did you stay in the area of the
- 13 Beaufort Inn?
- 14 A. About an hour and forty-five minutes.
- 15 Q. And then did you go anywhere else?
- 16 A. Yes.
- 17 Q. Where'd you go?
- 18 A. To the waterfront.
- 19 Q. And did you walk or did you take the car.
- 20 A. Take the car.
- 21 Q. And did you park somewhere?
- 22 A. Yes.
- 23 Q. Where?
- 24 A. Right behind the BBT Bank.
- 25 Q. I'm going to ask you, this is State's Exhibit

MR. HICKS ON DIRECT

1 number 8. If that looks familiar to you.

2 A. Yes.

3 Q. And where is that? Do you recognize the
4 location of Howard's car?

5 A. Yes, at the bank.

6 Q. This is State's Exhibit number 10. Do you
7 recognize that photograph?

8 A. Yes.

9 Q. What is that?

10 A. Inside the car.

11 Q. And what's the deal with the seats?

12 A. Anytime I get in somebody's car, I put the seat
13 back.

14 Q. At what point did you put it down like that?

15 A. ...

16 Q. Was it after you parked?

17 A. I guess.

18 Q. Did you guys then wait in the car at all?

19 A. No.

20 Q. So once you got it to this parking spot, what
21 did you guys do?

22 A. Sat right there, in the parking lot

23 Q. And what are you all waiting on?

24 A. People who's Lexus that was.

25 Q. There was a Lexus there that night?

MR. HICKS ON DIRECT

1 A. Yes.

2 Q. And where was it in relation to Al's car?

3 A. Right on the side, the passenger side.

4 Q. All right, let's talk about that. At some point
5 did people come out to their car?

6 A. Yes.

7 Q. And what happened when you all seen them?

8 A. Well, I was by the bank just fooling around, and
9 the next thing I heard was Howard say, you know, there
10 they go.

11 And I didn't know what he was talking about, and
12 so the next thing the Davidsons were at the trunk and
13 they were getting something out of the trun, and I had
14 looked and Howard had a gun.

15 He was pointing it at Mr. Davidson and saying that
16 nothing was going to happen to them and nobody was going
17 to get hurt. Just to do everything he said and everything
18 be all right.

19 Q. And were you there nearby as well?

20 A. Yes.

21 Q. That night did you have a knife?

22 A. Yes.

23 Q. I show you State's Exhibit 78.

24 SOLICITOR: May I approach?

25 THE COURT: You may.

MR. HICKS ON DIRECT

1 BY SOLICITOR:

2 Q. Mr. Hicks, do you know what that's a picture of?

3 A. Yes.

4 Q. And is that a fair and accurate picture of how
5 that looked that night?

6 A. Yes.

7 SOLICITOR: Move 78 into evidence.

8 MR. BROWN: Without objection.

9 THE COURT: In evidence without objection.

10 (Photo of knife entered in evidence as State's Ex-
11 hibit 78 in evidence)

12 BY SOLICITOR:

13 Q. Mr. Hicks, what is this?

14 A. A knife.

15 Q. Is that your pocket knife?

16 A. Yeah.

17 Q. Is this the knife you had when the robbery happened
18 that night?

19 A. Yes.

20 Q. Mr. Hicks, I show you State's 27. Is that your knife?

21 A. Yes.

22 Q. And once you were caught later that night, did you
23 still have that knife on you?

24 A. Yes.

25 Q. Where was it?

MR. HICKS ON DIRECT

- 1 A. In my pocket.
- 2 Q. Now, you said that Al had a gun on the Davidsons?
- 3 A. Yes.
- 4 Q. Do you recognize State's Exhibit Number 63?
- 5 A. Yes.
- 6 Q. What is that?
- 7 A. A gun.
- 8 Q. Is that Al's gun?
- 9 A. Yes.
- 10 Q. Is that the gun he used on the night you guys
- 11 robbed the Davidsons?
- 12 A. Yes.
- 13 Q. Once this starts, once you guys have the Davidsons
- 14 back in their car, what happened then?
- 15 A. . .
- 16 Q. Did you all just take their money and leave?
- 17 A. No.
- 18 Q. Tell me what happens next.
- 19 A. Well, he told everybody to get in the car.
- 20 Q. Who did?
- 21 A. Al Howard.
- 22 Q. So Al said what?
- 23 A. Everybody get in the car.
- 24 Q. And did everybody get in the car?
- 25 A. No. At first no.

MR. HICKS ON DIRECT

1 Q. Why not?

2 A. The Davidsons, you know, were scared. Mr. Davidson
3 was trying, you know, to get us to go on.

4 Q. Was he begging?

5 A. Yes.

6 Q. What was he begging?

7 A. Not to hurt them.

8 Q. What does Al say?

9 A. Just everybody get in.

10 Q. And at some point, did everyone get in the car?

11 A. Yes.

12 Q. How were you all seated in the car?

13 A. I was behind Mr. Hicks, and Al was behind Ms. Hicks.

14 Q. Where is the gun?

15 A. In the back seat.

16 Q. What did he do with the gun?

17 A. Holding it to her head.

18 Q. Now, which car do you all get in? Did you get in
19 Al's dad's car or do you get in the Davidson's car?

20 A. Davidson's.

21 Q. Once you get in the car, do you go somewhere?

22 A. Yes.

23 Q. Where do you go?

24 A. The ATM.

25 Q. What happens at the ATM?

MR. HICKS ON DIRECT

1 A. Al had told them he wanted to see a bank card, and
2 I don't know how it came about but he told him to turn
3 around, not look at him.

4 Then he tell him to withdraw money and said don't
5 try nothing funny, I know how to do the ATM machine.

6 So he withdraw some money and give it to Al, and Al
7 then gave money to me.

8 Q. Now, when you were arrested, you had some cash in
9 your pocket?

10 A. Yes.

11 Q. Where did that money come from?

12 A. My wallet.

13 Q. Did you have all the money, or do you know what
14 happened to the rest of it?

15 A. Yes, I had all of it.

16 Q. And how did you get it?

17 A. Alfonzo.

18 Q. He handed it to you?

19 A. Yes.

20 Q. And where were you when he gave it to you?

21 A. Inside the car.

22 Q. Now, once you guys get cash from the ATM, what
23 happened? Did you let the Davidsons go?

24 A. Uh uh. No.

25 Q. And what are you doing while this is going on at

MR. HICKS ON DIRECT

1 the ATM?

2 A. Sitting in the back seat, looking out the window,
3 thinking about running.

4 Q. You were thinking about running?

5 A. Yeah.

6 Q. Why was that?

7 A. Because I never wanted anything to happen to those
8 people.

9 Q. You were there for a robbery?

10 A. Yeah.

11 Q. Did it go further than you wanted it to?

12 A. Too far.

13 Q. So once you guys have the money, do you actually
14 run out of the car?

15 A. No.

16 Q. What happened?

17 A. He told them -- he told them he was going to tell
18 Mr. Davidson where to go, and to make a right onto 76,
19 and then make another right, make another right, and when
20 we got to the Beaufort High School parking lot he said,
21 turn around and make another right.

22 So we went to the football stadium and stop by a
23 tree, and everybody got out.

24 He told Mr. Davidson to get on the ground, and he
25 said, tie him up.

MR. HICKS ON DIRECT

- 1 Q. Who did he say that to?
- 2 A. He told me to tie him up at first.
- 3 Q. And did you start to tie up Mr. Davidson?
- 4 A. Yes, but I stopped.
- 5 Q. When you were tieing him up, what did you use?
- 6 A. A belt that he told Mr. Davidson's wife to take
- 7 off him.
- 8 Q. I show you State's Exhibit 23. Does that look fam-
- 9 iliar?
- 10 A. Yes.
- 11 Q. Is this the belt you tied Mr. Davidson up with?
- 12 A. Yes.
- 13 Q. What was Howard doing when you were doing this?
- 14 A. He had Mrs. Davidson.
- 15 Q. And did he have the gun with him still?
- 16 A. Yes.
- 17 Q. Once Mr. Davidson is tied up, what happens then?
- 18 Do you guys just leave?
- 19 A. No.
- 20 Q. What do you do?
- 21 A. Just stay there.
- 22 Q. What did Al do?
- 23 A. He took Ms. Davidson.
- 24 Q. Where did he take her?
- 25 A. Toward the concession stand on the field.

MR. HICKS ON DIRECT

1 Q. Did you go with them?

2 A. No.

3 Q. Did you see which direction he walked off in?

4 A. No.

5 Q. And so how long did you stay there with Mr.
6 Davidson?

7 A. A little while.

8 Q. Then what did you do?

9 A. Talked to Mr. Davidson and then walked away.

10 Q. What did you say to him?

11 A. I said he had a nice car and I was going to check
12 up on his wife for him.

13 Q. And did you go do that?

14 A. Yes.

15 Q. And did you find Al and Mrs. Davidson?

16 A. Not then.

17 Q. Did you eventually find them?

18 A. Yes.

19 Q. When you find them, what do you see?

20 A. Mrs. Davidson and Al.

21 Q. And what is happening?

22 A. . .

23 Q. What do you see happening?

24 A. Mrs. Davidson was holding onto the bars of the fence
25 and Alfonso Howard was standing up.

MR. HICKS ON DIRECT

- 1 Q. And do they have their clothes on?
- 2 A. She didn't.
- 3 Q. Did you see what was going on?
- 4 A. Yes and no. It was dark.
- 5 Q. What did you see?
- 6 A. Al was saying, don't worry. It's only art.
- 7 Q. Did you see what he was doing?
- 8 A. Yes.
- 9 Q. What?
- 10 A. . .
- 11 Q. What was he doing to her?
- 12 A. Trying to have sex with her.
- 13 Q. Okay, and once you see that, do you stay down there
- 14 with them?
- 15 A. No.
- 16 Q. What do you do?
- 17 A. Walked off.
- 18 Q. And did you stay gone?
- 19 A. For a brief second.
- 20 Q. Did you go back to where Al and Ms. Davidson were?
- 21 A. Yes.
- 22 Q. When you went back to where they are, what did
- 23 you see?
- 24 A. Al was making Ms. Davidson perform oral sex on him.
- 25 Q. And then what happened? What do you see next?

MR. HICKS ON DIRECT

1 A. I turned around and I seen Mr. Davidson coming toward
2 me, and Alfonzo said what is that, and I said, nobody.

3 Q. Did Mr. Davidson see you?

4 A. I don't know.

5 Q. Was it dark?

6 A. Yes.

7 Q. Were there any lights out there where you guys
8 were?

9 A. No.

10 Q. So then what is Al doing with Ms. Davidson?

11 A. He was coming toward me with Ms. Davidson, and then
12 he grabbed my hand and put it on Ms. Davidson's leg and
13 he say hold on her leg.

14 Q. And where was she at this point?

15 A. On the ground.

16 Q. On her back or . .

17 A. On her back.

18 Q. So he had -- he put your hand on her leg?

19 A. Yes.

20 Q. And what does he do?

21 A. Started raping her.

22 Q. Did you say anything to him during this time?

23 A. No.

24 Q. Did you ever make the comment maybe she don't want
25 this?

MR. HICKS ON DIRECT

1 A. No.

2 Q. Did he say anything to you like she's going to get
3 it anyway?

4 A. I don't recall that.

5 MR. BROWN: Objection to leading.

6 THE COURT: Okay. Solicitor, don't lead him.

7 BY SOLICITOR:

8 Q. At some point did Al let Mrs. Davidson get up?

9 A. Yes.

10 Q. Were you still there?

11 A. No.

12 Q. Where were you?

13 A. By the car.

14 Q. Did you come back to where they were?

15 A. No.

16 Q. At this point, do you see whether or not Mr.

17 Davidson had gotten away?

18 A. Oh, yeah. He was at the house -- once he came up to-
19 ward me he ran to the house that was near there.

20 Q. So he actually ran by where you were?

21 A. He ran by.

22 Q. So when Al and Ms. Davidson get back to where you
23 are, what do you all do?

24 A. Well, I was sitting in the car, and Al and Ms.

25 Davidson walk behind to the fence, and I could see she

MR. HICKS ON DIRECT

1 had her clothes off, and he was touching her all over.

2 And I heard a police siren, and he jump in the car
3 and said, let's go, and we took off.

4 Then we went down a road and stopped and jumped out.

5 Q. At any point, did you help or try to help pick up
6 Ms. Davidson's clothes?

7 A. . .

8 Q. You said you saw her without her clothes. Did you
9 pick any clothing up?

10 A. No.

11 MR. BROWN: Your Honor, she's again leading.

12 THE COURT: Right. Don't lead.

13 BY SOLICITOR:

14 Q. As they were coming back, you said Howard was touch-
15 ing her?

16 A. Yes.

17 MR. BROWN: Again, leading.

18 THE COURT: All right. Solicitor, don't lead.

19 Q. All right, when you get back to the car, where are
20 you sitting in the car?

21 A. In the driver's seat.

22 Q. And does Al rejoin you in the car?

23 A. Yes.

24 Q. Where do you go?

25 A. Down the road.

MR. HICKS ON DIRECT

- 1 Q. Where is Ms. Davidson?
- 2 A. At the fence still.
- 3 Q. Does she get in the car?
- 4 A. No.
- 5 Q. And after you hear sirens, what did you do?
- 6 A. I pulled off.
- 7 Q. And where did you go?
- 8 A. Toward the end of the road to get out of the stad-
- 9 ium.
- 10 Q. How fast were you going?
- 11 A. Twenty miles an hour.
- 12 Q. Did you ever see where the sirens were coming from?
- 13 A. The police was in the road.
- 14 Q. So you did see the police?
- 15 A. Yes, he turned around.
- 16 Q. How long did you drive the car?
- 17 A. Not far.
- 18 Q. What happened?
- 19 A. I stopped.
- 20 Q. And then what did you do?
- 21 A. Jumped out.
- 22 Q. And then what do you do?
- 23 A. Climbed the fence.
- 24 Q. And what does Al do?
- 25 A. The same thing.

MR. HICKS ON DIRECT

1 Q. So you guys stay together?

2 A. Yes, for a while.

3 SOLICITOR: If I may approach the witness, Your
4 Honor?

5 THE COURT: You may.

6 BY SOLICITOR:

7 Q. I show you State's Exhibits 3 and 4. First I'll
8 show you Number 3. Do you know what that is?

9 A. Yes.

10 Q. What is it?

11 A. It's their car and the driver's side door.

12 Q. And who came out that door?

13 A. Me.

14 Q. State's Exhibit Number 4, what is this?

15 A. That is his side. The passenger side.

16 Q. Who came out that door?

17 A. He did.

18 Q. Is this how you guys left it that night?

19 A. Yes.

20 Q. You said you jumped over a fence?

21 A. Yes.

22 Q. I show you State's Exhibit 40. Is this the fence?

23 A. Yes.

24 Q. And on State's 41, do you know what the item is on
25 the fence?

MR. HICKS ON DIRECT

1 A. . .

2 MR. BROWN: Your Honor, again it's a leading ques-
3 tion.

4 THE COURT: It wasn't suggestive. You can ask it.

5 BY SOLICITOR:

6 Q. Do you know what that is?

7 A. Yes.

8 Q. And what is that?

9 A. The glove I was wearing.

10 Q. That you were wearing?

11 A. Yes.

12 Q. And when you are on foot, do you and Al pretty much
13 stay together?

14 A. . .

15 Q. Where do you go?

16 A. After I jumped the fence, I took off my sweater and
17 I started to run toward the end of Lady's Island but I
18 stop right by the tree, and Al ran past me and he said,
19 come on, let's go, and I followed him.

20 Q. And did you leave your sweater?

21 A. No.

22 Q. Why not?

23 A. He said to pick it up.

24 Q. Who did?

25 A. Al did.

MR. HICKS ON DIRECT

1 Q. He told you to pick your sweater up?

2 A. Yes.

3 Q. Did he say why?

4 A. That's how they can find us.

5 Q. Did you pick your sweater up?

6 A. Yes.

7 Q. What did you do with it?

8 A. Put it on.

9 Q. And in what direction do you guys run in then?

10 A. Toward the bridge.

11 Q. What bridge?

12 A. Beaufort bridge.

13 SOLICITOR: If I may approach, Your Honor?

14 THE COURT: You may.

15 BY SOLICITOR:

16 Q. I show you State's Exhibits 33 and 32. Do those
17 look familiar?

18 A. Yes.

19 Q. What are they?

20 A. My gloves.

21 Q. How do you recognize these gloves?

22 A. Howard gloves.

23 Q. And at any point, did you touch these gloves?

24 A. Yes.

25 Q. When did you do that?

MR. HICKS ON DIRECT

1 A. . .

2 Q. How did it happen?

3 A. Howard was running toward Suntrust Bank and he
4 dropped them. I picked them up and I said, here's your
5 gloves, and he said forget it, and I threw them away.

6 Q. Later on when you were interviewed by law enforce-
7 ment, did you return to these gloves?

8 A. Yes.

9 Q. What did you tell the officers about these gloves?

10 A. Howard dropped them and I throwed them away.

11 MR. BROWN: Your Honor, I would have an issue regard-
12 ing a Brady claim.

13 THE COURT: Okay. Noted for the record.

14 Let's continue.

15 MR. BROWN: Yes, maam.

16 THE COURT: We'll take it up.

17 BY SOLICITOR:

18 Q. Mr. Hicks, did you tell the officers that you had
19 touched these gloves?

20 A. Yes.

21 Q. What did you tell them that you did?

22 A. I said I pick the gloves up and throw them under the
23 tree.

24 Q. Did you make it down to the bridge?

25 A. Yes.

MR. HICKS: ON DIRECT

1 Q. And once you made it to the bridge, did you guys just
2 walk back across the bridge then?

3 A. No.

4 Q. Where did you go?

5 A. Under the bridge.

6 Q. Where to?

7 A. In the water.

8 Q. Why did you go into the water?

9 A. It was how -- we needed to get across to get to his
10 dad's car to get back home.

11 Q. And did you actually get in the water?

12 A. Yes.

13 Q. Did Al get in the water?

14 A. Yes.

15 Q. What did you do?

16 A. I went half the way, took my boots off that I had
17 on, took the money out of my pocket and started swimming.

18 Q. What did you do with the money?

19 A. Put it in my mouth.

20 Q. How far did you swim?

21 A. Almost all the way.

22 Q. Did you make it all the way back to . .

23 A. No.

24 Q. What happened?

25 A. Well, I got in the water and went half the way, and

MR. HICKS ON DIRECT

1 I started going down, and I said forget it, and he said.
2 I'm not going to leave you. That's what he said.

3 So he started pushing me back and I started swimming
4 again.

5 Q. I'm going to show you . .

6 SOLICITOR: May I approach?

7 THE COURT: Yes.

8 BY SOLICITOR:

9 Q. I'm going to show you State's Exhibit 56. Do you
10 recognize that area?

11 A. Uh hm.

12 Q. And what is that?

13 A. That's the bridge, that side of the bridge.

14 Q. And were you there in that area during this event?

15 A. Yes.

16 Q. And what did you do?

17 A. Just stay down there waiting to -- waiting.

18 Q. How long do you think you waited down there?

19 A. A long time. I don't know what the time was but I
20 know it was a long period.

21 Q. I show you State's Exhibit Number 55. Do you know
22 what that is?

23 A. Uh hm.

24 Q. I want you to point how far did you swim to?

25 A. I would say about right here.

MR. HICKS ON DIRECT

1 Q. About the middle of the picture?

2 A. Yes.

3 Q. Did you -- when you came back to shore, did you --
4 did you come back?

5 A. No, I . . .

6 Q. Well, you describe it. Where did you come back to?

7 A. The boat area, the boat ramp.

8 Q. Okay.

9 A. On that side.

10 Q. What was Al wearing that night? Do you remember?

11 A. Black or dark blue shirt and black pants, sweatshirt.

12 Q. And the area you come back to, was there a lot of
13 sand in that area?

14 A. Marsh area.

15 Q. Did you get dirty and wet?

16 A. Yes.

17 Q. How about Al?

18 A. Yes.

19 Q. Once you get back to land, what do you guys do?

20 A. We stayed there for a while and the police was hunt-
21 ing for us with flashlights.

22 Q. At what point did you decide to move away from that
23 place?

24 A. The sun started coming up and the police was in the
25 area, and we went toward Beaufort High School and the Bay

MR. HICKS ON DIRECT

1 Street area -- across the bridge and to Beaufort, the
2 Beaufort area.

3 Q. Were you able to see them from where you were?

4 A. No.

5 Q. Was it getting light?

6 A. A little bit.

7 Q. So where do you go next?

8 A. Al said he was going across the bridge, and he would
9 run across and he said you just follow behind me.

10 Q. What did you do?

11 A. I followed him.

12 Q. Did you make it across the bridge?

13 A. Yes.

14 Q. How far did you get after you got off the bridge?

15 A. Toward the Bank.

16 Q. Then what happened to you?

17 A. The police call me out and he wanted ID, so I reach
18 in my pocket for ID and I found I had two cards in my
19 pocket, so I took off running.

20 Q. What was in your pocket?

21 A. Ms. Davidson's ID.

22 Q. Did you get to the car?

23 A. No.

24 Q. What happened?

25 A. The police came and I was running and I did a little

MR. HICKS ON DIRECT

1 bounce off the car and ran another ways and another po-
2 lice try to catch me and he fell, and I said, all right,
3 and I gave up.

4 Q. So you were arrested then?

5 A. Yes.

6 Q. Did you see what direction Al ran to?

7 A. No.

8 Q. Was he ahead of you or behind you?

9 A. Ahead of me.

10 Q. And once you were arrested, were you -- do you start
11 talking to the police?

12 A. Not right away.

13 Q. When did you start talking to the police? Would
14 you say in the very beginning you were cooperative?

15 A. No.

16 Q. What were you?

17 A. Scared.

18 Q. At first did you try to deny you did this?

19 A. No.

20 Q. When they first asked you about it, what did you
21 say to them?

22 A. I told them I never did nothing; that didn't did
23 nothing to them.

24 Q. At some point did you change that?

25 A. Yeah.

MR. HICKS ON DIRECT

1 Q. Did you tell them everything you've told us here
2 today?

3 A. No.

4 Q. What did you not tell them?

5 A. I can't remember that.

6 Q. Have you been more detailed today?

7 A. Yes.

8 Q. Do you remember giving a written statement to
9 police?

10 A. Yes.

11 Q. Did you hand-write out a statement yourself?

12 A. No.

13 Q. How was it written?

14 A. Vortisch typed it.

15 Q. Did you get a chance to look at it after it was
16 typed?

17 A. Uh huh, briefly.

18 Q. Did you stick by the statement or did you change
19 anything in it later?

20 A. I changed it.

21 Q. What part did you change?

22 A. . .

23 MR. BROWN: Your Honor, I bring the Brady claim
24 now as well.

25 THE COURT: We need to take that up, is that correct?

MR. HICKS ON DIRECT

1 MR. BROWN: Yes, maam.

2 THE COURT: All right. Respectfully, ladies and
3 gentlemen, I'm going to send you out very briefly to dis-
4 cuss a matter of law.

5 Please go back to your jury room and, again, do not
6 discuss this case.

7 We will be back with you shortly.

8 (Jury excused from Courtroom at 5:40 P.M.)

9 BAILIFF: The jury is clear, Your Honor.

10 THE COURT: Thank you. Mr. Brown.

11 MR. BROWN: May it please the Court?

12 Two claims now, because for the first time in the
13 entire case I've heard reference from him that the gloves
14 -- this is the first claim, the one I referenced earl-
15 ier during his testimony.

16 The gloves that are entered into evidence as 45,
17 State's 45, as the gloves worn by Mr. Howard -- the first
18 time any of the discovery -- I have an intact copy of
19 discovery if you'd like me to enter it.

20 I have asked Detective Vortisch and Detective Ott,
21 about the statement regarding the gloves and who was
22 wearing those gloves, and Investigator Vortisch said
23 three times in his report that Mr. Hicks said those were
24 the gloves he was wearing.

25 I very thoroughly went through all of that, and again

1 the two references to the gloves, again the blue and
2 green gloves, . .

3 THE COURT: Mr. Brown, are you telling me you believe
4 there is a report or a statement out there . .

5 MR. BROWN: By Brady in cases . .

6 THE COURT: Mr. Brown, first answer my question.
7 You can quote me all the case law you like.

8 MR. BROWN: Yes, maam.

9 THE COURT: But my question is -- and the reason I
10 ask this is I understand what you are saying is he has
11 changed his testimony.

12 MR. BROWN: Yes, maam.

13 THE COURT: My question again is where is the Brady
14 violation?

15 Are you telling me that there is a report somewhere
16 or something that perhaps shows he told them that?

17 MR. BROWN: Well, if I may, Your Honor, I don't know
18 there is a report because if I had it I would know about
19 it and there wouldn't be a Brady matter.

20 I do believe there was a statement, and the reason I
21 say that is this. Last week at the hearing where we
22 talked about the gloves -- last week or the week before
23 -- there was reference -- there was a question by Your
24 Honor about whether or not there was DNA to link my
25 client by DNA to gloves Mr. Hicks was wearing.

1 The Prosecutor said Hicks said Mr. Howard was wear-
2 ing those gloves.

3 The first time I'd ever heard that at that time was
4 a representation by the Prosecutor. Mr. Hicks wasn't there.

5 I hear it again today, and it sounds to me like there
6 was a statement made by Mr. Hicks to the State, and whe-
7 ther it was directed through the State or through the at-
8 torneys, the defense attorneys to the State -- they knew
9 about that. The State knew about that.

10 This other inconsistent statement which is a Brady
11 matter -- the inconsistent statement about the gloves
12 with my client's DNA on it I did not have. I have never
13 had that statement.

14 I asked for a copy of the negotiation statement and I
15 was denied that. The statement regarding negotiations I
16 was denied access to that or the proffer.

17 So I never heard about that. The prior inconsistent
18 statement about Mr. Howard wearing the gloves, the blue
19 and green gloves.

20 That is the statement I'm talking about. Now whether
21 it is written or not . .

22 THE COURT: Just so I'm clear, Mr. Brown, in his
23 previous statement he gave my understanding is these
24 are the gloves that he took them back to find.

25 MR. BROWN: Yes, maam.

1 THE COURT: So my question is in his previous state-
2 ment he said they were his, meaning Mr. Hicks' gloves,
3 is that correct?

4 MR. BROWN: Yes, maam, and I can show . .

5 THE COURT: No, sir. No, sir. All I want to know --
6 so my question is this.

7 Solicitor, is there a statement or anything anywhere
8 that says Mr. Hicks has told one of the investigating of-
9 ficers that these are Mr. Howard's gloves and this is his
10 gloves?

11 SOLICITOR: No, maam.

12 MR. BROWN: And, Your Honor, if I may . .

13 THE COURT: No, sir.

14 MR. BROWN: . . I just want to clarify . .

15 THE COURT: Mr. Brown.

16 MR. BROWN: Yes, maam.

17 THE COURT: Is there any other Brady or any other
18 discovery that you have not turned over?

19 SOLICITOR: Good Lord, no. I have turned everything
20 over at this point I think but my own blood.

21 What he's referring to, a statement, I interviewed
22 Mr. Hicks before our last pre-trial hearing. That was
23 the first time I met Mr. Hicks; obviously, the first
24 time I'd had to talk to him, because he was a Defendant in
25 the case.

1 We were going through the evidence, and he tells me
2 that those were Howard's gloves that he threw.

3 I do have a report where the officer said Mr. Hicks
4 told him those were his gloves there. That could have
5 been something that Mr. Vortisch thought Mr. Hicks meant.
6 When he said he threw them he automatically assume those
7 were his gloves, because he threw them.

8 THE COURT: Or Mr. Hicks was lying, one or the
9 other.

10 SOLICITOR: Either one, but there is no statement.
11 It was a statement I got from Mr. Hicks when I interviewed
12 him in preparation for this trial.

13 I then told Mr. Brown that in front of Your Honor
14 during our pretrial hearing, about that statement.

15 As soon as -- it was within a day or two of getting
16 that information while interviewing Mr. Hicks.

17 THE COURT: You say you didn't learn about that in-
18 formation until the day you interviewed him, and it was
19 the next day I believe we came in and we had a hearing.
20 Is that correct?

21 SOLICITOR: Yes, maam. So there is no written
22 statement. I don't think there is anything anywhere other
23 than -- no one has interviewed Mr. Hicks. Of course, he
24 has counsel.

25 THE COURT: Okay.

1 SOLICITOR: So, no, absolutely. We have turned over
2 everything.

3 THE COURT: Was Mr. Deysach present during that
4 interview?

5 SOLICITOR: Yes, maam.

6 THE COURT: Okay. Yes, Mr. Brown?

7 MR. BROWN: And, if I may, there are cases, and, of
8 course, the Riddle case, and these statements are Brady
9 violations in the Riddle case.

10 I have copies before us, as well as copies of the
11 Gibson case, which is, Your Honor, 514 Southeast Second 320.

12 These were oral statements that were not disclosed,
13 and I dispute what the Solicitor asserted.

14 I asked and the Solicitor never said yesterday that
15 Mr. Hicks gave a different statement at the pretrial
16 hearing.

17 Of course, the record speaks for itself as to that,
18 but I was never informed the day before that there were
19 was some oral statement which disputes and contradicts this
20 statement.

21 In Gibson versus State -- if I could give Your
22 Honor some facts . .

23 THE COURT: No, respectfully. I know the case of
24 Gibson v. State, but she did with you present put on the
25 record that he had given that statement.

1 I will tell you, Mr. Brown, that I took this case
2 over from Judge Buchner, so the only things I heard in
3 reference to it were last week, and it was always my be-
4 lief those were Mr. Howard's gloves.

5 I clearly heard that in Court on Wednesday because
6 that was my understanding.

7 So, respectfully, how can it be a Brady violation if
8 she didn't have that information then, and then she stated
9 it to you on the record in open Court to the point where
10 I heard it.

11 I heard it and I understood it.

12 MR. BROWN: Again, I have no idea -- this is the
13 first I've heard of it -- when the statement was made
14 or that it was made to her.

15 That now puts us in this position where she is a
16 witness to the inconsistent statement, and I don't know
17 about any other statements like that. I don't know if
18 the Prosecutor is now a witness.

19 THE COURT: Okay.

20 MR. BROWN: In this hearing, . . .

21 THE COURT: Respectfully, let me ask you, Mr. Brown,
22 what is it you want me to do?

23 What is it you're asking because she assures me there
24 is no written statement or any statement, other than she
25 interviewed your client-- I'm sorry, interviewed Mr. Hicks.

1 That was, again, after I'm assuming a deal was struck
2 was his lawyer. Is that correct?

3 SOLICITOR: Correct, Your Honor.

4 MR. BROWN: Well, first of all, I would like to know
5 the entirety of that interview because if there are incon-
6 sistencies in it I don't know about them, until just now.

7 I asked prior to this for the negotiation informa-
8 tion . .

9 THE COURT: Mr. Brown, prior to the negotiations the
10 State did not speak with him. He had counsel who is now
11 sitting in the back of the Courtroom.

12 She wouldn't have the ability to ask him about this.

13 MR. BROWN: She spoke to him then. At that time she
14 is talking about there was not a deal struck. The deal
15 was not reached until Friday of last week.

16 SOLICITOR: There was a deal struck before I spoke to
17 Mr. Hicks, which is why I had the opportunity to speak
18 with him.

19 MR. HICKS: I asked for that, and she said she would
20 let me know when a deal was struck. I got that informa-
21 tion on Friday.

22 THE COURT: Well, respectfully, I don't see any Brady
23 violation.

24 Do you have any other issue, Mr. Brown?

25 MR. BROWN: I have a second Brady issue on the spot

1 spot where the gloves were thrown, and, again, it goes
2 back to whether or not he came back and gave more details
3 later.

4 And I heard . . .

5 THE COURT: You are saying he came back later and
6 gave more details to whom?

7 MR. BROWN: He just said it, and that is when I ob-
8 jected, because this is his whole written statement that
9 . . .

10 THE COURT: You said to me he had given four state-
11 ments, including one to the psychiatrist. How are we now
12 down to one statement?

13 MR. BROWN: Because I . . .

14 THE COURT: I think he testified that he did add more
15 details or in fact change his statement, which you can cross
16 examine him on, which I know you will do.

17 The question now is what are you look for now?

18 MR. BROWN: For some other -- I am of the opinion he
19 gave another statement in more detail, and I assume it is
20 another, quote, written statement.

21 THE COURT: Okay, I don't believe you should assume
22 anything.

23 This is his testimony. I will give you an opportunity
24 to cross examine him and ask him if he gave another state-
25 ment to anyone.

1 Again, I am assuming -- Solicitor, is there another
2 written statement?

3 SOLICITOR: No, maam, Your Honor. That has been ad-
4 dressed and testified to by three witnesses now, Officer
5 Ott, Officer Vortisch and Officer Kelleher, that follow-
6 ing his statement Mr. Hicks came back and was interview
7 further, and he gave additional information.

8 That's why I asked him and what he testified to. It
9 has been part of this entire trial, and there is abso-
10 lutely no merit.

11 There is no more written statements. What I asked
12 him was, did you go back and give them additional inform-
13 ation or change what was in your written statement, and he
14 said yes, and that was developed, and here we are.

15 THE COURT: Respectfully, any other motion, Mr.
16 Brown, before we go ahead and take just a few minutes re-
17 fresher break?

18 MR. BROWN: Again, I want to renew my request for
19 any inconsistent exculpatory statements given to any person
20 for the State, which would be a cop or a Prosecutor.

21 THE COURT: Solicitor, have you turned over every-
22 thing?

23 SOLICITOR: Yes, maam.

24 MR. BROWN: I don't have anything from that interview
25 she did.

1 SOLICITOR: That is my trial prep.

2 THE COURT: Respectfully, you don't need to explain
3 that to me.

4 You all refresh yourselves and then we're going to
5 bring this jury back in, and we're going to keep going on
6 Mr. Hicks.

7 You are not finished, Mr. Hicks, and whatever else
8 you have, Solicitor, . .

9 SOLICITOR: It will be short for me.

10 THE COURT: All right.

11 MR. BROWN: Your Honor, I would expect my cross will
12 probably last a couple of hours.

13 THE COURT: Oh, we're going to be here a while.

14 MR. BROWN: Yes, maam. Thank you.

15 THE COURT: All right.

16 (Court stood in recess from 5:52 until 6:14 P.M. when
17 the matter was continued)

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1 THE COURT: I apologize for the delay. I will
2 tell you that I gave the jurors the opportunity to call
3 home.

4 That took some time. We tried to stretch them out
5 on different phones, but they all wanted to contact fam-
6 ily to tell them they would be late, so they are here
7 for the duration.

8 With that said, is there anything we need for the
9 record before we continue, from the State?

10 SOLICITOR: Nothing from the State.

11 THE COURT: From the Defense?

12 MR. BROWN: Nothing from the Defense. I just want
13 to make sure that all objections and motions have been
14 renewed.

15 THE COURT: Noted for the record.

16 MR. BROWN: Thank you.

17 THE COURT: All right, let's bring the jury in.
18 Thank you.

19 (Jury returned to Courtroom at 6:15 P.M.)

20 BAILIFF: Jurors entering, Your Honor.

21 THE COURT: Thank you.

22 BAILIFF: Your Honor, the jury is seated.

23 THE COURT: Thank you. Welcome back.

24 Solicitor?

25 SOLICITOR: Thank you.

MR. HICKS ON DIRECT Continued

1 (Mr. Hicks having resumed witness stand)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR:

4 Q. Mr. Hicks, going back, we were taking about the
5 typed statement that you gave law enforcement.

6 After that was typed, did you then go back and talk
7 to the officers some more?

8 A. In a small way.

9 Q. That night after the typewritten statement was given,
10 did you talk with them some more?

11 A. I think so.

12 Q. And did you tell them anything different than what
13 was in your typed statement?

14 A. Yes.

15 Q. And what was different?

16 A. I would have to look at it again. I don't remember
17 right offhand.

18 Q. Would that refresh your memory a little bit?

19 A. Yes.

20 THE COURT: Mr. Hicks, you're going to have to speak
21 up, sir.

22 BY SOLICITOR:

23 SOLICITOR: If I may approach, Your Honor.

24 THE COURT: Yes.

25 Q. Mr. Hicks, is that the statement that was typed

MR. HICKS ON DIRECT

1 that night for you?

2 A. Yes.

3 Q. Now, looking at the first part of it, is there any-
4 thing different than you told officers after that was
5 typed?

6 A. Yes, the time frame.

7 Q. What did you say?

8 A. The time frame.

9 Q. All right, what is different about the time frame?

10 A. Just through that time . . .

11 Q. Which one? The one that was written or the one
12 later?

13 A. This one.

14 Q. What does the written one say?

15 A. What time it been. I just told them it first begin
16 -- in this statement I just threw something out and let
17 them . .

18 Q. Why did you do that?

19 A. So they would work. So they would do their own
20 homework, but I was going to tell the truth anyway about
21 what happened.

22 Q. So when they are typing that statement for you, are
23 you giving them all the information at that point?

24 A. Yes, some of it.

25 Q. Some of it?

MR. HICKS ON DIRECT

1 A. Yes, some of it.

2 Q. All right. Is it all of it?

3 A. It was until the last part where it says, stupid
4 me. That I said, stupid me.

5 Q. Now, what in your written statement are you now
6 saying is not true?

7 A. Where it says that I said that I wanted my turn.

8 Q. And you said that the time frame is wrong?

9 A. Yes.

10 Q. So when you said on May 26, 2006, it was two thirty-
11 seven A.M. I met up with Alonzo Hicks at the parking lot
12 behind BB and T, is that true?

13 A. No.

14 Q. What is the truth?

15 A. That I met him around ten forty-five on May the
16 25th.

17 Q. You are talking about where you first testified it
18 was early that morning when you all first met up?

19 A. Yes.

20 Q. Okay. Mr. Hicks, we were looking at a Food Lion
21 video earlier. Were you bigger then than you are now?

22 A. Yes.

23 Q. How are you bigger?

24 A. A good bit.

25 Q. What is the difference? Were you lifting weights

MR. HICKS ON DIRECT

- 1 back then or were you just heavy?
- 2 A. Just heavier, a heavy person.
- 3 Q. Back in 2006, you escaped from prison?
- 4 A. Yes.
- 5 Q. What kind of trouble had you been in back then?
- 6 A. Violation of probation.
- 7 Q. And what kind of charge did you have?
- 8 A. Grand larceny.
- 9 Q. All right, and what did you steal?
- 10 A. A fire truck.
- 11 Q. A fire truck -- was it a big red fire truck?
- 12 A. No.
- 13 Q. Or was it a fireman's truck?
- 14 A. Yes.
- 15 Q. Have you been in any other trouble besides that?
- 16 A. B and E.
- 17 Q. And what is that?
- 18 A. Breaking and entering, into a motor vehicle.
- 19 Q. You broke into a car before?
- 20 A. No, I just took the charge for somebody.
- 21 Q. But you got a conviction for that?
- 22 A. Yes.
- 23 Q. Did you go to jail for that?
- 24 A. Yes.
- 25 Q. How about another robbery? Have you ever been

MR. HICKS ON DIRECT

1 charged and convicted of another robbery?

2 A. Strong arm robbery dropped down to conspiracy or
3 something, if I'm not mistaken.

4 Q. And what happened with that? What were you accused
5 of doing or what did you do?

6 A. I just went in the store and grabbed the money bag
7 and ran out.

8 Q. And you did that and did time for that?

9 A. Yes.

10 Q. Mr. Hicks, I want to ask you, since you've been in
11 jail or since you've been arrested for these charges,
12 have you heard from or been contacted by Alfonzo Howard?

13 A. Yes, by letters.

14 SOLICITOR: If I may approach, Your Honor.

15 THE COURT: Yes.

16 BY SOLICITOR:

17 Q. I show you the contents of State's Exhibit 82. Do
18 you recognize these items?

19 A. Yes.

20 Q. What are these things?

21 A. Just telling me what to do -- he was telling me
22 what to do.

23 Q. What are they?

24 A. . .

25 Q. Where did they come from?

MR. HICKS ON DIRECT

1 A. Howard.

2 Q. And what are they?

3 A. . . .

4 Q. How did you get them?

5 A. From another inmate.

6 Q. All right. Tell me how that happened.

7 A. I was in A-one when I first came
8 there.

9 Q. What is A-one?

10 A. Where they place you in the jail.

11 Q. Like a section in the jail?

12 A. Yes. A placement room.

13 Q. Now, did you -- who did you say the letters came
14 from?

15 A. Al.

16 Q. Al Howard?

17 A. Yes.

18 Q. Did he hand them to you?

19 A. No, he had another inmate hand them to me.

20 Q. And what did they say?

21 A. . . .

22 Q. What do they -- what are they? What do they say?

23 A. You have to read them.

24 Q. Well, read them then. First, let me ask, did you
25 write any of these letters?

MR. HICKS ON DIRECT

1 A. No.

2 Q. Is your name on these letters anywhere?

3 A. No, but he wrote this right here and it says L A R --
4 that's not how to spell my name.

5 Q. Does it look like you wrote those letters?

6 A. No.

7 Q. That's not your handwriting?

8 A. No.

9 Q. But does it look like someone signed your name like
10 you wrote that letter?

11 A. Yes.

12 Q. What do the letters say? Without reading all of
13 them, in general what are the letters about?

14 A. . .

15 Q. What kind of things does he tell you?

16 A. That he want to take care of his mother who is sick
17 and that he got a brother out there that needs to be
18 taken care of.

19 Q. In these letters are there any instructions to you?

20 A. Yes.

21 Q. What are you supposed to do with these letters?

22 A. Tear them up.

23 Q. What are you supposed to do before you tear them up?

24 A. Rewrite them.

25 Q. Rewrite them?

MR. HICKS ON DIRECT

1 A. Yes.

2 Q. All right, so you are supposed to rewrite them and
3 now what do the letters say?

4 Read the first one for me.

5 A. . .

6 Q. Do you know which letter there tells you to rewrite
7 them?

8 A. This one right here.

9 Q. How about read that one for me.

10 A. . .

11 Q. Make sure you're in the microphone so we can all
12 hear you.

13 A. It say, I want to do everything to help you, no
14 matter what it is. It's not what people think or say
15 about you. It's about you. I have the same thing going
16 on with me but we are going to make it.

17 Trust in God and things will be okay.

18 P.S. I can't understand what's going on with them.
19 They talk. They talk about Jesus. He's still forgiven
20 them even when they were killing him.

21 I have another letter for you to copy but this one
22 I want you to send to a friend because these people don't
23 play. These people don't play fair.

24 I think what I'm going to do is have someone call
25 your lawyer. Okay? So we can get this thing on the road

MR. HICKS ON DIRECT

1 and then I can help to work on you, you know, do legal
2 work.

3 So don't worry about nothing. Just believe in God
4 and all things work together. I haven't heard anything
5 about my mom so I don't know if she is gone -- she has
6 past because my dad said it was -- I don't understand
7 what he wrote right here.

8 Send me something over so see I'm going through the
9 same thing.

10 P.S. Don't send that to me. Send it to Stacy Russo
11 or whatever, and when you copy it tear it up -- tear this
12 one up.

13 Q. Did you write that letter?

14 A. No.

15 Q. Who wrote that letter?

16 A. Howard.

17 Q. And was there another letter with that one?

18 A. Yes.

19 Q. And that letter mentions you are supposed to copy
20 another one. Was the one you were supposed to copy with
21 that letter?

22 A. Yes.

23 Q. Now, can you read for the jury the letter that you
24 were supposed to copy in your handwriting?

25 A. To whom it may concern. I am writing -- I am

MR. HICKS ON DIRECT

1 writing this to you in regards to Mr. Howard.

2 Excuse me. To whom it may concern. I am writing to
3 you in regard to Mr. Howard. The purpose of this letter
4 is so that someone -- someone to act on -- on this -- I
5 don't know what it says -- what I am about to say.

6 My name is -- same thing -- L A R E N Z O Hicks,
7 and I'm going -- I'm going to state what happened between
8 me and Howard.

9 Me and Howard stopped at the Circle K. Howard
10 stepped out to talk to some girls. I stayed in the car
11 and Howard been talking too long, so I asked him about
12 going to the waterfront and Howard said he wasn't going
13 to be long, so I wait and Howard was taking too long, so
14 I told him that I'll be back and Howard asked me was I
15 going to the waterfront, and I -- do I say what it says?

16 Q. Absolutely.

17 A. It says I was going to the waterfront to hook with
18 some whores. Howard say don't get stopped in dad's car,
19 for me to -- something for me to come back -- for me to
20 come back and I then went on my way.

21 Then I seen someone I knew, and you all know the
22 rest. I know Howard left a gun ^{of his dad} in the back seat of the
23 car and so I gave it to my friend.

24 I then seen Al coming to the bridge where I was hid-
25 ing. I then called and he came down and I told him I

MR. HICKS ON DIRECT

1 fucked up and started toward the water and tried to drown
2 myself and Al pulled me out, and then Al said he was out,
3 but we got caught.

4 The police was all over me -- the police was all over
5 me so I -- I knew Al had been to prison and I could get
6 out of some time if I put him in it, so I put him in it
7 so I did that for the probation so it would help me.

8 So I continue to lie so the police would leave me
9 alone.

10 I'm sorry I ever cause anyone any pain.

11 So I'm writing this in hope for the same relief.

12 Q. Is there a name at the bottom of that?

13 A. Larenzo -- L A R E N Z O .

14 Q. Did you sign that?

15 A. No, I didn't.

16 Q. Did you write that letter?

17 A. No.

18 Q. Is that your statement?

19 A. No.

20 Q. Is any of that true?

21 A. No.

22 Q. Mr. Hicks, did you rewrite that letter for Mr.
23 Howard?

24 A. No.

25 Q. What did you do with it?

MR. HICKS ON DIRECT

1 A. I saved it.

2 Q. Mr. Hicks, at the time you gave your statement to
3 law enforcement did anybody threaten you to make you give
4 a statement to law enforcement?

5 A. No.

6 Q. Did anyone hurt you . .

7 A. No.

8 Q. . . to get you to give the statement?

9 A. No.

10 Q. Did you give a statement freely and voluntarily?

11 A. Yes.

12 Q. And are you doing that again today?

13 A. Yes.

14 Q. Mr. Hicks, thank you. Please answer anything Mr.
15 Brown has for you.

16 A. I will.

17 MR. BROWN: May it please the Court?

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION

20 BY MR. BROWN:

21 Q. That statement you just read, you mentioned you
22 jumped into the water to try to drown yourself?

23 A. Yes.

24 Q. The Solicitor asked you if anything in that state-
25 ment was true, and you said no. Was it true that you

MR. HICKS ON CROSS

1 jumped in the water to drown yourself?

2 A. Yes, I did. Yes and no.

3 Q. Is it true you jumped in the water but not to drown
4 yourself, or is it not true that you jumped in the water
5 but you didn't try to drown yourself?

6 A. . .

7 Q. Or something else?

8 A. I jumped in the water but not to kill myself.

9 Q. Not to kill yourself?

10 A. No.

11 Q. And do you recall making a statement in February of
12 2008?

13 A. I don't remember dates.

14 Q. Do you recall making a statement about this time
15 last year?

16 A. . .

17 Q. You had already talked to your lawyer, this one
18 right here?

19 A. I don't understand what you're asking.

20 Q. No law enforcement was there?

21 A. No.

22 Q. No judge?

23 A. No.

24 Q. No jury?

25 A. No.

MR. HICKS ON CROSS

1 Q. You were sitting in a room in Charleston, and did
2 you tell the person you were speaking with then that you
3 jumped in the water to drown yourself?

4 A. I don't know but I probably did.

5 Q. You probably did?

6 A. . .

7 Q. So without anybody else around, you told him you
8 did jump in the water to drown yourself, but here you're
9 telling the Court that's a lie?

10 A. . .

11 Q. Can you explain it?

12 A. Yes.

13 Q. How?

14 A. At first I was going to do it.

15 Q. Do what?

16 A. Drown myself, if I can.

17 Q. And . .

18 A. But he talked me out of it, Mr. Howard.

19 Q. Talked you out of drowning yourself?

20 A. Yes.

21 Q. Now, that was all going on that morning there?

22 A. Excuse me.

23 Q. You said I'm jumping in to drown myself?

24 A. No, I said to leave me. I was going down anyway.

25 He was in the water.

MR. HICKS ON CROSS

1 Q. You didn't jump in the water to drown yourself?

2 You decided you were going to drown?

3 A. He was in the water. I said to leave me, I was
4 going to drown myself, and he said no.

5 Q. And you made that statement in the water, and did
6 you have these twenty Twenty Dollar bills in your mouth?

7 A. Probably did.

8 Q. I thought you told us that you put that money in your
9 mouth when you jumped in the water?

10 A. But I took it out.

11 Q. Did you have it in the water out of your mouth when
12 you were telling him you were going to drown?

13 A. Yes, when he was pushing me.

14 Q. He was pushing you in the water?

15 A. To get me out.

16 Q. Let me ask you to take a look at what's been marked
17 as Defendant's Exhibit 1 for purposes of this trial.

18 A. . .

19 Q. I ask you to take a look at that.

20 A. Uh hm.

21 Q. Do you recall making a statement when you were in the
22 County Jail that was signed and notarized -- that you
23 signed and it was notarized by the counselor at the jail,
24 Leonard Barnes?

25 A. No, I did not sign this.

MR. HICKS ON CROSS

1 Q. You did not make that statement?

2 A. No. I never even wrote this.

3 Q. And you never wrote it?

4 A. No.

5 Q. And you did not sign it?

6 A. No.

7 Q. So you didn't sign it in front of Leonard Barnes?

8 A. No, I never signed this and I never ever even wrote
9 it.

10 Q. Never even wrote it?

11 A. No.

12 Q. Did you ever talk to a lawyer named Gene Hood?

13 A. Excuse me.

14 Q. Did you ever talk to a lawyer named Gene Hood?

15 A. Briefly on the phone.

16 Q. On the telephone?

17 A. But it wasn't even a conversation. He said he could
18 not talk to me or wasn't going to be my lawyer.

19 Q. What did you say? First, when was this?

20 A. When I first was brought to B three to B two.

21 Q. When was that?

22 A. Sometime in '06.

23 Q. You talked to Mr. Hood on the telephone. What did
24 you call him for?

25 A. To see if he could help me.

MR. HICKS ON CROSS

- 1 Q. Okay.
- 2 A. To see if he could help me or if he could be my lawyer.
- 3 Q. And he took your collect call?
- 4 A. No -- yes.
- 5 Q. He did take your collect call?
- 6 A. Yes.
- 7 Q. At the Public Defender Office?
- 8 A. I just called the number.
- 9 Q. Was it the Public Defender's Office?
- 10 A. Yes.
- 11 Q. Okay, and so you were looking for a lawyer and you
- 12 wanted to talk to him but he said he couldn't talk to you?
- 13 A. He said he wasn't going to be my lawyer but I never
- 14 did know that.
- 15 Q. Okay, and so at some point in time he talked to you?
- 16 A. Yeah.
- 17 Q. He was your lawyer?
- 18 A. I never did talk to him like that now, like you're
- 19 trying to make it seem.
- 20 Q. I'm trying to find out how it was.
- 21 A. It was like, can you please take my case, and he said
- 22 no, I'm representing your Codefendant, and I said okay,
- 23 and I hung up.
- 24 Q. Did you know your lawyer who is a Public Defender, Mr.
- 25 Deysach, and your lawyer, Ms. Smart, who was your lawyer

MR. HICKS ON CROSS

1 before Mr. Deysach -- did you know they both were Public
2 Defenders?

3 A. Yes.

4 Q. And that they worked under Mr. Hood?

5 A. Yes.

6 Q. And they have the entire time that you've been repre-
7 sented by the Public Defender Office?

8 A. Yes.

9 Q. Mr. Deysach ever tell you he had talked to Mr. Hood
10 about the negotiations that you have in this case with the
11 State?

12 A. No.

13 Q. Did Mr. Deysach ever tell you that he and Mr. Hood
14 talked about whatever they talked to Ms. Tanner about, about
15 your negotiations?

16 A. No.

17 Q. He never told you that?

18 A. No.

19 Q. Now, let's talk a minute about your mental illness.

20 A. What do you want to know?

21 Q. You ever have problems remembering things?

22 A. Sometimes.

23 Q. Okay.

24 A. But this right here, I remember everything. I remember
25 detail by detail of the case.

MR. HICKS ON CROSS

- 1 A. You remember everything?
- 2 A. Yes.
- 3 Q. And so you testified that Mr. Howard was the one who
- 4 had sexual intercourse . .
- 5 A. Yes.
- 6 Q. . . out on that football field?
- 7 A. Yes.
- 8 Q. And you also testified that you were the one who had
- 9 walked Mrs. Davidson back to the car and groped her?
- 10 A. No.
- 11 Q. You didn't fondle her?
- 12 A. No.
- 13 Q. And you didn't walk her back to the car?
- 14 A. No.
- 15 Q. And Mr. Howard had the gun?
- 16 A. Yes.
- 17 Q. And you didn't take the panties, bra or shoes back to
- 18 the car?
- 19 A. No.
- 20 Q. Mr. Howard must have been the one who walked Ms. Davidson
- 21 back to the car?
- 22 A. Yes.
- 23 Q. And so Mr. Howard had to have been the one who put his
- 24 arms around Ms. Davidson and fondled her?
- 25 A. Yes.

MR. HICKS ON CROSS

1 Q. He carried the gun?

2 A. Yeah.

3 Q. He carried the bra and panties and shoes?

4 A. Yeah.

5 Q. All at one time while he was doing all of that?

6 A. Guess so. I don't know how they got to the car.

7 Q. Because you know you'd never said that you wanted
8 some yourself?

9 A. Never said it, no.

10 Q. And you never fondled her?

11 A. Never.

12 Q. And any evidence otherwise is not true?

13 A. No.

14 Q. And so what you're saying is you've never said any-
15 thing contrary to that?

16 A. Yes.

17 Q. Sometimes you hear voices?

18 A. Exactly what?

19 Q. Do you sometimes hear voices?

20 A. Yes.

21 Q. Excuse me?

22 A. Yes.

23 Q. Some times you see light or see lights or something
24 like that?

25 A. Yes.

MR. HICKS ON CROSS

- 1 Q. Do you sometimes see unicorns?
- 2 A. Yeah.
- 3 Q. Excuse me?
- 4 A. Yes.
- 5 Q. You see unicorns?
- 6 A. Yes.
- 7 Q. When is the last time you've seen unicorns?
- 8 A. I can't recall.
- 9 Q. How many times have you seen unicorns in the last month?
- 10 A. None.
- 11 Q. None?
- 12 A. Yes.
- 13 Q. How many times in the last year?
- 14 A. None.
- 15 Q. How many times since you've been arrested on this case?
- 16 A. Once.
- 17 Q. Once?
- 18 A. Yes.
- 19 Q. Did the unicorn say anything to you?
- 20 A. No.
- 21 Q. What did the unicorn do?
- 22 A. Nothing.
- 23 Q. And where were you when you saw the unicorn?
- 24 A. In B three.
- 25 Q. All right. Do you think it was really there?

MR. HICKS ON CROSS

1 A. I don't know.

2 Q. What do you know about demons?

3 A. . .

4 Q. What do you know about demons? Do you ever see demons?

5 A. Yes.

6 Q. What do these demons tell you?

7 A. To take the charge, man.

8 Q. To take the charge, and sometimes you hear voices telling
9 you to go and hurt people, don't you?

10 A. Yes.

11 Q. How many times did you hear voices tell you to go out
12 and hurt someone?

13 A. I don't know.

14 Q. How many times in the last year?

15 A. Twice.

16 Q. How many times in the last year?

17 A. Twice.

18 Q. Twice in the last year?

19 A. Yes.

20 Q. Did you hurt anybody?

21 A. Yes.

22 Q. Who did you hurt?

23 A. Somebody, an inmate.

24 Q. Did you hurt another inmate while you were in jail?

25 A. Yes.

MR. HICKS ON CROSS

- 1 Q. Because voices told you to do it?
- 2 A. Yes and no.
- 3 Q. Why else did you do it?
- 4 A. He said something he should never have said to me.
- 5 Q. He said something you didn't like . .
- 6 A. Yes..
- 7 Q. . . so you physically had a physical altercation with
- 8 him?
- 9 A. No.
- 10 Q. But it was also voices that told you to do the same
- 11 thing?
- 12 A. If that's how you want to put it.
- 13 Q. And what happened to the inmate?
- 14 A. . .
- 15 Q. What did you do to him?
- 16 A. Knocked his teeth out.
- 17 Q. Knocked his teeth out?
- 18 A. Yes.
- 19 Q. Who at the jail found out about that?
- 20 A. I don't know. Everybody.
- 21 Q. Like the COs.
- 22 A. COs.
- 23 Q. And what did they do to you?
- 24 A. Locked me down.
- 25 Q. Did they charge you with assault and battery

MR. HICKS ON CROSS

1 with intent to kill?

2 A. No.

3 Q. Did they charge you with assault and battery of a high
4 and aggravated nature?

5 A. No.

6 Q. Was it just plain simple assault and battery?

7 A. No.

8 Q. Did you tell your lawyer about all this?

9 A. No. For what?

10 Q. I guess nothing, because you never got charged, did
11 you?

12 A. . .

13 Q. Was that part of a win-win deal?

14 A. I don't . .

15 Q. We'll take care of you, Mr. Hicks, if you just keep saying
16 Mr. Howard is involved in this?

17 A. No, I got a lock down for ten days.

18 Q. You didn't get nothing for it, did you?

19 A. Yeah.

20 Q. As long as you're doing what they want you to, you are
21 protected, aren't you?

22 A. . .

23 Q. Isn't that right?

24 A. No.

25 SOLICITOR: Your Honor, I'm going to object to that.

MR. HICKS ON CROSS

1 He is mis-characterizing . .

2 MR. BROWN: That's exactly what . .

3 SOLICITOR: He is mis-characterizing . .

4 MR. BROWN: That would be for the jury to determine.

5 THE COURT: Respectfully, Mr. Brown, ask a question.

6 BY MR. BROWN:

7 Q. And when you got out of there, did you say you were
8 sorry for knocking his teeth out?

9 A. No.

10 Q. All right, because you know you're frustrated and angry,
11 aren't you?

12 A. No.

13 Q. And hurt people?

14 A. At times.

15 Q. Sometimes when you use cocaine, it makes you frustrated
16 and angry, and you hurt people?

17 A. That's something I don't -- I don't do anything like
18 that. Just once in a blue moon.

19 Q. Once in a blue moon you use cocaine and you feel like
20 hurting people?

21 A. . .

22 Q. Is that right?

23 A. No.

24 Q. That doesn't sound right?

25 A. . .

MR. HICKS ON CROSS

1 Q. How many times have you been committed to a mental
2 health facility?

3 A. Three.

4 Q. You sure it's not four?

5 A. No.

6 Q. A couple?

7 A. A couple of times.

8 Q. When is the last time you were committed?

9 A. In 2005.

10 Q. Where were you committed in 2005?

11 A. Beaufort Memorial.

12 Q. And you escaped, didn't you?

13 A. No.

14 Q. How did you get the fireman's truck?

15 A. Say again.

16 Q. How did you get the fireman's truck when you were com-
17 mitted in the hospital?

18 A. I woke up early and I left. That's how I got it.

19 Q. You left -- you escaped?

20 A. No, I left my house and the mental health case wasn't
21 over, and I just walked over and that's how I got it.

22 Q. That doesn't have anything to do with you being commit-
23 ted, because . . .

24 A. No.

25 Q. . . you walked from the mental health facility to the

MR. HICKS ON CROSS

- 1 hospital to steal a fireman's truck?
- 2 A. . .
- 3 Q. Is that right?
- 4 A. I guess.
- 5 Q. Did you call the police and tell them you did it?
- 6 A. Yeah.
- 7 Q. Did you talk to this officer here?
- 8 A. Yes.
- 9 Q. In 2005?
- 10 A. Yes.
- 11 Q. Detective Ott?
- 12 A. Yes.
- 13 Q. And they came out to where you were and you told
- 14 them I've got a stolen truck out here?
- 15 A. Yes.
- 16 Q. And they wanted to know where the stuff from the
- 17 truck was?
- 18 A. Yes.
- 19 Q. And did you tell them back at the house?
- 20 A. No.
- 21 Q. You didn't tell them it was back at the house?
- 22 A. You said my house?
- 23 Q. You didn't tell them they could talk to the guy at
- 24 the house?
- 25 A. You say my house?

MR. HICKS ON CROSS

- 1 Q. No, not your house -- at the house?
- 2 A. There wasn't no truck at nobody's house.
- 3 Q. There wasn't a truck at anybody's house?
- 4 A. I parked it at a store.
- 5 Q. Where did you tell them they could find the stuff?
- 6 A. At somebody's house.
- 7 Q. Okay, and you have any idea whose that somebody's
- 8 house is?
- 9 A. Yes.
- 10 Q. Who is that?
- 11 A. My ex-girlfriend's cousin.
- 12 Q. Who is that?
- 13 A. Roddy Johnson.
- 14 Q. And when they showed up to get the stuff back, it wasn't
- 15 at the house?
- 16 A. No.
- 17 Q. Do you know why?
- 18 A. No.
- 19 Q. You burned it, didn't you?
- 20 A. I didn't burn nothing.
- 21 Q. Was it in a burn pit?
- 22 A. I don't know. I guess so.
- 23 Q. You don't know?
- 24 A. No.
- 25 Q. You told them it was back at the house?

MR. HICKS ON CROSS

1 A. Yes.

2 Q. And that wasn't true?

3 A. It was at the house.

4 Q. It was at the house but it was burned?

5 A. It was at the house. I didn't know nothing was
6 burned. I didn't burn nothing.

7 Q. And when they came out to see you, they didn't
8 charge you with anything, did they?

9 A. . .

10 Q. They took you to the hospital because of your psy-
11 chiatric condition, didn't they?

12 A. No.

13 Q. They didn't?

14 A. No. I had to turn myself in.

15 Q. Wait one second. Did you not go back to the
16 hospital?

17 A. When.

18 Q. After they came to see you when you reported the truck
19 that you had stolen?

20 A. . .

21 Q. Did they not take you back to the hospital for an
22 evaluation?

23 A. I don't recall that.

24 Q. You don't recall that?

25 A. No.

MR. HICKS ON CROSS

1 Q. They did arrest you, didn't they, later on?

2 A. . .

3 Q. And you pled guilty then, didn't you?

4 A. No.

5 Q. They arrested you coming out of the mental health fa-
6 cility, didn't they?

7 A. Uh hm.

8 Q. All right, but they didn't arrest you right away, did
9 they?

10 A. . .

11 Q. But the reason they didn't arrest you wasn't because
12 you didn't steal a truck?

13 A. Right.

14 Q. It was because of your mental health condition?

15 A. No.

16 Q. What was it?

17 A. I didn't turn myself in.

18 Q. Let me be sure I understand this. You stole a truck

19 . . .

20 A. Yes.

21 Q. . . that was valued at Eleven Thousand Dollars, and
22 several thousand dollars worth of items, and you called
23 them later and said, hey, I've got a truck that I stole;
24 some of the stuff is burned up, and they come out there
25 to get it from you and they just don't do anything to you

MR. HICKS ON CROSS

1 until later?

2 A. . . .

3 Q. You ever been an informant for the police before?

4 A. No.

5 Q. You ever talk to them about things like this and
6 how to work the system?

7 A. No.

8 Q. You don't know how?

9 A. Nope.

10 Q. Because they feel pity for you?

11 A. . . .

12 Q. Let's back up a little bit. Did you try to go in
13 the Navy at one time?

14 A. Yes.

15 Q. And you didn't pass the test to go in the Navy?

16 A. . . .

17 Q. They wouldn't let you mop the deck of that ship?

18 A. . . .

19 Q. I mean, they didn't think you were smart enough
20 to push a mop on a boat, did they?

21 A. No, it wasn't like that.

22 Q. What was it?

23 A. I just didn't pass.

24 Q. And it was during a time of war that they wouldn't
25 take you to go on a boat and run a mop?

MR. HICKS ON CROSS

1 A. . . .

2 Q. I mean, you weren't looking to fly planes or any-
3 thing, were you?

4 A. No, sir.

5 Q. And so they told you no?

6 A. They said I didn't pass it but I could come back.

7 Q. Okay. Now, the Prosecutor asked you about some
8 of your convictions too.

9 And she went through and talked about -- I think
10 you identified a robbery and a B and E auto, if you
11 remember.

12 A. Yes.

13 Q. And something downstairs?

14 A. Yes, a magistrate's something.

15 Q. Okay, and they made you put your hand on the Bible
16 and raise your right hand?

17 A. No.

18 Q. They didn't swear you in to tell the truth?

19 A. No.

20 Q. Did the Judge talk to you about whether you did
21 it?

22 A. Yes.

23 Q. And you told the Judge in a solemn Court of Law
24 that you did it?

25 A. It was me and another guy.

MR. HICKS ON CROSS

- 1 Q. Okay.
- 2 A. I said I did it.
- 3 Q. You told them I did it?
- 4 A. I said he didn't have nothing to do with it.
- 5 Q. And that was a lie you told the Judge in this
- 6 same Courthouse, wasn't it?
- 7 A. It wasn't a lie though.
- 8 Q. You said you took the charge for someone else?
- 9 A. Yes, I took the charge.
- 10 Q. But is it because you did do it or you just cut him
- 11 out?
- 12 A. I took the charge for him. They did it.
- 13 Q. They did it?
- 14 A. But I took the charge for him. For them.
- 15 Q. Let me make sure I understand now. Did you break into
- 16 the car or not?
- 17 A. No.
- 18 Q. You didn't?
- 19 A. No.
- 20 Q. Did you tell the Judge you did?
- 21 A. I told him I did it.
- 22 Q. So you lied in this Courthouse in a Court proceed-
- 23 ing?
- 24 A. Well, . .
- 25 Q. Is that true?

MR. HICKS ON CROSS

1 A. Yeah.

2 Q. And you will lie sometimes when you just can't remem-
3 ber?

4 A. No.

5 Q. You lie because you can remember?

6 A. No.

7 Q. And those voices -- the doctors never told you that
8 you have a psychosis or you suffer from a psychosis?

9 A. I don't know.

10 Q. You've never been told that?

11 A. No.

12 Q. How about antisocial personality disorder?

13 A. I can't recall.

14 Q. Okay. How about schizoid affective disorder?

15 A. Schizophrenia?

16 Q. Schizoid affective.

17 A. I don't know. I don't know the difference.

18 Q. How about polysubstance abuse?

19 A. . .

20 Q. Never told you that or you never told them you
21 abused . .

22 A. No.

23 Q. . . cocaine or alcohol?

24 A. I don't recall none of this.

25 Q. Cocaine, marijuana, alcohol?

MR. HICKS ON CROSS

- 1 A. I didn't.
- 2 Q. Did you ever tell doctors that you abused cocaine,
3 marijuana and alcohol?
- 4 A. I never did say nothing about it.
- 5 Q. You never told them that you did cocaine which
6 makes you angry, but you'd use it anyway?
- 7 A. I don't know if . .
- 8 Q. You did say that?
- 9 A. Yes.
- 10 Q. And they told you that you suffered from cocaine
11 abuse?
- 12 A. I guess.
- 13 Q. I'm sorry.
- 14 A. I guess.
- 15 Q. Did you get kicked out of school because you were
16 doing drugs?
- 17 A. No.
- 18 Q. No?
- 19 A. No.
- 20 Q. You never said your problems in school started when
21 you were doing drugs?
- 22 A. Yes, but that wasn't why I was kicked out.
- 23 Q. Why were you kicked out?
- 24 A. Because I started running.
- 25 Q. Did you start running because you were fighting?

MR. HICKS ON CROSS

1 A. No.

2 Q. You never told anybody you were kicked out when you
3 were doing drugs and fighting?

4 A. I was fighting but that wasn't the reason.

5 Q. You were fighting in school but that wasn't the
6 reason they kicked you out?

7 A. Right.

8 Q. The school in Jasper County?

9 A. Yes.

10 Q. Did anybody call a policeman named Martin Kelleher?

11 A. Yes.

12 Q. Tell me about the strong arm robbery?

13 A. What you want to know?

14 Q. You stole somebody else's stuff?

15 A. Yes.

16 Q. You robbed with a gun in Columbus?

17 A. That's when I got robbed.

18 Q. When you got robbed?

19 A. Yes. That's when somebody rob me. That's the person
20 who robbed me.

21 Q. You got robbed and they looked at you as the person
22 who was robbed?

23 A. Yes.

24 Q. And so the Sheriff's Department got it wrong?

25 A. Yes.