

STATE OF SOUTH CAROLINA

VOLUME I OF II

IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable Michael G. Nettles, Circuit Court Judge

KENNETH SAMUEL WILLIAMS,

RECEIVED
OCT 06 2017
S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-000182

APPENDIX

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

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

RUSTON NEELY
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

PAGES 1 – 500

INDEX

INDEX i

TRIAL TRANSCRIPT DATED JULY 26 – 29, 20101

APPLICATION FOR POST-CONVICTION RELIEF582

RETURN.....590

AMENDED APPLICATION FOR POST-CONVICTION RELIEF595

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED OCTOBER 17, 2016597

LETTER FROM JUDGE NETTLES657

ORDER OF DISMISSAL.....659

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FOURTEENTH JUDICIAL CIRCUIT
 COUNTY OF BEAUFORT) 2007-GS-07-1918
) 2007-GS-07-1919
) 2007-GS-07-1920

THE STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 VS.) TRANSCRIPT OF RECORD
)
 KENNETH S. WILLIAMS,)
)
 DEFENDANT.)
)
 _____)

JULY 26, 27, 28, 29, 2010
 BEAUFORT, SOUTH CAROLINA

B E F O R E:

THE HONORABLE THOMAS W. COOPER, JUDGE, AND A JURY

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

ANGELA McCALL-TANNER, ESQUIRE, ASSISTANT SOLICITOR
 JAMES JOHN BANNON, ESQUIRE, ASSISTANT SOLICITOR
 ATTORNEYS FOR THE STATE

GENE G. HOOD, ESQUIRE
 ATTORNEY FOR THE DEFENDANT

ALSO PRESENT DAY ONE:
 DONALD C. COLONGELI, ESQUIRE

ELIZABETH B. HARRIS, CVR
 CIRCUIT COURT REPORTER

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
----------------------------	-----------------

MONDAY, JULY 26, 2010

PRETRIAL MATTERS

MOTIONS BY DEFENSE	13
------------------------------	----

LEWIS GRAYSON

DIRECT EXAMINATION BY MR. COLONGELI	20
---	----

CROSS-EXAMINATION BY MS. McCALL-TANNER	21
--	----

EXAMINATION BY THE COURT	23
------------------------------------	----

RULING OF THE COURT	37
-------------------------------	----

JURY VOIR DIRE	41
--------------------------	----

JURY SELECTION	66
--------------------------	----

JACKSON VS. DENNO HEARING

RONALD WEKENMANN

DIRECT EXAMINATION BY MS. McCALL-TANNER	76
---	----

JOHN GRIFFITH

DIRECT EXAMINATION BY MS. McCALL-TANNER	81
---	----

CROSS-EXAMINATION BY MR. HOOD	87
---	----

RULING OF THE COURT	89
-------------------------------	----

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

TUESDAY, JULY 27, 2010

OPENING REMARKS BY THE COURT 112

OPENING BY MS. McCALL-TANNER 120

OPENING BY MR. HOOD 126

STATE'S CASE IN CHIEF

CHARLES T. McGUIRE, JR.

DIRECT EXAMINATION BY MS. McCALL-TANNER 133

CROSS-EXAMINATION BY MR. HOOD 136

REDIRECT EXAMINATION BY MS. McCALL-TANNER 136

STACY STRONG

DIRECT EXAMINATION BY MS. McCALL-TANNER 137

JAMES KOCH

DIRECT EXAMINATION BY MS. McCALL-TANNER 142

CROSS-EXAMINATION BY MR. HOOD 153

RONALD WEKENMANN

DIRECT EXAMINATION BY MS. McCALL-TANNER 157

CROSS-EXAMINATION BY MR. HOOD 162

REDIRECT EXAMINATION BY MS. McCALL-TANNER 180

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

JOHN GRIFFTH

DIRECT EXAMINATION BY MS. McCALL-TANNER 184

CROSS-EXAMINATION BY MR. HOOD 252

REDIRECT EXAMINATION BY MS. McCALL-TANNER 284

RE-CROSS-EXAMINATION BY MR. HOOD 286

EXPLANATION OF RIGHTS: L. SCHOENEMANN, J. CHASE 290

LISA SCHOENEMANN

DIRECT EXAMINATION BY MS. McCALL-TANNER 293

CROSS-EXAMINATION BY MR. HOOD 302

REDIRECT EXAMINATION BY MS. McCALL-TANNER 316

JENNY CHASE

DIRECT EXAMINATION BY MS. McCALL-TANNER 318

CROSS-EXAMINATION BY MR. HOOD 334

REDIRECT EXAMINATION BY MS. McCALL-TANNER 347

WEDNESDAY, JULY 28, 2010

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

STACY STANLEY

VOIR DIRE EXAMINATION BY MS. McCALL-TANNER 352

DIRECT EXAMINATION BY MS. McCALL-TANNER 353

CROSS-EXAMINATION BY MR. HOOD 370

MICHAEL CAPLAN

VOIR DIRE EXAMINATION BY MS. McCALL-TANNER 377

DIRECT EXAMINATION BY MS. McCALL-TANNER 379

CROSS-EXAMINATION BY MR. HOOD 414

END OF STATE'S CASE IN CHIEF

EXPLANATION OF RIGHTS: DEFENDANT 425

MOTIONS BY DEFENSE 427

RULING BY THE COURT 432

END OF DEFENDANT'S CASE

CLOSING BY MS. McCALL-TANNER 458

CLOSING BY MR. HOOD 465

JURY CHARGE 484

FURTHER JURY CHARGE 514

FURTHER JURY CHARGE 529

THURSDAY, JULY 29, 2010

1
2
3
4
5
6
7
8
9
10
11

FURTHER JURY CHARGE 538

FURTHER JURY CHARGE 549

VERDICT 559

POLLING OF THE JURY : 560

MOTIONS BY DEFENSE 567

RULING OF THE COURT 568

SENTENCE OF THE COURT 576

CERTIFICATE PAGE 579

BATSON SHEET (TWO PAGES)

	<u>E X H I B I T S</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
1				
2				
3	S-1	PHOTOGRAPH	186	187
4	S-2	PHOTOGRAPH	186	188
5	S-3	PHOTOGRAPH	188	189
6	S-4	PHOTOGRAPH	188	190
7	S-5	PHOTOGRAPH	190	192
8	S-6	PHOTOGRAPH	190	192
9	S-7	PHOTOGRAPH	190	193
10	S-8	PHOTOGRAPH	190	193
11	S-9	BATTERY COVER	193	194
12	S-10	BATTERY PACK	193	194
13	S-11	DNA SWAB		195
14	S-12	PHOTOGRAPH		201
15	S-13	PANTS		202
16	S-14	PHOTOGRAPH		202
17	S-15	PHOTOGRAPH		203
18	S-16	TWO BUTTONS		203
19	S-17	SHIRT		204
20	S-18	PHOTOGRAPH		205
21	S-19	WIRE		205
22	S-20	PHOTOGRAPH		207
23	S-21	DNA SWAP		209
24	S-22	PHOTOGRAPH		209
25	S-23	HAIR SAMPLE		210

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I. D.</u>	<u>EV.</u>
2	S-24	PHOTOGRAPH		212
3	S-25	PHOTOGRAPH		212
4	S-26	PHOTOGRAPH		212
5	S-27	WALLET INSERT WITH ITEMS		213
6	S-28	DNA SWAB		213
7	S-29	PHOTOGRAPH		214
8	S-30	DNA SWAB		214
9	S-31	DNA SWAB		214
10	S-32	DNA SWAB		214
11	S-33	DNA SWAB		214
12	S-34	PHOTOGRAPH		215
13	S-35	DNA SWAB		215
14	S-36	PHOTOGRAPH		216
15	S-37	DNA SWAB		216
16	S-38	PHOTOGRAPH		234
17	S-39	PHOTOGRAPH		234
18	S-40	PHOTOGRAPH		234
19	S-41	PHOTOGRAPH		234
20	S-42	PHOTOGRAPH		234
21	S-43	PHOTOGRAPH		234
22	S-44	PHOTOGRAPH		234
23	S-45	BANK CARD		237
24	S-46	DNA SWAB		245
25	S-47	PHOTOGRAPH		229

1	NO.	DESCRIPTION	I.D.	EV.
2	S-48	TWO DNA SWABS		239
3	S-49	DNA SWAB		219
4	S-50	DNA SWAB		219
5	S-51	CD OF INTERVIEWS - NOT TRANSCRIBED	284	285
6	S-52	CUTTINGS FROM VICTIM'S CLOTHING		365
7	S-53	SET OF DENTURES		389
8	S-54	PHOTOGRAPH		391
9	S-55	PHOTOGRAPH		391
10	S-56	PHOTOGRAPH		391
11	S-57	PHOTOGRAPH		393
12	S-58	PHOTOGRAPH		393
13	S-59	PHOTOGRAPH		393
14	S-60	PHOTOGRAPH		393
15				
16				
17	C-1	DEFENDANT'S <i>VOIR DIRE</i> REQUESTS		65
18	C-2	NEWSPAPER ARTICLE		183
19	C-3	AUTOPSY PHOTOGRAPHS		424
20	C-4	STATE'S REQUESTS TO CHARGE		456
21	C-5	JURY NOTE		528
22	C-6	JURY NOTE		528
23	C-7	JURY NOTE		528
24	C-8	JURY NOTE		538
25	C-9	JURY NOTE		549

1 will be prepared to testify at this time for us. But
2 again, I'm concerned that I could not pull that off twice.

3 Our -- we have two female co-defendants who have
4 agreed to testify. Again, they are both cooperative at
5 this point, and both intend to testify this week. State's
6 concern again is that if we try to bring them back a second
7 time, you know how people are. They may not want to
8 participate twice.

9 THE COURT: Right.

10 MS. McCALL-TANNER: After they've been cross-examined
11 this week. So, I'm afraid I'm going to lose them.

12 Also, we have DNA in this case against one of the, one
13 of the co-defendants. The original analyst has retired.
14 Had some difficulty getting him to court. Now, we do have
15 backup obviously through SLED, his supervisors and other
16 analysts who can testify to his results. But that is a
17 concern as well if analyst number two decides to retire or
18 to go on to more lucrative employment.

19 So, the state does have reasons beyond just
20 inconvenient. This is a judicial economy situation. There
21 will be a increased burden on our witnesses, particularly
22 the doctor who we cannot go forward without, and our
23 chemist, and again these female witnesses who do intend to
24 testify.

25 There is also a son of the deceased victim. He

1 discovered his father's body. He is going to testify in
2 the trial. I think that would be an increased burden on
3 him as well being the victim to have to have to testify
4 twice about what he discovered. So, the state does have
5 reasons.

6 And my understanding from defense counsel, you know,
7 they do have antagonistic defenses. I understand that. I
8 believe they, they point the finger at each other. That's
9 really their only statements. But the state has prepared
10 under *Bruton* how to deal with these statements, and we are
11 prepared to handle that this afternoon if it becomes the
12 case.

13 They basically point the figure at each other, but
14 they both put themselves at the incident location at the
15 time this occurs. The state obviously wants to put that
16 part of it, that they put themselves there. So, we have
17 Brutonized their statements.

18 We have, we do have case law prepared. Obviously
19 *Hughes vs. State* says that mere allegation, antagonistic
20 allegations is not enough to sever. Argument that one
21 defendant is less culpable than another co-defendant alone
22 is not enough to sever.

23 THE COURT: Right.

24 MS. McCALL-TANNER: The fact that they ---

25 THE COURT: I don't mean to be rude by turning my

1 back. I'm getting some books.

2 MS. McCALL-TANNER: Yes, sir.

3 THE COURT: But I'm listening. You go ahead.

4 MS. McCALL-TANNER: The fact that their defenses may
5 be to point the finger at one another, also case law on
6 point is that that is not enough to sever.

7 So, I don't know that there has been any, or there
8 will be any issues that will override the state's burden,
9 or burden on the state to try to try this case twice.

10 I know that there's an issue Mr. Colongeli brought up
11 in chambers about security. We have fantastic security
12 force, not only in the courtroom but through the jail. The
13 state does not have any concerns that these two individuals
14 could be in the courtroom together, and that could be
15 managed quite successfully.

16 THE COURT: All right.

17 MS. McCALL-TANNER: Thank you, Your Honor.

18 THE COURT: Thank you.

19 Mr. Hood for Mr. Williams, and Mr. Colongeli for Mr.
20 Skinner, is this a joint motion, or one filed in front of
21 the other? Can you all tell me? I just want to know who
22 to hear from first.

23 MR. HOOD: Your Honor, it's a joint motion.

24 THE COURT: All right, sir. Mr. Hood.

25 MR. HOOD: We had actually -- I'm, I'm kind of

1 confused about what Mr. Colongeli's client is actually
2 charged with. All of my reading of the reports that I have
3 from the other, from the law enforcement officers indicates
4 other charges other than what Ms. Tanner has spoke about
5 this morning. Could I see ---

6 MS. McCALL-TANNER: Yes, sir.

7 MR. HOOD: --- the indictments?

8 MS. McCALL-TANNER: He is charged as a primary. I
9 think initially he was looked at as an accessory, but at
10 the time we went to the grand jury, he was indicted and
11 charged as a primary. And he is charged with all the
12 primary offenses.

13 MR. HOOD: I just wanted to make sure because, like I
14 said, it was listed as different offenses initially, in all
15 my reading, you know, of the other reports.

16 THE COURT: Right.

17 MR. HOOD: First off, I'd like to point out I think
18 maybe we are underestimating the, the security issue that
19 we're talking about here. We've had an opportunity to
20 speak with the, with the officers who are here from the
21 jail who have to provide, you know, the security more or
22 less with respect to these two individuals.

23 These two have fought in the past in the jail. When
24 they were originally in the jail together, there was --
25 they have to, they had to keep these two separated. There

1 were threats made, you know, on both sides, it's my
2 understanding.

3 And speaking with the individual, Mr. Grayson who has
4 handled these individuals and handled them on a daily basis
5 coming back and forth from the jail, he has great concerns
6 about these two being in the courtroom together. That,
7 that there is no way that they think they can assure the
8 safety of either party, for that matter. And that's,
9 that's the first thing as far as the -- what I think about
10 the security issue involved in this particular case.

11 And, and the antagonistic defenses, obviously Ms.
12 Tanner's mentioned that. And yes, they are because
13 actually, if you look at it very closely, I think that you
14 will find that my client makes statements against Mr.
15 Skinner, who's Don, Mr. Colongeli's client. However, Mr.
16 Skinner never really makes statements against my client,
17 which he, he never comes out and says my client did X, Y,
18 and Z. I listened to these tapes over and over, and
19 nowhere in there does Mr. Colongeli's client say my guy did
20 this. He was responsible for, you know, the actual
21 killing.

22 Then we get into the issue of the 404(b) stuff as far
23 as Mr. Colongeli's client and my client. And as of date, I
24 don't have a copy of the rap sheet of Mr. Skinner or the
25 rap sheet of my client. My client was -- Ms. Tanner

1 actually sent me a notice to seek life without parole based
2 on prior convictions of my client in which she alleged that
3 he had two prior violent, I assume serious convictions for
4 burglary which I've never seen and -- you know, so I don't,
5 I don't know what convictions he had.

6 And Mr. Colongeli's client, obviously I don't know
7 anything his because I don't have a rap sheet on him
8 either. I do know from my past experience with Mr.
9 Colongeli's client, who my office has represented on
10 several different occasions, that, that he has an extensive
11 prior record. But I don't, I don't keep track of exactly
12 what those matters are. And so I'm not familiar with
13 actually how many convictions he has, and what type of
14 convictions he has.

15 Also, initially this matter has been going on now for
16 three years. This matter will be three years old in
17 September, the beginning of September. The state claims
18 judicial economy. Well, maybe they should have thought
19 about that a year ago, two years ago. I mean, they've been
20 sitting around on their thumbs for three years. And now
21 they come up and say well, you know, we have money
22 problems. We can't get them, you know, and we want to do
23 all this, but we can't try them together because, you know,
24 I mean, it's, it's going to cost us a lot of money.

25 Well, they should have thought about that three years

1 ago when they had all this together at one time, and they
2 could have handled this case within a year or, you know,
3 six months or whatever. But, needless to say, they did
4 nothing. And so the matter has fermented, and people, you
5 know, they go away. You know, they change places, jobs.
6 They pass away. So, anyway, I don't think too much of
7 their judicial economy argument.

8 And besides that, we're talking about murder. We're
9 not talking about some burglary or strong-arm robbery or
10 anything of that nature. We're talking about the most
11 serious crime a person can be accused of, and they're
12 talking about money, and what we're talking about is
13 justice. And what we're talking about is fairness, and
14 that's what we are concerned with. We're concerned with
15 the fairness in this particular matter.

16 Now, again, Mr. Colongeli's client got out on bond.
17 He had been out on bond for a long period of time. He was
18 recently picked up and put back in jail on a motion of the
19 government's, the state's because he was accused of several
20 assault charges against people with a weapon. And -- which
21 is obviously matters that I might be interested in going
22 into when it comes down to who the person was that did this
23 to the victim in the case. And third-party guilt is
24 obviously going to be a matter which is going to be heavily
25 explored by myself, and I'm sure Mr. Colongeli is going to

1 try to do the exact same thing to me.

2 So, those are the problems that I see, you know, with
3 respect to these two people being tried together. And I
4 don't think there's any way possible for my client to
5 receive a fair trial in this particular case.

6 THE COURT: All right. Thank you.

7 Mr. Colongeli, let me hear from you.

8 MR. COLONGELI: Thank you, Your Honor. May it please
9 the court?

10 THE COURT: Yes, sir.

11 MR. COLONGELI: Respectfully, Your Honor, I beg the
12 court's indulgence here because a lot of my issues run
13 parallel to Mr. Hood's, and if I could start out as Mr.
14 Hood did with the security issue.

15 I've been preparing for this case for quite some time.
16 As you heard, it's three years old. It never dawned on me
17 until recently being at the jail to see my client and see
18 Mr. Grayson here, who's been -- I've known for fifteen
19 years. I have a great deal of respect for his opinion in
20 doing his job.

21 When I mentioned to him that we were going to trial,
22 his first reaction was there's no way that you -- that I
23 can do my job effectively by having those two individuals
24 under the same roof in the courtroom. And obviously that
25 was something that should have been apparent to me but

1 wasn't. And as I discussed it with him, it became more and
2 more so.

3 Like I said, I have a great deal of respect for him.
4 He's been doing this a very long time. And I think if you
5 were to ask him, he could not guarantee you courtroom
6 security with these two individuals in this room,
7 notwithstanding them being shackled, handcuffed, something
8 like that. So, obviously security's a big issue here that
9 I'm concerned about.

10 THE COURT: Mr. Colongeli, why don't I let you ask
11 him? Why don't you call him as a witness, and let's put
12 him under oath, and let you ask him those questions.

13 MR. COLONGELI: Right now, Your Honor?

14 THE COURT: Right now.

15 MR. COLONGELI: Mr. Grayson, if you could take the
16 stand, please?

17 THE COURT: Mr. Grayson, if you'd come forward,
18 please, and be sworn.

19 LEWIS GRAYSON, BEING DULY SWORN,
20 TESTIFIES AS FOLLOWS:

21 THE COURT: Mr. Grayson, if you will have a seat.
22 Tell us your name and what your capacity is in the
23 courtroom, please, sir. Thank you.

24 WITNESS: Lewis Grayson, corporal from the Beaufort
25 County Detention Center.

1 THE COURT: Thank you, sir.

2 Mr. Colongeli.

3 MR. COLONGELI: May it please the court, Your Honor?

4 THE COURT: Yes, sir.

5 DIRECT EXAMINATION BY MR. COLONGELI:

6 Q. Corporal Grayson, how long have you been employed with
7 the detention center?

8 A. Twenty years.

9 Q. Okay, and your primary function or your position is
10 that of what with the jail?

11 A. Court officer, transport officer.

12 Q. And as part of that, do you provide, provide courtroom
13 security as to the inmates?

14 A. Yes, sir, inmates only.

15 Q. And do you recall the conversation we had
16 approximately a week or so ago regarding this case?

17 A. Yes, sir.

18 Q. Could you please inform the court what your feelings
19 are, professional opinion as to being able to provide
20 security with both Mr. Skinner and Mr. Williams next to
21 each other at defense table?

22 A. Well, what I told you was both of them sitting at the
23 table, there's no, no control I would have over them
24 whatsoever. They won't be in restraints. I know that they
25 don't like each other.

L. GRAYSON - CROSS-EXAMINATION BY MS. McCALL-TANNER

21

1 Q. From your knowledge, have there been problems with
2 them in the past ---

3 A. Yes. Yes, they have.

4 Q. --- as Mr. Hood indicated?

5 A. Yes.

6 Q. And it came to my attention yesterday being at the
7 jail that actually after Mr. Williams was noticed with the
8 possibility of life without parole, he currently is on a
9 suicide watch. Are you aware of that?

10 A. Yes.

11 Q. All right.

12 MR. COLONGELI: That's all. Thank you, Mr. Grayson.

13 THE COURT: Mr. Hood, do you have any questions?

14 MR. HOOD: None, Your Honor.

15 THE COURT: Thank you.

16 Ms. Tanner.

17 MS. McCALL-TANNER: Yes, sir, Your Honor.

18 CROSS-EXAMINATION BY MS. McCALL-TANNER:

19 Q. Mr. Grayson, besides problems with Mr. Williams, has
20 Mr. Skinner had problems with other people at the jail?

21 A. None that I can't actually say, no.

22 Q. Wasn't he assaulted at some point after a bond hearing
23 by someone unrelated to this case?

24 A. Skinner?

25 Q. Devon Ward, perhaps?

1 A. No, I can't, can't recall that.

2 Q. Well, what I'm asking you is if either one of these
3 individuals was in the courtroom, wouldn't you still have
4 the same issues as no control at the table because they're
5 not shackled and you are not seated directly beside them?

6 A. No. The problem is with them against each other, not,
7 not just a single person, no.

8 Q. And have you observed Mr. Skinner or Mr. Williams be
9 belligerent besides -- with anyone besides each other in
10 the jail?

11 A. Mr. Skinner, yes. Skinner.

12 Q. In fact, he gets belligerent with his own attorney,
13 isn't that true, in the courtroom?

14 A. I can't say that.

15 Q. Is it fair to say that you would have no security
16 issue at all if it was only one or the other in the
17 courtroom?

18 A. That's true.

19 Q. And in your twenty years, how many times have you been
20 in the courtroom with an inmate that you were concerned
21 about their behavior?

22 A. Twenty years.

23 Q. Twenty years.

24 A. Yes.

25 Q. And has there ever been a situation that you could not

L. GRAYSON - EXAMINATION BY THE COURT

23

1 handle if it occurred in the courtroom?

2 A. That we could not handle?

3 Q. Yes, sir.

4 A. I've had maybe two.

5 Q. Maybe two in twenty years?

6 A. Yes.

7 Q. In fact, you worked security for a death penalty case
8 for an individual who was *pro se*, cop killer, and didn't
9 have any security issues. Isn't that true?

10 A. I was -- we wasn't allowed in the courtroom.

11 Q. And you dealt with him, transported him back and
12 forth?

13 A. Just transported him back and forth, right.

14 Q. Let me get down to it. Mr. Grayson, you are prepared
15 and you are trained, and you have the skills and the
16 knowledge to handle security in a courtroom?

17 A. Yes.

18 MS. McCALL-TANNER: Thank you, sir.

19 EXAMINATION BY THE COURT:

20 Q. Mr. Grayson, do you have any type of shackles,
21 knee-brace shackles or any shackles of that nature that can
22 be used to limit the defendants' motions?

23 A. No, sir. The only thing we have is leg shackles.

24 Q. All right, just the chains that hook together?

25 A. Yes.

1 Q. Okay. All right. Is this, is this animosity between
2 these two individuals, Mr. Skinner and Mr. Williams, is it,
3 is it both ways, or does one not like the other, or do both
4 not like each other?

5 A. I think they don't like each other.

6 THE COURT: All right, thank you.

7 Anything further, Mr. Colongeli?

8 MR. COLONGELI: Nothing further, Your Honor.

9 THE COURT: Mr. Grayson, thank you. You can step
10 down.

11 WITNESS: Thank you, sir.

12 (THE WITNESS EXITS THE STAND.)

13 MR. COLONGELI: Your Honor, I, I, I'll leave that
14 issue. I think you've heard ---

15 THE COURT: I have.

16 MR. COLONGELI: --- adequate testimony as to the
17 security, potential security threat.

18 THE COURT: Okay.

19 MR. COLONGELI: Moving on, Your Honor, as Mr. Hood
20 said, and I did a great deal of research as to motions to
21 sever. I've been practicing fifteen years and never been
22 faced with this motion before, so it became quite
23 interesting me -- for me to do the research.

24 And as has been said by counsel in the courtroom,
25 obviously contradictory defenses in and of themselves is

1 not enough grounds ---

2 THE COURT: That's right.

3 MR. COLONGELI: --- to bring this. However, it is a
4 grounds, and obviously that's what we're dealing with.

5 I spoke to other esteemed members of the Bar, as I
6 have with Mr. Hood, in preparation for this trial. Every
7 attorney I've spoken to has the opinion that this case, the
8 facts that it will present, almost is virtually impossible
9 to try together because of the *Bruton* issues, because of
10 the contradictory defenses, and the fact over all as far as
11 how we will proceed, the complications it will pose.

12 As was said before, I believe, Mr. Skinner is much
13 less culpable than Mr. Williams. I think the evidence will
14 present that. I think the state would back that up, based
15 on plea offers that have been made up and until last week
16 in which they sought the testimony of my client, which he
17 has rejected.

18 Also, my client has spent in excess of 700 days
19 incarcerated with the county waiting for trial. There was
20 a great issue between me and the solicitor as to a bond.
21 Judge Buckner retained jurisdiction as to that issue, and
22 finally he was released pending the speedy trial of this
23 case, which was over a year and a half ago.

24 His bond recently, as stated by Mr. Hood, as far as
25 these recent charges was revoked by Judge Kinard until this

1 week, at which point would be reinstated if the case wasn't
2 tried. So, I think that gives you a little perspective as
3 far as Mr. Skinner's role overall in this case as a
4 co-defendant. And that kind of goes to judicial economy
5 argument that Ms. Tanner's making.

6 Judicial economy I also take great concern with as far
7 as that being her primary position as to why this case
8 shouldn't be severed. It seems to me that judicial economy
9 would be much better served if, in fact, you did sever
10 them. It would be much less complicated to go forth.

11 Obviously, the fairness of the trial is what is of
12 tantamount importance to this court and to both defense
13 counsels, as to our clients receiving justice. And in the
14 history of things and the reality of things, Your Honor, I
15 think you know that if, in fact, it was severed, I believe
16 the state is going to proceed with Mr. Williams first.

17 More than likely, based on the negotiations and offers
18 that have been made, the likelihood of Mr. Skinner going to
19 trial after that I think is, is very minimal based on the
20 history of what's happened with the offers. Obviously,
21 that's speculation on my part, Your Honor.

22 Also, the 404(b) evidence. I have gathered through
23 information I have obtained, short of actually being able
24 to see the rap sheet of any of the people involved in this
25 case. As Mr. Hood, I've not seen the rap sheets of any of

1 the witnesses in this case. But I have confirmed with the
2 solicitor this morning that burglary and robbery is the
3 *modus operandi*, or let's say that Mr. Williams has a
4 history as to those offenses. We would be precluded, my
5 client would be precluded from proceeding with asserting
6 third-party guilt under 404(b) Lyle evidence of the
7 co-defendant's history of such crimes. Just as Mr. Hood
8 was saying, he's got the same issue as to assault and
9 battery of recent with charges my client received. That's
10 critical. I think that specific argument as far as the
11 defense that I would hope to proceed with, I'll be
12 precluded from doing so.

13 And that specific grounds, as far as giving you
14 something to have more so than just contradictory defenses,
15 we've got that. We've got the 404(b), the security issues,
16 the history of the case itself, and I believe that's all,
17 Your Honor.

18 But I do respectfully urge you to consider the
19 severance. I think justice would be served by doing it. I
20 think justice requires it to be done, and respectfully urge
21 you to consider and grant the motion.

22 THE COURT: All right.

23 Ms. Tanner, I'll come back to you. I heard some of
24 your counter argument in sort of an anticipatory fashion.
25 But I will give Mr. Hood and Mr. Colongeli the last words

1 since it is their motion. Ms. Tanner.

2 MS. McCALL-TANNER: Yes, sir. For the court's
3 edification, the state's theory in this case obviously is
4 the hand of one, the hand of all. And there is no
5 prejudice to the defendants going forward under that
6 theory. It would be the theory if they were separate; it's
7 the theory if they're together.

8 THE COURT: Right.

9 MS. McCALL-TANNER: It's not a situation where Mr.
10 Hood's client is going to benefit because there's more
11 evidence against Mr. Colongeli's client if they separate.
12 It's hand of one, the hand of all. The exact same
13 witnesses will be called in both cases.

14 I outline in my opening basically the issues I have
15 with my, with my witnesses and bringing them back together.
16 So, the case is going to be exactly the same if I have to
17 do I twice. So, for judicial economy, that is true.

18 I think both defense counsels pointed out this case is
19 three years old, which I don't think shocks anyone's
20 conscience in South Carolina if a murder case is three
21 years old. But I do take exception to me sitting on my
22 thumb, so to speak, is what one of the counsel said for
23 three years. We moved eight murder cases last year in
24 2009. So, I'm not sitting on my thumb.

25 We are prepared to go forward with this case. We're

1 prepared to go forward. The defendants are not prejudiced
2 by going forward because it is a hand of one, hand of all
3 theory. The evidence will be presented as such in both
4 cases. And, quite frankly, other than mentioning a couple
5 of insufficient grounds for severance, neither one of them
6 have actually put forth a true ground that shows that their
7 client will be prejudiced by going forward today as a joint
8 trial.

9 THE COURT: All right.

10 Gentleman, I want you to develop how you would be
11 prejudiced on a third-party guilt issue in this regard.
12 Third-party guilt generally is directed against someone who
13 is not a co-defendant, but someone who is outside the
14 courtroom and outside the reach of the court, although
15 technically third-party guilt means I didn't it. Somebody
16 else did. But for the most part, third-party guilt issues
17 arise when that party is not present in the court, and
18 where there is some evidence in that regard. And the
19 evidence regarding third-party guilt must be such as to be,
20 to be inconsistent with the guilt of the party who is
21 claiming it. And of course it's a pretty high bar for
22 third-party guilt, as we know.

23 I want you to address that in your response, and I
24 want you to address the 404(b) issues a little bit more
25 completely in that regard. Of course this court is the

1 gatekeeper in regard to 404(b) evidence and is concerned
2 about that, that type of evidence coming in that would
3 prejudice anyone, certainly the party who is not impacted
4 directly by the 404(b) evidence.

5 The jury, as you know, is, you know, is instructed in
6 that regard. We do the best we can. I wouldn't say in
7 every instance those instructions are enough to completely
8 sanitize one defendant from, from issues that involve the
9 other. But it, it would be more, I think, than that one
10 has a criminal record and that one does not, or perhaps
11 does not have the same degree of seriousness.

12 It would appear to me that if the jury is going to
13 compare these folks to each other, that the one who has the
14 less serious criminal record would benefit in that regard.
15 But I never know how a jury's going to act. I suppose they
16 could take the reverse if they wanted to.

17 But I'll let you -- hear from, from you all now,
18 having heard from me about some of my concerns. And, Mr.
19 Hood, you have the last word on your client's behalf and
20 then, Mr. Colongeli, on yours.

21 MR. HOOD: Your Honor, I just, I would just like to
22 say that as far as my client being able to testify in this
23 trial, by having -- my -- if you -- going back and looking
24 at the entire case, and you look at this particular case
25 from what the state's theory is -- is hand of one, hand of

1 all -- I'm not sure where they get that theory from.

2 If you look at the state's case in the evidence that
3 we have that was in the file, there was never any joint
4 venture that these guys went together to -- with a common
5 purpose of scheme or plan or anything of this nature to
6 commit a criminal act of any kind. And, and, and I'm not
7 sure where they're, where they're going to as far as a hand
8 of one, hand of all theory. But anyway, that's, that's
9 their problem.

10 But going back to what we were talking about with
11 respect to the third-party guilt and things of that nature,
12 well obviously you're obviously correct. If Mr.
13 Colongeli's not here, I intend to raise that as an issue,
14 you know, in my particular case. And I'm sure that Mr.
15 Colongeli, if I'm -- if he's, if he's the only one here,
16 he's going to do the same thing. And, and so, therefore,
17 we, we both have that, that particular issue which I intend
18 obviously to raise that particular matter during the course
19 of my trial.

20 THE COURT: Right.

21 MR. HOOD: Because of the way that I'm going to
22 question the witnesses and things of that nature is
23 certainly going to be -- put the burden on Mr. Colongeli.

24 And I think what we have here is another situation
25 where it may not seem like a big thing, but my client is

1 black, and all of the witnesses in this case and the victim
2 in this case are white. Perceived right off the bat, my
3 client is the underdog, you know? It's a guy that's going
4 to be taken advantage of. And the state's sitting over
5 here, and they're taking advantage of the whole situation.

6 So, the bottom line is my person, my client cannot any
7 way possibly receive a fair trial and be able to do the
8 things that we need to do in order to show the real person
9 who did any acts towards the victim in this case.

10 THE COURT: How does that change, though? Obviously,
11 your client is going to be black whether he's tried
12 together or alone.

13 MR. HOOD: Absolutely.

14 THE COURT: And how is that going to change anything
15 if, if the other guy whom you want to blame in this case is
16 outside the courtroom and is not involved in the trial,
17 whereas if he is in the courtroom and they can look at him,
18 you can point at him. Is that -- tell me how the dynamics
19 of that are impacted or changed by the fact that he's not
20 in the courtroom when you're trying your client's case.

21 MR. HOOD: Well, the state is going to use two other
22 co-defendants.

23 THE COURT: Right.

24 MR. HOOD: And these co-defendants are not -- you
25 know, they -- again, I'm not quite sure what they were

1 charged or actually indicted for because we've never been
2 given anything, you know, in writing as to what these two
3 individuals actually were, you know, charged finally and
4 indicted for.

5 THE COURT: All right.

6 MR. HOOD: They were charged with accessory after the
7 fact to robbery at one time. And since that period of
8 time, apparently there have been additional statements made
9 by the these two defendants who were in the van, who now
10 possibly one of them was actually up at the house along
11 with the two individuals that she claimed were there also
12 who just happen to be my client and Mr. Colongeli's client.

13 So, now we have three people up in the doorway of the
14 house, let's say. And so now it's changed the whole
15 picture of exactly who was present and what crimes these
16 people participated in. If, in fact, we go with hand of
17 one, hand of all theory that the state's going with, it
18 seems to me this third young lady now becomes a part of the
19 hand of one, hand of all situation because she actually
20 goes with them. And, boom, when the incident starts, she's
21 there.

22 So, again, I, I'm just terribly confused as to what's
23 going on with respect to the state's charges with respect
24 to these two young ladies. And again, they are the ones
25 who are going to testify. They're all friends of Mr.

1 Colongeli's client. My client is the outsider. Has no
2 relationship to them whatsoever, and that's my concern.

3 THE COURT: I understand. Okay.

4 Mr. Colongeli.

5 MR. COLONGELI: May it please the court, Your Honor?

6 THE COURT: Yes, sir.

7 MR. COLONGELI: Overall, for the record I'd like to,
8 to reiterate that due process basically is prevented from
9 me being able to prevent -- or present a full defense,
10 specifically as to -- and once again I concur with Mr.
11 Hood. It's almost a parallel argument without falling into
12 the trap of just saying contradictory defenses.

13 THE COURT: Right.

14 MR. COLONGELI: Specifically as to your concerns with
15 the 404(b), you have a case here, and without trying the
16 case in this motion, Your Honor, you've got basically a
17 case with an autopsy result has the cause of death being
18 obesity, to begin with.

19 You've got a situation where I am confused also by the
20 hand of one, hand of all theory where, from my
21 investigation, preparation in the case, and what I've been
22 provided through discovery, there will be not be one iota
23 of evidence presented that my client ever went into this
24 house where supposedly this assault occurred. And this is
25 where, I guess, they come up with this hand of one, hand of

1 all. But their own state's witness, I think, will preclude
2 the fact that my client ever was in the residence where
3 this assault took place.

4 However, that goes specifically to me being precluded
5 from presenting a 4-0 -- potentially, if the court allowed
6 it, a 404(b) defense as to trying to bring in *Lyle* evidence
7 as to Mr. Williams's propensity to commit burglary.

8 Now, obviously that's a stretch, Your Honor, but I
9 think that is very important here because my client's
10 basically being thrown under the bus, so to speak, under
11 the hands of one, hands of all theory for merely being
12 present. There is no evidence from the disclosure I've
13 received where there was any prior knowledge or plan or
14 conspiracy before these people arrive at this house. So,
15 I'm very concerned that, based on that, there's not going
16 to be any questions that can be asked that even allow my
17 client to say it's Mr. Skinner -- I, I mean, and the same
18 goes for Mr. Hood.

19 His client is the one that got my client involved in
20 the first place. But for his information to law
21 enforcement that my client and these two other individuals
22 were even there, we wouldn't be here today.

23 And forgive me if I'm wrong, and obviously I'll defer
24 to the court's discretion on this, but I just don't see how
25 those questions or even the testimony elicited can be

1 framed once redacted to be able to allow us to purport any
2 defense, any defense whatsoever.

3 So, and I'd be happy to try to clarify it more, but
4 specifically I think I've put it on the record as far as
5 this 404(b) Lyle evidence as to Mr. Williams's propensity
6 for burglaries because I believe he has more than one. I
7 think that's the state's theory for going with the notice
8 of life without the possibility of parole. That's
9 something I think, in my research of case law, has been
10 granted, admitted under Lyle to come in.

11 And once again for the record, Your Honor, I know
12 you've heard, heard lengthy testimony and information as to
13 security. I'm not one to shy away from potential problems
14 with my clients. I never have been. However, maybe I've
15 gotten a little older, a little wiser. I would not try to
16 allege to this court that, that -- some sort of safety
17 issue was potential when I didn't truly believe it was.

18 Gene and I have had -- Mr. Hood and I have had three
19 years to get to know these clients, to deal with them. Ms.
20 Tanner knows herself particularly the propensities of my
21 client. And with all the respect I have for Mr. Grayson,
22 I'll be honest with you. I think my ability to defend Mr.
23 Skinner properly will be detracted from my concern about an
24 outbreak in the courtroom. And I hate to have to put that
25 on the record, but I will be honest with you. And I know

1 your biggest concern, too, is courtroom security for your
2 lawyers, for the courtroom staff, and for everyone. But I
3 will be honest with you that I, I am going to be concerned
4 about that during -- while I'm trying to present a case.
5 And I think that should be made clearly on the record, and
6 I appreciate you letting me do that.

7 THE COURT: Thanks, Mr. Colongeli.

8 MR. COLONGELI: Your Honor, if I may?

9 THE COURT: Yes, sir.

10 MR. COLONGELI: One of the things in my research on
11 this motion to sever which makes it different than the ones
12 that were denied, this is a joint motion. In a lot of the
13 research I did, one of the attorneys was opposing the
14 motion himself, along with the state. So, I would add that
15 also as a grounds.

16 THE COURT: Thank you.

17 (A PAUSE.)

18 THE COURT: Thank you, folks, for your patience. The
19 issues regarding the consistent defenses, as everybody has
20 stated, are not in and of themselves sufficient grounds to
21 grant a severance. Antagonistic defenses are not unusual
22 in joint trials. Sometimes they're even the rule rather
23 than the exception. And the third-party guilt issues that
24 might flow out of that same scenario don't cause me a great
25 deal of heartburn. As a matter of, as a matter of law, I

1 think those issues can be well handled within the context
2 of trial if it were held jointly. However, the security
3 issue, on the one hand, and the overlay of the 404(b)
4 issues as it pertains to Mr. Skinner give this court some
5 concern.

6 There are ways to deal with security issues. I had
7 dealt with them in this very courtroom in a murder, a
8 capital murder case in which a jury was selected. That
9 case was somewhat different. We had electronic belts and
10 leg shackles and everything else in that case that
11 addressed concerns. And there was a single defendant in
12 that particular case, and so the dynamics, the chemistry,
13 if it can be called that, that apparently is present here
14 was not present there.

15 The security issue alone probably by itself would not
16 tilt the scales in favor of my granting a severance. But
17 the 404(b) issue pertaining to Mr. Skinner, I think, adds
18 some weight to that side of the scale. I'm confident that
19 the, that the Brutonized statements which the state has
20 prepared could be dealt with and properly presented. All
21 of those things are somewhat complicating issues to a joint
22 trial in this particular case. They would be present in
23 almost every trial.

24 But as a result the concern about the security issues
25 that have been indicated here by Mr. Grayson, and because

1 of the acknowledged bad blood between these two individuals
2 -- we can deal with courtroom outbursts, quite frankly. We
3 have to deal with them from time to time. They, they
4 disrupt things. Sometimes they even terminate a trial
5 prematurely. But it seems to me that, in view of the
6 concerns expressed in this regard, and in view of my
7 concerns about the 404(b) issues regarding Mr. Skinner, I'm
8 going to grant the motion to sever.

9 MS. McCALL-TANNER: Thank you, Your Honor.

10 THE COURT: All right.

11 MR. COLONGELI: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 Okay, I know that the state's going to need some time
14 to sort of reorganize things, or perhaps maybe not a lot of
15 time. But we've got a jury to deal with at this point in
16 time in any event, so we'll go forward and move.

17 MS. McCALL-TANNER: Based on that, can I make the
18 request that we just go ahead and schedule for pretrial
19 motions for, say, 2:00? That gives us time.

20 THE COURT: Yes.

21 MS. McCALL-TANNER: Pick the jury. Maybe get a bite
22 to eat, and come back at 2.

23 THE COURT: That's good.

24 MS. McCALL-TANNER: Since it will be less now than
25 originally planned.

1 THE COURT: All right.

2 MS. McCALL-TANNER: We can get done today.

3 THE COURT: Okay.

4 MS. McCALL-TANNER: 2:00.

5 THE COURT: All right.

6 MS. McCALL-TANNER: Thank you.

7 THE COURT: We'll stand aside in this case, then,
8 until 2:00.

9 MS. McCALL-TANNER: Well, we can go ahead and pick our
10 jury this morning.

11 THE COURT: Ma'am?

12 MS. McCALL-TANNER: We'd like to go ahead and pick our
13 jury this morning and all the motions and all, move those
14 to the afternoon.

15 THE COURT: Okay. All right. You'll choose the
16 defendant ---

17 MS. McCALL-TANNER: Yes, sir.

18 THE COURT: --- that you wish to try in this case, and
19 we'll pick the jury as to that defendant.

20 MS. McCALL-TANNER: Thank you, sir. I appreciate it.

21 (OFF THE RECORD.)

22 THE COURT: Madame Solicitor, call you case.

23 MS. McCALL-TANNER: Thank you, Your Honor. The state
24 is ready. *The State of South Carolina vs. Kenneth Sammy*
25 *Williams*, indictment 2007-GS-07-1918 charging him with

1 murder. The state is ready in *The State of South Carolina*
2 *vs. Kenneth Sammy Williams*, indictment number
3 2007-GS-07-1919 charging him with common law strong-arm
4 robbery. State's ready in *The State of South Carolina vs.*
5 *Kenneth Sammy Williams*, indictment number 2007-GS-07-1920
6 charging Kenneth Sammy Williams with burglary in the first
7 degree. Pass these to Your Honor.

8 THE COURT: Thank you.

9 Ladies and gentlemen, as you have heard, the case that
10 called -- *State vs. Kenneth Sammy Williams* has been called
11 by the state. Mr. Williams has been indicted by the grand
12 jury of Beaufort County and charged in one indictment with
13 the crime of murder. That indictment says that in Beaufort
14 County on about September the 8th of 2007, with malice
15 aforethought, Kenneth Sammy Williams did murder Jack Koch.

16 MS. McCALL-TANNER: Koch.

17 THE COURT: Jack Koch, K-O-C-H, by means of beating
18 about the head during a robbery. And that Jack Koch did
19 die in Beaufort County as a proximate result thereof on
20 September the 8th, 2007, in violation of the law.

21 The next indictment charges Mr. Williams with robbery,
22 common law, strong-arm robbery. And that indictment says
23 that in Beaufort County on or about September the 8th of
24 2007, the defendant, Kenneth Sammy Williams, did take and
25 care away personal property from or presence of Jack Koch

1 by means of force or threats or intimidation with the
2 intent to deprive Jack Koch permanently of that property --
3 specifically, his wallet -- in violation of the law.

4 The final indictment charges burglary in the first
5 degree. That indictment accuses Mr. Williams here in
6 Beaufort County on September the 8th of 2007 with entering
7 the dwelling of Jack Koch, located at in
8 Port Royal, without his consent, and with the intent to
9 commit a crime therein. And that in addition, the entering
10 occurred during the nighttime. And while there, Mr.
11 Williams caused physical injury to someone who was not a
12 participant -- specifically Jack Koch -- in violation of
13 the law.

14 Now, ladies and gentlemen, the indictments which I
15 have just read to you are not evidence, nor are they proof
16 of the charges they contain. They are charging documents,
17 legal documents that tell you or me or anyone else who
18 reads these documents what this case is all about. To the
19 charges contained in these indictments, Mr. Williams has
20 entered pleas of not guilty and has asked for a jury trial
21 at your hands.

22 Mr. Williams, would you please stand and face the jury
23 behind you? Thank you. You can be seated.

24 Ladies and gentlemen, I need to know now if any of you
25 all are related by blood or connected by marriage to Mr.

1 Kenneth Williams, or if you're a friend of his, or a
2 business associate of his, or a casual acquaintance of his,
3 or a person who has any direct or indirect contact with Mr.
4 Williams. If so, please stand.

5 Yes. Your name, please, ma'am.

6 JUROR: I, I, I don't know. I mean, I think -- his
7 nickname. I don't know. Shag? Are you Shag?

8 DEFENDANT: Yes.

9 JUROR: Okay. Well, I, I know him.

10 THE COURT: And what capacity? Give us your name,
11 please, ma'am, first of all.

12 JUROR: Alvina S. Gadson.

13 THE COURT: And that's juror number 73.

14 JUROR: Yes, sir.

15 THE COURT: Mr. Gadson -- Ms. Gadson, in what capacity
16 do you know him? How well do you know him?

17 JUROR: I mean, I know him from -- during, I think it
18 was school time.

19 THE COURT: Okay.

20 JUROR: And in just the community, in the community
21 and stuff like that.

22 THE COURT: All right. Would you call it a casual
23 relationship or close, personal relationship? How would
24 you describe it, Ms. Gadson?

25 JUROR: I think it's casual.

1 THE COURT: All right. Would that relationship, then,
2 as you have described it make it difficult for you to serve
3 fairly and impartially as a juror in this trial?

4 JUROR: No. I would, I would do it fairly.

5 THE COURT: And could you set aside your relationship,
6 whatever it is with him, and decide this case based on the
7 evidence that you would hear in court without regard to
8 that?

9 JUROR: Yes, sir.

10 THE COURT: And would you do that, please?

11 JUROR: Yes, sir.

12 THE COURT: Thank you, ma'am.

13 Ladies and gentlemen, is anyone on the jury panel
14 related by blood or connected by marriage to the victim in
15 this case, Jack Koch? Or are you friends with -- of him,
16 or business associates, or casual acquaintance, or people
17 who have in the past any direct or indirect contact with
18 Jack Koch? If so, please stand.

19 (NO ONE STANDS.)

20 THE COURT: Ladies and gentlemen, potential witnesses
21 who may testify in the trial of this case are Dr. Michael
22 Caplan, Ms. Jenny Chase, Ms. Lori Giles, G-I-L-E-S, of
23 SLED, Detective John Griffith of the Port Royal Police
24 Department, Mr. James Koch, Officer of Charles McGuire of
25 Port Royal Police Department, Mr. John Ortuno of SLED, Ms.

1 Leslie Schoenemann, Ms. Stephanie Stanley of SLED, Ms.
2 Stacy Strong of the Beaufort County EMS, Detective
3 Wekenmann, okay, Wekenmann of the Port Royal Police
4 Department, and Mr. Timothy Skinner.

5 I need to know if any of you all have any connection
6 with any of these potential witnesses. Are you related to
7 them by blood or by marriage, or are you friends of theirs,
8 or business associates of theirs, or casual acquaintances,
9 or people who have any direct or indirect contact with any
10 of these potential witnesses? If so, please stand.

11 Yes, ma'am, your name, please.

12 JUROR: Janet Gredler.

13 THE COURT: All right, Ms. Gredler is juror number 80.
14 Ms. Gredler, tell me who the association is with and its
15 nature, please, ma'am.

16 JUROR: Beaufort EMS. I work in the emergency room at
17 Coastal Carolina. So, I deal with them on a daily basis.

18 THE COURT: I see. Thank you. Would that
19 relationship or that connection that you've just described
20 make it difficult for you to serve fairly and impartially
21 as a juror on this particular case?

22 JUROR: No.

23 THE COURT: Could you set aside that association and
24 decide this case based on what you would hear in court
25 without regard to that association?

1 or people who have in Yes.

2 THE COURT: And would you do that, please, ma'am?

3 or people who have in Yes.

4 THE COURT: Thank you, Ms. Gredler.

5 JUROR: Middleton.

6 THE COURT: Ms. Middleton is a juror 148. Ms.
7 Middleton, tell me about the association, please, ma'am.

8 JUROR: Well, I'm with communications, supervise
9 9-1-1, so I occasionally speak to these officers.

10 THE COURT: Okay. All right, would that association
11 through your capacity as a 9-1-1 operator make it difficult
12 for you to serve fairly and impartially as a juror in this
13 case?

14 JUROR: No, sir.

15 THE COURT: Ma'am?

16 JUROR: No, sir.

17 THE COURT: Could you set aside that association and
18 decide this case based on the evidence that you would hear
19 in court?

20 JUROR: Yes, sir.

21 THE COURT: And would you do that, please, ma'am?

22 JUROR: Yes, sir.

23 THE COURT: Thank you, Ms. Middleton.

24 Yes, ma'am. Your name, please?

25 JUROR: Tracey Colongeli.

1 THE COURT: Juror 37, Ms. Colongeli.

2 JUROR: I am legal assistant to the law office of Don
3 Colongeli, who represents the co-defendant.

4 THE COURT: All right, thank you, ma'am. That's all
5 you need to tell me. Ms. Colongeli, we'll stand you aside
6 as a juror in this case.

7 JUROR: Okay, what do I do?

8 THE COURT: Hang around. Don't, don't leave us.

9 JUROR: Okay.

10 THE COURT: We might find something else for you to
11 do.

12 JUROR: Okay.

13 THE COURT: Juror number 37 is excused in this
14 particular case.

15 CLERK OF COURT: Yes, sir.

16 THE COURT: Ladies and gentlemen, I now need to know
17 if any of you all know anything about this case. If you
18 have seen or heard or read anything about this case, or if
19 you have any knowledge about this case from any source at
20 all, would you please stand?

21 Yes, ma'am, your name, please.

22 JUROR: Barbara Sinsheimer.

23 THE COURT: Ms. Sinsheimer is juror number 186. Would
24 you tell us, first of all, the source of the knowledge, Ms.
25 Sinsheimer?

1 JUROR: *Beaufort Gazette*.

2 THE COURT: Ma'am.

3 JUROR: The *Beaufort Gazette*.

4 THE COURT: *Beaufort Gazette*. Was that the time this
5 matter occurred back in 2007?

6 JUROR: Yes, sir. I had just moved here, so I
7 remember it.

8 THE COURT: You remember that? Would you come
9 forward, please, ma'am, Ms. Sinsheimer, and let me ask you
10 questions at sidebar, if you don't mind?

11 Counsel approach.

12 (THE FOLLOWING CONFERENCE IS HELD AT SIDEBAR IN THE
13 PRESENCE OF COUNSEL.)

14 THE COURT: If you will speak so that she can hear
15 you, please, ma'am. Do you recall any specifics that you
16 read in the paper at that time?

17 JUROR: No. Just that the house was broken into, and
18 a man was killed. And I know where the house is because I
19 rented right around the corner from it.

20 THE COURT: Oh, you did?

21 JUROR: So, I ran by it a lot.

22 THE COURT: Oh, you did?

23 JUROR: On my regular run. So, I -- and then it was
24 for sale, and it was kind of creepy.

25 THE COURT: I see. Do you live in an area, in the

1 Port Royal ---

2 JUROR: I don't live in Port Royal, not in that
3 neighborhood anymore.

4 THE COURT: Okay. All right. Did you in your own
5 mind form an opinion, or did you express to anybody else
6 any opinion that you might have as to whether or not Mr.
7 Williams is guilty of these charges?

8 JUROR: No, sir.

9 THE COURT: If you were asked to serve as a juror in
10 this trial, would you be able to make your decision based
11 on the evidence that you would hear in the courtroom
12 without regard to what you read in the paper at that time?

13 JUROR: Yes, sir.

14 THE COURT: And would you do that, please, ma'am?

15 JUROR: Yes, sir.

16 THE COURT: Thank you, ma'am. You can go back and
17 have a seat. Ms. Sinsheimer, I'd appreciate if you
18 wouldn't discuss that with any other members of the jury.
19 We have a jury selection in process. And then if you
20 happen to be seated on the jury, not share that with them.
21 Thank you, ma'am.

22 (END OF CONFERENCE AT SIDEBAR.)

23 THE COURT: Ladies and gentlemen, the lawyers who will
24 be involved in the trial of this case on behalf of the
25 state, case will be prosecuted by assistant solicitor Angie

1 Tanner of the solicitor's office. Mr. Williams, the
2 defendant, is represented by Mr. Gene Hood, public defender
3 for Beaufort County. I need now to know about your
4 connection with any of these lawyers. Are you related to
5 them by blood or by marriage, are you friends of theirs,
6 business associates of theirs, casual acquaintances of
7 theirs? Have you ever been represented by any of them or
8 sued by any of them in the past, or do you have any
9 connection of any sort with either of these lawyers? If
10 you have, would you please stand?

11 (NO ONE STANDS.)

12 THE COURT: Thank you. Now, ladies and gentlemen,
13 you've told me that you don't know anything about this
14 case, but now I need to know if you have any connection
15 with any case similar to this.

16 This is a crime of personal violence. Obviously, the
17 crime of murder is a crime of personal violence. There are
18 other crimes of personal violence: armed robbery, assault
19 and battery, assault and battery with intent to kill, and
20 those -- criminal sexual conduct, kidnapping. These are
21 examples, and I use them by way of examples only of crimes
22 of personal violence because I need to know if you or any
23 members of your immediate family have ever been involved in
24 a crime of personal violence. And so the question applies
25 not only to you. It applies to any members of your

1 immediate family: that is, your household.

2 The involvement could be a wide, possible range of
3 involvement. You or your family member could have been the
4 victim of a crime. That is, the person against whom the
5 crime was inflicted. You or your family member could have
6 been the defendant in the crime. That is, the person who
7 was charged with committing the crime. Or you or your
8 family member could have been a witness to the crime.

9 So, if you or any member of your immediate family has
10 ever been involved in a crime of personal violence as a
11 defendant or a victim or a witness, I want you to form a
12 line, please, in this aisle right here, and I'll bring you
13 forward one at the time to talk with you about your
14 situation, please.

15 (A PAUSE.)

16 BAILIFF: We have seven, Judge.

17 THE COURT: All right. Thank you.

18 BAILIFF: 124, Mr. Larsen.

19 THE COURT: Thank you. Come forward, please, sir.

20 (THE FOLLOWING CONFERENCES ARE HELD AT SIDEBAR IN THE
21 PRESENCE OF COUNSEL.)

22 THE COURT: Mr. Larsen, was it you or a family member
23 that was involved?

24 JUROR: A family member.

25 THE COURT: And what was the relation to you?

1 JUROR: My sister.

2 THE COURT: And what was her involvement?

3 JUROR: The case is actually ongoing. She was -- it
4 was last Friday. Rape, possible rape and threatening with
5 a weapon.

6 THE COURT: Okay. Has anybody been yet caught as a
7 result of that?

8 JUROR: Not yet. I think it's ongoing.

9 THE COURT: Did that happen here in Beaufort County?

10 JUROR: Yes.

11 THE COURT: Do you know who -- if a solicitor has been
12 assigned to that yet?

13 JUROR: Not that I know. I don't know; I don't know a
14 lot about the case.

15 THE COURT: What is your sister's name?

16 JUROR: Joanna Perdamo. Joanna Perdamo.

17 THE COURT: Would, would that situation make it
18 difficult for you to serve fairly and impartially as a
19 juror in this particular case?

20 JUROR: No, sir.

21 THE COURT: Is your sister all right now? Is she at
22 home?

23 JUROR: Yes, sir.

24 THE COURT: And tell me whether or not anybody has
25 been arrested for this charge.

1 JUROR: No, sir.

2 THE COURT: Do they know who did it?

3 JUROR: It's all he said/she said. That's -- right
4 now, that's far as I know. I don't know a whole lot about
5 what has happened in the case.

6 THE COURT: If you were selected as a juror, then,
7 could you set aside that association, that experience in
8 your sister's life and decide this case based on the
9 evidence that you would hear in court?

10 JUROR: Yes, sir.

11 THE COURT: And would you do that, please?

12 JUROR: Yes, sir.

13 THE COURT: Thank you. You can go back and have a
14 seat.

15 BAILIFF: 101, Ms. Hogan.

16 THE COURT: Ms. Hogan, if you'll come stand there and
17 speak so that she can hear you, please, ma'am. Ms. Hogan,
18 was it you or a family member?

19 JUROR: Family member.

20 THE COURT: And what was the relation to you, please?

21 JUROR: My aunt.

22 THE COURT: And what was her situation?

23 JUROR: She was robbed at gunpoint at a Costco parking
24 lot about ten years ago and was murdered.

25 THE COURT: Where did that happen?

1 JUROR: In Tucker, George.

2 THE COURT: All right. Was anyone ever convicted as a
3 result of that?

4 JUROR: They're in jail now.

5 THE COURT: Were you living in the area at the time
6 that it happened?

7 JUROR: No. All my family's in Atlanta, but I was
8 living in Hilton Head at the time.

9 THE COURT: Okay.

10 JUROR: But I was up there for all the trials and all
11 that.

12 THE COURT: I understand. Would your association,
13 then, as a relative of a victim of a crime similar to the
14 one charged in this particular case make it difficult for
15 you to serve fairly and impartially as a juror in this
16 trial?

17 JUROR: Probably not.

18 THE COURT: Would you be able to set aside that
19 experience insofar as your service as a juror is concerned
20 and make your decision in this case based just on the
21 evidence that you would hear in court with regard to that?

22 JUROR: Uh-huh.

23 THE COURT: Would you do ---

24 JUROR: I would.

25 THE COURT: And would you do that?

1 JUROR: I could do that.

2 THE COURT: Thank you, Ms. Hogan. Would you do that?

3 JUROR: I will do that.

4 THE COURT: Thank you, Ms. Hogan.

5 JUROR: Okay.

6 BAILIFF: 202, Szczurek.

7 THE COURT: Thank you.

8 JUROR: Hello, Judge.

9 THE COURT: Thank you, Ms. Szczurek. Is that it?

10 JUROR: Correct, correct.

11 THE COURT: Did I say that right?

12 JUROR: Yes, you did.

13 THE COURT: Good. Thank you. Was it you or a family
14 member that was involved?

15 JUROR: It was me.

16 THE COURT: And what was the situation?

17 JUROR: I was attacked from behind in my place of
18 employment when I worked in Philadelphia.

19 THE COURT: Okay. Was anybody ever caught and
20 convicted as a result of that?

21 JUROR: No. They were never caught.

22 THE COURT: I see. How long ago was that?

23 JUROR: It was in the late eighties.

24 THE COURT: Okay.

25 JUROR: Probably '89.

1 THE COURT: Okay. Were you injured?

2 JUROR: I -- no, I wasn't. Not that I needed medical
3 attention.

4 THE COURT: I see.

5 JUROR: No.

6 THE COURT: Just traumatized?

7 JUROR: Yes, that's exactly, yes.

8 THE COURT: Would your experience in that regard make
9 it difficult for you to serve fairly and impartially as a
10 juror in this case?

11 JUROR: I don't think so.

12 THE COURT: Would you be able to set aside your own
13 experience and ---

14 JUROR: Yes, I ---

15 THE COURT: --- decide this case based on what you'd
16 hear in court?

17 JUROR: I believe so, yes.

18 THE COURT: And would you do that, please?

19 JUROR: Yes, I would.

20 THE COURT: Thank you, Ms. Szczurek.

21 BAILIFF: 80, Ms. Gredler.

22 THE COURT: Ms. Gredler, is it?

23 JUROR: Yes.

24 THE COURT: Gredler, Gredler?

25 JUROR: Gredler.

1 THE COURT: Gredler. Was it you or a family member
2 that was involved?

3 JUROR: Myself.

4 THE COURT: And what was your situation, please?

5 JUROR: I was drugged and raped.

6 THE COURT: Where was that?

7 JUROR: That was in California.

8 THE COURT: How long ago was that?

9 JUROR: About three years ago.

10 THE COURT: Was anyone ever caught and convicted as a
11 result of that?

12 JUROR: No.

13 THE COURT: Okay. Would your experience as a victim
14 in that regard make it difficult for you to serve fairly
15 and impartially as a juror in this case?

16 JUROR: I think so, yes.

17 THE COURT: I can imagine that it would, and we would,
18 we would not want you to have to relive in any way what
19 you've gone through. I'm going to excuse you as a juror in
20 this trial.

21 JUROR: Thank you.

22 THE COURT: Thank you. You can go back and have a
23 seat.

24 BAILIFF: 20, Ms. Bradley.

25 THE COURT: Ms. Bradley, was it you or a family member

1 that was involved?

2 JUROR: A family member.

3 THE COURT: And what was the relation to you?

4 JUROR: My brother.

5 THE COURT: And what was his situation?

6 JUROR: He's currently serving a term in Columbia for
7 armed robbery and supposedly possible violence. We don't
8 know all the details.

9 THE COURT: Okay. How long ago did those things
10 happen?

11 JUROR: 2005.

12 THE COURT: Okay. Where did they happen?

13 JUROR: Columbia, South Carolina.

14 THE COURT: They happened in Columbia?

15 JUROR: Uh-huh, but I couldn't tell you exactly where
16 because I lived in Hilton Head.

17 THE COURT: Ma'am, I understand. Did you involve
18 yourself in any way with that case, being at the trial or
19 anything of that nature?

20 JUROR: No, I did not.

21 THE COURT: I see. Have you maintained contact with
22 your brother while he's been in prison?

23 JUROR: Uh-huh.

24 THE COURT: Would your situation in that regard as the
25 sister of one who's been charged with a crime make it

1 difficult for you to serve fairly and impartially as a
2 juror in this particular trial?

3 JUROR: I don't think.

4 THE COURT: Would you be able to set aside that
5 experience and decide this case based on what you would
6 hear in court without regard to that experience?

7 JUROR: Yes. I believe could.

8 THE COURT: Would you do that, please, ma'am?

9 JUROR: Uh-huh.

10 THE COURT: Thank you, ma'am. You can go back and
11 have a seat. Thank you, Ms. Bradley.

12 BAILIFF: 88, Mr. Haefner.

13 THE COURT: Mr. it Haefner, was it you or a family
14 member who was involved?

15 JUROR: Me.

16 THE COURT: Sir?

17 JUROR: Me.

18 THE COURT: And what was the situation?

19 JUROR: Through vandalism.

20 THE COURT: Sir?

21 JUROR: Vandalism.

22 THE COURT: Vandalism, okay. Was it to your vehicle,
23 to your, to your personal property, your house, or what was
24 it?

25 JUROR: I egged my neighbor's house.

1 THE COURT: Oh, you did it?

2 JUROR: Uh-huh.

3 THE COURT: Okay. All right. I see. When you were
4 obviously much younger, okay. Was that here in Beaufort
5 County?

6 JUROR: Yes, sir.

7 THE COURT: Okay. Would that situation make it
8 difficult for you to serve fairly and impartially as a
9 juror in this particular case?

10 JUROR: No, sir.

11 THE COURT: Okay. All right. Thank you, sir. You
12 can go back and have a seat. Thank you.

13 JUROR: Thank you.

14 BAILIFF: 134, Mr. Madison. Final one, judge.

15 THE COURT: Thank you. Mr. Madison, was it you or a
16 family member who was involved?

17 JUROR: It was a family member.

18 THE COURT: And what was the relation to you, please,
19 sir?

20 JUROR: It's a brother.

21 THE COURT: A brother?

22 JUROR: Uh-huh.

23 THE COURT: And what was his involvement?

24 JUROR: It was rape of a child. He was a child
25 molester.

1 THE COURT: Okay. Did that happen here in Beaufort
2 County?

3 JUROR: No.

4 THE COURT: Okay. He was tried and convicted as a
5 result of that?

6 JUROR: That is correct.

7 THE COURT: How long ago did that happen?

8 JUROR: I'd say about ten years ago.

9 THE COURT: Is he still in jail?

10 JUROR: Yes.

11 THE COURT: Did you involve yourself in that situation
12 as a -- following the trial, standing there, or involved
13 in your brother ---

14 JUROR: No. That happened in Indiana.

15 THE COURT: I see.

16 JUROR: And I was here.

17 THE COURT: I see. All right, sir, would your, would
18 your situation as a relative of someone who's been
19 convicted of a crime of that nature make it difficult for
20 you to serve fairly and impartially as a juror in this
21 case?

22 JUROR: Sir, it would not.

23 THE COURT: Could you set aside that experience and
24 decide this case based on the evidence that you would hear
25 in this courtroom without regard to that?

1 JUROR: Correct.

2 THE COURT: And would you do that, please, sir?

3 JUROR: I sure would.

4 THE COURT: Thank you, Mr. Madison.

5 JUROR: Yes, sir.

6 THE COURT: You go back and have a seat.

7 (END OF CONFERENCES AT SIDEBAR.)

8 THE COURT: Ladies and gentlemen, are any of you, or
9 any members of your immediate family -- that is your
10 household -- now, or have you in the past been employed by
11 any prosecuting agency? That is the solicitor's office,
12 district attorney's office, any federal or state
13 prosecuting agency, or any public defender's office,
14 either state, local, or federal public defender's office.
15 If so, would you please stand? Is any member of the jury
16 panel ---

17 BAILIFF: There's one standing, Judge. Judge, there's
18 one standing.

19 THE COURT: Oh, I'm sorry. I apologize. Yes, ma'am,
20 your name, please?

21 JUROR: Yes, sir. I'm Celine Sayers.

22 THE COURT: I'm sorry?

23 JUROR: I'm Celine Sayers.

24 THE COURT: Juror number 182. Ms. Sayers, tell me
25 about the relationship, please

1 JUROR: Yes, sir. My mother had a job at a law
2 office. It was years and years ago, so I don't know if it
3 really applies.

4 THE COURT: Okay, what ---

5 JUROR: Quite a few years ago.

6 THE COURT: That, that's fine. It's good for us to
7 know that. If you could tell me if that would have any
8 impact on your ability to be fair and impartial in this
9 case.

10 JUROR: No, sir.

11 THE COURT: Thank you, ma'am.

12 Are any of you members of, contributors to, or
13 supporters of any law enforcement or victim's rights
14 organizations such as MADD, SADD, CAVE, CADRE, or the like,
15 some similar position? If so, please stand.

16 (NO ONE STANDS.)

17 THE COURT: Are any of you related by blood or
18 connected by marriage to any member of any law enforcement
19 agency? If so, please stand.

20 (NO ONE STANDS.)

21 THE COURT: Thank you. Ladies and gentlemen, is there
22 anything in your own personal history, your own beliefs,
23 your religious background, or whatever it might be that
24 would make it difficult for you to serve fairly and
25 impartially as a juror in the trial involving allegations

1 of this sort? If so, would you please stand?

2 (NO ONE STANDS.)

3 THE COURT: Have any of you formed in your own mind,
4 or have you expressed to anyone else any opinion that you
5 might have as to the guilt or the innocence of Mr.
6 Williams? If so, would you please stand?

7 (NO ONE STANDS.)

8 THE COURT: Are any of you aware of -- that is to say
9 conscious of -- any bias or prejudice that you might have
10 for or against the state, or for or against the defendant
11 in this case? If you know of any such reason, would you
12 please stand?

13 (NO ONE STANDS.)

14 THE COURT: Finally, do any of you know of any reason
15 of any kind whatsoever that would keep you from serving
16 fairly and impartial as a juror in this trial? If you know
17 of any such reason, would you please stand?

18 (NO ONE STANDS.)

19 THE COURT: Thank you.

20 Ms. Tanner, further questions from the state?

21 MS. McCALL-TANNER: Nothing from the state.

22 THE COURT: Thank you.

23 Mr. Hood, other than previously noted, any additional
24 questions from the defendant?

25 MR. HOOD: Nothing, Your Honor.

1 THE COURT: Thank you.

2 Madame Clerk, you can give us a jury. The strikes
3 will be five for the state, ten for the defense. We will
4 select two alternates. The strikes will be one for the
5 state, two for the defense as to each alternate.

6 Ladies and gentlemen, as we speak, at this very moment
7 a computer is generating a list. Some of your names will
8 be on that list, and some of them will not. In a minute,
9 you will know. In, in bygone days when things used to be a
10 lot simpler, all of your names were on little, white slips
11 of paper, and they were placed in white capsules and
12 sealed. And they were placed in a round, brass receptacle,
13 and it was a great, it was a real procedure and production.
14 Involved rounding that thing around. They'd reach in there
15 and they'd open. It's kind of like the lottery drawing,
16 you know. Everybody would sit there on the edge of their
17 seats. Is that going to be my name? And then as the names
18 were drawn, the jurors would come forward individually.

19 Some of the romance has gone out of the process with
20 the use of computers. Now we just have a sterile computer
21 that kicks out those name in a minute, and you will be
22 asked generally the same questions, but it's not nearly as
23 ornate as it used to be.

24 (VOIR DIRE REQUEST MARKED INTO EVIDENCE AS COURT'S
25 EXHIBIT NUMBER 1.)

1 THE COURT: Ladies and gentlemen of the jury, as your
2 names are called, if you will stand in place right where
3 you are and await further instructions from the clerk,
4 please.

5 (A PAUSE.)

6 THE COURT: Ladies and gentlemen, as I have said, if
7 your name is called, if you will stand in place right where
8 you are and await further instructions from the clerk.
9 Thank you.

10 Mr. Clerk.

11 CLERK OF COURT: Ladies and gentlemen, when I call
12 your juror number and your name, just stand up. If you are
13 selected to be seated as a juror, come on up and have a
14 seat in the jury box.

15 Juror number 46, Jerome, Cuppia.

16 (WHITE MALE STANDS.)

17 CLERK OF COURT: What says the state?

18 MS. McCALL-TANNER: Please present the juror.

19 CLERK OF COURT: What says the defense?

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

22 CLERK OF COURT: Have a seat, Mr. Cuppia.

23 Juror number 8, Charles Barna.

24 (WHITE MALE STANDS.)

25 CLERK OF COURT: What says the state?

1 MS. McCALL-TANNER: Please present the juror.

2 MR. HOOD: Please seat Mr. Barna.

3 COURT REPORTER: I'm sorry. I'm having difficulty
4 hearing the defense.

5 MR. HOOD: Please seat Mr. Barna.

6 CLERK OF COURT: Juror number 88, Mark Haefner.

7 (WHITE MALE STANDS.)

8 CLERK OF COURT: What says the state?

9 MS. McCALL-TANNER: Please present the juror.

10 CLERK OF COURT: Says the defense?

11 MR. HOOD: Please excuse Mr. Haefner from the trial of
12 this case.

13 CLERK OF COURT: Have a seat, sir.

14 Juror number 95, Ann Hergenroeder.

15 (WHITE FEMALE STANDS.)

16 CLERK OF COURT: What says the state?

17 MS. McCALL-TANNER: Please present the juror.

18 MR. HOOD: Please excuse the juror from the trial of
19 this case, please.

20 CLERK OF COURT: Juror number 185, Joan Simmons.

21 (AFRICAN-AMERICAN FEMALE STANDS.)

22 CLERK OF COURT: What says the state?

23 MS. McCALL-TANNER: Please present the juror.

24 MR. HOOD: Please seat the juror, please.

25 CLERK OF COURT: Juror number 76, Elaine Gannt.

1 (WHITE FEMALE STANDS.)

2 CLERK OF COURT: What says the state?

3 MS. McCALL-TANNER: Please present the juror.

4 MR. HOOD: Please seat the juror, please.

5 CLERK OF COURT: Juror number 207, Cynthia Vannus.

6 (WHITE FEMALE STANDS.)

7 CLERK OF COURT: What says the state?

8 MS. McCALL-TANNER: Please present the juror.

9 MR. HOOD: Please excuse the juror from this case,
10 please.

11 CLERK OF COURT: Juror number 111, Pamela John.

12 (WHITE FEMALE STANDS.)

13 CLERK OF COURT: What says the state?

14 MS. McCALL-TANNER: Please present the juror.

15 MR. HOOD: Please seat the juror, please.

16 CLERK OF COURT: Juror number 168, Barbara Pittman.

17 (WHITE FEMALE STANDS.)

18 CLERK OF COURT: What says the state?

19 MS. McCALL-TANNER: Please present the juror.

20 CLERK OF COURT: Keep standing, Ms. Pittman.

21 MR. HOOD: Please excuse the juror from the trial of
22 this case, please.

23 CLERK OF COURT: Juror number 140, Elaine Maury.

24 (WHITE FEMALE STANDS.)

25 CLERK OF COURT: What says the state?

1 MS. McCALL-TANNER: Please present the juror.

2 MR. HOOD: Please seat the juror, please.

3 CLERK OF COURT: Juror number 68, Robert Fletcher.

4 (WHITE MALE STANDS.)

5 CLERK OF COURT: What says the state?

6 MS. McCALL-TANNER: Please present the juror.

7 MR. HOOD: Please excuse the juror from the trial of
8 this case, please.

9 CLERK OF COURT: Juror number 182, Celine Sayers.

10 (WHITE FEMALE STANDS.)

11 CLERK OF COURT: What says the state?

12 MS. McCALL-TANNER: Please present the juror.

13 MR. HOOD: Please seat the juror, please.

14 CLERK OF COURT: Juror number 57, John Dunn.

15 (WHITE MALE STANDS.)

16 CLERK OF COURT: What says the state?

17 MS. McCALL-TANNER: Please present the juror.

18 MR. HOOD: Please seat the juror, please.

19 CLERK OF COURT: Juror number 222, Susan Workman.

20 (WHITE FEMALE STANDS.)

21 CLERK OF COURT: What says the state?

22 MS. McCALL-TANNER: Please present the juror.

23 MR. HOOD: Please seat the juror, please.

24 CLERK OF COURT: Juror number 30, Jerry Cartmill.

25 (WHITE MALE STANDS.)

1 CLERK OF COURT: What says the state?

2 MS. McCALL-TANNER: Please present the juror.

3 MR. HOOD: Please seat the juror, please.

4 CLERK OF COURT: Juror number 85, Brian Gruly.

5 (WHITE MALE STANDS.)

6 MS. McCALL-TANNER: Please present the juror.

7 MR. HOOD: Please seat the juror, please.

8 CLERK OF COURT: Juror number 12, Christine Beal.

9 (WHITE FEMALE STANDS.)

10 MS. McCALL-TANNER: Please present the juror.

11 MR. HOOD: Please seat Ms. Beal, please.

12 CLERK OF COURT: Juror number 27, Donald Calhoon.

13 (WHITE MALE STANDS.)

14 CLERK OF COURT: What says the state?

15 MS. McCALL-TANNER: Please present the juror.

16 MR. HOOD: Please seat the juror, please.

17 THE COURT: Let's select two alternates, Mr. Clerk.

18 The strikes will be one for the state and two for the

19 defense as to each of the two alternates.

20 CLERK OF COURT: Yes, sir.

21 Juror number 197, Lillian Sullivan.

22 (WHITE FEMALE STANDS.)

23 CLERK OF COURT: What says the state?

24 MS. McCALL-TANNER: Please present the juror.

25 MR. HOOD: Please excuse the juror from the trial of

1 this case, please.

2 CLERK OF COURT: Juror 154, Sharon Nix.

3 (AFRICAN-AMERICAN FEMALE STANDS.)

4 MS. McCALL-TANNER: Please present the juror.

5 MR. HOOD: Please seat the juror.

6 CLERK OF COURT: Juror number 16, Mary Joan Bott.

7 (WHITE FEMALE STANDS.)

8 CLERK OF COURT: What says the state?

9 MS. McCALL-TANNER: Please present the juror.

10 MR. HOOD: Please excuse the juror from the trial of
11 this case, please.

12 CLERK OF COURT: Juror number 218, Latoya Williams.

13 (AFRICAN-AMERICAN FEMALE STANDS.)

14 CLERK OF COURT: What says the state?

15 MS. McCALL-TANNER: Please present the juror.

16 MR. HOOD: Please seat the juror.

17 THE COURT: Ms. Tanner, are there any matters of law
18 regarding the jury selection from the state?

19 MS. McCALL-TANNER: Nothing from the state, Your
20 Honor.

21 THE COURT: Thank you.

22 Mr. Hood, from the defense? She didn't exercise any
23 strikes or didn't have any matters of law as far as she's
24 concerned.

25 MR. HOOD: Well, I guess not, Your Honor. Thank you.

1 THE COURT: Thank you.

2 Ladies and gentlemen, those of you who were not
3 selected as jurors for the trial of this case, I'm going to
4 let you go now and ask that you be back in the jury
5 assembly room at 2:30. That's an hour and fifteen minutes,
6 and I hope that will give you enough time to get a bite to
7 eat.

8 I thank you very much for your cooperation and
9 assistance with us, and your patience in this room today.
10 Enjoy your lunch, and please be back in the jury assembly
11 room across the hall at 2:30 this afternoon. Thank you.

12 (THE JURY PANEL EXITS.)

13 THE COURT: Now, ladies and gentlemen, those of you
14 who have been selected as jurors in the trial of this case,
15 we're not going to begin the trial testimony in this case
16 until tomorrow morning. We've got some legal issues that
17 we need to deal with this afternoon that we always have in
18 cases of this sort before we're in position to begin the
19 presentation of this case to you as jurors. And so we will
20 not need you all back until 9:30 tomorrow morning. You've
21 got the rest of the afternoon off.

22 When you come back tomorrow morning at 9:30, you will
23 come and report to the jury room across the hall. The
24 bailiff will show you where to come and how to get there.
25 You'll come back through a secret passageway the rest of

1 the time. You will not come back in the courtroom, in
2 other words; you will report up the back hall and come
3 directly to the jury room tomorrow morning and be there at
4 9:30.

5 Now, before we start the trial in the morning at 9:30,
6 I'm going to give you some instructions about things that
7 you may and may not do as jurors during the trial of this
8 case. But to keep you from mistakenly and innocently from
9 doing some of those things overnight that you didn't even
10 know you were not supposed to do, let me give you a few
11 brief, preliminary remarks at this point in time.

12 First of all, let me tell you that you're not allowed
13 to discuss this case among yourselves or with anyone else
14 at any time during the trial of this case. Even as jurors,
15 you can't talk about it among yourselves. I'll give you
16 some more reasons for that tomorrow morning, but just take
17 my word for it right this minute. But you won't have a
18 chance to talk with any of -- yourselves as jurors
19 overnight. So, specifically my remarks are designed to
20 what you may do and may not do with other folks.

21 You can't talk with anybody else about this case, and
22 you can't let anybody else talk with you about this case
23 either. All the process that we've gone through today, of
24 course, has been designed to make sure that when we got
25 fourteen of you all in that jury box, that you were going

1 to be people who didn't know anything about this case, and
2 who didn't have any connection with this case, and didn't
3 have any preconceived ideas about this case. And in order
4 for this system to work efficiently and correctly and
5 justly, we have to maintain that distance throughout the
6 trial of this case.

7 Everything that you need to know about this trial,
8 indeed all that you are allowed to know about this case,
9 you have to learn from this courtroom and from no other
10 source. So, please don't let anybody else talk with you
11 about it. Don't talk with anybody else about it. Don't
12 try to find out anything on your own about the trial of
13 this case at any time, or about this case itself at any
14 time during the, during the trial.

15 When the trial is over, when you get back into the
16 jury room, you can take as much time as you want to talk
17 about it, but you can't do it until then.

18 Don't try to do any research about this case, or to
19 find out anything on your own about this case from any
20 source at all.

21 If anyone should try to talk with you about this case,
22 just tell them that you're a juror, and that you're not
23 allowed to talk with anyone about it. And if that does not
24 end the conversation at that time, and if they persist in
25 their efforts to talk with you about this case after you've

1 told them you're a juror, please just find out who they
2 are. Let me know when you get back to court tomorrow, and
3 we'll take care of that matter for you.

4 Enjoy your evening, ladies and gentlemen, and your
5 afternoon, and I'll see you all at 9:30 tomorrow morning.
6 If you will follow the bailiff through this door.

7 (THE JURY EXITS AT 1:19 P.M.)

8 BAILIFF: The jury is clear, Your Honor.

9 THE COURT: Thank you.

10 Folks, we'll be at ease in this case until 2:30 this
11 afternoon. We'll start the motions at 2:30. Is that okay?

12 MS. McCALL-TANNER: Yes, sir.

13 MR. HOOD: That will be fine, Your Honor.

14 THE COURT: All right. Thank you.

15 MS. McCALL-TANNER: Thank you, Your Honor.

16 THE COURT: We're recessed until 2:30.

17 (OFF THE RECORD.)

18 THE COURT: Okay, I understand we have several
19 motions. I think first of all with *Jackson vs. Denno*.

20 Ms. Tanner, is the state ready to proceed in that?

21 MS. McCALL-TANNER: Yes, sir. The state's ready.

22 THE COURT: All right, is defense ready, Mr. Hood?

23 MR. HOOD: I think we are, Your Honor.

24 THE COURT: Good. You can call your first witnesses.

25 MS. McCALL-TANNER: The state calls Officer Ron

1 Wekenmann.

2 THE COURT: Come forward, please, Officer, and be
3 sworn.

4 MS. McCALL-TANNER: State calls Detective Ron
5 Wekenmann.

6 THE COURT: Detective Wekenmann, come forward and be
7 sworn.

8 RONALD WEKENMANN, BEING DULY
9 SWORN, TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: State your full name and spell your
11 last name, please.

12 WITNESS: Ronald Wekenmann. Last name is spelled
13 W-E-K-E-N-M-A-N-N.

14 DIRECT EXAMINATION BY MS. McCALL-TANNER:

15 Q. Good morning, Detective Wekenmann. Where are you
16 employed?

17 A. I'm employed with the Port Royal Police Department.

18 Q. And how long have you worked there?

19 A. I've worked for the department for eleven years.

20 Q. And what are your duties in your capacity of work at
21 the police department?

22 A. I'm a investigator and chief detective.

23 Q. Now in that capacity, were you part of the
24 investigation into Kenneth Williams?

25 A. Yes, ma'am. I assisted Lieutenant Griffith in that

R. WEKENMANN - DIRECT EXAMINATION BY MS. MCCALL-TANNER 77

1 investigation.

2 Q. And would Lieutenant Griffith be what you would call
3 the primary or case officer?

4 A. Yes.

5 Q. And you assisted?

6 A. Yes.

7 Q. Now, I want to talk about the first time you have
8 contact with Mr. Williams during this investigation. When
9 did that occur?

10 A. Don't remember the exact date, but the first time I
11 had contact with him was in his, basically in his front
12 yard of his home.

13 Q. If I said September 10th, would that sound close?

14 A. Yes. I believe so. It, it was around September the
15 10th.

16 Q. And now when you have contact, when you first see him,
17 what's he doing?

18 A. He's in his front yard. He's got a bucket of soapy
19 water, and he's cleaning some tennis shoes.

20 Q. When you say cleaning tennis shoes, what's he doing
21 with them?

22 A. Well, he's, like, scrubbing them with a brush, with

23 ---

24 Q. Bottom or the tops?

25 A. The entire shoe.

1 Q. And do you approach him?

2 A. Not immediately. First, I contacted Lieutenant
3 Griffith and told him that I've located Kenneth and asked
4 him to respond to the area.

5 Q. And at some point, do you and Lieutenant Griffith have
6 a conversation with Mr. Williams?

7 A. Yes.

8 Q. And do you question him about this incident?

9 A. Yes. After we made initial contact with him, we asked
10 him to come to the police department. We took him back to
11 the police department at that time. Lieutenant Griffith
12 conducted an interview with me present.

13 Q. And during that interview, are you able to get
14 anything specific about this crime that was committed on
15 that day?

16 A. What stands out the most is I actually took a
17 photograph of a injury to one of his fingers, which was
18 very much of interest to us at the time, based on evidence
19 we found at the crime scene.

20 Q. And during this conversation, did Mr. Williams give
21 you an explanation for that injury on his finger?

22 A. I believe he said that he hurt it gardening, or cut it
23 on a bush or a thorn or something like that.

24 Q. So, on September 10th, he tells you that injury to the
25 finger is from a thorn bush?

R. WEKENMANN - DIRECT EXAMINATION BY MS. McCALL-TANNER 79

1 A. Yeah, something like that, uh-huh.

2 Q. All right. Now, and on that date, is he allowed to
3 leave?

4 A. Yeah. When we completed the interview, he was allowed
5 to -- he walked out of the police department.

6 Q. Now, it appears on the 19th is when Mr. Williams is
7 arrested for these charges. Is that correct?

8 A. That is correct.

9 Q. And do you have a conversation with him in the jail?

10 A. Yes. I was in the booking room assisting Lieutenant
11 Griffith once again. He was completing the warrants and as
12 I was standing there, Mr. Williams said I really need to
13 talk to you. I mean, I, I have to talk to you now.

14 Q. And this is after he's arrested?

15 A. After he's arrested.

16 Q. And he knows what he's being charged with?

17 A. Yes.

18 Q. And what does he say to you?

19 A. He essentially says I'm, I'm not going down for this.
20 He goes -- he told me that another person had done it. He
21 said that a man named Skinner did it. He was there with
22 two other people, two females. That he was definitely
23 present when it happened, but all he wanted to do
24 afterwards was get out of there.

25 And then I asked about the cut on his finger. And he

1 said that -- you know, he changed his story now and said,
2 well, I got this trying to pull Skinner off the old man, or
3 something to that effect.

4 Q. So, now on the 19th, the cut on the finger occurs at
5 the incident location?

6 A. Correct.

7 Q. And, Officer Wekenmann, at this point, are you
8 conducting an interrogation of Mr. Williams?

9 A. No. As a matter of fact, I advised him several times
10 that -- you know, during the previous interview, he says I,
11 I need to talk to a lawyer once, you know, the interview
12 got too much for him. He said I'd like to talk to a
13 lawyer. We ended that interview.

14 During this interview, I said, Mr. Williams, you've
15 already asked for an attorney. I can't ask you any
16 questions. You know, you need to refrain from making any
17 statements, you know, unless you make a special request.
18 And I said that we would be back in the afternoon -- if he
19 would go ahead and submit that request -- and then take a
20 formal statement from him.

21 Q. And did you go back with Lieutenant Griffith to
22 conduct an official statement?

23 A. Yes.

24 Q. And take ---

25 A. We did.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 81

1 MS. McCALL-TANNER: All right. Thank you, sir.

2 Please answer anything defense counsel has.

3 THE COURT: Mr. Hood, you can cross-examine.

4 MR. HOOD: I don't have any questions.

5 THE COURT: Thank you.

6 You can step down, Mr. Wekenmann. Thank you.

7 (THE WITNESS EXITS THE STAND.)

8 MS. McCALL-TANNER: The state calls Lieutenant John
9 Griffith.

10 THE COURT: Come forward, Mr. Griffith, and be sworn.

11 JOHN GRIFFITH, BEING DULY SWORN,

12 TESTIFIES AS FOLLOWS:

13 THE COURT: Ms. Tanner.

14 MS. McCALL-TANNER: Thank you.

15 DIRECT EXAMINATION BY MS. McCALL-TANNER:

16 Q. Good afternoon, Lieutenant. Where are you employed?

17 A. Port Royal Police Department.

18 Q. And how long have you been there?

19 A. Just over twenty, twenty years.

20 Q. And were -- you were involved in the investigation of
21 the murder of Jack Koch?

22 A. Yes, I was.

23 Q. And as part of that investigation, did you conduct
24 interviews of suspect Kenneth Williams?

25 A. Yes, I have.

1 Q. And you heard Detective Wekenmann discuss three
2 separate interviews. Were you present for all three of
3 those?

4 A. Yes, I was.

5 Q. Well, let's start with the first one on September the
6 10th. Can you describe for the court the surrounding
7 circumstances of that? Was Mr. Williams under arrest, for
8 example?

9 A. No, he was not.

10 Q. And how did you come in contact with him and get him
11 to talk to you that day?

12 A. I believe Lieutenant Wekenmann was actually in the
13 neighborhood. We were kind of watching him as a person of
14 interest. He notified me on the phone that he had observed
15 Mr. Williams at the residence that he was staying at, and
16 then I then proceeded over to the house. When I got there,
17 Lieutenant Wekenmann told me that he had witnessed -- what
18 he witnessed Mr., Mr. Williams doing.

19 I then knocked on the door. Mr. Williams came to the
20 front door. He had a pair of shoelaces in his hands that
21 were soaking wet.

22 Then I asked him if he'd come to the police department
23 to be interviewed regarding a theft that occurred on 16th
24 Street. He agreed to do so; he came voluntarily. We
25 transported him in our vehicle, our unmarked vehicle down

1 to the police department.

2 Q. And was he handcuffed during the ride?

3 A. No, he wasn't.

4 Q. At any point during the ride to the police station,
5 did he ask you to turn around and take him home?

6 A. No, he didn't.

7 Q. And so he went along with you freely and voluntarily?

8 A. Yes, he did.

9 Q. And was he under arrest at that time?

10 A. No, he was not.

11 Q. And once you arrive at the station, does he agree to
12 go in with you?

13 A. Yes, he does.

14 Q. And what type of atmosphere are you in during your
15 conversation with Mr. Williams?

16 A. We brought him in and sat him down in our office, and
17 just started asking him about the events.

18 Q. Now, you said the theft on 16th Street.

19 A. Yes.

20 Q. Is that the incident location of Jack Koch's murder?

21 A. Yes.

22 Q. So, you were asking about this incident and this
23 incident date?

24 A. Yes.

25 Q. Now, was Mr. Williams handcuffed or under arrest at

1 the time this conversation occurred?

2 A. No, he was not.

3 Q. At any point, did he ask to leave?

4 A. No.

5 Q. And did he give a statement to you freely and
6 voluntarily?

7 A. Yes, he did.

8 Q. Did you make him any promises or any threats?

9 A. No, I didn't.

10 Q. And once the interview concluded, did you then place
11 him under arrest?

12 A. No, we didn't.

13 Q. Did Mr. Williams freely leave the police station?

14 A. Yes, he did. We offered to give, give him a ride, but
15 he chose to walk. It was only, like, a block away from
16 where he lived.

17 Q. So, he just walked out on his own?

18 A. Yes.

19 Q. Okay. Now, the next time you have contact with Mr.
20 Williams would be, if I'm correct, September 19th?

21 A. Yes.

22 Q. And where did that take place?

23 A. We made contact with him when we served the warrants.

24 Q. And once you served the warrants, is he -- he's then
25 in custody and under arrest?

1 A. Yes.

2 Q. And is he given his Miranda rights at that point?

3 A. I don't recall. I was in the process of filling out
4 the warrants. Lieutenant Wekenmann was doing the primary
5 conversing with him.

6 Q. But during that time with Mr. Williams, do you
7 question him or interrogate him about this case?

8 A. No. Previously, on the previous interview, he had
9 indicated to us that he didn't want to give a -- we had
10 requested a DNA sample. He refused to give us a DNA sample
11 because he wanted an attorney present. We offered him an
12 attorney. He found -- he said he didn't have an attorney,
13 but that he just didn't want to give us a sample. That's
14 when we let him go. So, therefore, from that point
15 forward, we felt that -- we didn't want to recontact him
16 for any reason, so we didn't ask him any questions.

17 Q. So, that's at the end of the interview on the 10th
18 when he walks out?

19 A. Yes.

20 Q. Walks off. Okay. So, when you have contact with him
21 on the 19th, you don't interrogate him?

22 A. No.

23 Q. Does he make any statements to you anyway?

24 A. He does to actually Lieutenant Wekenmann. He was
25 talking to him at the booking desk at the jail. We were

1 filling out -- I was filling out some paperwork. In the
2 peripheral, I heard him talking to Lieutenant Wekenmann
3 about what had gone on.

4 Q. And did you hear Wekenmann interrogating Mr. Williams
5 at the jail?

6 A. No. He, he wasn't asking any questions at all.
7 Williams just made that indication, or made the statement
8 that I'm not going down for what Skinner did.

9 Q. Now, when you get to -- later in the day, do you go
10 back to talk to Mr. Williams?

11 A. Yes, we do.

12 Q. And at this point, do you give him Miranda?

13 A. Yes, we do.

14 Q. And does he understand what you're telling him?

15 A. He indicated that. I even clarified to him that, that
16 -- and I reminded him that he previously did ask, ask for
17 an attorney before he gave us the DNA swabs. And we felt
18 that unless he was absolutely certain that he wanted to
19 give us the statement at that time, we weren't going to
20 take the statement. He again acknowledged that, yes, he
21 did previously ask for an attorney, but this time he was
22 willing to make statements without an attorney present.

23 Q. And did you make him any promises or threats in order
24 to get him to waive that right?

25 A. No, we didn't.

R. WEKENMANN - CROSS-EXAMINATION BY MR. HOOD

87

1 Q. And this was at his request? He asked to talk to you?

2 A. Yes, he did.

3 Q. And did he give you a free and voluntary statement?

4 A. Yes, he did.

5 MS. McCALL-TANNER: Lieutenant, I have no further
6 questions. Please answer anything defense counsel has for
7 you.

8 THE COURT: Mr. Hood.

9 CROSS-EXAMINATION BY MR. HOOD:

10 Q. Lieutenant Wekenmann, did you take all of the
11 statements from Sammy yourself? You said you were present
12 at the -- each one of the statements. Did you take them
13 all, all three of them?

14 A. I, I don't quite under ---

15 Q. There were three statements, right?

16 A. Yeah. I mean, they weren't officially written out, if
17 that's what you're referring to.

18 Q. Okay. Well, what I'm saying is you were present at
19 each one of these statements.

20 A. Oh. Yes, sir.

21 Q. Is that correct?

22 A. Yes, sir.

23 Q. And did you ask any questions during these statements?

24 A. Yeah. Primarily, I conducted the interviews.

25 Q. Okay.

1 A. Yes, sir.

2 Q. And each one of those was recorded except for the one
3 that was up at booking, I believe.

4 A. Yes, sir.

5 Q. Is that correct? Okay, okay, and I believe that you
6 guys actually picked him up at his probation office, at the
7 probation office where his -- where he was at meeting with
8 his probation officer.

9 A. Yes, sir.

10 Q. Isn't that correct? Okay, and based on the
11 information that Mr. Williams gave you, were you able to
12 identify the other three suspects which were later arrested
13 as a result of this contact with Mr. Williams?

14 A. Yes.

15 MR. HOOD: Okay. Thank you.

16 THE COURT: Ms. Tanner, redirect?

17 MS. McCALL-TANNER: No further questions, Your Honor.

18 THE COURT: Thank you. You can step down.

19 (THE WITNESS EXITS THE STAND.)

20 MS. McCALL-TANNER: And that would be all for the
21 *Jackson vs. Denno*.

22 THE COURT: Thank you.

23 All right, Mr. Hood, are there any witnesses for the
24 defense on the *Jackson vs. Denno* issue?

25 MR. HOOD: None, Your Honor.

1 THE COURT: All right. I'll be glad now to hear
2 arguments, Mr. Hood.

3 MR. HOOD: I have none, Your Honor.

4 THE COURT: Thank you.

5 The statements appear, the ones that were obtained,
6 appear to have been appropriately obtained. The September
7 the 10th statement was made voluntarily. The defendant was
8 not under arrest; his movement was not unduly confined or
9 restricted. The best test of that is that he did, in fact,
10 leave the police department after he had made whatever
11 statement he made, having indicated at that time apparently
12 his desire to have an attorney present. He was then
13 confronted again on the 19th of September when the warrants
14 were served on him charging him with these crimes.

15 The evidence of Lieutenant Wekenmann was that he was
16 talking to the defendant but was not asking any questions,
17 and told the defendant that he could not talk with him
18 because he had invoked his right to an attorney, at which
19 time the defendant apparently volunteered some statements
20 not the result of interrogation.

21 Later in that day, he was Mirandized -- excuse me.
22 They went back end of the day, and he was Mirandized at
23 that time, I believe, and understood his rights and
24 apparently waived them.

25 Again later, the final interview or the final contact

1 occurred at the jail. I don't have a date for that.
2 Apparently he was Mirandized there for a second time.
3 Waived his rights to an attorney at that point in time.

4 Any statements made during that time I find to have
5 been freely and voluntarily made, with the full
6 understanding of his constitutional rights and safeguards,
7 and with a knowing waiver of those rights and safeguards.
8 And the statements were freely and voluntarily given.

9 All right, Ms. Tanner, anything further from the state
10 of a preliminary nature?

11 MS. McCALL-TANNER: Yes, sir, Your Honor. The state
12 and the defense have entered in a couple of stipulations
13 I'd like to put on the record.

14 THE COURT: Okay.

15 MS. McCALL-TANNER: There is one witness from SLED.
16 Her name is Lori Giles, G-I-L-E-S. Her purpose at SLED,
17 she is in the trace department. In this case, she was sent
18 the clothing that belonged to the victim. She made
19 cuttings from those, from those clothing items, and then
20 she forwarded them on to the DNA lab. She did not perform
21 any tests. She only conducted the cuttings because they
22 don't sent the full piece to the lab.

23 THE COURT: Right.

24 MS. McCALL-TANNER: Only pieces that may have
25 evidentiary value. She did that. It turns out once the

1 DNA was performed, that those samples only contained DNA
2 belonging to the verdict.

3 I spoke with Mr. Hood. He agreed to stipulate, so
4 that I don't have to bring her down from Columbia, just to
5 say she took cuttings from these clothings -- clothing
6 items.

7 THE COURT: All right; anything you want to add to
8 that, Mr. Hood?

9 MR. HOOD: No, Your Honor, as long as we, you know,
10 include everything that -- in other words, they took all
11 the clothing from the victim in this case, and they
12 analyzed those things which reacted for blood and this and
13 that and the other. And they determined that all of that
14 blood found on his clothing belonged to the victim. That's
15 my understanding.

16 MS. McCALL-TANNER: That, that's correct.

17 THE COURT: All right, I don't think we have a
18 difference there that needs -- thank you, sir. Okay.

19 MS. McCALL-TANNER: Secondly, Your Honor, in this case
20 it actually turned out there were two DNA analysts who
21 conducted tests on items in this case from SLED. The
22 initial analyst was John Ortuno, O-R-T-U-N-O.

23 THE COURT: All right.

24 MS. McCALL-TANNER: He performed the majority of the
25 testing. Since then, he has retired. He is living in the

1 Columbia area. He was a little more difficult to get ahold
2 of.

3 During the trial prep in this case, we discovered a
4 swab that had not been sent up to SLED for analysis. We
5 did sent it up. That meant that a new analyst had to
6 become involved because the retired agent did not have
7 privileges at the lab to come in and continue testing
8 items. So, that would be Stephanie Stanley from SLED.

9 Initially, the state was going to bring both of them
10 here, my conversations with people from SLED. Stephanie
11 Stanley still is employed by SLED. Obviously has the
12 resources and whereabouts to get to court much easier than
13 Mr. Ortuno. She actually had to use his testing and his
14 results in her testing, and she can testify to his results.

15 THE COURT: All right.

16 MS. McCALL-TANNER: I've spoken to Mr. Hood. He seems
17 okay with that. She can testify to any of his results.
18 She can't say I performed that test, but she can say I
19 relied on that test. It matches the test I performed
20 obviously and the same results, and things of that nature.

21 THE COURT: Okay.

22 MS. McCALL-TANNER: And we did have a lengthy
23 conversation about that, and I explained that -- I also
24 gave him the number of the lieutenant in DNA if he had any
25 questions about how that would work, if he had any concerns

1 that she would be unable to do that.

2 Lieutenant Robin Taylor is who I spoke with. She said
3 it's actually done more frequently now when they're -- that
4 case arises. Obviously with budget and the state, they do,
5 they do do that quite frequently. They do have a peer
6 review set up, set up anyway. They're often reviewing each
7 other's work, and so there's no issue with testifying to
8 his results on any item that he tested.

9 THE COURT: All right, Mr. Hood, do you want to add
10 anything to that?

11 MR. HOOD: No, Your Honor.

12 THE COURT: All right, Ms. Tanner.

13 MS. McCALL-TANNER: Your Honor, that's all the state
14 has. I think defense has a couple more things, but that's,
15 that's all the state has.

16 THE COURT: All right. Good.

17 MR. HOOD: Your Honor, basically we have a
18 sequestration request with respect to the state witnesses.

19 THE COURT: Okay, and ---

20 MR. HOOD: That would be the first one.

21 THE COURT: Which witnesses in particular? Any or all
22 witnesses? Which ones?

23 MR. HOOD: Well, I'd say all of them, Your Honor.

24 THE COURT: All right, let me -- Ms. Tanner, what says
25 the state to that?

1 MS. McCALL-TANNER: Well, Your Honor, Lieutenant
2 Griffith is my case officer. I would like him to be
3 allowed to stay at the table with me.

4 THE COURT: Certainly.

5 MS. McCALL-TANNER: One other witness is James Koch.
6 He is the son of the deceased. I believe under the
7 Victim's Bill of Rights, he has the right to be present.

8 THE COURT: Right.

9 MS. McCALL-TANNER: If he would like. He may want to
10 stay outside. I haven't asked him.

11 THE COURT: Okay.

12 MS. McCALL-TANNER: But I think if he exercises his
13 right as a victim, that he should be allowed to stay in.

14 THE COURT: Right. Okay.

15 MS. McCALL-TANNER: The others I don't have any
16 objection to being sequestered.

17 THE COURT: Okay, and the sequestration order will be
18 reciprocal obviously, and defense witnesses will also be
19 sequestered. The case officer, the victim -- by
20 definition, Mr. Koch is a victim -- can stay. The
21 sequestration order will be effective as of the conclusion
22 of opening statements, all right?

23 MS. McCALL-TANNER: Thank you, Your Honor.

24 THE COURT: Mr. Hood.

25 MR. HOOD: Judge, I have not been given copies of the

1 rap sheets of all of the witnesses in this case who are
2 relevant to the case. In other words, the other defendants
3 such as Ms. Jenny Chase, Lori Giles. Obviously, Mr.
4 Skinner was added, I think, at the last minute this
5 morning.

6 THE COURT: Right. Yes.

7 MR. HOOD: And I would like obviously rap sheets on
8 all of those individuals.

9 THE COURT: Okay. All right.

10 MR. HOOD: And Leasy -- I mean, I'm sorry. I said
11 Lori Giles, but actually it's Lisa Schulemann.

12 THE COURT: Schoenemann.

13 MR. HOOD: Schoenemann, Schulemann, yeah.

14 THE COURT: Is she a co-defendant as well?

15 MR. HOOD: She's a co-defendant.

16 THE COURT: All right.

17 MR. HOOD: No, not Giles.

18 THE COURT: Ms. Tanner, is that going to be a problem?

19 MS. MCCALL-TANNER: No, sir, Your Honor. He's never
20 requested them before, but I will be sure that he has them
21 in the morning.

22 THE COURT: All right. Before they -- before you have
23 to cross-examine them, you'll have those in hand.

24 MR. HOOD: Yeah, and I need it for my client also,
25 Your Honor. And, you know, we have been -- Ms. Tanner

1 indicated she sent me a notice saying, you know, she wanted
2 to serve my client with a notice with life without parole.
3 And we discussed that matter, and she didn't serve it on my
4 client. She sent it to me for me to, if I would, serve it
5 on my client.

6 THE COURT: Right.

7 MR. HOOD: And she and I discussed it. And I told
8 her, I said I don't think he has any of these serious
9 convictions or most serious convictions.

10 THE COURT: Right.

11 MR. HOOD: That would allow for, you know, a life
12 without parole sentence. And we sort of ended our
13 conversation at that point in time. And what I would like
14 to know is exactly what his, you know, record is, I mean.

15 THE COURT: The notice, of course, should contain
16 whatever the prior record was in full. And so, Ms. Tanner,
17 can you, can you provide information to Mr. Hood?

18 MS. McCALL-TANNER: Yes, sir. I have certified copies
19 for him of the priors. And as I told Mr. Hood this
20 afternoon, there may be some issue. The rap sheets don't
21 quite match up with the actual court records. So, he
22 definitely has a prior record, but whether or not they
23 qualify as serious or most serious, there may be some issue
24 there.

25 THE COURT: Okay.

1 MS. McCALL-TANNER: But I do have certified copies for
2 him.

3 THE COURT: All right. Good. Thank you. When I was
4 here before, we had issues, some LWOP issues, as I recall.
5 Unfortunately, my research at that time has escaped my
6 mind. I'll do it again if we get to that.

7 MR. HOOD: I don't think we're going to get to that,
8 Judge..

9 THE COURT: All right.

10 MR. HOOD: I hope not, anyway.

11 THE COURT: All right, Mr. Hood.

12 MR. HOOD: The other thing is, you know, during the
13 statements that were given by the defendant there, I think
14 there were, there were three of them. And I want to make
15 sure that the statements that are presented to the jury are
16 redacted with reference to any prior convictions. The fact
17 that he was on parole or probation, or anything of that
18 nature needs to be, you know, taken out of those, out of
19 those statements.

20 THE COURT: Of course, I haven't seen those statements
21 yet, so I will ask you all to review those statements
22 jointly. If, if any redaction can be agreed upon, of
23 course you all can take care of it. If it cannot be agreed
24 upon, then you will present it to me, and then I'll deal
25 with it.

1 MR. HOOD: Correct. Okay.

2 MS. McCALL-TANNER: Your Honor, I might, I might make
3 it a little easier. These are audio recordings. One of
4 them is particularly poor quality. I do not intend to play
5 the audio recordings.

6 THE COURT: Right.

7 MS. McCALL-TANNER: I just intend to elicit testimony
8 from the officer who took the statement and was present for
9 the statement. We have had the conversation: we don't
10 discuss prior records, or where you've picked him up at his
11 probation office.

12 THE COURT: Right.

13 MS. McCALL-TANNER: He's well aware of that.

14 THE COURT: Right.

15 MS. McCALL-TANNER: He's a veteran; he knows better,
16 so.

17 THE COURT: Okay.

18 MS. McCALL-TANNER: We've already handled that.

19 THE COURT: All right. Good.

20 Don't think it will be a problem, Mr. Hood. If it is,
21 to quote a friend of mine from back home, we'll drive off
22 of that bridge when we get to it.

23 MR. HOOD: Okay. Judge, I just want to make sure
24 that, that no other statements or physical evidence or
25 anything of that nature that we have not already been

1 provided that the state now has in their possession.

2 THE COURT: All right, you're renewing your Rule 5
3 request, things of that nature?

4 MR. HOOD: That's correct.

5 THE COURT: All right, Madame Solicitor, anything else
6 that needs to be disclosed, disclosed in that regard?

7 MS. McCALL-TANNER: No, sir. Actually, I have the
8 evidence here in the courtroom. I informed Mr. Hood I
9 would have it here today so that we could go ahead and
10 premark items, and that he could look through it the same
11 time I did if that was necessary.

12 THE COURT: Good, and I appreciate that because that
13 will expedite things, and I would ask you all after we
14 finish today to take the time that is left and we will get
15 y'all to premark those. If there are items which can be
16 agreed upon, they can go ahead and be marked as exhibits.
17 If there is a dispute as to whether or not they can come
18 in, you can go ahead and mark them for identification, give
19 them a sticker and number, just put ID on it. Ms. Harris
20 will do that. And we can argue about whether the ID comes
21 off tomorrow.

22 MS. McCALL-TANNER: Yes, sir.

23 THE COURT: Okay.

24 MR. HOOD: Judge, there's one last item, and this is
25 probably going to be the most difficult to deal with.

1 Several days ago before this trial began, before today
2 obviously.

3 THE COURT: Right.

4 MR. HOOD: Ms. Tanner contacted me with reference to
5 statements made by two of the co-defendants in this case.
6 Specifically, Jenny Chase and Lisa Schoenemann, those two
7 individuals. And I inquired as to whether or not there
8 were copies of the statements made by these individuals.

9 These two co-defendants had been interviewed at least
10 twice apiece by law enforcement, and they had given
11 statements at those times. So, we had two previous
12 statements by each one of these witnesses in the file.
13 This was a third statement given by these two witnesses.

14 The statements were not given -- the third statements
15 were not given to law enforcement, to my knowledge. I
16 asked the officers, the case officers, the investigating
17 officer whether or not he was present at the time these
18 third statements were given by these two co-defendants.
19 And he said he was not, and he was not aware of any
20 statements that they had given.

21 THE COURT: Right.

22 MR. HOOD: So, I asked Ms. Tanner whether or not the
23 statements were written, and she said no. That they were
24 just verbal statements that were given to her in the
25 presence of their attorneys. And these statements differed

1 from the statements that they had previously given.

2 At least one of them's statement differed
3 substantially, and I have no way of knowing whether or not
4 the other one was different or not because there's no
5 record of it. There was no recording of it, or anything of
6 that nature, so that we are stuck only with what Ms. Tanner
7 recalls as being the statements given by these three
8 witness -- I mean, by these two witnesses.

9 And I don't, I don't think they were interviewed at
10 the same time. I would, I would hope that they were
11 interviewed separately with each attorney being present
12 with their own independent client. But I don't know.

13 My problem is that these two witnesses are obviously
14 very important to the state's case. And they're going to
15 be called by the state, as indicated by the witness list
16 here.

17 Now, based on what Ms. Tanner told me, that one of
18 these witnesses -- the statements that they are now making
19 is substantially different from the other statements that
20 they had made. And the other one may or may not be
21 consistent with what they, what they had previously said on
22 two different occasions. So, I, I'm just at a loss.

23 My problem is that I will not be able to properly
24 cross-examine these witnesses without having the benefit of
25 the person who took these statements to say whether or not

1 these statements are an accurate statement of what they
2 gave on such and such and a day, whatever day it was. And
3 so I have no way of impeaching them without Ms. Tanner
4 being called as a witness to testify as to what these
5 people told her, if you see what I mean.

6 THE COURT: Well.

7 MR. HOOD: I'm stuck.

8 THE COURT: Do you anticipate that what they tell here
9 in the -- if they testify about that third statement, that
10 that testimony will be any different from what Ms. Tanner
11 told you it was?

12 MR. HOOD: Well, I don't know.

13 THE COURT: But if it's not, and if their testimony is
14 consistent with what Ms. Tanner told you it was, then
15 there's no problem, right?

16 MR. HOOD: Well, Judge, as you well know, that's just
17 one little thing that she was told. There were a whole
18 bunch of things that were told. Now, whether or not -- you
19 know, sort of like you listening to the statement and me
20 listening to the statement, you know, and I see
21 inconsistencies with the previous statements that
22 somebody's given, but you don't see those inconsistencies.
23 And, you know, so -- I mean, it -- I don't have any earthly
24 idea what the total value of the statements given by these
25 two individuals actually was.

1 THE COURT: Right.

2 MR. HOOD: All I know is a little tiny bit that they
3 now are saying, one of them is now saying something a
4 little bit different from what she had said previously.
5 And the other one may or may not be saying somewhat similar
6 to what she had said previously.

7 I, you know, I'm at a loss. I can't interview the
8 officers, you know, like I would interview a law
9 enforcement and investigator and say hey, what'd she tell
10 you.

11 THE COURT: All right.

12 MR. HOOD: You know? And I can't go back to get a
13 tape and say it's on the tape here. I can, I can know what
14 -- exactly what they're saying.

15 THE COURT: Right.

16 MR. HOOD: So, I just have to take whatever they say
17 as being the gospel.

18 THE COURT: Right.

19 MR. HOOD: And no way of really knowing whether or not
20 that's what they said to begin with.

21 THE COURT: Ms. Tanner, how do you, how do you propose
22 to present those statements?

23 MS. McCALL-TANNER: Well, Your Honor.

24 THE COURT: If at all.

25 MS. McCALL-TANNER: Both of these women are going to

1 testify. He's going to have every opportunity in the world
2 to cross-examine them.

3 THE COURT: All right.

4 MS. McCALL-TANNER: Under his theory, you're tying the
5 hands of every prosecutor in the world: that we wouldn't be
6 able to conduct pre-trial interviews of our witnesses.

7 THE COURT: Right.

8 MS. McCALL-TANNER: We don't record those. That's
9 trial prep. It is my duty under *Brady* and Rule 5 to turn
10 over to him any inconsistencies. I did that.

11 THE COURT: Right.

12 MS. McCALL-TANNER: I called him immediately and said
13 look. Here's my interview. Here's what they told me.
14 Here's what they say they're going to say.

15 THE COURT: Right.

16 MS. McCALL-TANNER: They may say that. They may say
17 what's in the incident report that Lieutenant Griffith
18 said.

19 THE COURT: Right.

20 MS. McCALL-TANNER: Regardless, he's going to have
21 every opportunity to cross-examine both of these witnesses
22 under oath on the stand in front of the jury. That doesn't
23 make the prosecutor a witness.

24 THE COURT: Right.

25 MS. McCALL-TANNER: That is trial prep and, and to do

1 what he is suggesting, we wouldn't be able to do our jobs.
2 We'd never be able to interview a witness again.

3 THE COURT: Right, and of course the rule doesn't
4 anticipate, Mr. Hood as you know, the disclosure of the
5 statement of these witnesses unless they create a *Brady*
6 issue or something of that nature. Specifically under --
7 Rule, Rule 5 has an exception for the statement of
8 witnesses except under certain circumstances, as you all
9 know.

10 So, the fact that you will be able to cross-examine
11 and confront them with any inconsistencies, whatever they
12 happen to be -- obviously, you know, if you have a
13 full-blown transcript of everything that they had said,
14 there would be more inconsistencies could be developed
15 without a doubt. There always are. But as long as you
16 know what the, at least what the significant inconsistency
17 was, which apparently has been disclosed, you can certainly
18 develop that point and any other points that
19 cross-examination might reveal.

20 Well, I can say -- it's not, it's not the same as
21 having your defendant's statements there so that you can
22 look at those and analyze them under a microscope. I don't
23 think this is any violation of the rule. I don't think there's
24 any violation of the letter or the spirit of the rule. And
25 the fact that she's disclosed whatever discrepancies there

1 are for impeachment purposes seems to satisfy *Brady* and the
2 progeny of cases that allows you explore those things.

3 Can you tell me what else you would, what else you
4 would be entitled to as a matter of law and rule?

5 MR. HOOD: Well, you know, Your Honor, I, I, I really
6 don't know, you know? I mean, because again I'm
7 handicapped because I don't know what was said there.

8 THE COURT: Right.

9 MR. HOOD: You know, I don't, I don't know what these,
10 what people would say. And obviously their attorneys can't
11 come running forward and give me this information because
12 that's privileged communication between, you know, them and
13 their clients. You know, and the thing that just ---

14 THE COURT: Well, not if it was made in the presence
15 of someone else. Not if it's made in the presence of a
16 third party. There'd be no privilege.

17 MR. HOOD: Well, it, you know, it is a possibility
18 that I could call, you know, their attorneys, but I don't
19 -- I'm not quite sure how that would work.

20 THE COURT: There would, there would be -- you might
21 have to ---

22 MR. HOOD: Considering that I know for a fact that one
23 of the attorneys is going to advise -- have you advise
24 their client of their rights on the record prior to their
25 giving testimony because there is -- you know, they've,

1 they've got some problems that they have to be concerned
2 with as far as their representation is concerned.

3 THE COURT: Right.

4 MR. HOOD: But I, I think that, you know, once again
5 it's one of those situations where, you know, if you, if
6 you're going to interview co-defendants, I, I don't see
7 where -- witnesses, ordinary witnesses are not a problem.
8 But co-defendants really create a probably for the state
9 when they interview those witnesses by themselves without
10 someone there to be an independent person to take down the
11 information and, you know, be prepared, you know, to turn
12 that over to the defense because we never know what's said
13 in those things.

14 THE COURT: Right, and ---

15 MR. HOOD: Because what they think is important and
16 what we think is important are two entirely different
17 things.

18 THE COURT: Without a doubt.

19 MR. HOOD: Generally.

20 THE COURT: Without a doubt. But, but the rule
21 recognizes the fact that certainly prosecution agents have
22 to be free to interview the witnesses and not necessarily
23 record them. That's the reason the rule is, the rule is
24 specifically worded as it is except as provided for. And
25 it goes on in Rule 5, under certain parts of this rule:

1 This rule does not authorize the discovery
2 or the inspection of statements made by the
3 prosecution witnesses or prospective
4 prosecution witnesses, provided that after a
5 prosecution witness has testified on direct
6 examination, the court shall on motion of
7 the defendant order the prosecution to
8 produce any statement of the witness in the
9 possession of the prosecution which relates
10 to the matters as to which the witness is
11 testifying. And provided further, the court
12 may, upon a sufficient showing, require the
13 production of any statement of the
14 prospective witness prior to the time the
15 witness testifies.

16 And so it is clear that if there is a written copy of
17 a document in the possession of the prosecution, that
18 before you cross-examine him, you have the right to look at
19 it. But there's nothing in the rule or in the procedure
20 that requires them to make copies of -- or transcripts of
21 everything that the witness tells them.

22 However, to disclose, as she has apparently,
23 information that is different from the other statements
24 which makes it an item of impeachment, or if it were
25 exculpatory, exculpatory under *Brady*, certainly you're

1 entitled to that.

2 I don't know how to deal with it. I guess, Mr. Hood,
3 it's just going to be a matter of cross-examination based
4 on the two statements that you already have, and whatever
5 they say that's different from those, and you can develop
6 it yourself. And then I'm sure you can do that.

7 MR. HOOD: Okay.

8 THE COURT: But I don't know how I can help you any
9 more than that. I'll be glad, I'll be glad for you to look
10 further into that as it develops. But I don't see that
11 there's any, there's any violation of the rule, and
12 certainly nothing that would require the intrusion of this
13 court into that process, at least not yet, okay?

14 MS. McCALL-TANNER: Thank you, Your Honor.

15 THE COURT: All right, anything further, Mr. Hood?

16 MR. HOOD: I think that covers them all.

17 THE COURT: All right, thank you.

18 Folks, the jury will be brought in in the morning at
19 9:30, and I think we'll be ready, on the basis of this, to
20 go immediately into the opening, the beginning of the
21 trial. The jury will be brought in. I will appoint a
22 foreperson. They will be sworn. I will make some brief,
23 introductory comments, and allow you all brief opening
24 statements, and we'll begin the trial in the morning at
25 9:30. Everybody ready?

1 MS. McCALL-TANNER: Yes, sir.

2 THE COURT: All right, thank you all. We'll stand
3 aside in this case until 9:30 tomorrow morning.

4 (WHEREUPON, THE CASE IS AT EASE.)

5 TUESDAY, JULY 27, 2010

6 (COURT RESUMES AT 9:34 A.M.)

7 THE COURT: Thank you, ladies and gentlemen. Please
8 be seated. Good morning.

9 Ms. Tanner, is the state ready to proceed?

10 MS. McCALL-TANNER: State's ready, Your Honor.

11 THE COURT: Thank you.

12 Mr. Hood, is defense ready?

13 MR. HOOD: Yes, Your Honor.

14 THE COURT: Good.

15 Bring us a jury, please.

16 (THE JURY ENTERS AT 9:37 A.M.)

17 THE COURT: Ladies and gentlemen, good morning and
18 thank you for your prompt return now as we are ready to
19 start the trial of this case.

20 Ms. Maury, I have asked you to sit in that chair
21 because I want you to serve as the forelady of this jury.
22 All that means is that you will be the jury's spokesperson
23 here in court. When the trial is over, you'll be
24 responsible for writing the verdict of the jury, but I'll
25 tell you more about that because you have to do it. Don't

1 worry about that now. All you need to remember is you've
2 got a reserved chair, that chair. You'll use that
3 throughout the trial of this case.

4 Ms. Nix and Ms. Williams, ladies, you will occupy
5 those two chairs throughout the trial of this case unless
6 some time during the trial I ask you to sit somewhere else,
7 okay?

8 Ladies and gentlemen, the rest of you don't have
9 reserved seats. You've got general admission tickets.
10 You've got to do the best you can when you come in from
11 time to time. But all the seats are equally comfortable,
12 and they give you an equal view and hearing of what's going
13 on in the courtroom. And just a suggestion, it's always a
14 good idea to move all the way down before you sit in a
15 chair because if you leave an open chair beyond you,
16 somebody's going to have to step on your toes to get to it.
17 That could get right painful during the course of a trial.

18 You are going to be sworn in now as jurors, ladies and
19 gentlemen, and I want you to pay particular attention to
20 the oath that you are about to take as jurors. It is a
21 time honored, it is an artfully worded oath. It explains
22 to you very concisely, but at the same time very completely
23 what your responsibilities as jurors are going to be in
24 this case. And I'm going to be reminding you during this
25 trial and after this trial as to exactly what you have

1 sworn to do as jurors in this trial.

2 Mr. Clerk.

3 CLERK OF COURT: Yes, sir.

4 Please stand and raise your right hand.

5 (WHEREUPON, THE JURY IS SWORN.)

6 THE COURT: Before we begin the trial, ladies and
7 gentlemen, let me take just a few moments to explain to you
8 the procedure that we will follow during the course of this
9 trial. And hopefully that will give you a higher degree of
10 comfort in assuming the responsibilities which you have
11 just sworn an oath to do.

12 When I finish talking to you in just a moment, Ms.
13 Tanner on behalf of the state is going to stand before you
14 and make a brief opening statement. And in that opening
15 statement, she is going to explain to you in something of a
16 preview fashion what this case is all about from the
17 state's point of view. And she might also indicate to you
18 some of what she intends to offer by way of proof in
19 support of the charges that the state has brought in these
20 indictments.

21 When she has finished making her opening statement,
22 Mr. Williams, through his attorney Mr. Hood, has a right to
23 make an opening statement, but he is under no obligation to
24 do so. He doesn't have to do so, and I will tell you why
25 in just a moment.

1 After the opening statements have been made, then you
2 will actually begin to see and hear the presentation of
3 evidence. Evidence, for the most part, will take the form
4 of testimony of witnesses who will take an oath and sit in
5 this chair right here between you and me and will answer
6 questions that the lawyers for both sides will put to them.
7 Evidence may also take the form of photographs or diagrams
8 or documents, something of that nature. I don't know what
9 the evidence is going to be. I have not seen it, but it
10 would not be unusual for those sorts of things to be
11 offered in a case of this sort as evidence.

12 The state will offer its evidence and testimony first.
13 And after the state has concluded the presentation of its
14 evidence and testimony, then the defendant has the right to
15 offer evidence and testimony if he chooses. But once
16 again, he is under no obligation to do so.

17 After all of the evidence has been presented, then the
18 lawyers will come back before you, and they will make their
19 closing argument, their closing statements as they are
20 sometimes called. And after that has been done, then I
21 will instruct you or charge you to tell you what the law is
22 in this particular case.

23 And then after you receive, have received the charge
24 on the law, you will go into your jury room finally to talk
25 about this case among yourselves to deliberate and to reach

1 a verdict.

2 I remind you again that you are not at liberty to talk
3 about this case at any time among yourselves or anyone
4 else, or to read anything that might be in the newspaper,
5 or to expose yourself to any information about this case
6 outside of this courtroom. The oath that you just took
7 said that you would well and truly try this case and render
8 a true verdict according to the evidence and the law.

9 I'll tell you what the law is. The evidence you will
10 hear from this chair and from those documents and from no
11 other resource. And so if you try to find out something on
12 your own about this case, or let somebody else talk with
13 you about in this case, you will have violated the oath
14 that you just took. And I'm sure that you won't do that,
15 but I need to remind you again the importance of that.

16 And on this matter of the evidence, ladies and
17 gentlemen, let me tell you that it's important that you
18 understand the distinction between what is and what is not
19 evidence. The opening statements that the lawyers are
20 going to make, they're not evidence. The closing
21 statements the lawyers will make are not evidence. And the
22 questions that the lawyers will ask are not evidence.

23 Now, all of those things are necessary, and we could
24 not conduct a very orderly trial without those things. But
25 they themselves are not evidence, and your verdict cannot

1 rest on an opening statement or a closing statement or a
2 question. Your verdict must rest on the answer to the
3 question because that comes from a person who testifies
4 under the oath subject to questions by both lawyers. And
5 it is subject to the test of strict proof, along with any
6 items or documents that our law allows in as evidence in
7 the trial of a case.

8 Now, the reason that it's important that you
9 understand the distinction between what is and what is not
10 evidence is this. When it comes to the matter of evidence,
11 you actually are the judges. I think those badges that
12 you're wearing -- I can't see them -- probably say juror.
13 Or if they don't say juror, implicit in what is on there is
14 the fact that you are a juror obviously. But on the matter
15 of evidence, you're actually a judge because when it comes
16 to evidence, you have to judge the truthfulness and the
17 weight and the value of the things that are presented to
18 you.

19 Now, I'm the judge of the law, and so I've got the
20 easy job. All I've got to do is to decide as a matter of
21 law whether somebody can tell you something from this
22 witness chair, or whether you can look at that photograph
23 or not. But once I decide that you can hear the testimony,
24 or that you can look at the photograph or some other item
25 of evidence, from that point on what you do with it is

1 entirely up to you. You've got the right to decide whether
2 you believe it or not, how truthful it is, what weight you
3 should give to it. And that means you've got to pay
4 attention. You've got to keep an open ear, as well as an
5 open mind.

6 You won't have any trouble doing that, but I remind
7 you of the importance of doing that. And whether you've
8 ever served as a juror before, and whether this is just the
9 second day you've ever been in a courtroom in your life or
10 not, you are still more than qualified to make the
11 decisions that you are going to be asked to make in this
12 particular case because ever since you have been able to
13 think on your own and make decisions for yourself, you've
14 been using the same abilities, the same qualities, the same
15 characteristics that we ask you to make in this particular
16 case.

17 Any time there is an issue that is in dispute, any
18 time a question exists as to whether or not you're going to
19 believe something, how do you decide? Well, you know how
20 you decide. You use your good common sense; you use your
21 sense of logic and reason. You apply your experiences in
22 life.

23 It is a simplistic example, and I use it perhaps not
24 meaning to demean anything that will go on in this
25 courtroom because the issues here are far more important

1 than this example suggests. But if any of you have more
2 than one child, or if you've got more than one grandchild,
3 you know exactly what I mean when the two of them come to
4 you and one of them says he hit me, and the other says no,
5 she hit me first. Well, you've got to make a decision
6 somehow or another. And somehow or another you do it. You
7 put the questions in your mind, you let them run through
8 the machinery of your common sense, and you reach a
9 decision as to where the truth lies.

10 And as I say, that is an overly simplistic example of
11 what you'll be doing in this particular courtroom. And
12 you're qualified to do it, and I'm capable that you will do
13 it.

14 I told you a few moments ago that the defendant in
15 this case does not have to make an opening statement. And
16 he doesn't have to offer evidence and testimony if he
17 chooses not to because as I indicated to you yesterday
18 before you were selected as jurors in this trial, Mr.
19 Williams has pled not guilty to the charges contained in
20 these three indictments. And in the law, when a person
21 pleads not guilty to the charges in the indictments, he is
22 presumed in law to be not guilty of those charges. He is
23 presumed to be innocent of those charges.

24 And that means that he doesn't have to take the stand
25 and try to convince you that he is not guilty of these

1 charges. He doesn't have to bring in other witnesses to
2 try to convince you that he is not guilty of these charges.
3 He is presumed in law to be innocent of the charges, and so
4 the burden of proof then rests upon the state -- not just
5 in this case but in every case of this sort brought in
6 these courts -- to prove that he is guilty beyond a
7 reasonable doubt.

8 When this trial is over, I will explain to you in
9 greater detail what we mean by that, burden of proof beyond
10 a reasonable doubt. But for our purposes right now in
11 these introductory remarks, let me tell you that proof
12 beyond a reasonable doubt is proof that leaves you firmly
13 convinced of the defendant's guilt.

14 And so after you have heard all of the evidence and
15 testimony in this case, if you are firmly convinced that
16 the defendant is guilty, then the state has met its burden
17 of proof, and would be entitled to a verdict of guilty on
18 the charge. But if after hearing all the evidence and
19 testimony you think there's still a real possibility that
20 he is not guilty of the charge, then the state has not met
21 its burden of proof. And in that case, the defendant would
22 be entitled to a verdict of not guilty.

23 So, you'll be listening to the evidence and the
24 testimony in this trial. It will probably last for a
25 couple of days. And then you'll go back in that jury room,

1 and you'll talk about it. And after your discussions have
2 ended, you will write a verdict which will express your
3 opinion as to whether or not the state has met its burden
4 of proof in these charges.

5 One thing final as a matter of housekeeping.
6 Sometimes jurors may want to take notes. I don't think you
7 have to take notes. This is not going to be a lengthy
8 trial, and it's not the sort of document-heavy trial that
9 is going to confuse you with a lot of numbers and figures
10 and dates and things of that sort, I wouldn't think. But
11 if you feel that you need to take notes, you can take
12 notes, but I must give you some specific instructions about
13 what you must do in that.

14 First of all, I remind you that you will take notes
15 only of the testimony offered from the witness stand
16 because that's the evidence. You don't concern yourself
17 with taking notes during opening and closing statements
18 because that's not evidence. You don't write down
19 questions; you write down answers to the best of your
20 ability. And you leave your notes in the jury room at
21 night. You don't take them home with you.

22 And, frankly, while I think your collective wisdom
23 will be -- and your collective memory will serve you just
24 as well as notes, if in discussions and deliberations
25 someone else has a note that says one thing and your memory

1 says something else, you go with your memory. You're not
2 to be dissuaded or persuaded either way by someone else's
3 notes if your memory is different on those things.

4 I offer those not as a suggestion you take notes
5 because, as I say, I don't encourage it. But if you feel
6 like you need that, I don't prohibit it either.

7 Ladies and gentlemen, thank you very much for your
8 attention to these remarks. Now please listen to the
9 lawyers as they make their opening statements.

10 MS. McCALL-TANNER: May it please the court, Your
11 Honor?

12 THE COURT: Yes, ma'am.

13 MS. McCALL-TANNER: Mr. Hood.

14 MS. McCALL-TANNER: Ladies and gentlemen of the jury,
15 this case is about an eighty-one year-old man, Jack Koch.
16 He was beaten, he was robbed, and he was killed in his own
17 home by this man, Kenneth Williams. That's what this case
18 is about.

19 And before we start, I need you to clear your mind of
20 everything you think you've learned on TV. If you watch
21 *CSI*, if you watch *Law and Order*, and I watch it. I admit
22 it, but I need you to clear your mind of what you think
23 you've learned from those shows because the judge is going
24 to inform you at the end of this trial what the law is, and
25 you'll be surprised how different it is from television.

1 So, clear your mind of that. Listen to what the judge
2 tells you about the law, and apply to the facts that you
3 will hear during this case because I promise you that it
4 won't be a nice, sixty-minute time slot package with three
5 commercial breaks. Doesn't work like that.

6 The judge is going to describe for you and tell you
7 what the law is on three separate charges. In this case,
8 the charge of murder has been brought against Kenneth
9 Williams. Now, murder is not always what you see on TV.
10 It's not some guy lying in wait the bushes and jumps out
11 and shoots you. That is murder, yeah. But there are so
12 many other ways to be charged with murder.

13 You will hear that the law of murder means the killing
14 of another person with malice aforethought. What is
15 malice? The judge will define for you what is malice.
16 Malice is something -- it is a depraved heart. When you
17 kill someone with a depraved heart, when you have malice
18 aforethought, that's murder.

19 Second charge, you'll hear the law of burglary in the
20 first degree. Now, clear your mind of burglary. What you
21 see on television, the guy in the stocking cap crawling
22 through the window in the middle of the night while the
23 family sleeps, is that burglary? Sure, that's burglary,
24 but there are other ways to commit burglary.

25 Burglary is the unlawful entry into another person's

1 dwelling or building, and there are degrees of burglary.
2 In this case, he's been charged with burglary in the first
3 degree.

4 So, what makes it first degree? Well, first, the
5 entering is unlawful into a dwelling, into a home.
6 Entering had to be unlawful into a home. Another thing is
7 it could have occurred at nighttime. That makes it first
8 degree. It also makes it first-degree burglary if during
9 the commission of the burglary, someone not involved in the
10 crime is injured. In this case Jack Koch. That's
11 first-degree burglary.

12 Then you'll hear the third charge, which is a
13 common-law robbery, also referred to as a strong-arm
14 robbery. That is different than what you would think of on
15 TV about an armed robbery where a gun or a knife is used.
16 In this case, it's a strong-arm robbery, and what that
17 means is that physical force was used to commit the
18 robbery. Not a weapon, but actual physical force.

19 Again, Kenneth Williams has been charged with all
20 three of these charges, these offense: murder, burglary in
21 the first degree, and strong-arm robbery.

22 You're going to hear from various witnesses in this
23 case. They come from all walks of life, all varieties.
24 And you're going to hear that on the early-morning hours of
25 September 9, 2007, right here in Beaufort County in the

1 town of Port Royal, you'll hear that James Koch came home
2 from work early-morning hours. Walks into the house, and
3 he finds his father, eighty-one year-old Jack Koch, face
4 down in a pool of his own blood in the foyer of his own
5 house.

6 You're also going to hear from witnesses that on the
7 same night, the night hours of September 8th leading up to
8 the early-morning hours of September 9, 2007, Kenneth
9 Williams was partying. Was hanging with his friends, and
10 you'll hear that those friends were Timothy Skinner and two
11 females, Jenny Chase and Lisa Schoenemann. You'll hear
12 from those two ladies. They were partying that night.
13 Drank beer, drank liquor, smoked some crack. They were
14 having a party, and at some point they gave out; they ran
15 out of party goods, and they needed some money. They had
16 to keep the party going, but they needed money to keep that
17 party going.

18 Now, Kenneth Williams knew Jack Koch. Kenneth
19 Williams had done yard work for Mr. Koch a couple of times.
20 So, Kenneth tells the group I think I know where we can get
21 some money. You guys want to keep partying? I think I
22 know where we can go to get that money.

23 So, all four of these people load up into Timothy
24 Skinner's van. You'll hear they drove over to Mr. Koch's
25 house. They knock on the door. Mr. Koch answers the door.

1 He's home, but he's not too happy about seeing these people
2 at his house that evening. Starts telling them look, just
3 leave. You need to leave. They offer, well, we'll have
4 one of the girls dance for you. Then he gets angry and he
5 yells: leave or I'm calling the cops.

6 Well, that means it's time for Plan B because they
7 came for money. They didn't come and knock on the door and
8 leave. They came for money because the party is not over
9 yet, and Mr. Koch is standing in the way.

10 So, what happens under Plan B? Well, what happens
11 next: malice, depraved heart. Jack Koch, eighty-one year-
12 old Jack Koch is forced back into his own home. Jack Koch
13 is grabbed by his shirt. It is ripped. He is punched in
14 the face. He is beaten about the head. His head is
15 slammed into a wall, creating a hole in his own home.

16 You will hear from the pathologist, and he'll describe
17 the injuries to eighty-one year-old Jack Koch. You'll hear
18 the extent of it. You'll hear how traumatic it was. He'll
19 tell you that the stress and the trauma of this beating
20 caused Jack's eighty-one year-old heart to beat wildly.
21 His heart got out of control, the excitement from the
22 beating. You'll hear that that arrhythmia caused him to
23 have a heart attack. And you'll hear that within seconds,
24 he fell to the floor.

25 And then you'll hear that while he was on the floor,

1 on his floor dying, they ripped his wallet out of his pants
2 pocket. And you know how much money they got for their
3 party at the expense of Jack Koch's life? \$57. That's how
4 much Jack Koch was worth on September 9, 2007.

5 But the party kept going. They continued partying
6 that night when they left Jack Koch's house when they left
7 him in a pool of blood on his floor dead.

8 On September 9, 2007, Kenneth Williams committed
9 robbery by force, he committed burglary in the first
10 degree, and he committed murder. He killed Jack Koch
11 September 9, 2007. Jack, Jack's heart was no match for his
12 depraved heart on September 9, 2007.

13 Now, the judge told you what your duty is. Your duty
14 is to focus. Your duty is to listen to the evidence,
15 listen to the witnesses. That's what you have to do. I
16 have the burden of proof. Burden of proof is all on me.

17 You heard that Mr. Hood, defense counsel, doesn't have
18 to say a word. I have to prove the case. He can sit
19 silently if he wants to. He can get up, and he can try to
20 muddy the water for you. Mr. Hood wants you to look over
21 here and look over here.

22 I want you to listen to the evidence, and I want you
23 to look here at Kenneth Williams. And I want you to listen
24 to the facts, and I want you to bring back a verdict that
25 speaks truth and justice in this case. Thank you.

1 THE COURT: Thank you, Ms. Tanner.

2 Mr. Hood.

3 MR. HOOD: Thank you, Your Honor.

4 Is this okay? We're supposed to sort of stand so that
5 we don't have our back to the court reporter because she
6 has difficulty hearing when our back's directly to her, and
7 my, my voice is changing because I, like so many of you,
8 are getting older, okay? And so my, my, my volume is
9 changing and, and things of that nature.

10 But muddy waters, you know, I thought they were a
11 band. You know, there's a guy. I think his name is Muddy
12 Waters. Plays out of Louisiana. I think it's probably New
13 Orleans, somewhere like that maybe.

14 There's no way that we're going to do -- and, and I'm
15 not here to pull anything over your eyes. I'm here to show
16 you that, in fact, Sammy -- and I call him Sammy. You're
17 going to hear a bunch of names during the course of this
18 trial, so let me make you familiar with those names so
19 you'll understand who we're talking about.

20 That is Kenneth Williams there, my client. Kenneth
21 goes by the name of Sammy with a lot of people. He also
22 has a nickname which is Shag. So, you will either hear --
23 when they say Kenneth, he's still Kenneth, Kenny Williams.
24 When you hear Sammy, that, that's the same person. And
25 when you hear Shag, that's the same person. So, don't get

1 confused with the names because we're only talking about
2 the same person, and that's Kenneth Williams.

3 Now, Ms. Tanner's given you quite a story, quite a
4 story. And I expect her to prove that story to you because
5 she says, you know, my job is to muddy the waters, and I
6 don't understand that because I'm here to seek the truth.
7 And I think we're all here to seek the truth, and that's
8 what we're all about. That's why you're here. We're here
9 because we want to make absolutely, positively sure that
10 Kenneth Williams is given a fair trial, and that the person
11 who did the attacks is discovered. And I think after
12 you've heard all of this evidence that you're going to hear
13 during the course of this trial, you're going to find that
14 Kenneth Williams is not that person, not that person, not
15 that person at all.

16 There are a variety of people who are going to come
17 and testify. I selected all of you for one purpose, and
18 that is hopefully you will use your good common sense and
19 your knowledge of the ways of the world, the ways of the
20 world. Why do people do the things they do? What
21 motivates people?

22 When somebody says we're going to dance for you, I
23 want you to use your good common sense and say that's not
24 what they were going to do. Think, okay? Because these
25 people have told story after story after story, all of them

1 that you're going to hear from that witness stand. I think
2 one of the witnesses listed by the state that you guys were
3 asked about if you knew is Kenneth Skinner. I hope Kenneth
4 does take the stand, but I don't know whether he will or
5 not. That's the state's witness. So, they're the ones
6 that call the witnesses. They're the ones that have to
7 prove that Kenneth Williams committed these crimes.

8 We don't have to prove anything. Kenneth Williams has
9 already given statements to the police. He gave them a
10 full statement with everything included about what
11 happened. And guess what? The state didn't like that
12 statement. It wasn't -- they didn't have anything to
13 really corroborate. They needed something to be able to
14 say positively that this person was in the house as opposed
15 to this person.

16 So, what they had was they had some blood inside of
17 the house that they found. And lo and behold, it matched
18 Sammy's blood, Kenneth Williams. So, now they know that
19 Sammy was in the house. So, it had to be Sammy. It could
20 not have been Mr. Skinner because they need to be able to
21 corroborate somebody's statement, and that's the only way
22 they can do it. So, they picked Sammy and go after him.

23 Now, Sammy gave them an explanation as to what
24 happened, and why his finger was cut, this, that, and the
25 other. The whole nine yards. I need for you to listen

1 very closely to the evidence, to all of the testimony
2 concerning where this blood was found, where this blood was
3 found, and what the theory is that the state has as far as
4 how Sammy cut his finger and things of that nature.

5 You're not going to hear this stuff. I'm going to
6 tell you right now. You're not going to hear all this
7 stuff because they can't prove it, okay? The only thing
8 they can show is that they have three witnesses who all
9 tell different stories, that have told three different
10 stories. They tell one story as much as they want to, and
11 then they tell another story which contradicts the story
12 before. And then they tell a third story which contradicts
13 the other two statements. There you go.

14 So, you guys are going to have to decide which one you
15 believe. But you really don't have to because you're going
16 to use your good common sense. And you're going to decide
17 this based upon what you think somebody has to gain, and
18 what you think -- who would be insulted, who would be
19 offended by what Mr. Koch says because something happens
20 that triggers somebody to go after Mr. Koch.

21 Sammy worked for him. Sammy had been working for him.
22 Mr. Koch paid Sammy. Sammy rode with him in his truck. He
23 would take Sammy home, take Sammy wherever he needed to go.
24 Sammy depended upon him because Mr. Koch paid him; he paid
25 him to do work for him.

1 These other people didn't work for him. Well, I say
2 they didn't work for him. You'll have to decide whether or
3 not the word work is the operative word as to what they may
4 or may not have done for Mr. Koch.

5 This is going to be an extremely difficult trial to
6 control some of the language that you're going to hear, and
7 some of the things that you're going to hear are going to
8 disturb you. You're not going to like some of the things
9 that you hear, and -- but you're going to have to hear it
10 because that's just the way it is. I mean, this happened
11 and there's no way getting around it. What brought all
12 these people there that particular night to Mr. Koch's
13 house was because of Mr. Koch's interest in sexual
14 entertainment from young ladies, okay?

15 Sammy was out riding one day with Mr. Koch, the day
16 before this event occurred, in a vehicle, Mr. Koch's
17 vehicle. They had just finished work. Sammy had finished
18 work. Mr. Koch had paid him, and now he was taking Sammy
19 out to his place. But before that, Mr. Koch wanted to go
20 and see a young lady and see if Ms. -- if Sammy was able to
21 secure a woman for him.

22 So, they started riding around to all these locations
23 where Sammy knew of a female that might be able to provide
24 those services for Mr. Koch. And lo and behold, they made
25 a couple of stops, and -- but people weren't -- the women

1 were not there, and finally they get stopped by a deputy.
2 But interestingly enough, before they got stopped by the
3 deputy, on one of their stops looking for this woman, they
4 went by Timothy Skinner's house to see if there was a
5 person there. But Mr. Skinner wasn't home either, and
6 neither was the females.

7 So, they drive off and as they're driving off, they
8 get stopped by the police, by a deputy. This deputy stops
9 Mr. Koch for speeding or whatever it is. And he becomes
10 very -- I don't know. He, he doesn't like what he sees.
11 He thinks that this obviously is some kind of drug-related
12 activity that's going on here with -- between Mr. Koch and
13 Sammy.

14 And he says to Mr. Williams, Sammy, he says what are
15 you doing here. Why are you riding around with Mr. Koch?
16 And Sammy says we're looking for a house cleaner, a woman
17 to clean house. He becomes even more suspicious that this
18 is drug related. But he can't prove anything, so he lets
19 them go.

20 Mr. Koch gets several tickets, which eventually one of
21 those tickets leads the police right to Sammy because
22 Sammy's mentioned in the report because of this deputy's
23 belief there was some kind of drug dealing going on between
24 Mr. Koch, who's an eighty-year-old man, and Samuel, you
25 know.

1 What it was was Sammy was black. Sammy's black. Mr.
2 Koch is white. That's the only reason that this drug
3 business came up, and the deputy's white. That's the only
4 reason that this mess even started, you know, with respect
5 to drugs and all this other kind of stuff, and that's why
6 we're here now.

7 You will find that Sammy is the only black involved in
8 this case. Everybody down there circled the wagons,
9 including the state. They've all circled the wagons around
10 Sammy. Get Sammy. Sammy had to have done it because he's
11 a bad guy obviously because he's black, and he looks mean.
12 You look at him. Kept saying Sammy's mean. He's got this
13 big face, you know, so that makes him mean. That makes him
14 the person who did this particular bad deed.

15 Sammy called Mr. Koch Pops. Worked for Pops. He
16 didn't have a motive to even want to hurt Mr. Koch because
17 that was the man who pays him. He works for him. Why
18 would you hurt the thing that's keeping you in money and
19 keeping you alive?

20 Ask yourself that question as this case goes along
21 because that's going to be the most important thing in this
22 case. Who was offended when the young ladies were turned
23 down? Get those unks out of my yard.

24 Thank you.

25 THE COURT: Thank you, Mr. Hood.

C. McGUIRE - DIRECT EXAMINATION BY MS. McCALL-TANNER 133

1 Ms. Tanner, you may call your first witness.

2 MS. McCALL-TANNER: Thank you, Your Honor. The state
3 calls Officer Charles McGuire.

4 CHARLES T. McGUIRE, JR., HAVING
5 FIRST BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

6 BAILIFF: Please speak directly into the microphone.

7 WITNESS: Okay.

8 CLERK OF COURT: State your full name and spell your
9 last name, please.

10 WITNESS: Officer Charles T. McGuire, Jr. McGuire,
11 M-C-G-U-I-R-E.

12 DIRECT EXAMINATION BY MS. McCALL-TANNER:

13 Q. Good morning, Officer McGuire.

14 A. Morning.

15 Q. Where are you employed?

16 A. Port Royal Police Department.

17 Q. And how long have you worked for the Port Royal Police
18 Department?

19 A. About three and a half years.

20 Q. And what are your duties at the Port Royal Police
21 Department? What do you do all day?

22 A. All day I'm a culvert enforcement officer and also
23 enforce state laws.

24 Q. And have you worked in the capacity of what we would
25 think of as a first responder?

1 A. Yes.

2 Q. Now, I'm going to ask you about a date, September 9,
3 2007. Were you working the, the early morning hours of
4 that date?

5 A. Yes.

6 Q. And were you on patrol?

7 A. Yes.

8 Q. And were you dispatched to an address on 16th Street
9 in Port Royal?

10 A. Yes.

11 Q. And did you respond to that location?

12 A. Yes.

13 Q. Now, is that address in the Town of Port Royal?

14 A. Yes.

15 Q. And also located within Beaufort County?

16 A. Yes.

17 Q. Can you tell me about what time you were dispatched to
18 that address?

19 A. I'd say about 2:23 in the morning.

20 Q. A.M.?

21 A. Yes.

22 Q. And once you arrived on the scene, what do you see?

23 A. I saw Mr. Koch. We met him first and he's outside and
24 then ---

25 Q. The son, you say?

C. McGUIRE - DIRECT EXAMINATION BY MS. McCALL-TANNER 135

1 A. The, the son, yes.

2 Q. All right.

3 A. And then we went inside. We saw the older guy, kind
4 of heavy set, laying in the living room, living room and
5 the hallway. He's laying there and not responding. Jamie,
6 she was the other officer that responded to me, with us,
7 she checked his pulse. No pulse. I checked the pulse
8 also. He's cold to the touch. We did a search for any
9 suspects in the, in the house. No suspects were found in
10 the house, and after that, I secured the scene and EMS and
11 fire responded also. And that's pretty much it.

12 Q. Now, once you had cleared the house for suspects, what
13 would be your duty on the scene?

14 A. I would -- brought it secure. Make sure nobody comes
15 in or out. If somebody comes in, then I write their name
16 down.

17 Q. And did you do that on this scene?

18 A. Yes.

19 Q. So, once you had cleared the suspects, located the
20 body, do you do anything else? Do you touch anything or
21 collect any evidence?

22 A. No, sir -- no, ma'am.

23 Q. And who do you turn that scene over to?

24 A. The detectives.

25 Q. Okay. Were you able to get an identification of the

1 victim on the scene?

2 A. I can't recall.

3 Q. But you say you did talk to a son?

4 A. Yes.

5 Q. With a last name Koch?

6 A. Yes.

7 MS. McCALL-TANNER: Thank you, Officer McGuire.

8 Please answer anything defense counsel has.

9 THE COURT: Mr. Hood.

10 MR. HOOD: I only have a couple questions.

11 CROSS-EXAMINATION BY MR. HOOD:

12 Q. Did you see any valuable objects in the house when you
13 were in there?

14 A. I can't recall.

15 Q. Well, did you notice any jewelry on Mr. Koch?

16 A. No.

17 MR. HOOD: Okay. Thank you.

18 THE COURT: Any follow up, Ms. Tanner?

19 MS. McCALL-TANNER: Just briefly.

20 REDIRECT EXAMINATION BY MS. McCALL-TANNER:

21 Q. To confirm, would that have been your job, to collect
22 evidence from the body?

23 A. No.

24 MS. McCALL-TANNER: Thank you. No further questions.

25 THE COURT: Thank you. Officer McGuire, you can step

S. STRONG - DIRECT EXAMINATION BY MS. McCALL-TANNER

137

1 down.

2 (THE WITNESS EXITS THE STAND.)

3 MS. McCALL-TANNER: State calls Stacy Strong. May
4 this witness be excused, Your Honor?

5 THE COURT: Without objection, Officer McGuire, you
6 can go back to work. Thank you.

7 Ms. Strong, come forward please to be sworn.

8 STACY STRONG, HAVING FIRST BEEN
9 DULY SWORN, TESTIFIES AS FOLLOWS:

10 BAILIFF: Speak directly into the microphone, please.

11 WITNESS: I will. Thank you, sir.

12 CLERK OF COURT: State your full name and spell your
13 last name for us, please.

14 WITNESS: Stacy Deann Strong. S-T-R-O-N-G.

15 DIRECT EXAMINATION BY MS. McCALL-TANNER:

16 Q. Good morning, Ms. Strong.

17 A. Good morning, ma'am.

18 Q. Where are you employed?

19 A. I am employed with Parris Island Fire and Rescue as a
20 paramedic.

21 Q. And prior to your employment with Parris Island, where
22 were you employed?

23 A. Beaufort County EMS, ma'am.

24 Q. And how long did you work for Beaufort County EMS?

25 A. Three years total.

S. STRONG - DIRECT EXAMINATION BY MS. McCALL-TANNER 138

1 Q. And were you working there in September of 2007?

2 A. I was.

3 Q. What kind of training do you have to perform your job?

4 A. It's a technical school what you go to, and you learn
5 the basics. I was a basic EMT at the time, and just learn
6 the -- how to revive people if they're, you know,
7 unconscious and things like that.

8 Q. Now, is there a difference between an EMT and a
9 paramedic?

10 A. Yes, ma'am.

11 Q. And what would the difference be? What are the
12 levels?

13 A. My level at the time as a basic, was just the basic
14 life saving skills. Stop bleeding and stuff like that. As
15 a paramedic you're able to administer drugs and cardiac
16 monitor and stuff like that.

17 Q. And you are now a paramedic?

18 A. Yes, ma'am.

19 Q. Now, in general, when you get a call out to a scene
20 and, and the report is an unconscious victim, what, what's
21 the first thing you do?

22 A. Check for a pulse, see if they're breathing.

23 Q. And what else are you looking for?

24 A. Sign of life.

25 Q. And what would be a sign of life?

S. STRONG - DIRECT EXAMINATION BY MS. McCALL-TANNER 139

1 A. If a person was breathing or a pulse, able to respond
2 to any move -- their eyelids, look at you, move. Any
3 number of things.

4 Q. Is there any equipment that you would use and -- to
5 assist you in searching for life if those signs were ---

6 A. Yes, ma'am.

7 Q. --- say very shallow?

8 A. We have a cardiac monitor.

9 Q. And how is a cardiac monitor used?

10 A. There's four leads on there that you place on the
11 individual. They're called limb leads. You place them on
12 there and turn it on. It will read out any electrical
13 activity from the heart.

14 Q. Now, going back to September 9, 2007, were you called
15 out to an address on 16th Street in the Town of Port Royal?

16 A. Yes, ma'am.

17 Q. And when you responded there, what do you find?

18 A. It appears to be an unconscious man laying on the
19 floor ---

20 Q. And when ---

21 A. --- face down.

22 Q. When you find him, what do you do? What kind of
23 condition is he in?

24 A. He is not responsive. He does not have a pulse; he's
25 not breathing. There's a pool of blood just underneath his

1 mouth.

2 Q. And what, if any, test do you perform on him?

3 A. We hooked him up to the cardiac monitor to see if
4 there's any signs of electrical activity from his heart,
5 and there were none.

6 Q. So, there was absolutely no sign of life on him?

7 A. No, ma'am. None.

8 Q. Were you able to identify the patient? Did you get
9 identification on him for your report?

10 A. Yes, ma'am.

11 Q. And do you recall your patient's name?

12 A. Mr. Koch, I believe.

13 Q. K-O-C-H?

14 A. Yes, ma'am.

15 Q. All right. So, when you say there's no electrical
16 activity in the heart, what is that called?

17 A. Asystole, flat line. There's no, nothing at all.

18 Q. So, at that point is there anything you can do for a
19 patient in that condition?

20 A. There are things that you can do, but his situation,
21 no, not really. I mean he was cold to the touch and ---

22 Q. So, in his situation, what do you mean by his
23 situation?

24 A. He was dead on arrival.

25 Q. So, there was no treatment or transportation of Mr.

S. STRONG - DIRECT EXAMINATION BY MS. McCALL-TANNER

141

1 Koch to a medical facility?

2 A. No, ma'am.

3 Q. Would that have made any difference in his outcome?

4 A. No, that would have not.

5 Q. And so at that point, who do you turn the body over
6 to?

7 A. Since the Port Royal P.D. were already on scene, we
8 turned it over to him. But at the time, Kirk Cookland was
9 the corner, and we contacted him.

10 Q. And he handles transportation of the body?

11 A. Yes, ma'am.

12 MS. McCALL-TANNER: Okay. Thank you, ma'am.
13 Please answer anything defense counsel has.

14 WITNESS: Okay.

15 THE COURT: Mr. Hood, cross-examination.

16 MR. HOOD: I don't have any questions.

17 THE COURT: Thank you.

18 WITNESS: Okay. Yes, sir.

19 THE COURT: Ms. Strong, you can step down.

20 WITNESS: All right. Thank you.

21 THE COURT: She may be excused.

22 MS. McCALL-TANNER: Thank you, Your Honor.

23 (THE WITNESS EXITS THE STAND.)

24 THE COURT: Ms. Tanner.

25 MS. McCALL-TANNER: The state calls James Koch.

1 THE COURT: Mr. Koch, come forward please, sir, and be
2 sworn.

3 JAMES KOCH, HAVING FIRST BEEN DULY
4 SWORN, TESTIFIES AS FOLLOWS:

5 BAILIFF: Speak into the microphone if you would.

6 WITNESS: Yes, sir.

7 CLERK OF COURT: State your full name and spell your
8 last name for us, please.

9 WITNESS: My name is James Arthur Koch. K-O-C-H.

10 DIRECT EXAMINATION BY MS. McCALL-TANNER:

11 Q. Good morning, Mr. Koch.

12 A. Morning.

13 Q. Mr. Koch, can you tell the jury how you know or are
14 related to Jack Koch?

15 A. Jack's my father.

16 Q. And can you describe for the jury your relationship
17 with your father at the time he died?

18 A. I had just recently moved to Port Royal from Maine,
19 and my father welcomed me to the home, and I had been
20 living there probably three weeks before the incident.

21 Q. And I guess -- would you characterize your
22 relationship with your father as always being close?

23 A. Always? No. When we were in Maine -- my mother
24 passed in '97, and we were living in Maine at the time.

25 There was some issues between that, between my father and

J. KOCH - DIRECT EXAMINATION BY MS. MCCALL-TANNER

143

1 I. But over the course of the last ten years, before I
2 moved down to South Carolina in '07, we had worked on that
3 relationship. So, it was building. So, it was a -- to the
4 point where he welcomed me back, you know. He welcomed me
5 home to his house. I had lost my job in Maine and was
6 looking for employment in South Carolina.

7 Q. And so you were actually living with your father at
8 the time?

9 A. Yeah, for about three weeks.

10 Q. And what kind of work were you in? Did you find work
11 in South Carolina?

12 A. No, I work in Savannah. I'm in food and beverage, a
13 restaurant manager. Have been for twenty plus years.

14 Q. And were you working at the time of your father's
15 passing?

16 A. Yes, ma'am.

17 Q. Tell us a little bit about your father's habits, about
18 his home.

19 A. I don't know if you're familiar with the term a
20 hoarder. My father was a pack rat. He was a Depression
21 age child. So, he grew up during the Depression and he
22 knew the value of tools, he knew the value of stuff. But
23 he liked to keep his stuff and not throw his stuff away.
24 So, throughout his house, it was a lot of paths to get
25 through to one room to another, including the front porch.

1 It made my mother quite mad actually because his stuff kept
2 expanding.

3 Q. Yeah, and at the time you were living with him, was
4 the home in that condition?

5 A. Yes, ma'am.

6 Q. And were you working on that at all with him?

7 A. Yes, ma'am. He's very protective of -- with his
8 stuff, and so I started with the front porch as a point of
9 entry. That's what looks kind of good there. Then people
10 have the impression of how badly it was. But, yeah, I had
11 started organizing and cleaning up the front porch.

12 Q. Is the front porch something that your father spent
13 time on?

14 A. Yes, he spent quite a bit of time out there. Had a TV
15 out there with a fan. He liked the front porch. We liked
16 the front porch, too. It's quite nice. It's got a view of
17 the river.

18 Q. What about other habits such as how did he
19 communicate? Did he have a telephone or cell phone or
20 mobile phone?

21 A. He had a number of cell phones he didn't know how to
22 use. He had a portable phone that he kept on the front
23 porch. There's also one in the kitchen, I believe. And
24 then he had a phone down in the family room, I would call
25 it, he would talk to us occasionally from in Maine. But,

1 yeah, he was, you know, he was out and about.

2 Q. So, did he keep this cordless phone with him when he
3 was on the porch?

4 A. Oh, yeah, it was right there by the chair, his command
5 module we like to call it. He had like a nice Easy Boy
6 chair, reclining chair on the front porch. The fan was
7 next to him. So, if it was hot, he would have the fan on
8 him, the TV. He would have his remote, any kind of -- my
9 father was an engineer with Westinghouse. So, he liked to
10 tinker with things. So, he had screw drivers, wrenches,
11 all kinds of tools at easy reach for him.

12 Q. And what about money? Was your father, was your
13 father a wealthy man?

14 A. Wealthy? No. He was, he was comfortable. He was
15 receiving Social Security, had a nice pension from
16 Westinghouse. He also was a, kind of a silent partner with
17 a restaurant in, in Beaufort. So, he did get a little cash
18 each week from his investment in that restaurant.

19 Q. Is cash something he normally kept on hand?

20 A. Oh, yeah. He, he liked walking around money.

21 Q. Walking around money?

22 A. Yeah.

23 Q. And how much would you say his walking around money
24 would be at any given time?

25 A. Oh, probably a hundred, a couple hundred bucks. He

1 kept most of his money in a clip, in a money clip.

2 Q. And did your father have a wallet?

3 A. Yes, ma'am.

4 Q. And where did he keep his wallet?

5 A. Probably in his back right pocket.

6 Q. And, Mr. Koch, I need to ask you about September 9,
7 2007.

8 A. Yes, ma'am.

9 Q. Did you work that day?

10 A. The night is Sunday, I believe.

11 Q. That's correct. We'll go back to the 8th.

12 A. Yeah, that, that Saturday I worked. I worked in
13 Savannah. I, I had to be at work at 4:00, so I left around
14 3:00.

15 Q. Is that a.m. or p.m.?

16 A. That's in the afternoon.

17 Q. So, you leave home around 3:00 p.m. on the 8th?

18 A. Yes, ma'am.

19 Q. Is that correct? And when you leave -- excuse me,
20 summer cold. Was your father at home?

21 A. Yes, ma'am.

22 Q. And ---

23 A. He was a ---

24 Q. I'm sorry. What was he doing?

25 A. He was asleep in his bedroom.

J. KOCH - DIRECT EXAMINATION BY MS. McCALL-TANNER

147

1 Q. And was anyone else at the home when you left?

2 A. No. No, ma'am.

3 Q. Now, what time did you get off work?

4 A. I think we closed, we closed probably -- we closed at
5 11:45. I got done when everything got cleaned up. I left
6 Savannah around 1:00.

7 Q. And do you come straight home?

8 A. Yes, ma'am. On the way, though, I stopped to pick up
9 some, a beer for watching TV, late night TV, and have a
10 beer.

11 Q. And when you get home, about what time do you arrive?

12 A. It was just a little after 2:00.

13 Q. 2:00 a.m.?

14 A. Yes, ma'am.

15 Q. Okay. So, now you're into ---

16 A. Sunday.

17 Q. --- overnight?

18 A. Yeah, Sunday morning. Early Sunday morning.

19 Q. And when you get home, what do you find? Is
20 everything normal at first?

21 A. No, not really. When I walked into the front porch,
22 the screen door, the storm door to the front porch was not
23 shut. My father was adamant about having that door shut,
24 which was a habit of his. He liked it shut. So, I made
25 note over the time, you know, I don't -- make him happy, I

1 would close the screen door, the storm door, and remember
2 closing it before leaving for work because he was sleeping.

3 And so when I came home that morning, early that
4 morning, the door was not closed. So, I knew something --
5 you know, either he left and didn't close it, but I, I
6 would be pretty sure that he would have closed it if he
7 went out the front door. So, that was strange for me right
8 there.

9 Q. And once you entered the house -- well, when you first
10 enter the house, what area of the house are you in?

11 A. I'm -- well, you walk into the front porch, and then
12 you go through the front door, you're in a living room
13 area.

14 Q. And what do you find there?

15 A. The front door was slightly ajar. So, it wasn't
16 closed all the way, and I noticed a -- well, of course I
17 see my father on the floor. I notice other things that
18 were askew in the house.

19 Q. And you say askew, what do you mean? What did you
20 see?

21 A. There's a fish tank on the left between the hall
22 closet that was knocked aside. It wasn't in its location
23 that it was before.

24 Q. And where exactly do you find your father?

25 A. He's in the entry to the kitchen. You walk through

J. KOCH - DIRECT EXAMINATION BY MS. McCALL-TANNER

149

1 the living room into a doorway that goes to the kitchen.

2 The kitchen and the living room have an adjoining wall, and

3 he's in front of the refrigerator laying face down.

4 Q. Are you able to see anything about his condition?

5 A. I see that he's in a pool of blood.

6 Q. And once you see that, what do you do?

7 A. I go to my father and I push his shoulder. Dad, I

8 call his name, and there's no response. I feel for a

9 pulse. I think I feel one. I -- you know, but he was cold
10 to the touch. I call 9-1-1.

11 Q. Now, and once 9-1-1 arrives, do you -- when the
12 officer arrives, do you talk to them?

13 A. Well, yes, ma'am.

14 Q. Well, let me go back. When you left for work, or this
15 area where your father's -- is that an area where you had
16 worked on cleaning?

17 A. The front porch or the -- where I found him?

18 Q. In that, that foyer area of the front porch.

19 A. Yeah, I had, I had organized some of that for him,
20 yes.

21 Q. And when you left for work, was there any blood on the
22 floor?

23 A. No, ma'am.

24 Q. And, Mr. Koch, do you know the defendant, Kenneth
25 Williams? Have you ever seen him before today?

1 A. Yes, ma'am.

2 Q. And where have you seen him before?

3 A. I seen him around the house, I believe, on two
4 occasions. Once when I first came down and then the Friday
5 before.

6 Q. And what was he doing when you saw him?

7 A. He's doing yard work for us or for dad.

8 Q. Now, did he hang out in your house with your dad? Did
9 you see that?

10 A. No, ma'am.

11 Q. Now, in, in the condition your dad's house was in, did
12 he have guests hanging out in the house?

13 A. No, ma'am.

14 Q. Did he invite people in?

15 A. No. I would say my father was embarrassed by the
16 condition of his house.

17 Q. Now, prior to your father's murder, when was the last
18 time you saw Kenneth Williams?

19 A. It was that Friday before. That would be the 7th.

20 Q. And what was he doing?

21 A. He was just finishing up some work around the yard,
22 maybe some raking, I think.

23 Q. Did you have contact following that incident night
24 with law enforcement to give them information?

25 A. After the 9th? Yes, ma'am.

J. KOCH - DIRECT EXAMINATION BY MS. McCALL-TANNER 151

1 Q. All right, and, and what was that contact all about?

2 A. I had found -- well, they closed the, the house. So,
3 I couldn't go back to the house that Sunday morning, and
4 they cleared the house so I could go back into it late in
5 the afternoon on Sunday. Going through my father's things,
6 I found two traffic tickets.

7 Q. And what information were you able to gather from the
8 traffic tickets?

9 A. From the tickets, it showed that my father had been
10 stopped for expired registration, expired tags, and the
11 other ticket being no proof of insurance I think was the
12 other citation. During that Sunday, I had been at the Port
13 Royal Police Department to look at photographs of, of
14 possible suspects. And when I found the tickets, I brought
15 that to the attention to the Port Royal Police.

16 Q. And why would that ticket be something that you
17 thought was important?

18 A. Because of the time. I knew my father was taking --
19 on Friday, the Friday before on the 7th, my father said
20 hey, I'm going to give Sammy a ride home. All right. I'm,
21 like, okay. And so I only met Mr. Williams a couple times
22 and only briefly. So, I wasn't really quite sure, you
23 know, his appearance or his -- what he really looked like.
24 So, I brought this to the attention to the Port Royal
25 Police as possible hey, this is the guy that did some yard

1 work for my father.

2 Q. And was he listed on these tickets with your father?

3 A. I do not know.

4 Q. Mr. Koch, I wanted to ask you this, but you were
5 present for opening statements. You heard mine. You heard
6 Mr. Hood. You heard some talk about maybe some of your
7 father's likes. Does that shock you in any way?

8 A. No, ma'am.

9 Q. And why would that be?

10 A. My father was a Merchant Marine. He was a single,
11 only child. He had been widowed ten years. For all I know
12 -- my father didn't take any medication. He was very
13 healthy. He was a big guy, 6'3", 200 and maybe 60 pounds.
14 He -- it doesn't surprise me that my father would be
15 interested in meeting some ladies.

16 Q. And how old was your father?

17 A. He was eighty-one.

18 Q. Do you know if he had much of a social life or ---

19 A. No, no. Really just, he would go to breakfast at the
20 restaurant that he was kind of a silent partner in, and for
21 the most part he was a home body.

22 MS. McCALL-TANNER: Thank you, Mr. Koch. Please
23 answer anything defense counsel may have.

24 THE COURT: Thank you, Ms. Tanner.

25 Mr. Hood, cross-examination.

S. STRONG - CROSS-EXAMINATION BY MR. HOOD

153

1 CROSS-EXAMINATION BY MR. HOOD:

2 Q. Now, your father was wearing quite a bit of jewelry
3 that particular day when you found his body. Isn't that
4 correct?

5 A. Yes. My father was, like I said, worked for
6 Westinghouse, and he worked for Westinghouse International.
7 He traveled the world. He procured and kind of invested in
8 jewelry when he was in Saudi Arabia and Egypt.

9 Q. Right, and he was wearing all that, well, quite
10 expensive jewelry the night you found him?

11 A. All of it? No.

12 Q. Well, a large portion of it?

13 A. I think he had a bracelet on.

14 Q. And I think he had a necklace on and a ring and things
15 of that nature. Is that correct?

16 A. Yeah, he had a gold chain, probably a bracelet, and a
17 ring, and a wedding ring, yes.

18 Q. And all, all of that was intact. Isn't that true? I
19 mean no, no -- it wasn't gone. It was there. Is that
20 correct?

21 A. That is correct.

22 Q. Okay, and you didn't find any of the other jewelry
23 missing that, that he had in his house. Isn't that
24 correct?

25 A. That's correct.

1 Q. And you didn't find -- he had a whole bunch of big
2 nice computers there, didn't he?

3 A. No, they weren't nice.

4 Q. Well, he had computers there. Is that safe to say?

5 A. Well, like I said, my father was a tinkerer.

6 Q. Tinkerer.

7 A. And we would have -- he did have five or six hard
8 drives that were all in a different shape of repair.

9 Q. Yeah. But, but there was nothing that you could tell
10 that was stolen, disturbed, or otherwise. Isn't that true?

11 A. That is correct. Nothing else was taken out.

12 Q. Okay. So, now, you indicated that he kept his money
13 in a money clip. Is that correct?

14 A. For the most part, yes.

15 Q. Yeah. Okay, and that would be in his pocket, his
16 front pockets?

17 A. More than likely, yes.

18 Q. Okay. All right. Now, the, the Saturday before you
19 went to work -- okay. What time do you normally leave to
20 go to work on Saturdays?

21 A. Well, in the restaurant business I have a, a swing
22 shift. I work a.m.'s, mids, and, and closes. On the close
23 on that Saturday on the 8th I was scheduled at 4:00. So, I
24 would have left at 3:00. It takes about an hour, forty-
25 five, forty-five, hour to get to Savannah.

S. STRONG - CROSS-EXAMINATION BY MR. HOOD

155

1 Q. And had you gotten home the night before around 2:00
2 or 3:00, or what time did you get home the night before?

3 A. The night before?

4 Q. On Friday.

5 A. On that Friday?

6 Q. Yeah, on Friday.

7 A. Probably Friday, I was probably at home two
8 o'clockish.

9 Q. Two o'clockish, and about what time did you get up on
10 Saturday morning or Saturday day?

11 A. Saturday, I was probably up and out, up and Adam about
12 10:00, 11:00.

13 Q. 10:00 or 11:00. Okay, and where was your father at at
14 that time? Do you know?

15 A. On Saturday?

16 Q. Yeah, Saturday.

17 A. I don't recall.

18 Q. Okay. And, and did he normally drive his truck around
19 freely? I mean, he didn't have any problems driving. Is
20 that correct?

21 A. No, but he didn't go a lot of places.

22 Q. Uh-huh, but he would drive his vehicle. Isn't that
23 correct?

24 A. Certainly.

25 Q. He had a, he had a truck, a old truck or a ---

1 A. It's a 1984 Ford Ranger pickum-up truck.

2 Q. Yeah, yeah, and he use to give Sammy a ride in that
3 particular truck. Isn't that correct?

4 A. The only time I know he had given Sammy a ride was
5 that Friday.

6 Q. Okay, but you were not there all of the times when
7 your father was working with Sammy. Isn't that true?

8 A. That's true.

9 Q. Yeah. Okay. Now, the yard that we're talking about,
10 the next day, did you notice whether or not the yard had
11 been freshly raked or anything of that nature the next
12 day?

13 A. The next day, the 8th?

14 Q. Correct. Well, actually it would have been the 9th.

15 A. Sunday morning?

16 Q. Sunday morning, yeah.

17 A. No. The police had been there Sunday morning.

18 Q. Okay, and did you notice anything unusual about the
19 yard or anything of that nature?

20 A. It had been raked.

21 Q. It had been. Oh, okay, but you don't know who did
22 that on, on Saturday?

23 A. Well, Sammy was there Friday. He raked the yard
24 Friday.

25 Q. He raked the yard Friday. How about Saturday? Do you

S. STRONG - CROSS-EXAMINATION BY MR. HOOD

157

1 know whether or not ---

2 A. No.

3 Q. --- Sammy was even there or anybody else?

4 A. To my knowledge, no, no one else was at the house.

5 MR. HOOD: Okay. Thank you.

6 THE COURT: Ms. Tanner, redirect?

7 MS. McCALL-TANNER: Nothing further, Your Honor. May
8 this witness be excused?

9 THE COURT: Thank you, Mr. Koch. You can step down.

10 (THE WITNESS EXITS THE STAND.)

11 MS. McCALL-TANNER: State calls Detective Ron
12 Wekenmann.

13 THE COURT: Detective Wekenmann, come forward, please,
14 to be sworn.

15 RONALD WEKENMANN, HAVING FIRST
16 BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

17 CLERK OF COURT: Speak directly into the mic.

18 WITNESS: Yes, sir.

19 CLERK OF COURT: State your full name and spell your
20 last name, please.

21 WITNESS: Ronald Wekenmann. Last name's spelled
22 W-E-K-E-N-M-A-N-N.

23 DIRECT EXAMINATION BY MS. McCALL-TANNER:

24 Q. Good morning, Detective Wekenmann. Where are you
25 employed?

R. WEKENMANN - DIRECT EXAMINATION BY MS. McCALL-TANNER 158

1 A. I'm employed with the Port Royal Police Department.

2 Q. And how long have you worked there?

3 A. I've worked for the department for eleven years.

4 Q. And what are your duties or your capacity of work at
5 this time?

6 A. I'm an investigator and chief detective.

7 Q. Okay. Now, in that capacity, were you part of the
8 investigation into Kenneth Williams?

9 A. Yes, ma'am. I assisted Lieutenant Griffith in that
10 investigation.

11 Q. Okay, and would Lieutenant Griffith be what you would
12 call as the primary or case officer?

13 A. Yes.

14 Q. And you assisted?

15 A. Yes.

16 Q. Now, I want to talk about the first time you had
17 contact with Mr. Williams during this investigation. When
18 did that occur?

19 A. Don't remember the exact date, but the first time I
20 had contact with him was in his, basically in his front
21 yard of his home.

22 Q. If I said September 10th, would that sound ---

23 A. Yes, I believe so. It was, it was around September
24 10th.

25 Q. Now, when you had contact, when you first see him,

R. WEKENMANN - DIRECT EXAMINATION BY MS. McCALL-TANNER 159

1 what's he doing?

2 A. He's in his front yard. He's got a bucket of soapy
3 water, and he's cleaning some tennis shoes.

4 Q. And when you say cleaning tennis shoes, what's he
5 doing with them?

6 A. Well, he's, like, scrubbing them with a brush.

7 Q. The bottom or the tops?

8 A. The entire shoe.

9 Q. And do you approach him?

10 A. Not immediately. First, I contact Lieutenant Griffith
11 and told him that I located Kenneth and asked him to
12 respond to the area.

13 Q. And at some point, do you and Lieutenant Griffith,
14 Lieutenant Griffith have a conversation with Mr. Williams?

15 A. Yes.

16 Q. And do you question him about this incident?

17 A. Yes. After we made initial contact with him, we asked
18 him to come to the police department; we took him back to
19 the police department. At that time, Lieutenant Griffith
20 conducted an interview with me present.

21 Q. And during that interview, are you able to get
22 anything specific about this crime that was committed on
23 that day?

24 A. What stands out the most is I actually took a
25 photograph of an injury to one of his fingers, which was

R. WEKENMANN - DIRECT EXAMINATION BY MS. McCALL-TANNER 160

1 very much of interest to us at the time based on evidence
2 we found at the crime scene.

3 Q. And during this conversation, did Mr. Williams give
4 you an explanation for that injury on his finger?

5 A. I believe he said that he, he hurt it gardening, or
6 cut it on a bush or a thorn or something like that.

7 Q. So, on September 10th he tells you injury, the injury
8 to the finger is from a thorn bush?

9 A. Yeah, something like that.

10 Q. All right. Now -- and on that date, is he, is he
11 allowed to leave?

12 A. Yeah. When he completed the interview, he was allowed
13 to leave, walked out of the police department.

14 Q. Now, it appeared on the 19th is when Mr. Williams is
15 arrested for these charges. Is that correct?

16 A. That is correct.

17 Q. And do you have a conversation with him in the jail?

18 A. Yes. I was in the booking room assisting Lieutenant
19 Griffith. Once again, he was completing the warrants, and
20 as I was standing there, Mr. Williams said I, I really need
21 to talk to you. I mean, I have to talk to you now.

22 Q. And this is after he's arrested?

23 A. After he's arrested.

24 Q. He knows what he's being charged with?

25 A. Yes.

R. WEKENMANN - DIRECT EXAMINATION BY MS. McCALL-TANNER 161

1 Q. And what does he say to you?

2 A. He essentially says I'm, I'm not going down for this.
3 He goes -- he told me that another person had done it. He
4 said that, that a man named Skinner did it. He was there
5 with two other people, two females. That he was definitely
6 present when it happened, but all he wanted to do
7 afterwards was get out of there. And then I asked him
8 about the cut on his finger, and he said that, you know --
9 he changed his story now and said, well, I got this trying
10 to pull Skinner off the old man or something to that
11 effect.

12 Q. So, now on the 19th, the cut on the finger occurs at
13 the incident location?

14 A. Correct.

15 Q. And, Officer Wekenmann, at this, at this point are you
16 conducting an interrogation of Mr. Williams?

17 A. No. As a matter of fact, I advised him several times
18 that, you know, during the previous interview he, he said I
19 need to talk to a lawyer. You know, once the interview got
20 too much for him, he said I'd like to talk to a lawyer. We
21 ended that interview.

22 During this interview, I said now, Mr. Williams,
23 you've already asked for an attorney. I can't ask you any
24 questions. You know, you need to refrain from making any
25 statements unless you make a special request. And I said

1 that we would be back in the afternoon, if he would go
2 ahead and submit that request, and then take a formal
3 statement from him.

4 Q. And did you go back with Lieutenant Griffith to
5 conduct an official statement ---

6 A. Yes.

7 Q. --- taking?

8 A. I did.

9 MS. McCALL-TANNER: All right. Thank you, sir.
10 Please answer anything defense counsel has.

11 THE COURT: Mr. Hood, cross-examine.

12 CROSS-EXAMINATION BY MR. HOOD:

13 Q. I'm afraid I'm going to be a little bit more thorough
14 than what just occurred there.

15 You were actually present every time a statement was
16 taken from Sammy. Isn't that correct?

17 A. Yes, I was.

18 Q. Okay, and that -- the first opportunity that, that you
19 had with respect to actually sitting down with Sammy and
20 talking with Sammy was actually at your office. Isn't that
21 correct?

22 A. Yes, it was.

23 Q. The police department, correct?

24 A. Yes, sir, uh-huh.

25 Q. And it was you and Lieutenant Griffith here?

R. WEKENMANN - CROSS-EXAMINATION BY MR. HOOD

163

1 A. Lieutenant Griffith.

2 Q. Yeah, and so you guys were in there talking to Sammy,
3 but you weren't -- you didn't tell Sammy about a murder or
4 anything like that, did you, the first time?

5 A. I don't believe we did initially, no.

6 Q. Okay. The first time around, you're just asking Sammy
7 where he was at. Isn't that correct ---

8 A. That is correct.

9 Q. --- on a particular day? Isn't that correct? And,
10 and Sammy told you eventually, after telling you several
11 places that he had worked at, that he actually ended up on
12 Saturday with a guy by the name of Skinner and some
13 females. Isn't that correct?

14 A. I believe that's correct, yes, sir.

15 Q. Yeah, yeah. Okay. Now, Sammy also told you, and, and
16 -- because you asked him questions about who he was working
17 for over in the Port Royal area. Isn't that correct?

18 A. I don't recall specifically that, but it's possible.

19 Q. Okay, but he gave you a -- the names of several people
20 that he was working for over in Port Royal cleaning their
21 yards, cutting their grass, and, and getting rid of
22 varmints such as skunks -- or not skunks, but a variety of,
23 of things that had died in the yard and things of that
24 nature. Isn't that correct?

25 A. I don't recall that specifically. I know he, he made

1 statements to the effect that he worked in the
2 neighborhood, that ---

3 Q. Okay.

4 A. --- he did odd jobs.

5 Q. But there were several people that he told you he
6 worked for like ladies, and names of these people. Isn't
7 that correct?

8 A. I don't recall if he gave us any names.

9 Q. Okay. Did -- let me ask you a question. You made a
10 report in this case, didn't you?

11 A. Yes, I did.

12 Q. And, and when you wrote that report, that was fresh in
13 your mind. Isn't that correct?

14 A. That is correct.

15 Q. And you were going over the things that, that had
16 occurred with Sammy at that particular time. Isn't that
17 correct?

18 A. That's correct.

19 Q. And I know this has been three years ago when this
20 event occurred, but have you not sat down and read what you
21 wrote with regards to each one of those events with Sammy
22 and all of these other witnesses and people that you
23 interviewed?

24 A. I've read my notes. I haven't read the entire report,
25 no, sir, not since ---

R. WEKENMANN - CROSS-EXAMINATION BY MR. HOOD

165

1 Q. So, in other words -- okay. Okay. Okay. Okay.

2 Let's, let's do this. Sammy told you -- he got his dates
3 confused as to whether it was a Friday or a Saturday.

4 Isn't that correct?

5 A. I believe so, yes.

6 Q. Yeah, and, and he, he was telling you about raking the
7 yard and working for Mr. Jack. Isn't that correct?

8 A. I, I think he made statements to that. I don't
9 remember specifically.

10 Q. Yeah, and he called Jack Pops. Isn't that correct?

11 A. I don't recall that.

12 Q. Okay. Okay. All right. Now, didn't he tell you that
13 he and Mr. Jack went out looking -- Mr. Jack wanted some
14 services of a young, of a female. Isn't that correct?

15 A. Yes.

16 Q. Okay, and so that -- what, what did they do? What did
17 he tell you they did?

18 A. Basically, that they just went around town checking to
19 see if they could obtain services from a female. They went
20 to a couple of different locations.

21 Q. And one of those locations was Timmy Skinner's house.
22 Isn't that correct?

23 A. I don't recall if it was Skinner's house. I only
24 recall one location specifically, sir.

25 Q. Okay. Do you remember him telling you he got stopped,

1 they got stopped by the police?

2 A. Yes, I do.

3 Q. Okay, and you remember the fact that Sammy told the
4 police officer who stopped them, an Officer Jeff Light, a
5 deputy sheriff, that they were looking for a housekeeper,
6 someone to clean, a housekeeper. Isn't that correct?

7 A. I'm not sure what he told Deputy Light.

8 Q. But it was in your report. Do you remember that? Do
9 you remember? You, you were there when he was interviewed,
10 weren't you?

11 A. That's correct.

12 Q. Okay. Let's go to the second, second time. All
13 right, you're standing somewhere over in the jail. Isn't
14 that correct?

15 A. Yes, in the booking office.

16 Q. Right out in front of booking and Sammy is there, and
17 he has been accused now of the killing of Mr. Koch. Isn't
18 that correct?

19 A. That's correct.

20 Q. Okay, and you tell him that he's accused of burglary
21 first. Isn't that true?

22 A. That's true.

23 Q. And you tell him he's accused of robbery. Isn't that
24 true?

25 A. That's true.

R. WEKENMANN - CROSS-EXAMINATION BY MR. HOOD

167

1 Q. Okay, and Sammy says wait a minute, I need to talk to
2 you about this. Isn't that correct?

3 A. That is correct.

4 Q. And he blurts out I'm not going down for this for
5 Skinner. Isn't that what he says?

6 A. Yes, essentially that's what he says.

7 Q. All right, and who is Skinner?

8 A. He was a person that he was with that night, a friend
9 or an acquaintance of Sammy's.

10 Q. What happens -- do, do you -- I mean, do you know
11 Skinner?

12 A. No, I'm not familiar with him at that time, no.

13 Q. And do you arrest Mr. Skinner?

14 A. Eventually, yes.

15 Q. Okay. Okay. Okay. Okay, and you arrest Mr. Skinner
16 based upon what?

17 A. We conducted some follow-up investigations, and based
18 on the information, and found that he was also present
19 during the incident. So, we arrested him also.

20 Q. So, where did you get the information about Skinner,
21 about Lisa, and about Jimmy?

22 A. Initially from Mr. Williams.

23 Q. Well, he's the one that told you about all of these
24 people. Isn't that correct?

25 A. That's correct.

1 Q. And he's the one that told you that he cut his finger
2 when he was trying to pull Skinner off of Mr. Koch. Isn't
3 that correct?

4 A. That's correct.

5 Q. Now, you questioned Mr. Williams about what he and
6 Skinner and these young ladies did that particular day.
7 Isn't that correct?

8 A. I believe so in the final interview, yes, sir.

9 Q. Okay. Okay. Okay, and isn't it true that Sammy was a
10 guest of Skinner's at Mr. Skinner's house?

11 A. I recall that they said they were, they were partying
12 there that night.

13 Q. Okay, and when they finished that particular party
14 that night, they went to another party, didn't they?

15 A. I'm not sure about that.

16 Q. Now wait a minute. You were there when Sammy
17 described what happened at Mr. Koch's house. Isn't that
18 correct?

19 A. Yes, sir.

20 Q. And he told you that he, a female named Lisa, a female
21 named Jenny, and Mr. Skinner left Mr. Skinner's house and
22 went to Mr. Koch's house. Isn't that correct?

23 A. Yes.

24 Q. And they went there to see if Mr. Koch was still
25 interested in having sex with one of these females that

R. WEKENMANN - CROSS-EXAMINATION BY MR. HOOD

169

1 they were taking there. Isn't that correct?

2 A. I recall statements like that, yes, sir.

3 Q. Okay. Now, when they get there, Sammy indicates that
4 one of the females claims to be too intoxicated to
5 participate. Isn't that correct, Lisa?

6 A. I know that one of the females -- I mean, that came
7 out, but I don't know who said it initially. I don't
8 recall who said ---

9 Q. But they were all in the van when they arrived at Mr.
10 Koch's. Isn't that correct?

11 A. Yes, sir.

12 Q. Three of them get out of the van. Isn't that correct?

13 A. I'm not positive about that fact, sir.

14 Q. Well, didn't Sammy tell you that Jenny, Sammy himself,
15 and Mr. Skinner got out of the van and went up to the front
16 door of Mr. Koch's house?

17 A. I'm not sure if that's what Sammy said or not, sir.
18 I'm not.

19 Q. Well, do you remember -- after they left Mr. Koch's
20 house, what did Sammy tell you they did?

21 A. If I recall correctly, they, I think, I believe they
22 went back to Skinner's house.

23 Q. Okay, and what did Sammy tell you occurred at
24 Skinner's house, when they left and went back to Skinner's
25 house -- or Mr. Koch's house? What happened at Skinner's

1 house?

2 A. If I recall correctly, I believe they just kind of sat
3 around some more and then went to another house.

4 Q. Isn't it -- that's right. They went to another party,
5 didn't they?

6 A. I don't know if it was a party or not.

7 Q. Well, do you remember anything to do with credit
8 cards?

9 A. Yes. I, I don't recall who exactly made the
10 statement, which one of the four parties that were there.
11 But the statement was that they had left there, they had
12 gone over a friend's house somewhere in the Millage Village
13 area, and one or two of the persons tried to test the
14 credit cards on the Internet.

15 Q. And who had the credit cards?

16 A. I'm not sure who was doing the testing, sir, or who
17 had them.

18 Q. Do you remember a person whose first name was Tony?

19 A. I believe that was the owner of the home that they
20 went to.

21 Q. Okay, and he was a friend of Mr. Skinner's. Isn't
22 that correct?

23 A. I'm not sure whose friend he was, sir.

24 Q. And wasn't there a woman there, a girlfriend of Mr.
25 Tony Freeman's?

R. WEKENMANN - CROSS-EXAMINATION BY MR. HOOD

171

1 A. I'm not sure about that.

2 Q. Didn't Sammy tell you that after they left they got
3 into the van after leaving Mr. Koch's house, that Mr.
4 Skinner pulled out the wallet of Mr. Koch?

5 A. I'm not positive. One of them had the wallet. I'm
6 not sure which one pulled it out. I know the -- I remember
7 the statement was that they divided up the money in the
8 van.

9 Q. Who divided up the money?

10 A. Mr. Williams and Mr. Skinner.

11 Q. Well, are you saying that Mr. Williams gave Mr.
12 Skinner money, or Mr. Skinner gave Mr. Williams money?

13 A. I'm not sure which, how it worked out. I, I don't
14 know, sir.

15 Q. But weren't you present again at the time ---

16 A. I was present ---

17 Q. --- Mr. Williams was interviewed?

18 A. --- during the statements, but they, they weren't my
19 -- it's, it's -- wasn't part of my report. I'm not the one
20 who reported on it.

21 Q. But you're sitting there listening to everything
22 that's going on, aren't you?

23 A. Yes, sir, I was.

24 Q. And you do that same thing with Mr. Skinner when you
25 interview Mr. Skinner, don't you?

1 A. That's correct.

2 Q. And you do the same thing with Lisa, one of the
3 females who was in the back seat of the van. Isn't that
4 correct?

5 A. That's correct.

6 Q. And you were also there with Jenny, the other female
7 who's driving the van. Isn't that correct?

8 A. That's correct.

9 Q. Now, whose van was this?

10 A. Mr. Skinner's.

11 Q. Okay. Okay. So, it's Mr. Skinner's van, and don't
12 you find a credit card inside of that van?

13 A. No. We found a bank account card. It wasn't a credit
14 card. It's just a, a bank card with an account number
15 written on it.

16 Q. Weren't there two account numbers written on it?

17 A. Yes, there were.

18 Q. Okay. Now we're getting somewhere. The first bank
19 account was for the checking account, right?

20 A. I don't know which one was which, sir.

21 Q. Okay, but didn't it have on there checking account,
22 doop-da-loop, banking account, loop-da-la-loop?

23 A. I don't know, sir. I only assisted in collection,
24 collection of it.

25 Q. What did you do with that card?

R. WEKENMANN - CROSS-EXAMINATION BY MR. HOOD

173

1 A. I believe it was entered into our evidence room.

2 Q. And did anybody, did you or anybody else send that
3 card off to determine if there were any fingerprints on it?

4 A. No, I did not.

5 Q. Did you ever check that card to determine who the
6 author of those numbers was?

7 A. I did not.

8 Q. Now, you found some other items inside of that van
9 too. Isn't that. Isn't that true?

10 A. Yes, sir.

11 Q. Okay, and these were items that you were questioning
12 Ms. Jenny Chase about. Isn't that correct?

13 A. I don't recall.

14 Q. Well, one of the -- one thing was found up on the
15 dashboard that had some numbers again on it. Isn't that
16 correct?

17 A. I don't, I don't recall, sir.

18 Q. Okay. All right. Let's see, did you ever locate Tony
19 Freeman, his girlfriend, and a son who lived out in the
20 trailer park where Skinner, the two young ladies, and Mr.
21 Williams went after they left Mr. Williams's house?

22 A. No, we did not.

23 Q. Okay. Did you ever go to the trailer park to
24 ascertain from people in the area where these people were?

25 A. I'm not sure which trailer park you're referring to.

1 We were just told the Millage Village area. And yes, we
2 did, we did go door to door trying to ascertain that
3 information, and no one had any information for us.

4 Q. Now, isn't it true that, based on your investigation,
5 that Lisa, who was one of the females that was in this van
6 when this event took place, Jenny and Mr. Skinner, that
7 they were all school-mates ---

8 A. I don't ---

9 Q. --- they were all friends?

10 A. I don't know that. I know they were friends, yes.

11 Q. Okay. They were friends. They were all friends?

12 A. Yes, sir.

13 Q. Okay, and Mr. Williams was unknown to at least two of
14 those people. Isn't that correct?

15 A. No. I was under the impression they were all friends.

16 Q. Well, are you saying that Lisa and Jenny were friends
17 of Mr. Williams?

18 A. From my recollection, yes, they all knew each other.

19 Q. Well, I'm not saying they knew each other from this
20 one time. I'm saying that they were somehow friends.

21 They've known each other for a long period of time.

22 A. I couldn't tell you how long, but I, I believed that
23 they were friends, yes.

24 Q. Okay. Okay. Okay. Now, did you -- were you involved
25 in the taking of any fingerprints or anything of that

1 nature from inside the house?

2 A. I attempted to lift some fingerprints inside the
3 house, yes, sir.

4 Q. All right. Did you find any fingerprints inside the
5 house?

6 A. No, sir, I did not.

7 Q. Okay, and do you know for a fact that Mr. Skinner was
8 inside of that house?

9 A. Based on his statements, yes.

10 Q. Okay. Has Mr. Skinner told you he was inside the
11 house? Isn't that correct?

12 A. That's correct.

13 Q. Okay. All right. All right, but you didn't find any
14 of his fingerprints inside of the house, did you?

15 A. No, we did not.

16 Q. Okay. Now, did you have anything to do with gathering
17 of the clothing of Mr. Williams?

18 A. Yes, I did.

19 Q. Okay, and that clothing was identified as the clothing
20 worn by Mr. Williams on this particular Saturday night.
21 Isn't that correct?

22 A. I believe it was, yes, sir.

23 Q. Okay, and that clothing was taken and turned in to
24 evidence. Isn't that correct?

25 A. That's correct.

1 Q. Okay, and all of that was sent to the lab. Isn't that
2 correct?

3 A. Large majority of it, yes, sir.

4 Q. Okay. Okay, and you sent that to the lab because you
5 were looking for blood on that clothing. Isn't that
6 correct?

7 A. Any type of evidence, yes, sir.

8 Q. Yes. Yes. Okay, and to your knowledge, it came back
9 that there was none of the victim's blood on any of Mr.
10 Williams's clothing. Isn't that correct?

11 A. Not the items we took from his home, no.

12 Q. Okay. Well, it's the items that were identified by
13 the two young ladies, by everybody else who saw Mr.
14 Williams that particular night, isn't that correct, and Mr.
15 Williams, isn't too true?

16 A. I believe so, yes, sir.

17 Q. Okay. Okay. All right. All right. Now, did you
18 also gather all of the clothing of Mr. Skinner that he was
19 wearing that particular night?

20 A. No, sir, I don't think we did.

21 Q. Okay. Now, isn't it true that after these four left
22 Mr. Koch's house and went back to Mr. Skinner's house, that
23 Mr. Skinner changed clothes and took a shower? Isn't that
24 correct?

25 A. I don't know that, sir.

R. WEKENMANN - CROSS-EXAMINATION BY MR. HOOD

177

1 Q. Well, did one of the young ladies and Mr. Williams or
2 anybody else tell you this?

3 A. No, I don't recall.

4 Q. You don't recall?

5 A. No, sir.

6 Q. You don't recall. Okay, and Mr. Skinner was
7 interviewed by you. His response to Mr. Williams saying
8 that he was the one who had beaten the old man and that he
9 had pulled him off of Mr. Koch, what was his reaction to
10 that pointing of the finger by Mr. Williams? Didn't he say
11 ---

12 A. I don't necessarily recall. The only thing I recall
13 about Mr. Skinner was he immediately wanted an attorney,
14 and we kept saying we can't talk to you, sir.

15 Q. Do you remember the words I'm shocked?

16 A. No, sir, I do not.

17 Q. Yeah. You remember those. You made your report.

18 A. I had my report right here, sir. It's only one or one
19 and a half pages.

20 Q. Okay. Let's go to something else. May be a little
21 more help. Were you a part of the officers who canvassed
22 the neighborhood around Mr. Koch's house?

23 A. Yes, I was.

24 Q. Okay. All right. Now, and did you interview a woman
25 who had some information about this van that Mr. Skinner

1 was driving having been at Mr. Koch's house before this
2 night?

3 A. I didn't interview, but I recall that that information
4 was given to us.

5 Q. Okay, and it was also the fact that this woman
6 indicated that there were females being dropped off at the
7 house and picked up by this van. Isn't that correct?

8 A. I don't know. I wasn't involved in that interview,
9 sir.

10 Q. I thought you were.

11 A. No. I assisted in the canvassing of the area, but I
12 didn't, I didn't talk to the woman. I recall that
13 information was available, but I did not talk to the woman
14 who said that.

15 Q. Oh, so you know this, this woman made these
16 statements?

17 A. I, I recall the statements being made ---

18 Q. Oh, okay.

19 A. --- about a van, but I do not ---

20 Q. Okay. Okay. Okay. Okay. All right. Now, now, when
21 you arrived on the scene after that Sunday morning, early
22 Sunday morning hours, and you had an opportunity to look at
23 the victim in the case, do you -- did you notice any of his
24 jewelry or anything of that nature on his body?

25 A. No, sir, I don't recall.

R. WEKENMANN - CROSS-EXAMINATION BY MR. HOOD

179

1 Q. Did you look for signs of a burglary, a taking, a
2 larceny, a taking of property from that dwelling?

3 A. Yes, we did.

4 Q. Okay, and did you find anything missing from that
5 dwelling?

6 A. No items from the dwelling. Just some from Mr. Koch.

7 Q. Okay, and the only thing that you believe was taken
8 from the person of Mr. Koch was his wallet. Isn't that
9 correct?

10 A. That is correct.

11 Q. And it came out of the back pocket of Mr. Koch. Isn't
12 that correct?

13 A. Right. The pocket was ripped completely out.

14 Q. Or at least we, we think that it did. Isn't that
15 correct?

16 A. That's the indication, yes, sir.

17 Q. Yeah, because we don't know where it was. Is that
18 correct? We really don't know where it was at, do we?

19 A. Right. Well, we know somebody ripped his pocket.

20 Q. Okay. Okay, and there were all kind of stains on Mr.
21 Koch's clothing. Isn't that correct?

22 A. I don't recall. I didn't examine his clothing, but,
23 yes, it was a very messy scene.

24 Q. Now, Mr. Koch was a big guy, wasn't he? Big guy, a
25 big person. Isn't that correct?

R. WEKENMANN - CROSS-EXAMINATION / REDIRECT EXAMINATION 180

1 A. Yes, sir.

2 Q. Okay. Okay, and he was quite healthy. Isn't that
3 correct?

4 A. Excuse me?

5 Q. And to your knowledge, based on your investigation, he
6 was quite healthy. Isn't that correct?

7 A. No, sir, I don't believe I can answer that question.
8 He was not when I saw him. I ---

9 Q. Okay, not when you saw him, but, you know, based on
10 your investigation, prior to this event, Mr. Koch was in
11 good health. He was a healthy individual. Isn't that
12 correct?

13 A. I didn't inquire into that. I don't know, sir.

14 Q. Okay. Okay. All right.

15 MR. HOOD: All right, I don't have any other questions
16 of him.

17 THE COURT: Thank you.

18 Ms. Tanner, redirect.

19 MS. McCALL-TANNER: Just briefly, Your Honor.

20 REDIRECT EXAMINATION BY MS. McCALL-TANNER:

21 Q. Mr. Williams's clothing that was, that was collected,
22 the clothes that were collected are the clothes he
23 indicated he was wearing. Is that correct?

24 A. I'm not sure who indicated it, but I, I know they were
25 the ones we were -- we had information that he possibly

1 was, was wearing, yes.

2 Q. But we don't know for sure.

3 A. We don't know for sure.

4 Q. We don't have a photograph of him that evening wearing
5 that clothing or anything like that.

6 A. No, that's correct.

7 Q. What about those shoes that he was so busy washing the
8 day after the murder? Did you find those when you went
9 back for the search warrant?

10 A. I don't believe we did. No, we did not.

11 MS. McCALL-TANNER: Thank you. No further questions.

12 THE COURT: Thank you. You can step down.

13 (THE WITNESS EXITS THE STAND.)

14 THE COURT: Next witness.

15 MS. McCALL-TANNER: May this witness be excused, Your
16 Honor?

17 THE COURT: Without objection, she would like to have
18 him excused.

19 MR. HOOD: I have no objection.

20 THE COURT: Ladies and gentlemen, we're going to take
21 a morning recess at this time. I'm going to send you to
22 your jury room for a few moments. Please do not discuss
23 this case among yourselves while you're in the jury room.
24 We'll get you out in about fifteen minutes to continue the
25 trial of the case. Thank you.

1 (THE JURY EXITS AT 11:19 A.M.)

2 THE COURT: Counsel, can you-all approach for a
3 moment?

4 (OFF-THE-RECORD BENCH CONFERENCE.)

5 THE COURT: Folks, we'll be in recess for about
6 fifteen minutes. Thank you.

7 (OFF THE RECORD.)

8 THE COURT: Folks, could you all approach? Let me
9 just share something with you that came to me during the
10 break? I don't believe it has any significance, but I know
11 it, so I want you to know it.

12 (OFF-THE-RECORD BENCH CONFERENCE.)

13 THE COURT: All right, folks, are we ready for the
14 jury now?

15 MS. McCALL-TANNER: State's ready, Your Honor.

16 THE COURT: Mr. Hood.

17 MR. HOOD: Yes, Your Honor.

18 THE COURT: Bring us the jury please.

19 BAILIFF: Yes, sir, judge.

20 MR. HOOD: Judge, just as an abundance of caution, I
21 think maybe we ought to just put on the record the fact
22 that you discussed this alleged newspaper article or
23 whatever it was in, or the Internet, and that, that we've
24 agreed, regardless of what they print -- hopefully it
25 hasn't had any affect on our, on, on ---

1 THE COURT: Right. Right. I read the article. I'll
2 be glad to make a part of the -- to make that article a
3 part of the record as a Court's Exhibit.

4 But I agree. I don't think there was anything in
5 there that was prejudicial. There's very little in there,
6 if anything, that was not known or was not soon to be known
7 to this jury.

8 MR. HOOD: I just know the newspaper is the writer on
9 the government, and they certainly have no interest in
10 anything but a conviction.

11 THE COURT: All right.

12 (NEWSPAPER ARTICLE MARKED INTO EVIDENCE AS COURT'S
13 EXHIBIT NUMBER 2.)

14 BAILIFF: Jury entering, Your Honor.

15 (THE JURY ENTERS AT 11:46 A.M.)

16 BAILIFF: The jury's seated, Your Honor.

17 THE COURT: Thank you.

18 Ladies and gentlemen, we'll continue now where we left
19 off. The state is intending to offer evidence and
20 testimony in this case.

21 Ms. Tanner.

22 MS. McCALL-TANNER: Thank you, Your Honor. The state
23 calls Detective John Griffith to the stand.

24 THE COURT: Detective, Detective Griffith, come
25 forward please, sir, to be sworn.

1 JOHN GRIFFITH, HAVING FIRST BEEN
2 DULY SWORN, TESTIFIES AS FOLLOWS:

3 BAILIFF: Talk into the microphone.

4 WITNESS: Okay. Thank you.

5 CLERK OF COURT: State your full name and spell your
6 last name for us, please.

7 WITNESS: John H. Griffith. G-R-I-F-F-I-T-H.

8 DIRECT EXAMINATION BY MS. McCALL-TANNER:

9 Q. Detective Griffith, where are you employed?

10 A. Port Royal Police Department.

11 Q. And how long have you worked for Port Royal?

12 A. Just over twenty years.

13 Q. And what are your duties and responsibility at the
14 police department?

15 A. At the current time I'm in charge of the patrol
16 division, but at this particular time I was in charge of
17 the investigative division.

18 Q. Back in 2007, you were over the investigating?

19 A. Yes, I was.

20 Q. All right. Well, let's talk about September 9, 2007.

21 Were you called out to a residence in the Town of Port
22 Royal?

23 A. Yes, I was.

24 Q. And can you describe what type of call you received?

25 A. I received a call from the on-duty shift supervisor

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 185

1 that they had responded to an assault and subsequent death
2 of an individual at .

3 Q. And that is within the town limits of Port Royal?

4 A. Yes, it is.

5 Q. Located here in Beaufort County?

6 A. Yes.

7 Q. Can you tell us how that works? I mean, we've talked
8 to a first responder and now an investigator. How do you,
9 how do you guys communicate and handle scenes like that?

10 A. I was actually on, on-call duty detective at the time.
11 If they have a scene that they can't handle themselves,
12 they will call the on-duty detective. This particular
13 night, I was on-duty and was called. I live about twenty,
14 thirty minutes away. So, it took me some time to get
15 there.

16 Q. And once you arrived, what type of actions do you take
17 on the scene?

18 A. The first thing I do is just get a brief summation of
19 what the first responding officers witnessed or saw when
20 they first got there, then ensure that the crime scene's
21 been completely secured, and then enter the crime scene,
22 and just take a walk through the crime scene.

23 Q. And what did you observe at this crime scene?

24 A. Initially I went into the front porch and into the
25 living room area and, and saw the victim laying on the

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 186

1 floor. He was laying on his left-hand side. His head was,
2 I recall, laying on the kitchen floor. His body was laying
3 on the living room floor.

4 Q. Do you perform any task on the scene after you make
5 your observations?

6 A. Initially all, all I did again is I, I do a walk
7 through. Since this scene like this was going to be a
8 lengthy crime scene, I then contacted my partner, which was
9 Lieutenant Wekenmann, to come and assist me, take
10 photographs, fingerprints, such as that.

11 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 1 FOR
12 IDENTIFICATION.)

13 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 2 FOR
14 IDENTIFICATION.)

15 MS. McCALL-TANNER: If I may approach the witness,
16 Your Honor?

17 THE COURT: Yes, ma'am.

18 BY MS. McCALL-TANNER:

19 Q. Detective, I'm going to show you what's been marked as
20 State's for ID 1 and 2. First tell me if you can identify
21 what is depicted in State's Number 1.

22 A. This is a photograph of the victim's house. This
23 photograph was taken once daylight -- once the sun came up.
24 It's a picture from the roadway facing the victim's house,
25 house.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 187

1 Q. You said once daylight came up. What time did you
2 respond out there?

3 A. It was -- I got there right around 3:00 a.m.

4 Q. And it's still dark outside?

5 A. Yes.

6 Q. Still nightttime?

7 A. Yes.

8 Q. And is State's Number 1, is that a fair and accurate
9 depiction of how it appeared that day?

10 A. Actually we had pushed the truck out. So, the truck
11 was, when I responded, the truck was actually underneath
12 the carport. We had pushed the truck out to search the
13 truck, make sure there was no tangible evidence in there.
14 So, the truck in this photograph is actually pushed out
15 from underneath the carport. But other than that, it's how
16 it was.

17 MS. McCALL-TANNER: Your Honor, State moves 1 into
18 evidence.

19 THE COURT: Mr. Hood.

20 MR. HOOD: No objection.

21 THE COURT: Thank you. Without objection, State's 1
22 in evidence.

23 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
24 NUMBER 1.)

25 BY MS. McCALL-TANNER:

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 188

1 Q. And, Detective Griffith, State's Exhibit 2, can you
2 tell me what is depicted in that?

3 A. Yes. This is a photograph of the front porch area of
4 Mr. Koch's -- well, you can see a corner of his chair, his
5 television that was earlier referenced. This is a picture
6 of the porch looking from the front porch door to the front
7 porch or front door to the house.

8 Q. And is it a fair and accurate depiction of how it
9 appeared that day?

10 A. Yes.

11 MS. McCALL-TANNER: At this time, State moves 2 in
12 evidence.

13 THE COURT: Mr. Hood.

14 MR. HOOD: I have no objection, Your Honor.

15 THE COURT: Without objection, State's 2 in evidence.

16 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
17 NUMBER 2.)

18 MS. McCALL-TANNER: And we'll come back to those.

19 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 3 FOR
20 IDENTIFICATION.)

21 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 4 FOR
22 IDENTIFICATION.)

23 BY MS. McCALL-TANNER:

24 Q. Detective, I'm going to show you what's been marked as
25 State's Exhibits for ID 3 and 4. If you could, take a look

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 189

1 at Exhibit 3 and tell me what's depicted in that.

2 A. This is a photograph taken at the front door of the
3 residence. You can plainly see the victim laying on the
4 floor half in the -- or partially into the kitchen laying
5 into the living room area. In the foreground there's also
6 the coroner, who was there prior to my arrival.

7 Q. Is that a fair and accurate depiction of how you found
8 him that day?

9 A. Yes, it is.

10 MS. McCALL-TANNER: State moves 3 into evidence.

11 THE COURT: Mr. Hood.

12 MR. HOOD: No objection.

13 THE COURT: Without objection.

14 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
15 NUMBER 3.)

16 BY MS. McCALL-TANNER:

17 Q. All right and, Detective, if you would, look at Number
18 4, please, and tell me what is depicted in that.

19 A. This a closer picture of the victim lying on the floor
20 on his left-hand side in the same position that he was at
21 in the previous picture.

22 Q. So, that's a fair and accurate depiction of how he
23 appeared?

24 A. Yes, it is.

25 MS. McCALL-TANNER: State moves 4 into evidence.

1 THE COURT: Mr. Hood?

2 MR. HOOD: No objection.

3 THE COURT: Thank you. Four in evidence.

4 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
5 NUMBER 4.)

6 MS. McCALL-TANNER: We'll come back to those.

7 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 5
8 FOR IDENTIFICATION.)

9 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 6 FOR
10 IDENTIFICATION.)

11 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 7 FOR
12 IDENTIFICATION.)

13 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 8 FOR
14 IDENTIFICATION.)

15 BY MS. McCALL-TANNER:

16 Q. Detective, I'm going to show you a few more exhibits,
17 and if you'll look first at Exhibit Number 5 and tell me
18 what is depicted in that photograph.

19 A. Yes, this is a picture, a close-up picture of the
20 victim, his head. Also there's a, a back -- or a cordless
21 phone that is underneath his right arm, along with a paper
22 bag, a plastic bag underneath his right arm.

23 Q. And is that a fair and accurate depiction of how it
24 appeared that day?

25 A. Yes, it is.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 191

1 Ms. McCALL-TANNER: Your Honor, at this time state
2 moves 5 into evidence.

3 THE COURT: Mr. Hood.

4 MR. HOOD: Your Honor, that's the only one I have any
5 question about. It's a, it's a little gruesome, and it was
6 several hours after the event. So, obviously there's been
7 a lot of change in circumstances based upon the evidence at
8 the time frame that, that we're aware of.

9 THE COURT: Let me look at, at the others to see how
10 -- actually compare this one and if they have some of the
11 same information this one may have.

12 MS. McCALL-TANNER: Yes, sir. State's position is
13 that they do not. It shows location of evidence. It's not
14 the most gruesome thing we have in the courtroom, and it
15 shows the evidence as it occurred that day.

16 THE COURT: All right. I would allow it over
17 objection of defense counsel. It has -- quite obviously is
18 a close-up picture. It shows the face of the, of the
19 victim. There's some evidentiary value or could be
20 evidentiary value, and some of the other items. Of course,
21 it does depict the, the jewelry that has been testified to
22 on cross-examination by some of the other witnesses. I
23 will allow -- that's Number 6, is it?

24 MS. McCALL-TANNER: That would be five.

25 THE COURT: 5 over objection of defense counsel.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 192

1 MS. McCALL-TANNER: Yes, Your Honor.

2 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
3 NUMBER 5.)

4 BY MS. McCALL-TANNER:

5 Q. Now, Detective Griffith, if you would, go to State's
6 Number 6. Can tell me what is depicted in that item?

7 A. This is a close-up of the victim's abdomen, abdomen.
8 Underneath his body was a pair of folded glasses and a
9 battery to a cordless phone.

10 Q. And is that a fair and accurate depiction of how you
11 observed it that day?

12 A. Yes, it is.

13 MS. McCALL-TANNER: State moves 6 into evidence.

14 THE COURT: Mr. Hood.

15 MR. HOOD: No objection.

16 THE COURT: Without objection.

17 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
18 NUMBER 6.)

19 BY MS. McCALL-TANNER:

20 Q. Show you what's been marked as State's Exhibit 7. Can
21 you tell me what is depicted in that photograph?

22 A. This is the actual close-up of the battery back to the
23 cordless phone. This picture was taken at the police
24 department when we swabbed the -- there was some blood on
25 it.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 193

1 Q. And is that a fair and accurate depiction of how you
2 found it?

3 A. Yes, it is.

4 MS. McCALL-TANNER: State moves 7 into evidence.

5 THE COURT: Mr. Hood.

6 MR. HOOD: No objection.

7 THE COURT: Thank you. Without objection, 7 is
8 admitted.

9 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
10 NUMBER 7.)

11 BY MS. McCALL-TANNER:

12 Q. Now, I would ask you to look at State's Exhibit 8.
13 Can you tell me what is depicted in Number 8?

14 A. Yes. This is the actual battery that had, also had
15 some blood on it that we took a picture of it back at the
16 police department and then swabbed.

17 MS. McCALL-TANNER: State moves 8 into evidence.

18 MR. HOOD: No objection.

19 THE COURT: Thank you. 8 in evidence.

20 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
21 NUMBER 8.)

22 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 9 FOR
23 IDENTIFICATION.)

24 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 10 FOR
25 IDENTIFICATION.)

1 MR. HOOD: Your Honor, I have no objection to either
2 one of these items.

3 THE COURT: Thank you.

4 Mark it into evidence, Madame Clerk or Madame Court
5 Reporter.

6 MS. MCCALL-TANNER: Your Honor, the state moves 9 and
7 10 into evidence apparently under no objection by defense.

8 THE COURT: No objection.

9 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
10 NUMBER 9.)

11 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
12 NUMBER 10.)

13 BY MS. MCCALL-TANNER:

14 Q. Okay, show you State's 9 and 10. If you could, tell
15 the jury what State's Exhibit Number 9 is.

16 A. This is the actual battery cover to the cordless
17 phone, and it's actually been -- we swabbed it and actually
18 dusted it for fingerprints.

19 Q. -- And were you able to recover any usable prints?

20 A. No, ma'am.

21 Q. Can you publish that to the jury please?

22 A. *(Witness complies.)*

23 Q. And the dark substance that's black now, is that how
24 you found it?

25 A. No. This is the actual fingerprint dust that we used

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 195

1 to dust it for fingerprints.

2 Q. Okay.

3 A. And the blood is obviously gone because we swabbed the
4 blood with a swab.

5 Q. But it is depicted in the photograph?

6 A. Yes, it is.

7 Q. And could you publish State's Number 10 to the jury,
8 please?

9 A. This is the actual battery pack. Again, it was, as
10 with the cover, we dusted it for fingerprints and swabbed
11 it. It does still have a little bit of blood left on it.
12 There was a large quantity of blood on it. So, there is
13 still some blood on it.

14 Q. And, Detective Griffith, during your search of the
15 crime scene, did you recover the remainder of this phone?

16 A. No. This is the only parts of the cordless phone that
17 we found on the scene.

18 MR. HOOD: I have no objection.

19 THE COURT: Thank you.

20 MS. McCALL-TANNER: This will be State's Exhibit 11.
21 No objection from defense.

22 (DNA SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
23 NUMBER 11.)

24 BY MS. McCALL-TANNER:

25 Q. Detective Griffith, if you could, tell the jury what

1 is State's 11.

2 A. This was a swab that we took. It was actually the
3 blood that was found underneath Mr. Koch's face area.

4 Q. And what was the purpose for taking that swab?

5 A. We just wanted to establish that this was, in fact,
6 his blood.

7 Q. And these items that you collected, what do you do
8 with them?

9 A. They're collected and the, the, the items that we can
10 process ourself, we take back to our police department,
11 process them. The swabs we obviously cannot test
12 ourselves. We send those to the SLED lab.

13 Q. And prior to sending them to the lab, do you preserve
14 them, protect them, and prevent others from tampering with
15 them in any way?

16 A. Yes. They were -- these were sterile swabs that we
17 used that we removed from a sealed package we swabbed. We
18 also protect the tip of the swab with a plastic tip
19 protector. Then we put inside this box, and we put them in
20 the evidence bag.

21 Q. Have you marked them in any way so that you can
22 identify them, say, today in court?

23 A. Yes, as this one is -- it just says victim's blood.

24 Q. Thank you, sir.

25 MS. McCALL-TANNER: Your Honor, at this time I'd like

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 197

1 to publish some of these photographs to the jury using the
2 Star Board.

3 THE COURT: Okay.

4 MS. McCALL-TANNER: If I could have the witness come
5 down from the stand?

6 THE COURT: Detective, if you will, face the court
7 reporter when you're off the stand as you're displaying
8 these photographs to the jury.

9 WITNESS: Yes, sir.

10 THE COURT: And it would probably be a good idea to
11 stand on the other end of where you're facing this
12 direction for me please. Thank you.

13 BY MS. McCALL-TANNER:

14 Q. Now, if you need to, walk closer so you can point
15 things out to the jury on the photographs. If you could,
16 describe for the jury -- this is State's Exhibit 1. If you
17 could, describe for the jury what is depicted here.

18 A. Okay. As earlier, earlier stated, this is a picture
19 we took during daylight hours. The truck has been pushed
20 out from the carport area to be searched. When we, when I
21 arrived there that night, the truck was actually underneath
22 the carport. You could enter the rows right here. You
23 would enter through the -- there's no gate that I recall.
24 So, you would enter through the gate of the fence.

25 As you proceed up the driveway, this is the front door

1 of the porch of the picture previously talked about. You
2 would go onto the screen porch and then this would be, this
3 would be the front door area entering into the house.

4 Q. All right. This is State's Exhibit Number 2. If you
5 could, describe for the jury what is depicted in this
6 photograph.

7 A. This photograph is what's taken at the front door of
8 the porch. This was taken towards the front door of the
9 house. There's several personal items of the victim here.
10 There's a small walk area that you can walk by there to get
11 into the front door from the front porch door.

12 Q. State's Exhibit Number 3.

13 A. Again, this is a picture taken from the front door
14 into the house. You'll see a victim lying in the floor
15 there by the vent in the living room, his head going into
16 the kitchen floor area. This is a fish tank that's been
17 pulled out from the wall, and obviously in the far picture
18 is the corner in the kitchen.

19 Q. Can you see that front door in this photograph that is
20 seen in Number 2?

21 A. Yes, you can.

22 Q. Okay. Can you point that out?

23 A. Yes. This is the actual light of the door. The door
24 opens into your left, and that picture there would depict
25 how it was, basically was.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 199

1 Q. Okay. This will be State's Exhibit 4.

2 A. This is a close-up of the victim as he laid on the
3 floor. Again, nothing's been moved, and there's been a few
4 items here that's been moved away from the wall.

5 Q. And is this the position he is in when he's located?

6 A. Yes. When I got there, that was the position he was
7 in.

8 Q. This is State's 5.

9 A. This is a photograph of the, of the victim's head.
10 Underneath his right arm is the battery back cover that I
11 earlier showed you, along with a plastic bag that was later
12 determined to be a newspaper bag.

13 Q. State's 6.

14 A. This is a picture of the victim's abdomen, abdomen
15 with the battery pack to the phone underneath his stomach,
16 along with his glasses that are folded.

17 Q. State's 7.

18 A. This is the battery cover before we dusted it for
19 fingerprints and before we swabbed it. This was taken back
20 to the police department.

21 Q. Okay, and can you point out the area that you swabbed?

22 A. Yes. It would be this area here, the small area where
23 the blood is.

24 Q. State's 8.

25 A. This is the battery to the cordless phone. Again, we

1 swabbed this blood area here for blood and also tested it
2 for fingerprints.

3 Q. All right. Thank you, detective. If you could,
4 return to the stand.

5 Now, Detective Griffith, as a part of your
6 investigation, did you also take note of the condition of
7 the victim's body and the clothing?

8 A. Yes, I did. Upon arrival, when I touched the victim's
9 arm, I realized that he had -- that rigor mortis had set
10 in. Also, you could see rigor mortis had set as well,
11 which is a pooling of the blood in the body.

12 Q. What is rigor mortis?

13 A. Rigor mortis would be the state of the body as it
14 starts to decompose. It would be just the stiffening of
15 the muscles.

16 Q. When did, when did that start?

17 A. Usually between two to six hours.

18 Q. After death?

19 A. After death.

20 Q. And you do find that in Mr. Koch when you ---

21 A. Yes. There's, there's slight rigor in his body.

22 Q. And how about his clothing?

23 A. His clothing, his shirt was pulled up above his waist
24 revealing his stomach, as you see. Also, his trousers are
25 pulled down below his buttocks, revealing his buttocks and

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 201

1 his underwear, and his -- I don't, I don't recall if it was
2 -- both of his trousers legs were pulled up, but I do, I do
3 know for a fact that one of them was, and also his right
4 rear pocket was ripped.

5 (COUNSELORS CONFER.)

6 MR. HOOD: No objection, Your Honor.

7 THE COURT: All right, sir.

8 MS. McCALL-TANNER: State's 12. State moves into
9 evidence. No objection from defense.

10 THE COURT: Thank you.

11 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
12 NUMBER 12.)

13 BY MS. McCALL-TANNER:

14 Q. Can you tell me what's depicted in State's 12?

15 A. This is a picture of the victim's right rear pocket of
16 his trousers.

17 Q. And, Detective, once the body's moved, do you actually
18 collect the clothing from the victim?

19 A. No. The victim -- the clothing remains, and the
20 pathologist would take that off at the autopsy.

21 Q. And does it come to you eventually as a part of your
22 investigation?

23 A. Yes, it does.

24 Q. And is it housed in your evidence division?

25 A. Yes.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 202

1 (COUNSELORS CONFER.)

2 MS. McCALL-TANNER: Your Honor, State moves 13 into
3 evidence with no objection from the defense.

4 MR. HOOD: No objection.

5 THE COURT: Thank you.

6 (PANTS MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
7 13.)

8 BY MS. McCALL-TANNER:

9 Q. Detective, I'll show you State's 13.

10 A. Yes.

11 Q. If you could, tell me what that is.

12 A. These were the actual victim's pants, and you can see
13 the right rear pocket has been ripped.

14 Q. Okay. If you could ---

15 MS. McCALL-TANNER: If I have him step off the stand
16 and publish that to the jury, as well as State's 12?

17 A. *(Witness complies.)*

18 Q. All right. Thank you. You can return to the stand.

19 (COUNSELORS CONFER.)

20 MR. HOOD: No objection, Your Honor.

21 THE COURT: All right.

22 MS. McCALL-TANNER: State will be moving 14 and 15
23 into evidence without objection from defense.

24 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
25 NUMBER 14.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 203.

1 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
2 NUMBER 15.)

3 BY MS. McCALL-TANNER:

4 Q. Show you State's 14 and 15, Investigator, and tell me
5 what is depicted in 14.

6 A. Yes, this is a close-up of the, of a button from the
7 victim's shirt that was taken. It was -- this button was
8 located by the front door.

9 Q. And 15.

10 A. This is a photograph of the, of another button, button
11 from the victim's shirt that was located on the actual
12 kitchen floor just above his head.

13 MR. HOOD: I have no objection to the buttons.

14 MS. McCALL-TANNER: State's 16 into evidence without
15 objection from defense.

16 THE COURT: Thank you.

17 (TWO BUTTONS MARKED INTO EVIDENCE AS STATE'S EXHIBIT
18 NUMBER 16.)

19 BY MS. McCALL-TANNER:

20 Q. Investigator, could you publish what is State's
21 Exhibit 16?

22 A. These are the two buttons that were just mentioned
23 that were collected.

24 Q. Thank you, sir. What about State's 13, the pants?
25 Was a wallet recovered on scene? Did you find a wallet

1 belonging to the victim?

2 A. No, no wallet.

3 MS. McCALL-TANNER: This will be State's 17.

4 MR. HOOD: No objection.

5 MS. McCALL-TANNER: No objection from defense.

6 (SHIRT MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
7 17.)

8 BY MS. McCALL-TANNER:

9 Q. And, detective, can you tell us what is State's
10 Exhibit 17?

11 A. Yes. That is the victim's shirt, and that was
12 collected from the autopsy.

13 MS. McCALL-TANNER: And if I could, may I have the
14 witness come off the stand?

15 THE COURT: No problem.

16 BY MS. McCALL-TANNER:

17 Q. If you could, publish to the jury the relevant buttons
18 that we previously entered into evidence.

19 A. Yes. They're -- actually, there's three buttons
20 popped off the shirt. We can only locate two on the scene,
21 but we concluded that those buttons were the same buttons
22 that were on the victim's shirt.

23 Q. You may return to the stand.

24 (COUNSELORS CONFER.)

25 MR. HOOD: No objection.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 205

1 MS. McCALL-TANNER: State's 18 into evidence. No
2 objection from defense.

3 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 18.)

5 BY MS. McCALL-TANNER:

6 Q. Detective, can you tell us what is depicted in 18?

7 A. This is a picture of the victim with his shirt on
8 and his collar that has a green wire affixed to it with
9 two alligator clips. We later determined, through talking
10 with the victim's son, that this was a common practice
11 of his dad. He would hang this other -- the cordless
12 phone from this to keep it close to his body at all
13 times.

14 (COUNSELORS CONFER.)

15 MR. HOOD: No objection, Your Honor.

16 MS. McCALL-TANNER: State's 19 in evidence. No
17 objection from defense.

18 (WIRE MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
19 19.)

20 BY MS. McCALL-TANNER:

21 Q. Detective, if you could, tell the jury what's 19.

22 A. This is the wire that was photographed.

23 Q. And that was on the victim's shirt at the time he was
24 located?

25 A. Yes, it was. This was collected on scene I believe.

1 MS. McCALL-TANNER: If I may now go back and publish
2 these photographs to the jury, Your Honor?

3 Q. Investigator, come down, please. All right, starting
4 with State's 12.

5 A. Again, this is a photograph, photograph of the
6 victim's pants at scene. You can see where the pocket's
7 been ripped. This is a regular pocket.

8 Q. And State's 13.

9 A. This is the blood near the front door, plus a little
10 button near the front door. That was found just inside the
11 front door.

12 Q. That was actually 14, State's 14. 15.

13 A. And this is the -- a photograph of the button that was
14 near the victim's head in the kitchen area.

15 Q. 18.

16 A. Photograph of the wire that was affixed to his collar.

17 Q. And that would be this item?

18 A. Yes, ma'am.

19 Q. Thank you, investigator. You can return to the stand.

20 All right, Investigator, once you moved beyond the
21 victim's body, then what areas of the crime scene do you
22 then investigate?

23 A. Well, once the victim is removed, then we start
24 actually collecting what evidence we want to collect upon
25 the removal of his body. We start looking. Again, walking

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 207

1 through the scene and we kind of try to develop a theory of
2 how everything happened. Once we developed that theory,
3 based on the evidence that we're, we're seeing, we look at
4 the evidence and try to figure out, you know, what's going
5 to be pertinent to the case to identify a suspect, a
6 suspect.

7 (COUNSELORS CONFER.)

8 Q. Show you State's 20.

9 MS. McCALL-TANNER: No objection from defense.

10 THE COURT: Thank you. Entered without objection.

11 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
12 NUMBER 20.)

13 BY MS. McCALL-TANNER:

14 Q. Investigator, can you describe the relevance of the
15 items in this photograph?

16 A. Yes. This is a photograph, photograph of a closet
17 door that's just to the left of the in -- inside door as
18 you're approaching inside the house. This photograph is
19 taken from the east side of the scene, or east side of the
20 house or the right-hand side as you walk in the living
21 room. The -- on the door there's a two and half to three
22 inch impression that has, it appears to be human hair in
23 the crack, embedded in the crack.

24 Q. And is the front door also depicted in this?

25 A. Yes, it is.

1 Q. Is that the condition ---

2 A. No, this ---

3 Q. --- that you found it in?

4 A. The front door had been processed. I believe
5 Lieutenant Wekenmann processed this, the door for latent
6 prints. But we didn't find any usable prints.

7 Q. Now, what's -- you say usable print. What does it
8 mean, a usable print?

9 A. Well, anything that could be identifiable to an actual
10 individual. We didn't find anybody, any, any latents that
11 had any ridge detail, which means the ridges in the
12 fingerprints that can be identified and matched to a
13 suspect.

14 Q. Well, wouldn't I leave a fingerprint? Do I not always
15 leave a usable print when I touch something?

16 A. Well, if you touch it -- ordinarily. But if there's
17 something such as this, like a struggle, you'll get like a
18 smudge or a smear mark, and that's what we found in this
19 occasion.

20 Q. And those you can't use to identify?

21 A. No, ma'am.

22 (COUNSELORS CONFER.)

23 MR. HOOD: No objection, Your Honor.

24 THE COURT: Thank you.

25 MS. MCCALL-TANNER: State's 21 in evidence without

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 209

1 objection from defense.

2 (SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
3 21.)

4 BY MS. McCALL-TANNER:

5 Q. And, detective, can you describe what is State's 21?

6 A. This would be a swab that we took from the entrance
7 door door knob.

8 Q. Okay, and what were you looking for when you take this
9 swab?

10 A. Well, as the victim's son indicated to us, the door
11 was pulled shut. So, we concluded that there may be some
12 potential, potential touch DNA on the door knob. So, we
13 swabbed the door knob.

14 Q. And did you use the same procedure with that swab as
15 you described earlier in checking the victim's?

16 A. Yes, ma'am, as with, with all swabs.

17 Q. And it was preserved and ---

18 A. In the same manner, yes, ma'am.

19 (COUNSELORS CONFER.)

20 MR. HOOD: No objection, Your Honor.

21 THE COURT: Thank you.

22 MS. McCALL-TANNER: State's 22 and 23 without
23 objection from defense.

24 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
25 NUMBER 22.

1 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
2 NUMBER 23.)

3 BY MS. McCALL-TANNER:

4 Q. Detective, I'll first show you 22 and then 23. Can
5 you describe what's depicted in 22?

6 A. Yes. This is the photograph of the close-up of the
7 closet door with the impression in it with the hair
8 embedded in it.

9 Q. And 23?

10 A. 23 is the actual hair sample that we collected from
11 the door.

12 MS. McCALL-TANNER: Your Honor, if I may publish these
13 now to the jury?

14 THE COURT: Yes, ma'am.

15 BY MS. McCALL-TANNER:

16 Q. Detective, if you would come down for just a moment.
17 First starting with State's 20, can you describe for the
18 jury what's depicted in this photograph?

19 A. Yeah. Again, this is a photograph of the picture
20 taken of the closet door and the front entry door. You can
21 see where it's been processed for latent fingerprints.
22 Also right here, you can't see very well, but that's the
23 impression right in that area.

24 Q. State's 22.

25 A. This is the close-up impression, photograph of the

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 211

1 impression. You can see the hair that's embedded in the
2 crack in the door.

3 Q. And going back to 20, can you point out where that is
4 located?

5 A. It's going to be in this area right here.

6 Q. And State's 23, that is relevant to this photograph?

7 A. Yes. This would be the hair we collected. This was
8 submitted to SLED. So, I'm unaware if it's -- that hair's
9 still in there. Probably not. They probably used it all.

10 Q. And that would be these items here?

11 A. Yes.

12 Q. Thank you, sir. You can return to the stand.

13 Okay, Detective, once you have collected items from
14 the immediate scene, do you then move to the porch area or
15 the outside area?

16 A. Yes, I do.

17 Q. And anything of relevance found there?

18 A. On the porch area there was a -- again, you notice
19 that there was some droplets of blood on the porch area as
20 well as just on the inside of the front door. We also
21 located a clear plastic wallet insert, one such as you
22 would use to house photographs or whatnot.

23 (COUNSELORS CONFER.)

24 MS. McCALL-TANNER: State's 24, 25, and 26, my
25 understanding is there's no objection from defense.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 212

1 MR. HOOD: None, Your Honor.

2 THE COURT: Thank you.

3 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 24.)

5 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
6 NUMBER 25.)

7 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
8 NUMBER 26.)

9 BY MS. McCALL-TANNER:

10 Q. Detective, starting with State's 24, can you tell me
11 what is depicted in that photograph?

12 A. Yes. This is the little table, table area next to
13 where the victim's chair was. It -- where there's a white
14 phone cradle that was included that may have housed a
15 cordless phone that we found parts to.

16 Q. And again, did you ever find a complete phone?

17 A. No, we did not.

18 Q. State's 25.

19 A. This is a photograph of some of the items of the
20 victim's that were on the front porch. You can see in the
21 photograph there's a clear wallet insert.

22 Q. And State's 26.

23 A. And this is just a close-up of the wallet insert. You
24 can see that it contains some paper items in it.

25 (COUNSELORS CONFER.)

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 213

1 MR. HOOD: Your Honor, I don't have any objection to
2 this, Your Honor.

3 THE COURT: Thank you.

4 MS. McCALL-TANNER: State's Exhibit 27 entered into
5 evidence with no objection from defense.

6 (WALLET INSERT WITH ITEMS MARKED INTO EVIDENCE AS
7 STATE'S EXHIBIT NUMBER 27.)

8 BY MS. McCALL-TANNER:

9 Q. Investigator, can you tell us what that is?

10 A. Yes. These are the items that were in the clear
11 insert found on the front porch. There's a Jamaican 100
12 dollar bill, and a Bank of America account credit card or
13 account card, and there's some other items that I believe
14 may be photographs, but I can't see through them. The --
15 next is the actual wallet insert, and we sent this off to
16 the SLED lab to be processed for latents.

17 Q. And were you able to get anything useful out of that?

18 A. No. They found no, no item for identification.

19 (COUNSELORS CONFER.)

20 MR. HOOD: No objection, Your Honor.

21 THE COURT: Thank you.

22 MS. McCALL-TANNER: State's 28.

23 (DNA SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
24 NUMBER 28.)

25 BY MS. McCALL-TANNER:

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 214

1 Q. Investigator, can you tell me what 28 would be?

2 A. Yes. This is a swab of blood that we found just
3 inside the living room door, or the actual entrance door to
4 the right of the door.

5 (COUNSELORS CONFER.)

6 MR. HOOD: No objection, Your Honor.

7 THE COURT: Thank you.

8 Ms. McCALL-TANNER: This will be State's 29, no
9 objection from defense, and then 30, 31, 32, and 33, no
10 objection from defense.

11 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
12 NUMBER 29.)

13 (DNA SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
14 NUMBER 30.)

15 (DNA SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
16 NUMBER 31.)

17 (DNA SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
18 NUMBER 32.)

19 (DNA SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
20 NUMBER 33.)

21 BY MS. McCALL-TANNER:

22 Q. Investigator, State's 29, can you tell me what's
23 depicted in that?

24 A. Yes. This is a photograph of the blood droplets that
25 were on the front porch area. Up in this area here was

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 215

1 where the first droplet of blood was found. There were
2 four other receding droplets of blood on the porch area.

3 Q. And State's 30 through 33, what are those items?

4 A. These were all the swabs that we took from the
5 different locations of blood on the porch and inside the
6 house, I believe.

7 Q. And you collected those in the same manner as the
8 previous ones?

9 A. Yes.

10 Q. And you preserved those and took them all for
11 analysis?

12 A. Yes.

13 (COUNSELORS CONFER.)

14 MR. HOOD: No objections, Your Honor, to any of those.

15 MS. McCALL-TANNER: State's 34 and 35, no objection
16 from defense.

17 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
18 NUMBER 34.)

19 (DNA SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
20 NUMBER 35.)

21 BY MS. McCALL-TANNER:

22 Q. Investigator, State's 34 and 35.

23 A. This is a photograph of a blood droplet that was on
24 one of the steps leading up to the porch area.

25 Q. And then what did you do with that when you found it?

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 216

1 A. We photographed it and swabbed it, and this is the
2 swab.

3 Q. State's 35?

4 A. Yes.

5 Q. And how far apart would this drop of blood be from the
6 ones you found on the porch and the living room?

7 A. Approximately, each droplet of blood was approximately
8 between two to three foot apart in close proximity to the,
9 the, the victim's belongings that were on the front porch.

10 (COUNSELORS CONFER.)

11 MR. HOOD: No objection, Your Honor.

12 THE COURT: Thank you.

13 MS. McCALL-TANNER: State's 36, State's 37, no
14 objection from defense.

15 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
16 NUMBER 36.)

17 (DNA SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
18 NUMBER 37.)

19 BY MS. McCALL-TANNER:

20 Q. State's 36 and 37.

21 A. This is a photograph of a droplet of blood that was
22 found on the driveway, and this is the swab from that
23 blood.

24 Q. And, Detective, does that fall in the same path as the
25 other droplets coming from the house?

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 217

1 A. Yes, it did. If I may add also, this droplet of blood
2 that was on the driveway was approximately ten to twelve
3 foot away from the blood that was on this step. We didn't
4 find any droplets of blood in between that droplet and the
5 one prior to that.

6 Q. Okay.

7 MS. McCALL-TANNER: Your Honor, if I may publish these
8 to the jury?

9 THE COURT: Yes, ma'am.

10 BY MS. McCALL-TANNER:

11 Q. Starting with State's 24, what is depicted in this
12 photograph?

13 A. This is a photograph of the white phone cradle that
14 was sitting next to the victim's chair on the front porch.

15 Q. State's 25.

16 A. This is a photograph of the victim's personal
17 belongings on the right side of the porch as you're
18 entering it, and you can see the wallet insert on the
19 floor.

20 Q. Okay, and what does that wallet insert -- and where is
21 it located in relation to these blood drops?

22 A. The blood droplets were -- you can't see them in this
23 photograph, but were just on the left of this in close
24 proximity to these, these items.

25 Q. 26.

1 A. Yes. This is just a close-up of the wallet insert.

2 Q. And State's 27.

3 A. This is the wallet insert and the contents of the
4 insert.

5 Q. So, this is the item depicted here in the photograph
6 after you attempted fingerprint dusting and all that?

7 A. Yes, ma'am.

8 Q. As to State's 29.

9 A. Yes. This is a photograph of the blood droplets we
10 found on the porch. The first droplet was just on the
11 inside of the door. There was a chair to the right of the
12 door, and it's out of the frame actually. But there's a
13 droplet of blood there, here, here, and two other locations
14 on the porch.

15 Q. And if we go back to a photograph of the interior,
16 they're -- I believe this is 3, State's 3. Can you show us
17 from inside the house where that blood droplet would have
18 been located?

19 A. Yes, it was a throw rug right here just as you entered
20 the door, and it's in between the throw rug and the
21 threshold of the door.

22 Q. And that would be the swab you took from inside of
23 what you're calling the living room?

24 A. Yes.

25 Q. That takes us to State's 34.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 219

1 A. This is a photograph of the porch step. That is the
2 first step up. The porch door will be right here, and the
3 blood droplet was just on the right side of that step.

4 Q. So, it's on the right side of the step?

5 A. As you're walking into the house.

6 Q. Okay. So, if you were leaving the house, it would be
7 on the left?

8 A. Yes.

9 Q. State's 36.

10 A. This is the photograph of a blood droplet on the
11 driveway. This blood droplet, as you're facing the house,
12 was found to the extreme right of the driveway.

13 Q. Okay. Thank you, sir, and take the stand.

14 (COUNSELORS CONFER.)

15 MR. HOOD: No objection.

16 THE COURT: Thank you.

17 MS. McCALL-TANNER: Actually if I can take these
18 numbers out of order, be 49 and 50.

19 (DNA SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
20 NUMBER 49.)

21 (DNA SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
22 NUMBER 50.)

23 BY MS. McCALL-TANNER:

24 Q. Detective, tell me what these two items would be.

25 A. These were the swabs from the battery cover and the

1 phone battery.

2 Q. These are items we've already looked at?

3 A. Yes.

4 Q. Now, Investigator, just beyond crime scene
5 observations and collections, what other things do you do
6 as part of your investigation into this crime?

7 A. Well, we would interview certain any -- anybody that
8 was, you know, may be a potential witness. In this case we
9 interviewed Mr. Koch's son. I interviewed him that
10 morning. We also the next day canvassed the neighborhood.

11 Q. And by canvas the neighborhood, I know we've heard
12 that on TV, but exactly what does that entail?

13 A. We started from the victim's house and went
14 door-to-door and asked them, you know, if they've heard or
15 seen anything.

16 Q. Were you able to reap any decent information from
17 canvassing?

18 A. We actually spoke to the next door neighbor who
19 actually used to be a reserve police officer with us. He
20 did not indicate that he saw or heard anything out of the
21 ordinary the previous night. We also talked to a neighbor
22 that was, I would say, two, three houses down who indicated
23 to us that she had allowed a individual meeting the
24 description of Mr. Williams to do some yard work for her.
25 Further down the road as you're leaving the victim's house

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 221

1 close to the YMCA, we spoke with lady that also had allowed
2 Mr. Williams, or allowed someone that had his physical
3 description, do her yard as well. She has also indicated
4 to us that he had come in to her -- actually, she invited
5 him in to her, to her house.

6 Q. Now, did you follow up on some neighbor alleging that
7 a van dropped girls off at the victim's house? Did you
8 follow up on that lead?

9 A. Yes, I did. Actually, I developed a lead. I was
10 going through the, through the police reports from that
11 night of the incident and noticed that we had had a report,
12 and I don't believe -- I don't know if it's the same night
13 or a few nights before or after, but of a neighbor that had
14 called in a couple houses away from the victim. Had called
15 in seeing a vehicle in the area and possibly someone
16 getting in and out of the vehicle.

17 Q. Were you able to corroborate any of that nonsense
18 about dropping girls off?

19 A. Yes. She indicated that she had a neighbor that lived
20 a couple houses down from her that had a, a teenage
21 daughter, and that she routinely witnessed her sneaking out
22 the window and being picked up by a vehicle. She also gave
23 us a description of the vehicle, which did not match the
24 van that they claimed to be in.

25 Q. So, this girl hopping in and out of a car, that's a

1 neighbor's teenager?

2 A. That's what we concluded, yes.

3 Q. Okay. Now, you also received further information from
4 the victim's son. Where did that take you the next day?

5 A. The following day on, on that Monday, I believe, it
6 was, I spoke with Mr. Koch. He indicated that he had found
7 a traffic citation that his father had received or actually
8 two. It was later that -- he brought those -- I asked him
9 to bring those in. It was later determined that his father
10 had received a ticket on the 7th of September for having an
11 expired tag. Also they found he found a, a South Carolina
12 public contact warning ticket, which is something that
13 we're required by law to give out, all law enforcement's
14 required by law to give out to anyone who's not issued a
15 citation. This citation was made out to his father.

16 However, it gave the physical description of a black male
17 and fitting the description of the individual that Mr. Koch
18 had said did Mr. Koch's yard.

19 Q. And did you follow up on that information?

20 A. Yes, I did. Actually, Lieutenant Wekenmann made a
21 phone call over to the Sheriff's Office, and we were able
22 to pull the video from the deputy's car, and we were able
23 to see that traffic stop on video. And we, we observed Mr.
24 Koch and an individual later identified as Sammy Williams
25 in a blue Ford Ranger pickup truck being stopped.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 223

1 Q. So, as your investigation moved forward, do you
2 develop suspects?

3 A. Yes.

4 Q. And who is developed as the suspect?

5 A. Again, a person of interest at this time was the
6 person that was last seen with the victim. Mr. Koch's son
7 had indicated that he observed a black male that was raking
8 the yard prior to and that had done some yard work for his
9 dad. With Mr. Koch indicating that his dad wasn't a very
10 social person, we felt that this was a very important
11 person to speak with. Maybe he had some information
12 regarding who -- he may of seen something out of the
13 ordinary or -- so, we were interested in talking to this
14 individual.

15 Having given this video, we had developed who the --
16 identified the individual as Kenny, Kenneth Williams and
17 found his, his address. He actually lived in a trailer
18 park about four to five blocks away from the victim in Port
19 Royal. So, at that time that's when we started to try to
20 find Mr. Williams.

21 Q. So, at what point do you have contact with Mr.
22 Williams?

23 A. I believe that was during -- that was on the 10th is
24 the first contact we had with Mr. Williams.

25 Q. Is this the day after the discovery of Mr. Koch's

1 body?

2 A. Yes. That would have been Monday the 10th.

3 Q. And can you describe for the jury that contact that
4 you had with Mr. Williams?

5 A. Yes. Mr. Williams being a person of interest to us,
6 Lieutenant Wekenmann was constantly watching the area that
7 he lived in trying to locate him so we could question him.
8 I got -- I received a phone call from Lieutenant Wekenmann
9 indicating that he saw this individual that we saw in the
10 video in the front yard of Number 17 Kents Court. At that
11 time, I told him to keep an eye on him and that I would be
12 on my way. When Lieutenant Wekenmann spoke with me on the
13 phone, he also indicated to me that Mr. Williams was in the
14 front yard with a bucket of soapy water cleaning some
15 tennis shoes.

16 When I arrived, Mr. Williams had already reentered
17 the, the mobile home. Knocked on the door. Mr. Williams
18 came to the door. When he came to the door to answer the
19 door for me, he had a pair of shoe strings in his hands
20 that were soapy and wet.

21 Q. And this is when you had contact with him, at the
22 front door?

23 A. Yes.

24 Q. And you, you talked to him that day?

25 A. Yes, we did. I advised him that we were investigating

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 225

1 a theft that occurred on 16th Street, and asked him if he'd
2 be willing to come to the police department for some
3 questioning. He agreed. He initially said is this about
4 the old man, and I said what do you mean by that, and he
5 says well, where's 16th Street.

6 I didn't do any questioning in the vehicle. We took
7 him back to the police department. Once we got to the
8 police department, I tape recorded him and also, you know,
9 asked him what he meant by where 16th Street was, and then
10 that's when he went into that he actually knew Mr. Koch.

11 Q. To go back, you tell him that you were there to talk
12 to him about what?

13 A. I had just told him that we were there to investigate.
14 We were investigating a theft on 16th Street.

15 Q. And that is the street the victim lives on?

16 A. Yes.

17 Q. And his response to that indication was what?

18 A. I got it here on me. Yes, I'll correct myself.
19 Actually, he made the statement: Is this about the old man.
20 He said that statement at the police department. He said
21 is this about the guy in the blue truck, and I asked him
22 what he meant. He said where is 16th Street. So, those
23 statements were actually made at the police department.

24 Q. So, once he said that, and then he goes back and wants
25 to know where's 16th Street?

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 226

1 A. Yeah, I clarified with him, and I said well, you know,
2 16th Street is just a couple of blocks down from here. We
3 were given information that you were -- you know, had done
4 some yard work or whatnot for the old man, and that's when
5 he got into, you know, oh, yeah, I know who, who you're
6 talking about.

7 Q. And how did your conversation progress from there?

8 A. I just asked him where he was at on the, the day of
9 Mr. Koch being found dead as well as the previous day. Mr.
10 Williams, he tended to get his dates mixed up a lot. He
11 seemed to be forthcoming once he got his dates right. But
12 he was, in my opinion, he, he seems, seemed somewhat
13 evasive.

14 Q. And did he give you some explanation of where he had
15 been?

16 THE COURT: Yes, sir, Mr. Hood?

17 MR. HOOD: I was going to object, but I'll withdraw
18 it.

19 THE COURT: All right. Thank you.

20 BY MS. McCALL-TANNER:

21 Q. Does he ever give you a clear understanding of where
22 he was on Saturday or Sunday?

23 A. It never was really crystal clear as again he kept
24 mixing his dates up. This was, you know, two or three days
25 prior, so I assume that he would realize where he was at.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 227

1 He later said that, you know, he was -- he had raked
2 Mr. Koch's yard on Friday. Later he went to Mikey's house,
3 which was a house a couple blocks away from the victim's
4 house. He said he went to several different locations,
5 Spanish Trace. He named a few people that he was at.
6 Couldn't give me any names. He gave me a couple of street
7 names, Andrea and Fatz's apartment. Didn't give me an
8 exact location, but he did give me some names and said he
9 was at the apartment complex.

10 Q. And what else does he tell you about his activities
11 those days?

12 A. Okay, I confronted him with the fact that I knew that
13 he was with the victim on Friday because he had been pulled
14 over by a deputy. At that time, he said oh, yeah, we were
15 out in the -- out in the Burton area. Me and Mr. Koch were
16 out in the Burton area. And as we were coming back from 88
17 Burton into Port Royal, we got pulled over by the, by the
18 deputy.

19 Q. So, he does tell you that once you confronted him with
20 that information. Is that correct?

21 A. Yes.

22 Q. And what does he tell you about how he spent the rest
23 of his time during those two days?

24 A. He said that he, he got dropped off at Casablanca Park
25 by Mr. Koch, which is a park area across from the Naval

1 Hospital in Port Royal. He got dropped off there, and then
2 later he said that he went to Skinner's house. That the
3 old man went to a field or another location that's in
4 Burton, and then ended up -- once the man, old man dropped
5 him off, he then went to Skinner's house and they began to
6 party.

7 Q. Did he ever tell you that he went to Mr. Koch's house
8 Saturday or Sunday?

9 A. Yeah. He indicated initially that he had raked the
10 yard on Saturday. He never was quite clear if it was
11 Friday or Saturday when he raked, actually raked the yard.
12 But he did say -- he ultimately said, after changing the
13 story a few times, that he had, in fact, raked the yard on
14 Saturday.

15 Q. During this time with him, were you able to document
16 anything about his appearance?

17 A. Yes. Initially when we walked him into the police
18 department -- again, it was just in our office area, a very
19 casual setting. He -- I noticed on his left middle finger
20 he had a, a cut that appeared to be a pretty fresh cut.

21 Q. And what did you do at that point?

22 A. I asked him about the cut as we, as the interview
23 progressed. I asked him about the cut. He indicated to me
24 he was doing some yard work and had cut it on a thorn at a
25 lady's house behind China Imperial, which is down Southside

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 229

1 Boulevard close to the Royal Shopping Center in Port Royal.

2 (COUNSELORS CONFER.)

3 MR. HOOD: No objections, Your Honor.

4 THE COURT: Thank you.

5 MS. McCALL-TANNER: Like to go out of order. This
6 will be 47, State's 47. No objection from defense.

7 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
8 NUMBER 47.)

9 BY MS. McCALL-TANNER:

10 Q. Detective, if you could tell me what that depicts.

11 A. This is a photograph of his left middle finger.

12 Actually, he allowed us to photograph his left finger as
13 well as his whole body on the day that we -- the first day
14 we interviewed him.

15 Q. And where is the injury located?

16 A. This would have been on his left middle finger.

17 Q. And what does he tell you on September 10th about how
18 he got that injury?

19 A. Again, he said that he had -- was doing some yard work
20 and cut it on a thorn at a lady's house behind China
21 Imperial.

22 MS. McCALL-TANNER: If I may publish to the jury, Your
23 Honor? I'll just pass this around.

24 BY MS. McCALL-TANNER:

25 Q. Now, how did this interview end? Does he stay with

1 you or not?

2 A. No. Actually, recalling the evidence that we
3 collected at the crime scene, we concluded that the, the
4 blood droplets that we found were more than likely not the
5 victim's blood as there didn't appear to be any indication
6 of any blood transfer from the victim to any suspects. So,
7 we concluded that this possibly could be the blood of the,
8 of the, of a potential suspect. Also, with the relation of
9 the blood droplets, we concluded that had the victim cut
10 himself while at the scene and in the act of the robbery,
11 the burglary, and the murder, that he probably would have
12 bled leaving the scene. And as he was leaving the scene,
13 he would have bled close, in close, close proximity to
14 these items on the porch, as well as the rest of the
15 locations we found the blood droplets, indicating to us
16 that he probably had an injury to the left side of his
17 body.

18 MR. HOOD: Your Honor, I hate to object to this. This
19 is all speculation on his part. He has no clue to none of
20 this.

21 THE COURT: I'll sustain the objection as to
22 speculation of how that, the location of that possible
23 wound without some better foundation being established ---

24 MS. McCALL-TANNER: Yes, sir.

25 THE COURT: --- as to where it came from. I'll

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 231

1 sustain.

2 BY MS. McCALL-TANNER:

3 Q. So, Detective Griffith, based on your observations and
4 your collection of evidence, you had an idea of some things
5 you were looking for. Is that correct?

6 A. Yes.

7 Q. And because of that, what type of evidence were you
8 trying to collect from suspects?

9 A. We were trying to get potential DNA evidence.

10 Q. And did you try to get some from Kenneth Williams?

11 A. Yes, I did. I asked him if he'd be willing to give us
12 some cheek swabs, which is not very intrusive. You just
13 merely swab the inside of, of someone's mouth. He
14 originally said yeah, sure, I'll do that.

15 I got the items out preparing to swab the inside of
16 his mouth. At that time he said no. on second thought, I
17 don't want to do that. You could be a dirty cop and might
18 be trying to set me up.

19 He said, however, if I had an attorney here, I'd be
20 more than glad to do that. And I said well, who's your
21 attorney. I'll call him and have him, him or her come
22 here. At that time he said well, I don't have an attorney.
23 I'll have to get a public defender. And I said well, you
24 know, that, that may be, but if you want to do this, you
25 can. If you don't want to do this, you don't have to. At

1 that time he, he just decided that he, he wasn't going to
2 give us some swabs.

3 And so once he said that he wanted an attorney for the
4 swabs, we just played it safe and not asked him any more
5 questions. We said okay, well, you know, you can, if you'd
6 like, we'd take you back. We'll take you back now. He
7 just decided that he didn't want us to drive him and that
8 he chose to walk. The police department's only about a
9 block away from where he lives. So, he just walked and he
10 left.

11 Q. Okay. Did you continue your investigation after this?

12 A. Yes.

13 Q. Is that correct? What other people did you interview
14 as part of your investigation?

15 A. Well, as it progressed, he -- during the first
16 interview, Mr. Williams indicated to us that he may have
17 been with three other individuals: He said a girl named
18 Jenny, a girl named Lisa, and Skinner on the night of. We
19 didn't have any -- I don't believe he gave us any full
20 names again. So, we didn't have any real hardcore names to
21 go after.

22 However, we were able to obtain -- we obtained a
23 search warrant for Mr., Mr. Williams's trailer as well. We
24 were able to obtain the clothing items he was wearing the
25 day of -- he was pulled over with Mr. Koch. He indicated

J. GRIFFITH - DIRECT EXAMINATION BY MS. MCCALL-TANNER 233

1 to us during that first interview that he was, in fact,
2 wearing those items of clothing on the night of Saturday,
3 Saturday night.

4 Q. And during your -- when you conducted the search
5 warrant, did you locate those shoes that he was washing?

6 A. No. We located a pair of, like, low-cut hiking boots,
7 but we could not locate any shoes whatsoever or any tennis
8 shoes whatsoever. We did, however, find a shirt that he
9 described as a New York shirt that was red and white in
10 color and some shorts that we collected.

11 Q. Now, in your interviews of these other people, did you
12 eventually talk to Jenny, Lisa, and Skinner?

13 A. Yes.

14 Q. And following up on your conversations with them, did
15 you collect any other evidence?

16 A. Yes, we did. Mr. Skinner was alleged to have owned a
17 white van. We found one of the females, I believe it was
18 Jenny Chase, driving the van several days later, and we
19 pulled, subsequently pulled her over and asked her to bring
20 the van back to the police department. At that time we
21 secured the van. She was arrested on other charges, and
22 once we placed her into, in jail, we impounded the van and
23 secured a search warrant for the van.

24 (COUNSELORS CONFER.)

25 MR. HOOD: I have no objection to any of these.

1 THE COURT: Thank you, Mr. Hood.

2 (PHOTOGRAPHS INDIVIDUALLY MARKED INTO EVIDENCE AS
3 STATE'S EXHIBIT NUMBERS 38, 39, 40, 41, 42, 43, 44.)

4 BY MS. McCALL-TANNER:

5 Q. Starting with State's 38, 39, 40, 41, 42, 43, 44,
6 Investigator.

7 MS. McCALL-TANNER: Since these are already in
8 evidence, if I could just go ahead and publish these to the
9 jury with the detective's testimony?

10 THE COURT: That would be fine.

11 BY MS. McCALL-TANNER:

12 Q. Starting with State's 38, could you describe for the
13 jury what is depicted in that photograph?

14 A. Yes. This is a, this is a white Chevy van that Jenny
15 Chase was driving the day we arrested her. This is also --
16 this was the van we determined to be Mr. Skinner's, and
17 this picture was taken behind the police department at the
18 time.

19 Q. Okay. State's 39.

20 A. This is the inside of the van. We opened all the
21 doors and took some photographs of it before we went in and
22 actually conducted the search. As you can see, there's a
23 lot of trash items in the, in the vehicle.

24 Q. And what area of the van is this showing?

25 A. This is the rear seat behind the passenger in the

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 235

1 front passenger and the, and the driver.

2 Q. State's 40.

3 A. This will be the front seat area on the van.

4 Q. State's 41.

5 A. This was the back cargo area of the van.

6 Q. State's 42.

7 A. This is a picture. There're several beer cans, liquor
8 bottles, and things of that nature throughout the -- this
9 is just a close up of some of the beer and things like
10 that.

11 Q. State's 43.

12 A. This is a photograph of a, a Bank of America account
13 card that we located in the van. We actually didn't
14 realize what it was until after we removed it and put it up
15 on the seat. We later on confirmed that these account
16 numbers were the savings account and checking account of
17 Mr. Koch.

18 Q. Going to that, can you give the jury an ID of where it
19 was actually located in the van?

20 A. Yes. As we were pulling through this area here
21 located in between the two front seats and in front of the
22 rear seat, it was on the floorboard.

23 Q. In front of the rear seat?

24 A. Yes.

25 Q. Okay. Kind of the -- what area? Would you point to

1 the area of the van?

2 A. It was -- I call it the center hump. Near the center
3 hump area, and there were some other items that were
4 actually on top of it, and you see there's, there's a can.
5 That looks like some underwear or something on the back
6 seat I think on there, if I recall correctly.

7 Q. State's 44, can you tell us what that is?

8 A. Yes. On the rear seat of the van, the bench seat, a
9 closer observation we found a stain that appeared to be
10 some type of blood stain. We swabbed it. We got a little
11 test kit -- Skill Test Kit is what we call them -- to see,
12 to determine if it's actual blood, and this did indicate
13 positive on our field test kit that this was potential
14 blood evidence.

15 Q. And going back to the seat, can you point out to the
16 jury where that actually is located in relevance to the
17 seat?

18 A. Yes. It would have been in the area right just
19 forward of the center of the seat and in the center any,
20 anywhere where the passenger would be sitting.

21 Q. And this is the back seat?

22 A. Yes.

23 Q. All right. Thank you, sir. Please take the stand.

24 (COUNSELORS CONFER.)

25 MR. HOOD: No objection, Your Honor.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 237

1 MS. McCALL-TANNER: State's 45, no objection from
2 defense.

3 (BANK CARD MARKED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 45.)

5 BY MS. McCALL-TANNER:

6 Q. Investigator, what is State's 45?

7 A. This is the account card that was pictured that we
8 found in the back of the van.

9 Q. And what did you do with this information?

10 A. We went and determined if those were, in fact, Mr.
11 Koch's account numbers. So, I subpoenaed the bank records
12 of Mr. Koch and confirmed -- they confirmed that those
13 account numbers were, in fact, his savings account and his
14 checking account numbers.

15 Q. And what did you learn from reviewing his account
16 records?

17 A. When I served the subpoena on the bank, I also
18 requested any activity that occurred after Mr. Koch's
19 death. There was no activity on the account. Actually,
20 there was -- they indicated that the account was overdrawn,
21 but it was overdrawn two or three days prior to the murder,
22 and it was from a check that Mr. Koch had written to a
23 farm.

24 Q. So, no activity?

25 A. No.

1 Q. And the swab that you took from the back seat of the
2 van, was that taken in the same manner as all the other
3 swabs?

4 A. Yes, ma'am.

5 Q. Collected it and you preserved it?

6 A. Yes, ma'am.

7 Q. And what did you do with the swab?

8 A. It was placed into evidence, and we later took it to
9 the SLED lab.

10 Q. And where is that swab now?

11 A. It's probably still with the SLED agent because it's
12 just coming back from the lab.

13 Q. Okay. Now, do you at some point get a sample from Mr.
14 Williams?

15 A. Yes.

16 Q. And how is that performed?

17 A. The same way we swabbed at the scenes and all. It was
18 -- we used the sterile swabs, swab protectors, swab boxes.
19 We seal them, have them initialed, and I initialed. I
20 actually personally collected the swabs.

21 Q. And once you collect them, what do you do with it?

22 A. We then submitted those to SLED for analysis.

23 (COUNSELORS CONFER.)

24 MR. HOOD: No objections, Your Honor.

25 MS. McCALL-TANNER: 48, no objection from defense.

J. GRIFFITH - DIRECT EXAMINATION, BY MS. McCALL-TANNER 239

1 (TWO DNA SWABS MARKED INTO EVIDENCE AS STATE'S EXHIBIT
2 NUMBER 48.)

3 BY MS. McCALL-TANNER:

4 Q. Can you identify State's 48 for the record?

5 A. Yes. This is the bag that I placed the swab in.

6 Q. And how do you know that what's been taken was in that
7 bag?

8 A. Because I listed, labeled on there two Buccal swabs
9 taken from Kenneth Williams.

10 Q. Investigator, once you complete your investigation, at
11 some point do you place Mr. Williams under arrest?

12 A. Yes. We established enough probable cause based on
13 DNA evidence to arrest him.

14 Q. And what do you charge him with?

15 A. He's charged with murder, burglary first degree, and
16 strong-armed robbery.

17 Q. Okay, and once you have him in custody for these
18 charges, do you have any other interviews with Mr.
19 Williams?

20 A. Well, from the first interview he indicated that he
21 wanted an attorney before we swabbed him. So, we just --
22 again, we didn't ask him any questions. Myself and
23 Lieutenant Wekenmann actually arrested him, and when we
24 were in the booking area, he made some unsolicited remarks
25 to us at the booking area.

1 Q. And so do you conduct an interview at that time?

2 A. No, we don't.

3 Q. Do you ever go back and conduct another interview with
4 Kenneth Williams?

5 A. Yes. He indicated to us that he did want to talk
6 without an attorney present, and we indicated to him that
7 we would be back later on in the afternoon and talk to him.

8 Q. And did you go do that?

9 A. Yes, we did.

10 Q. And how -- well, first off, before you interview him,
11 do you inform him of his rights?

12 A. Yes.

13 Q. And is that what we hear on television as Miranda
14 rights?

15 A. Yes.

16 Q. What does that actually mean?

17 A. It's basically advising him that he doesn't have to
18 talk to us. He's got the right to remain silent. But if
19 he does talk to us, that anything that he says may be used
20 against him in court. I also advise him that he doesn't
21 have to talk without an attorney, or he can contact his
22 attorney and talk to us with his attorney present.

23 Q. And did you give him those rights before you
24 interviewed him?

25 A. I did, and I also reminded him that he had previously

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 241

1 requested an attorney for the DNA swabs, and clarified with
2 him very carefully that, you know, we were there upon his
3 request because once someone invokes their rights, we
4 cannot recontact them unless it was at his request. So,
5 therefore, we went back and contacted him at his request.

6 Q. And did he appear to understand his rights?

7 A. Yes, he did.

8 Q. And did he voluntarily waive those rights and speak to
9 you?

10 A. Yes, he did.

11 Q. And, Investigator, did you record this interview?

12 A. I did.

13 Q. And how did that tape turn out?

14 A. The jail, the interview rooms at the jail are very --
15 not very acoustical, I guess, for lack of better terms.
16 So, therefore, it was very garbled. You know, you can --
17 if you listen to it several times, you can make out what
18 people are saying. However, those, those interview rooms
19 at the jail are notorious for being very echoing and just
20 -- you don't have very good quality.

21 Q. So, it is evidence. You and I attempted to listen to
22 it. Is that correct?

23 A. Yes.

24 Q. Now, besides just trying to record it, do you take
25 notes and then issue a report on your interview?

1 A. Yes.

2 Q. And how detailed is your report?

3 A. I just, when I write my report, I highlight areas that
4 would make me remember things, pertinent information. So,
5 therefore, it's just basically a summary. I don't verbatim
6 write down everything that's said, every question that's
7 asked, every response that's given. But I just write down
8 a summation of what the -- how everything went, transpired.

9 THE COURT: Ms. Tanner?

10 MS. McCALL-TANNER: Yes, sir.

11 THE COURT: Before we get to the substance of the
12 statement itself, is this a good time for us to stop
13 because obviously I don't know how long it's going to be.
14 If it's going to be two or three minutes, then we can go
15 with it. But if it's going to be longer than that, this
16 might be a good time to break. You tell me.

17 MS. McCALL-TANNER: I will -- if I said it will be ten
18 minutes, I'm afraid something would happen. It would take
19 long. So, I would say this would be a good place for a
20 break, Your Honor.

21 THE COURT: Do you have some other areas that you will
22 question him on after that?

23 MS. McCALL-TANNER: Very few.

24 THE COURT: Okay. Let's, let's, let's go ahead and
25 take our break right now. The jury's been in place ---

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 243

1 MS. McCALL-TANNER: Yes, sir.

2 THE COURT: --- for a good bit of time, and it's -- the
3 lunch hour is, is creeping past. So, we're going to stop,
4 ladies and gentlemen, at this point for the morning or
5 afternoon, early afternoon, and ask you to be back in the
6 jury room at 2:30 this afternoon. We will resume the trial
7 at 2:30. That's an hour and fifteen minutes.

8 Please do not discuss this case with anybody or among
9 yourselves while you're out of the courtroom or when you
10 return to the jury room. Just -- we'll get you back at
11 2:30 to resume the trial. Thank you.

12 Detective, you can stay where you are.

13 (THE JURY EXITS AT 1:14 P.M.)

14 BAILIFF: The jury's clear, Your Honor.

15 THE COURT: Thank you.

16 All right, Detective, you can step down obviously
17 during the lunch hour. You don't have to stay on the
18 stand. But as you probably know, you're not allowed to
19 discuss your testimony with anybody while you're off the
20 stand.

21 WITNESS: Yes, sir.

22 THE COURT: You can review notes if you need to. You
23 can review documents, but do not discuss your testimony
24 with anybody while you're on the stand.

25 WITNESS: Yes, sir.

1 THE COURT: Thank you.

2 WITNESS: Thank you.

3 (THE WITNESS EXITS THE STAND.)

4 THE COURT: All right. All right. I apologize, Ms.,
5 Ms. Tanner. You were on a roll, but I didn't know how much
6 longer that was going to go.

7 MS. McCALL-TANNER: That's fine.

8 THE COURT: And frankly I was concerned that we might
9 find ourselves bumping up against 2:00.

10 MS. McCALL-TANNER: Yes, sir.

11 THE COURT: And that was going to test their
12 tolerance, as well as ours.

13 MS. McCALL-TANNER: Yes, sir. Thank you very much. I
14 needed a break myself.

15 THE COURT: Okay. 1:00, 1:15. 2:30. Thank you. We
16 will be in recess until then.

17 MS. McCALL-TANNER: Thank you.

18 (OFF THE RECORD.)

19 THE COURT: Ms. Tanner, is the state ready to proceed?

20 MS. McCALL-TANNER: The state is ready, Your Honor.

21 THE COURT: Mr. Hood.

22 MR. HOOD: We're ready, Your Honor.

23 THE COURT: All right, Detective Griffith, you can
24 resume the stand, and you can bring us the jury.

25 BAILIFF: Yes, sir, judge.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 245

1 THE COURT: Thank you.

2 MS. McCALL-TANNER: I'm just trying to figure that
3 out. I think I got to Miranda.

4 THE COURT: You did. You were getting ready to put
5 the substance of the statement in.

6 MS. McCALL-TANNER: Yes, sir.

7 BAILIFF: Be just a minute, Judge.

8 (JURY ENTERS AT 2:35 P.M.)

9 THE COURT: Ladies and gentlemen, thank you for your
10 prompt return from lunch, and we're ready now to resume
11 where we left off before lunch. If you recall, Detective
12 Griffith was being direct examined by Ms. Tanner.

13 Ms. Tanner.

14 MS. McCALL-TANNER: Thank you, Your Honor. Please the
15 court?

16 (COUNSELORS CONFER.)

17 MR. HOOD: No objection, Your Honor.

18 THE COURT: Thank you.

19 MS. McCALL-TANNER: This will be State's 46. No
20 objection from defense.

21 (DNA SWABS MARKED INTO EVIDENCE AS STATE'S EXHIBIT
22 NUMBER 46.)

23 BY MS. McCALL-TANNER:

24 Q. Detective Griffith, can you tell the jury what State's
25 46 is?

1 A. Yes. This is a swab that we took from the back seat
2 of the van that we earlier discussed.

3 Q. And that would show the photograph of the location in
4 the back seat, and that's the actual swab that you used to
5 collect that sample. Is that correct?

6 A. Yes, ma'am.

7 Q. All right. Now, back to where we were before lunch.
8 I think we were at the point, you're interviewing Mr.
9 Williams. You've given him his Miranda, and he'd waived
10 his rights and wanted to speak with you. Is that correct?

11 A. Yes, ma'am.

12 Q. Can you tell the jury a little bit about the statement
13 he gave you?

14 A. Yes. Again, this took place inside the jail later on
15 in the afternoon after his arrest. He began by telling me
16 that he had met up with Skinner earlier Saturday afternoon.
17 They decided that they were going to party that night. So,
18 they went over to a girl named Lisa's house and picked her
19 up from her house at Dixie Mobile Home Park. They then
20 went back to Skinner's house, partied for a while, and then
21 they decided that they needed to get some more money. So,
22 they were going to go to Mr. Jack's house.

23 Q. And did he describe to you -- well, did they go to Mr.
24 Jack's house?

25 A. Yes, they did.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 247

1 Q. And did he tell you how they got there?

2 A. Yes. They went in Skinner's white van. He indicated
3 that Jenny -- or he gave me names of Lynn or Linda was the
4 driver of the van. She was later identified as Jenny
5 Chase. Skinner was in the front seat, front passenger
6 seat, Lisa was in the rear seat behind the driver, and he
7 was in the rear seat behind the passenger.

8 Q. So, that puts Kenneth Williams in the back seat where
9 we located or you collected the swabs?

10 A. Yes.

11 Q. Is he, is he able to tell you about what time he gets
12 to Mr. Jack's house?

13 A. He gave me a time frame. He said it was between 10:00
14 at night and midnight.

15 Q. So, it is during the nighttime?

16 A. Yes.

17 Q. And does he tell you what happened once they get to
18 Mr. Jack's house?

19 A. Yes. He said that they pulled in behind the entrance
20 to the driveway. It was he, Skinner, or Skinner and Jenny
21 had gotten out of the van and went up to the door.

22 Q. Did he tell you what Lisa did?

23 A. He indicated that Lisa was very intoxicated, and she
24 stayed in the van the whole time.

25 Q. All right, and once they get out of the van, what do

1 they do?

2 A. They went up to the door, knocked on the door, and
3 that's when the victim came to the door and asked them what
4 they were doing there.

5 Q. And what does he tell you about that?

6 A. He said when the victim opened the door, Skinner and
7 the victim started talking. He said that all of a sudden,
8 Skinner went off and started attacking the old man.

9 Q. Does he have any explanation of why?

10 A. No. I don't recall him giving me any explanation
11 whatsoever. He just said that all hell broke loose was his
12 exact words.

13 Q. All right, and did he tell you what he's doing at this
14 time?

15 A. He said that once Jimmy started or Skinner started
16 hitting the, hitting the victim, that he kept telling him
17 come on, man, let's go, let's just go, let's just go.

18 Q. Okay. So, he's just standing there saying let's go
19 while this other person is beating Mr. Jack?

20 A. Yes.

21 Q. All right, and does he give you any details about the
22 beating?

23 A. Yeah. He, he indicated that once Timmy started
24 attacking him, he saw the old man fall on the floor. He
25 described that he saw blood coming out of the old man's

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 249

1 facial area. He also said that at some point in time,
2 Timothy took the phone from the old man, or Skinner.

3 Q. So, from where he's supposedly standing, he described
4 to you blood coming from the victim's face. And, and what
5 did he say about the cordless phone?

6 A. He said once he got back in the van, he saw that Ken -
7 - or Skinner had taken a piece of the phone once they got
8 back in the van.

9 Q. Well, while he's observing all this, does he -- what
10 does he -- does he tell you what he does?

11 A. He's indicated -- well, earlier in the previous
12 statement when we first booked him in, he said that he cut
13 his hand while he was trying to pull Skinner off. I didn't
14 go into much detail on that. Again, his, his statement to
15 me, although he was including a little bit more
16 information, it didn't tend to follow any chronological
17 order. So, it was very hard to follow, and it's very hard
18 to pick out, you know, key points in the interview.

19 He did indicate, you know, in that previous statement
20 -- I don't recall if he indicated in this interview if he
21 had pulled Timmy off of him. I did inquire as to why no
22 one at the scene had, you know, tried to call 9-1-1 even
23 anonymously to try to get the man some help. He didn't
24 respond to that.

25 Q. So, he doesn't tell you he tries to get help for

1 Mr. ---

2 A. No. He -- well, he did indicate to me that he didn't
3 feel that it was that bad. So, they just left.

4 Q. He didn't think it was that bad. Now, did he tell you
5 what they do once they get back in the van?

6 A. He said they got back in the van, and Timmy was
7 passing out money to people. At one point, he gave some
8 money to Lisa, but then took it back from Lisa. He noticed
9 that Timmy had taken the cordless phone, Jack's wallet, and
10 a kitchen knife.

11 Q. All right, and do you recover any of these items?

12 A. No. We looked all over but could not find them.

13 Q. And in your search of the van, the only relevant
14 evidence you find is, is what, the bank card?

15 A. Yes.

16 Q. And where is that located?

17 A. That's, again, that's in front of the rear seat on
18 what I would call the hump area of the van in between the
19 two front seats.

20 Q. And based on Mr. Williams's statement, where would he
21 have been sitting?

22 A. He would have been sitting next to the sliding door
23 behind the passenger, the front passenger.

24 Q. The same area that the card is found in?

25 A. Yes.

J. GRIFFITH - DIRECT EXAMINATION BY MS. McCALL-TANNER 251

1 Q. Now, after this all goes down, what does he tell you
2 he does?

3 A. He said they went, they all went back, got into, back
4 into the van, went back to Skinner's house, and they
5 continued to party. Later on in the evening or the
6 morning, they then went to another location in the Millage
7 Village and went to a man named Tony's house and partied
8 there.

9 Q. Okay. So, let's be clear. The timing of this
10 statement where he is describing Timothy attack Mr. Koch is
11 post-arrest, after he's been told he is charged with these
12 crimes?

13 A. That is correct.

14 Q. So, prior to that, your initial contact with him, he
15 denied being there at all. Is that correct?

16 A. Yes.

17 Q. His explanation for the injury to his hand also
18 changed pre and post-arrest. Isn't that correct?

19 A. That is correct.

20 Q. Pre-arrest, what is his excuse for the injury on his
21 hand?

22 A. He cut it while doing yard work on a, on a, yeah, on a
23 thorn bush.

24 Q. And post-arrest, now he's been confronted with
25 charges, what is his, his explanation for the injury now?

1 A. He said it was as a result of him pulling Timmy or
2 Skinner off of the victim.

3 Q. Now, Detective Griffith, do you see Kenneth Williams
4 in the courtroom, the man you have interviewed, the one you
5 have charged with each of these offenses?

6 A. Yes, I do.

7 Q. Can you identify him for the jury?

8 A. Yes. He's in the black or gray suit sitting next to
9 Mr. Hood.

10 MS. McCALL-TANNER: Please have the record reflect
11 he's indicated the defendant.

12 THE COURT: Yes, ma'am.

13 MR. HOOD: This guy?

14 WITNESS: Yes.

15 MS. McCALL-TANNER: I think we handled that.

16 All right, investigator, please answer anything
17 defense counsel has.

18 THE COURT: Mr. Hood, you may cross-examine.

19 CROSS-EXAMINATION BY MR. HOOD:

20 Q. Investigator, I'm, I'm 5'7" and I think I've got a --
21 my client, how tall is my client there? He's about 5'9",
22 isn't he, maybe 10 at the outside?

23 A. I'd probably -- I would say.

24 Q. Yeah. He's a little heavier than he was when you saw
25 him earlier, wasn't he? Isn't he?

J. GRIFFITH - CROSS-EXAMINATION BY MR. HOOD

253

1 A. He's about the same.

2 Q. Yeah, well, okay, about the same, and Mr. Skinner's
3 about six foot, about 200 pounds, isn't he?

4 A. Yes, sir.

5 Q. Okay. So, Skinner's bigger than both of us and my man
6 here, Mr. Williams?

7 A. That's fair to say, yes, sir.

8 Q. Okay. All right. All right. Just to clarify that.
9 Mr. Koch was a big man, too, wasn't he?

10 A. Yes, he was.

11 Q. And there was a pretty good fight that probably took
12 place inside of that house because he wasn't, he wasn't
13 easy to get down. Isn't that correct?

14 A. I couldn't say.

15 Q. You couldn't say. Couldn't say. Okay. All right.
16 Now, you interviewed and taped each one of the suspects in
17 this case. Is that correct?

18 A. Yes.

19 Q. And the only interview of Mr. Williams that was not
20 taped was the one that took place at the jail at booking.
21 Isn't that correct?

22 A. Yes, that is correct.

23 Q. All right, and, and that's the first time -- the first
24 interview you had with Mr. Williams, Kenneth, was at your
25 office when you told him you were investigating a theft of

1 some stuff from some place. Isn't that correct ---

2 A. Yes, that was the first interview.

3 Q. --- in Port Royal?

4 A. Yes.

5 Q. And during the course of that interview, I think Mr.
6 Williams told you that, in fact, he worked for Mr., what he
7 -- who -- the person he called Koch. Isn't that correct?

8 Koch or either Jack. Isn't that correct, the person who
9 lived at 16th Street, Mr. Koch?

10 A. Yes. It was the first, first interview he revealed
11 that, yes, sir.

12 Q. So, so, he told you all of that, that he had been
13 working for this particular person on several different
14 occasions. Isn't that correct?

15 A. Yes, sir.

16 Q. Okay, and you knew that because you had also checked
17 with people in the neighborhood, and knew that there was a
18 guy out there that was doing all this yard work for all of
19 these people and matched his description. Isn't that
20 correct?

21 A. Yes.

22 Q. Okay. Okay. Now, on this day that he was stopped and
23 you, you made reference to it, you saw the video where the
24 victim, Mr. Koch, was stopped along with Mr. Williams in
25 Mr. Koch's car. Is that correct?

1 A. Yes.

2 Q. Okay, and during that stop, Mr. Williams was
3 questioned by the officer. I believe it was a staff
4 sergeant, Deputy Sheriff Light. Isn't that correct?

5 A. That is correct.

6 Q. In his words, Mr. Williams's words, when questioned by
7 Mr. Light about what he was doing with Mr. Koch was that
8 they were looking for a cleaning lady. Isn't that correct?

9 A. That was what the deputy indicated to Lieutenant
10 Wekenmann. Lieutenant Wekenmann interviewed the deputy.
11 So, that was related to me, yes.

12 Q. And he was right skeptical of this, Mr. Light was, and
13 treated this as a drug interdiction stop. Isn't that
14 correct?

15 A. That is correct.

16 Q. Okay. All right. All right. So, now, going back to
17 that particular stop, you questioned Mr. Williams at your
18 office, that first interview now, and on that first
19 interview you questioned him about what he and Mr. Crotch
20 [sic] were doing on that particular day that they were in
21 his car and got stopped by the police. Isn't that correct?

22 A. Yes, I did.

23 Q. And what they -- what were they doing? What were they
24 doing?

25 A. They were going around town looking for services from

1 different ladies in Burton.

2 Q. Who was going to get these services?

3 A. According to Mr. Williams, Mr. Koch was.

4 Q. Okay. Well -- okay. Okay. Mr. Williams indicated
5 that he was -- they were out there looking for sexual
6 entertainment for Mr. Koch at his request. Is that
7 correct?

8 A. That's what was related to me, yes, sir.

9 Q. Okay, and they were driving Mr. Koch's vehicle and Mr.
10 Koch was driving. Is that correct?

11 A. Yes, they were.

12 Q. Okay. All right. Now, and the places that they
13 stopped to try to find a woman who could provide this
14 entertainment, Mr. Williams told you about those places,
15 didn't he?

16 A. He didn't go into a lot of detail, but he did tell me
17 that they went ---

18 Q. Okay.

19 A. --- to different places.

20 Q. And one of them was a woman's name by the name of
21 Tina. Isn't that correct?

22 A. I have listed Trina, but ---

23 Q. Tina, Trina. Okay. All right. I'll accept that.
24 What about another location? They went to Timothy
25 Skinner's, didn't they?

J. GRIFFITH - CROSS-EXAMINATION BY MR. HOOD

257

1 A. Yeah, I don't -- let's see.

2 Q. Come on now. Look, look closer in your notes there.

3 A. No, they went to -- I'm just trying to figure out what
4 order -- I don't recall what order, where they ended up
5 last.

6 Q. But if you look down in your supplemental report down
7 at the last -- bottom of the page down there, you see Mr.
8 Williams then stated that he had mixed up his date and, you
9 know, but it talks specifically about that he went to Mr.
10 Skinner's house after this Tina or Trina or whatever, her
11 house. Isn't that correct?

12 A. Okay. Yes, sir.

13 Q. So, they were looking for sexual entertainment for Mr.
14 Crotch [sic] at this particular place?

15 A. According ---

16 Q. Mr. Skinner ---

17 A. --- to Mr. Williams, yes, sir.

18 Q. According to Mr. Williams, okay. According to Mr.
19 Williams. Yes. Okay.

20 Well, now, on this videotape that you heard when the
21 officer was questioning Mr. Williams about what he was
22 doing out there with this right big individual, did you
23 hear the, the individual, the big guy, the white guy who
24 was driving the van, or truck rather, say no, we're not
25 looking for a cleaning lady for me?

1 A. I don't recall what was said on the in-car video. I
2 can only recollect what Lieutenant Wekenmann related to me
3 from what Sergeant Light told him.

4 Q. So, he, he didn't appear to be in distress or anything
5 like that?

6 A. Oh, no.

7 Q. Okay. So, Mr. Williams wasn't kidnapping him or
8 anything of that nature. Is that correct?

9 A. No.

10 Q. Okay. All right. All right. Now, you interviewed
11 all of the people that were in that van that went to this
12 house on 16th Street, didn't you?

13 A. Yes, sir.

14 Q. Okay, and you taped those interviews of all of those
15 people?

16 A. Yes, we did.

17 Q. Now, let's, let's start with just a general question.
18 All of the people, with the exception I think of Mr.
19 Skinner -- in other words, the two young ladies and Mr.
20 Williams -- told you that they went to a Tony Freeman's
21 house that night after they left Skinner's house, after
22 they had been to Mr. Koch's house.

23 A. Yes.

24 Q. Is that correct?

25 A. That's correct.

J. GRIFFITH - CROSS-EXAMINATION BY MR. HOOD

259

1 Q. Okay, and all three of those people, the two young
2 ladies also told you the names of the people who were
3 present in that house. Is that correct?

4 A. They gave me -- initially they gave me the name of
5 Tony.

6 Q. Well, you have in your report Freeman.

7 A. Yes.

8 Q. I'm, I'm just taking what you say.

9 A. Yes.

10 Q. You know what I mean? But it was Freeman. Is that
11 correct?

12 A. Yes.

13 Q. And it was Freeman's girlfriend. Isn't that correct?

14 A. According to them, yes, it was Tony Freeman, his
15 girlfriend, and their son, I believe.

16 Q. Okay, but the son was about twenty-three years old,
17 wasn't he?

18 A. I don't know how old he was.

19 Q. Well, he was old, wasn't he? I mean, he was older.

20 He wasn't, he wasn't nine. He wasn't ten.

21 A. Not that I'm aware of, no.

22 Q. Okay. So, he was a grown guy, wasn't he?

23 A. As -- I guess. I don't know how old he was. I don't
24 know who he was.

25 Q. Well, did you ever, ever interview any of those three

1 people?

2 A. No, never did.

3 Q. Okay. Now, both of those girls, both of the women who
4 were in that van and one who was in that house told you
5 that they were taking the credit cards of the victim in
6 this case and trying to see what they could do about
7 getting money out of his account off of the computer.

8 Isn't that correct?

9 A. That is correct. Even Mr. Williams told me that.

10 Q. Okay. Okay. Yes, and the girls told you that?

11 A. Yes, sir.

12 Q. Yeah, and who gave them -- gave this son the credit
13 card that he was using to try to do this?

14 A. I don't believe anyone ever indicated who gave who a
15 credit card there. It was just indicated that apparently
16 it was the son, and maybe Skinner or another individual at
17 the house that was trying to access the account.

18 Q. Okay, Skinner. Well, who was this other person in the
19 house that was trying to access the account?

20 A. Well, they said that ---

21 Q. The son I know, and I know Skinner. Who was this
22 other person that was trying to access the account?

23 A. Well, they told me it was Tony Freeman, his
24 girlfriend, and either Tony or the girlfriend's son that
25 was there at the house and they was at a party. So, I

J. GRIFFITH - CROSS-EXAMINATION BY MR. HOOD

261

1 don't know if there's other individuals there at the party
2 or what. But they said it was his son primarily trying to
3 access to see if there was any money in the account.

4 Q. Okay, and these two females that you interviewed who
5 are listed here on this witness list who are going to come
6 in here and testify hopefully, they told you who these
7 people were and where they were located at. Is that
8 correct?

9 A. They gave me a general location, Millage Village, and
10 they described a trailer that we went out to try to locate,
11 but we never were able to locate anyone by that name at
12 anywhere in Millage Village.

13 Q. So, for three years you've been able -- unable to
14 locate these three people who had all of these people who
15 were involved in this murder that ---

16 A. Yes.

17 Q. A guest in their home that particular night. Is that
18 correct?

19 A. After we initially went over there, we went over there
20 a few times to try to locate them, and we just didn't see
21 the need to do it. I mean we weren't, we weren't
22 investigating a credit card fraud. We were investigating a
23 murder. The individuals weren't named as any alibi
24 witnesses or anything like that. So, there was no other
25 information to really corroborate.

1 Q. Well, wouldn't it be nice to know who gave the son the
2 credit card for the son to come in here and say Mr. Skinner
3 handed me the credit card and asked me to check, and gave
4 me these numbers for me to run on the computer to see
5 whether or not I could find out, and see whether I could
6 manipulate any money out of this guy's account?

7 A. Possibly. It would have been nice to know a lot of
8 things that we still don't know.

9 Q. Yeah. Yeah. Yeah. Now, there was one thing that I
10 noticed in all of the statements that you took that nobody
11 ever followed up on. There was never ever a question asked
12 after this witness, this person made this statement. And
13 this statement was that after they left that house that
14 night, they went back to Skinner's place where Skinner
15 changed clothes and took a shower. Do you remember that?

16 A. Yes, sir.

17 Q. Okay. Did you ever ask Lisa or Jenny or Mr. Williams
18 why Skinner had to take a bath?

19 A. Now, I don't -- I recall getting that information, but
20 I don't recall when I got it. But, no, I never asked
21 anyone else.

22 Q. Well, isn't it true that Mr. Williams told you that he
23 believed Mr. Skinner had blood on his clothing?

24 A. That is correct.

25 Q. And Mr. Skinner, I think, was described by the two

J. GRIFFITH - CROSS-EXAMINATION BY MR. HOOD

263

1 females as having a dress, long sleeve sort of shirt with a
2 pocket in it. Isn't that correct?

3 A. I don't recall what -- if they told me what kind of
4 shirt he was wearing or not. I believe Mr. Williams told
5 me he was wearing, like, cargo shorts I think, if I recall
6 correctly. I don't recall what kind of shirt.

7 Q. Well, didn't the young ladies tell you what type of
8 clothing he was wearing?

9 A. I don't recall that they told me that, no.

10 Q. Okay. Did you ever go to Skinner's house and retrieve
11 any clothing and turn it in to evidence?

12 A. No, we didn't.

13 Q. Okay, and you indicated that there were fingerprints
14 that were developed, but you, you guys determined were not
15 good enough to be identifiable. Is that correct?

16 A. There was no identifiable ridge detail, no.

17 Q. So, the person who handled this wallet insert which
18 was plastic, you didn't find any fingerprints on that at
19 all?

20 A. I'd have to yield to SLED on that. The report
21 indicates that they didn't find any, any fingerprints with
22 any identifiable value, value to them.

23 Q. Did they find any blood?

24 A. Not that they indicated.

25 Q. Okay. So, they didn't find any fingerprints. They

1 didn't find any blood. Well, how long had it been there on
2 the floor? Do you know?

3 A. No. To be honest with you, no, I don't know.

4 Q. So, we don't know when it got there. Is that correct?

5 A. True.

6 Q. We don't know who put it there. Is that correct?

7 A. Correct.

8 Q. So, it could have been there for several days?

9 A. It could have been. The only thing I can go by is
10 that the victim's son indicated to me that he had an
11 insert. So, we assumed that that was the insert to the
12 wallet, but we couldn't definitively tell that because we
13 never found the wallet. So, it could have been, very well
14 been another insert from another wallet.

15 Q. Okay. So, so, we don't know what value that is. We
16 just know it was there?

17 A. Yes, sir.

18 Q. Is that correct? And there were a lot of other things
19 there. Isn't that correct?

20 A. Oh, yes, sir.

21 Q. All right. Okay. Now, going back to the indentation
22 on this particular door, and you indicated that there was
23 hair found embedded in the door, in the cracks of the door
24 where a -- it had broken. Is that correct?

25 A. Correct.

J. GRIFFITH - CROSS-EXAMINATION BY MR. HOOD

265

1 Q. Okay, and that hair later on turned out to be the
2 victim's hair. Isn't that correct?

3 A. It did.

4 Q. Okay, and so it's safe to assume that his head hit
5 that particular door at some time. Is that correct?

6 A. Yes, sir.

7 Q. Okay. All right. Now, in order for his head and, and
8 -- well, let's go back to the autopsy, or to what you saw
9 as injuries. Did you see a wound that appeared to be
10 consistent with the injury to the door?

11 A. No. I could not look because -- he was laying on his
12 left-hand side, and I believe the autopsy indicated that he
13 had a contusion to the left side of his head.

14 Q. Okay. Okay. So, you, you, you actually note from the
15 autopsy that there was a contusion to his head which would
16 be consistent with the one that was in the door?

17 A. Yes.

18 Q. Okay. Now, in order for that head to have hit that
19 door with enough force to cause the hair to embed itself in
20 there, would you agree that someone had to be forcing that
21 person's head towards that door?

22 A. I guess you could speculate that, yes, as ---

23 Q. All right.

24 A. --- I earlier indicated.

25 Q. Okay, and in order for that person to have done that

1 with that much force, they would have had to have been
2 inside of the house physically when that occurred. Isn't
3 that correct?

4 A. I guess. I don't have any evidence to prove or
5 disprove that.

6 Q. Well, the victim was discovered several, many feet
7 from the entrance of the house. Isn't that correct?

8 A. Yes.

9 Q. Okay. So, obviously he got there somehow. He either
10 walked there or was drug there. Is that, is that correct?

11 A. You talking about where, where he ---

12 Q. Physically.

13 A. --- come to rest?

14 Q. Yeah.

15 A. Yes, sir.

16 Q. Oh, okay. So -- all right. So, it's safe to assume
17 that when he was attacked, he was inside of his house.

18 Isn't that correct?

19 A. I would assume so, yes, sir.

20 Q. So, in other words, the door was opened, somebody came
21 in, boom, something happened?

22 A. Yes.

23 Q. Is that correct? Okay. All right. All right. Now,
24 a little bit more of -- Sammy is right-handed, isn't he?

25 A. To be honest with you, I don't know.

J. GRIFFITH - CROSS-EXAMINATION BY MR. HOOD

267

1 Q. Well, the cut was on what hand?

2 A. I'm sorry?

3 Q. The cut ---

4 A. The cut was on his left middle finger.

5 Q. Left hand. Okay.

6 A. Yes, sir.

7 Q. Well, didn't you have him sign some documents, some
8 forms and things that indicate, you know, you know ---

9 A. I'm sure at some point he signed something, but I
10 don't recall whether he's right or left-handed.

11 Q. Okay. Well, the theory of this case was that somebody
12 beat this fellow with a phone or with their fist. Isn't
13 that correct?

14 A. Yes.

15 Q. Okay. Okay, and in, in, in doing so, they would have
16 obviously had to have touched his body. Isn't that, isn't
17 that correct?

18 A. Of course. Yes, sir.

19 Q. And if Sammy -- now, you found these blood droplets,
20 and they were just sort of, like, coming straight down,
21 like you were just walking along with your hand. They'd
22 just plop, plop, plop, plop, plop.

23 A. It did appear that way, yes.

24 Q. Okay, and they're about three to four foot apart or
25 two to three foot in some places?

1 A. Yes.

2 Q. Okay. So, we don't have a person doing like this, in
3 other words.

4 A. It didn't appear that it was ---

5 Q. Okay. Okay, but it was bleeding obviously pretty
6 much. Isn't that correct?

7 A. Yes, sir.

8 Q. Okay, and when you examined or SLED and, and you
9 examined the clothing of the victim -- you took all the
10 stuff and sent it to SLED that you thought had blood on it.
11 Isn't that correct?

12 A. Yes.

13 Q. Okay. Okay, and SLED takes a look at it, and they
14 examine all of this stuff and say this blood belonging to
15 X. Isn't that correct?

16 A. Yes.

17 Q. And all of the blood that was found on the clothing of
18 the victim and on the victim belonged to the victim. Isn't
19 that correct?

20 A. Well, I don't know how much of the blood they
21 collected from the shirt other than a clipping. So, I
22 don't know if all the blood was his or just ---

23 Q. Just answer the question. Did you get a report ---

24 A. Yes, sir.

25 Q. --- back from SLED that indicated that any of the

J. GRIFFITH - CROSS-EXAMINATION BY MR. HOOD

269

1 clothing that had blood on it came from Sammy Williams?

2 A. Not from what they tested.

3 Q. Okay. All right. Thank you. So, there's absolutely
4 no blood from Sammy Williams on the clothing of the victim
5 in this case. Isn't that correct?

6 A. That is correct.

7 Q. Okay. All right. So, so, Sammy's bleeding and he's
8 beaten this guy, and not a drop of his blood gets on the
9 man's clothing or on the man himself. Is that correct?

10 A. Again, I'd have to yield to SLED. That's what they
11 analyzed. So, that's what they find. That was their
12 findings.

13 Q. So, so, what we really would suspect is that the
14 person who beat this individual was not bleeding because
15 there's no blood on the victim's clothing or on any of the
16 objects that you guys think were used to beat the victim
17 with.

18 A. None of the evidence we collected, that evidence that
19 SLED analyzed, had his blood on it other than the swabs we
20 got from the front porch.

21 Q. Okay. All right. All right, and we know, based upon
22 the information that you received from Skinner, that
23 Skinner was inside of the house. Isn't that correct?

24 A. I'm sorry. From Skinner you said?

25 Q. Skinner. Mr. Skinner told you yes, I was inside of

1 the house of the victim.

2 A. No. Skinner actually indicated that he pulled the
3 door shut and stayed out on the porch the whole time.

4 Q. Well, you were in here during Mr. -- Lieutenant
5 Wekenmann's testimony, weren't you?

6 A. Yes, sir.

7 Q. And at the time you interviewed Mr. Skinner, Mr.
8 Skinner, according to what I remember Mr. Wekenmann saying,
9 was that Mr. Skinner told him yes, I was inside of the
10 victim's house. Don't you remember that?

11 A. Okay. If the porch, if you can consider that inside
12 the house, yes.

13 Q. Wait a minute. Wait a minute. Wait a minute. Mr.
14 Wekenmann did not say porch. Mr. Skinner said during the
15 course of his interview after you guys told him I found
16 your fingerprints inside of your -- inside of Mr. Koch's
17 house, he indicated well, yes, I was in Mr. Koch's house.
18 He makes that statement, doesn't he?

19 A. Actually, he said that he had been in there one time
20 before.

21 Q. Oh, okay, but he had been in there. Is that correct?

22 A. That is correct.

23 Q. Okay. All right. All right. All right. One time
24 before?

25 A. Yes, sir.

J. GRIFFITH - CROSS-EXAMINATION BY MR. HOOD

271

1 Q. Okay. Now, Skinner was the owner of the van. Is that
2 correct?

3 A. Yes, sir.

4 Q. And all the pictures we have there are of the van
5 which supposedly Skinner owned. Is that correct?

6 A. Yes, sir.

7 Q. Now, all of these items that you found, these numbers
8 that were taken, the account numbers and things of that
9 nature, did you send those off for any testing as far as
10 who the author of these numbers was, things of that nature?

11 A. No.

12 Q. You did not do any of that? Okay. So, there was no
13 effort made whatsoever to determine who wrote those numbers
14 down and where they got them from?

15 A. No.

16 Q. Okay. All right. Now, we also know that, based upon
17 Sammy's statement, was that Sammy, at the time he arrived
18 at the door, there were three people there.

19 A. Yes.

20 Q. And he maintained that from day one. Isn't that
21 correct?

22 A. That is correct.

23 Q. Okay. Okay, and the other three people that you had,
24 the two young ladies, both of them have denied ever being
25 out of the van. Isn't that correct?

1 A. That is correct.

2 Q. Okay, and both of them initially said that Skinner was
3 never out of the van. Isn't that correct?

4 A. Initially, yes.

5 Q. Okay, and only after some period of time did one of
6 them by the name of Lisa say that both of them were out of
7 the van.

8 A. That is correct.

9 Q. But she denied that the other female was out of the
10 van at any time. Isn't that correct?

11 A. That is correct.

12 Q. Okay. So, finally we have at least Sammy not being
13 the only one out. We have Skinner, based on one of the
14 young ladies' testimony, as being outside of the van up on
15 the porch. Isn't that correct?

16 A. Yes. Lisa told me that they both, Skinner and him,
17 had gotten out of the van at one point in time.

18 Q. And that they both went inside of the house. Isn't
19 that correct?

20 A. Yes.

21 Q. And then the door was closed. Isn't that correct?

22 A. Yes.

23 Q. Then the door opened and both of them came out of the
24 house. Isn't that correct?

25 A. Yes.

J. GRIFFITH - CROSS-EXAMINATION BY MR. HOOD

273

1 Q. Okay, and that Mr. Skinner, when he came back to the
2 van, was sweating. Isn't that correct?

3 A. Yes.

4 Q. But Lisa said Mr. Williams was not initially. Isn't
5 that correct?

6 A. I'm going to have to go back to my notes on that. I
7 don't recall. I remember her saying that someone was
8 sweaty when they got back in the van. I don't know if she
9 said both of them, or just one of them, or which one it
10 was. No, I indicated in my report it says -- if you'd like
11 me to read it?

12 Q. Go ahead.

13 A. She states that: Shag and Clint were out of the van
14 for about twenty minutes. They got back in the van, and
15 they did not seem nervous or upset, and they did not have
16 any weapons on them or blood on them. She stated that
17 they, they said we could have gotten more money. Later she
18 recalled that both of them were sweaty when they got back
19 in the van.

20 Q. But then prior to that, she said that only one of them
21 was sweaty. Isn't that correct? The first time around you
22 interviewed them. You interviewed them at least twice?

23 A. Oh, yes, yes.

24 Q. Both?

25 A. When -- I was at her. I was at her trailer ---

1 Q. Yeah.

2 A. --- the previous day.

3 Q. That's correct. That's correct, and she's the one who
4 said that Clint said we could have gotten more money, Clint
5 meaning Skinner. Isn't that correct?

6 A. Okay. During, during the first interview, no, I did
7 not indicate that in my report on the first interview.

8 Q. Who did she ---

9 A. She wasn't very detailed.

10 Q. Who did she say gave the directions to Jenny, who was
11 driving the van, to the victim's house?

12 A. I believe that would have been Kenneth.

13 Q. No, no, no. Maybe you ought to look at your notes
14 again. Who gave the directions? Doesn't she say Clint,
15 meaning Skinner, who's up in the front seat?

16 A. I don't indicate in my report, and I don't recall.

17 Q. Okay. Okay. Okay. All right. Maybe she'll recall.

18 Now, Lisa and Jenny and Skinner all went to school
19 together, didn't they?

20 A. According to Lisa, she knew Skinner from school. I
21 don't know if she knew Jenny or not.

22 Q. But they were all school-mates. Is that correct,
23 based on your interview with Jenny?

24 A. I believe that's what I heard, yes.

25 Q. But Mr. Williams did not go to school with them.

J. GRIFFITH - CROSS-EXAMINATION BY MR. HOOD

275

1 A. No.

2 Q. Isn't that correct?

3 A. I don't believe so.

4 Q. Because he's a little bit older than they are, isn't
5 he?

6 A. Yes, sir.

7 Q. Okay. Okay. So, it was the three of them who were
8 friends. Is that correct?

9 A. I guess, yes.

10 Q. Okay, and what they -- actually, how this thing really
11 started, I believe, was that Mr. Williams drops by Mr.
12 Skinner's or runs into Mr. Skinner at a convenience store.
13 Is that correct?

14 A. He didn't say where he ran into them.

15 Q. Okay.

16 A. He just said he ran into them.

17 Q. Okay, and Mr. Skinner invited him to the house for a
18 party. Isn't that correct?

19 A. Yes, sir.

20 Q. Okay, and when they arrived at the house for a party,
21 Jenny was there, is that correct, because Jenny was driving
22 the van. Isn't that correct?

23 A. Yeah, it wasn't real clear when they actually -- he
24 said that they went and picked up Lisa. It wasn't clear --
25 he didn't make it real clear when Jenny come into the

1 picture, but Jenny was obviously there at some point in
2 time.

3 Q. Well, hadn't they run out of drugs and they were going
4 to this trailer park to buy some marijuana? Clint, Skinner
5 was going to get some more drugs?

6 A. I don't recall having been told that. I know they
7 were going back out. They wanted to go get some more money
8 to party, to continue partying ---

9 Q. Well ---

10 A. --- is all they told me.

11 Q. --- when you say partying, weren't they using crack
12 cocaine, cocaine, alcohol, vodka?

13 A. The only thing I can, that I, that I can honestly say
14 that they were using, based on what I found in the van, was
15 alcohol. Were they using drugs? Maybe. I don't know.

16 Q. Weren't you present during these interviews where
17 these people told you that they were using crack cocaine?

18 A. I don't recall them saying crack cocaine. I do
19 remember saying something about marijuana. But I don't
20 remember crack cocaine specifically.

21 Q. What did Lisa think they were doing when they drove up
22 to this house where the victim lived? What kind of house
23 did she think it was?

24 MS. McCALL-TANNER: Your Honor ---

25 A. She ---

J. GRIFFITH - CROSS-EXAMINATION BY MR. HOOD

277

1 MS. McCALL-TANNER: --- I'm going to object at this
2 point. He's going into hearsay statements. I've allowed
3 it for a while. These girls are going to testify later.
4 He can ask them these questions.

5 THE COURT: All right, how do you avoid the hearsay
6 objection, Mr. Hood?

7 MR. HOOD: I don't, Your Honor, but I've been free to
8 do it. So, I just keep on going. I mean he ---

9 THE COURT: Unless somebody complains about it. Then
10 if they complain about it, I'll have to stop you.

11 MR. HOOD: Okay. I'll try to be a little bit more
12 succinct on this thing.

13 THE COURT: Okay.

14 BY MR. HOOD:

15 Q. Now, Sammy, Mr. Freeman indicated -- I mean Mr.
16 Williams indicated to you that he and Jenny and Mr. Skinner
17 went to the door of Mr. -- and knocked on the door. Is
18 that correct?

19 A. That's correct.

20 Q. Okay, and he told you why they went there. Isn't that
21 correct?

22 A. Yes, sir.

23 Q. And that was because the girls were going to provide
24 that sexual entertainment that the victim had requested
25 earlier. Isn't that correct?

1 A. Yes, sir.

2 Q. Okay, and when they got there, the one young lady in
3 the back of the van, according to Mr. Williams, sort of
4 said she was too intoxicated or she, she stayed in the van.
5 Is that correct?

6 A. That is correct.

7 Q. So, Jenny, the driver of the van, gets out and she is
8 going to be the one to provide services. Isn't that
9 correct?

10 A. Yes, sir.

11 Q. Okay, and she is the girlfriend of who?

12 A. Timothy Skinner, I believe.

13 Q. Okay, and she is living with Timothy Skinner at that
14 time?

15 A. From the information we had, yes.

16 Q. Okay, and so Skinner takes her up to the door, knocks
17 on the door, Mr. Jack comes to the door, and I believe that
18 Mr. Williams tells you that there is some problem between
19 Mr. Jack and Jenny?

20 A. Yes, sir.

21 Q. And there are some words passed, and then Mr. Skinner
22 gets involved with Mr. Jack. Is that correct?

23 A. Yeah. According to him, they hooked up.

24 Q. They hooked up, and they went inside of the house and
25 then Jenny is screaming what?

J. GRIFFITH - CROSS-EXAMINATION BY MR. HOOD

279

- 1 A. He didn't indicate. He just said she was screaming.
2 Didn't say what she was screaming or if she was saying
3 anything. Just screaming.
- 4 Q. She wasn't screaming something about get off of him?
- 5 A. I don't know.
- 6 Q. Something of that nature?
- 7 A. I don't remember any of that.
- 8 Q. You don't remember?
- 9 A. No.
- 10 Q. Okay. Okay. Now, your video -- I mean you audiotaped
11 this whole, whole matter that you're talking about with
12 respect to Kenneth Williams?
- 13 A. Yes, sir.
- 14 Q. Isn't that correct? And unfortunately, you, you say
15 it's not good, but that's the only real source that we have
16 that tells us exactly what Mr. Williams actually said.
- 17 A. Right, because I, again, I don't write down verbatim
18 what he said.
- 19 Q. Yeah, because you're just working off what you
20 remember and some of your notes. Isn't that correct?
- 21 A. Yes, sir.
- 22 Q. Okay. So, if he had said all of these things, you
23 just don't remember?
- 24 A. That's correct.
- 25 Q. Okay. Okay. Now, isn't it true that Mr. Williams

1 told you that he didn't take any of the money? Isn't that
2 correct?

3 A. Yes. He said everyone in the van got some money but
4 -- except for him.

5 Q. And he refused to take money. Isn't that correct?

6 A. I don't know about that. He just said he didn't take
7 any.

8 Q. Or didn't they use just the money for gas for the van?

9 A. At one point someone had indicated to me that Skinner
10 took money back from Lisa and said I'll put this in Betty,
11 referring to the van.

12 Q. Gas money as he ---

13 A. Yes, sir.

14 Q. Yeah, and one of the young ladies told you that Mr.
15 Skinner, that there were some words up at the door about
16 gas money. Isn't that correct?

17 A. I don't recall.

18 Q. You don't, you don't recall?

19 A. No.

20 Q. And none of the jewelry or anything of that nature
21 from the victim was taken. Is that correct, based on what
22 you saw?

23 A. None of the jewelry that he was referring to. There
24 was a money clip referred to earlier by Mr. Koch's son that
25 we never found, a gold money clip.

J. GRIFFITH - CROSS-EXAMINATION BY MR. HOOD

281

1 Q. Okay.

2 A. Yes, sir.

3 Q. Okay. Now, I believe you, at the time you examined
4 the body, you also found that he was wearing a watch.
5 Isn't that correct?

6 A. Yes, sir.

7 Q. And that that watch had apparently stopped. Is that
8 correct?

9 A. I don't recall. I don't, I don't even recall looking
10 at the watch, to be honest with you.

11 Q. Wasn't, wasn't the watch broken? It wasn't ticking?

12 A. I don't indicate that in my report. That would have
13 been something I just collected at the autopsy. We didn't
14 collect any evidence from the victim. So, they would have
15 collected that at the autopsy. When it came back, I don't
16 recall even looking at that.

17 Q. Do you remember anybody saying that the watch had a
18 time on it of 2:57 or 2:58?

19 A. No. I never looked at the watch.

20 Q. Now, the morning after this event occurred, do you
21 know where Mr. Williams went?

22 A. According to him, he came back into Port Royal from
23 Skinner's house. The morning of I didn't -- we don't know
24 who it was.

25 Q. And that was Sunday morning. Is that correct?

1 A. That was the morning of.

2 Q. Which is Sunday morning?

3 A. Yes.

4 Q. Okay, and he came back to this area for what?

5 A. He said he went to Mikey's house and mowed his yard.

6 Q. Well, he left Skinner's house at about what time in
7 the morning?

8 A. It says about 7:30 in the morning.

9 Q. And he had a job working where?

10 A. That's when he went and did the, the lady's house
11 behind China Imperial.

12 Q. Okay. Okay. So, he gets up the next morning and goes
13 back to the area and works at this woman's house after this
14 particular night. Is that correct?

15 A. Yes. Now, this is during his first statement to us,
16 yes.

17 Q. Yeah, and did you ever go to the woman's house to
18 verify his story?

19 A. We never -- he never gave us a definitive location.
20 He just said a lady behind China Imperial. There're
21 several houses back there, and he described it as a brick
22 house. However, he didn't know the lady or anything like
23 that, and we never did identify her.

24 Q. But you never went and looked? Never?

25 A. Well, we never identified her. So, we couldn't look.

J. GRIFFITH - CROSS-EXAMINATION BY MR. HOOD

283

1 Q. Okay. Okay. All right. Now, just a minute. I don't
2 think I have any more questions, but I want to make
3 absolutely sure.

4 (A PAUSE.)

5 Q. Now, in your second interview, the one that's taped,
6 the one that you say is a little -- you can't understand
7 some words, but whatever, and that's the reason you guys
8 haven't played it here or not put it into evidence. Mr.
9 Williams tells you that after this event occurs at the
10 victim's house, they went back to Clint's house -- in other
11 words, Mr. Skinner's -- where Mr. Skinner changed clothes
12 and took a shower because he had blood on his clothes. Is
13 that correct?

14 A. Yes.

15 Q. All right, and Skinner got back into the van after
16 they had been at the victim's house. Skinner pulled out
17 the wallet of the victim and was passing out money. Is
18 that correct?

19 A. That was after they left the victim's house?

20 Q. Correct.

21 A. Yes, sir.

22 MR. HOOD: Okay, I think that's all. Thank you.

23 THE COURT: Thank you, Mr. Hood.

24 Ms. Tanner, redirect.

25 MS. McCALL-TANNER: Yes, sir, briefly.

1 REDIRECT EXAMINATION BY MS. McCALL-TANNER:

2 Q. Mr. Hood asked you about the location of Timothy
3 Skinner. Based on your investigation, all the interviews
4 you conducted, where was Timothy Skinner located when the
5 assault on Mr. Koch occurred?

6 A. We don't have any evidence that put him inside the
7 house; however, Timothy Skinner himself says he was on the
8 front porch.

9 Q. Not in the house with Kenneth Williams and Mr. Koch?

10 A. No. He puts himself on the front porch.

11 Q. So, other than Kenneth Williams's statement, there is
12 no other evidence indicating Timothy Skinner went into Mr.
13 Koch's home?

14 A. No.

15 Q. And all these statements that Mr. Hood's been asking
16 you about, this information comes from Kenneth Williams
17 after his arrest?

18 A. Yes.

19 Q. Okay. All right. I'm going to ask you -- this will
20 be State's 51 for ID.

21 (CD OF INTERVIEWS MARKED AS STATE'S EXHIBIT NUMBER 51
22 FOR IDENTIFICATION.)

23 Q. If you recognize this item?

24 A. Yes. This would be a CD made of all the recordings we
25 done of all the interviews.

J. GRIFFITH - REDIRECT EXAMINATION BY MS. McCALL-TANNER

285

1 Q. So, State's 51, who did you give this to?

2 A. I -- you.

3 Q. And contained on this CD, State's 51, would be this
4 interview that we keep hearing about?

5 A. At -- all the interviews.

6 Q. Okay.

7 MS. McCALL-TANNER: Your Honor, at this time the state
8 would move 51 in for purposes of publishing to the jury a
9 portion of that interview.

10 THE COURT: You can publish the portion that ---

11 MS. McCALL-TANNER: That we've been talking about.

12 THE COURT: I'll allow that.

13 MS. McCALL-TANNER: Yes.

14 (CD OF INTERVIEWS MARKED INTO EVIDENCE AS STATE'S
15 EXHIBIT NUMBER 51 - **NOT TRANSCRIBED.**)

16 (PORTIONS OF STATE'S 51 ARE PLAYED FOR THE COURT.)

17 MS. McCALL-TANNER: Your Honor, this goes on for about
18 half an hour. I can play the whole thing, but I just
19 wanted to introduce that to the jury.

20 THE COURT: Is that part representative of the entire
21 rest of the interview?

22 MS. McCALL-TANNER: Yes, sir, it is.

23 THE COURT: Mr. Hood, do you wish to have her publish
24 that in its entirety?

25 MR. HOOD: Judge, I've listened to that thing about

1 twenty-five times and ---

2 THE COURT: Was that ---

3 MR. HOOD: --- I think it's really bad.

4 MS. McCALL-TANNER: Exactly.

5 THE COURT: Okay.

6 MR. HOOD: I mean, you can pick out some word.

7 THE COURT: Right.

8 MR. HOOD: But it's now and then.

9 THE COURT: Thank you. All right. Thank you. By
10 consent, then, the jury will not be punished any further
11 with that.

12 MS. McCALL-TANNER: Thank you, Your Honor. I just
13 wanted to make that point. No further questions for
14 Detective Griffith.

15 THE COURT: Any follow up, Mr. Hood, on any of those
16 points?

17 MR. HOOD: Your Honor, I just, I just have one
18 question, Your Honor.

19 RECROSS EXAMINATION BY MR. HOOD:

20 Q. Actually, it's not a question. It's just a going back
21 to what you originally told me when, when I was questioning
22 you about what Timothy Skinner had said about being in the
23 victim's house. You said that he said yes, I was in the
24 victim's house. Isn't that correct?

25 A. Yeah. I indicate in my report, it says I asked him if

J. GRIFFITH - RE-CROSS-EXAMINATION BY MR. HOOD

287

1 he had ever been at the man's house, and he admitted that
2 he was on the porch, but never went inside the man's house.

3 MR. HOOD: No, sir. Never mind.

4 THE COURT: Thank you.

5 Ms. Tanner, you got the last word.

6 MS. McCALL-TANNER: Nothing further of the witness.

7 THE COURT: Thank you.

8 MS. McCALL-TANNER: May he be excused?

9 THE COURT: It's a good, good last word.

10 Detective, you can step down.

11 (THE WITNESS EXITS THE STAND.)

12 MS. McCALL-TANNER: You want to proceed with the next,
13 or do you want to take an afternoon break?

14 THE COURT: Who do you have next?

15 MS. McCALL-TANNER: Next will be Lisa Schoenemann.

16 THE COURT: Let's take a break.

17 Ladies and gentlemen, let's take about fifteen
18 minutes. We'll start back at five minutes of the hour.
19 Please don't discuss the case among yourselves while you're
20 in the jury room. Thank you.

21 (THE JURY EXITS AT 3:38 P.M.)

22 THE COURT: The court will be in recess for about
23 fifteen minutes.

24 BAILIFF: The jury is clear, Your Honor.

25 MS. McCALL-TANNER: Thank you.

1 THE COURT: Thank you.

2 (OFF THE RECORD.)

3 (PRESENT DURING THE NEXT PORTION ARE ATTORNEYS GARAD
4 S. NEWMAN AND CHARLES B. MACLOSKIE.)

5 THE COURT: Both sides ready for the jury?

6 MS. McCALL-TANNER: Not now, Your Honor. The next two
7 witnesses will be co-defendants. They still have charges
8 pending. I know at least one of the defense counsel, he
9 would like you to caution her on the record outside the
10 presence of the jury. I don't know about the second one.
11 Mr. Macloskie, you still ---

12 MR. MACLOSKIE: Schoenemann.

13 MS. McCALL-TANNER: We ---

14 MR. MACLOSKIE: Same admonitions, Judge.

15 THE COURT: Okay. Good. I can -- that's Mr.
16 Macloskie and he represents?

17 MR. MACLOSKIE: And I represent Lisa Schoenemann.

18 THE COURT: Okay.

19 Mr. MACLOSKIE: And I understand -- here's -- question
20 her about her -- does she understand her rights, and if she
21 takes the stand, she's voluntarily waiving those rights.
22 She has counsel to discuss that with, and, and aware that
23 the testimony she renders here could be used against her in
24 a subsequent trial ---

25 THE COURT: Okay.

1 MR. MACLOSKIE: --- involving her charges.

2 THE COURT: Mr. Newman, do you want the same, same old
3 admonition?

4 MR. NEWMAN: Yes, sir, same here. And I will tell
5 you, as an officer of the court, I've advised my client as
6 to her rights and would ask that you just make sure that
7 she's made a voluntary, knowing, and intelligent waiver.
8 That she understands that she's subject to
9 cross-examination. Her testimony could be used against her
10 in a subsequent trial if the state saw fit.

11 THE COURT: Okay.

12 MS. McCALL-TANNER: And so we don't have to send the
13 jury out twice, can we bring both of them in now?

14 THE COURT: Bring them in at one time, and we'll do it
15 at the same time.

16 BAILIFF: One at a time?

17 THE COURT: Bring both in.

18 (LISA SCHOENEMANN AND JENNY LYNN CHASE ENTER THE
19 COURTROOM.)

20 THE COURT: If you could come here to the front and
21 stand by your attorneys please. Mr. Clerk, would you put
22 Ms. Chase and Ms. Schoenemann under oath, please?

23 CLERK OF COURT: Yes, sir.

24 (WHEREUPON, LISA SCHOENEMANN AND JENNY LYNN CHASE ARE
25 PLACED UNDER OATH.)

1 THE COURT: You are Ms. Lisa Schoenemann?

2 Ms. SCHOENEMANN: Yes, sir, I am.

3 THE COURT: Mr. Macloskie is your lawyer?

4 Ms. SCHOENEMANN: Yes, sir.

5 THE COURT: And you're Ms. Jenny Chase?

6 Ms. CHASE: Yes, sir.

7 THE COURT: And Mr. Newman is your lawyer?

8 Ms. CHASE: Yes, sir.

9 THE COURT: Ladies, you each have been subpoenaed to
10 come here to testify potentially as witnesses in the trial
11 of this case. You understand that?

12 Ms. CHASE: Yes, sir.

13 Ms. SCHOENEMANN: Yes, sir.

14 THE COURT: You understand that under our law, no
15 person can be compelled or forced into proceeding to
16 testify against him or herself. You cannot be forced to
17 admit that you're guilty of anything.

18 But if you take the stand in this case voluntarily,
19 then you're to be subject to cross-examination. You'll be
20 examined, first of all, by Ms. Tanner from the state, and
21 you'll be cross-examined by Mr. Hood for the defense, and
22 you will give up your rights in that particular case of not
23 to testify once you take the stand. And you can be
24 questioned on any matter that is relevant to this
25 particular case. And your testimony could be used against

1 you if the state would choose to use it against you in any
2 subsequent proceeding.

3 Ms. Schoenemann, do you understand that?

4 Ms. SCHOENEMANN: Yes, I do.

5 THE COURT: Ms. Chase, do you understand that?

6 Ms. CHASE: Yes, I do.

7 THE COURT: Do you understand, each of you, that by
8 taking the stand, you're voluntarily waiving your rights in
9 that regard? Do you understand that, Ms. Schoenemann?

10 Ms. SCHOENEMANN: Yes, sir.

11 THE COURT: And Ms. Chase?

12 Ms. CHASE: Yes, sir.

13 THE COURT: Do you have any questions that you want to
14 ask me about your rights in this regard?

15 Ms. SCHOENEMANN: No, sir.

16 THE COURT: Ms. Chase?

17 Ms. CHASE: No, sir.

18 THE COURT: Mr. Macloskie, is there any other
19 questions that you want me to put to Ms. Schoenemann on
20 your behalf?

21 MR. MACLOSKIE: None, Your Honor.

22 THE COURT: Mr., Mr. Newman for Ms. Chase?

23 MR. NEWMAN: No, sir.

24 THE COURT: All right. Thank you. All right. Who --
25 Ms. Schoenemann, you're going to be testifying first?

1 Is that right, she's going to be testifying first?

2 MS. McCALL-TANNER: That's correct. She'll be called
3 next, Your Honor.

4 THE COURT: All right. She can stay in the courtroom.
5 And, Ms. Chase, you can return to the jail room. Just
6 have a seat back out there somewhere. You'll be called as
7 soon as the jury is in place.

8 Okay. All right. You ready for the jury now?

9 MS. McCALL-TANNER: State's ready, Your Honor.

10 MR. HOOD: Defense is ready.

11 THE COURT: Good. Bring us the jury, please.

12 (THE JURY ENTERS AT 4:02 P.M.)

13 BAILIFF: Jury is seated, Your Honor.

14 THE COURT: Thank you.

15 Folks, I note when you come in front time to time that
16 some of you sit in the same chairs. Even though you don't
17 have assigned seats, you sit in the same chairs each time
18 you come in. So, I take it you much be like me. You must
19 be a Presbyterian. That's the way it work in our church:
20 you sit in the same seat every time. Do Baptists do that,
21 too? That's fine. As long as you've got comfortable seat.
22 I just made that notation from time to time. If you'd come
23 to my church, we would welcome you, but if you sit in
24 somebody else's seat, they're going to embarrass you.

25 You can pick up where we left off now, ladies and

L. SCHOENEMANN - DIRECT EXAMINATION BY MS. McCALL-TANNER 293

1 gentlemen. The state is intending to offer some testimony
2 in this case.

3 Ms. Tanner, you may call your next witness.

4 MS. McCALL-TANNER: Thank you, Your Honor. The state
5 calls Lisa Schoenemann.

6 THE COURT: Ms. Schoenemann, come forward please,
7 ma'am, and be sworn.

8 LISA SCHOENEMANN, HAVING FIRST
9 BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: Speak into the microphone there.
11 State your full name and spell your last name for me.

12 WITNESS: My name is Lisa Gail Schoenemann. My last
13 name is S-C-H-O-E-N-E-M-A-N-N.

14 DIRECT EXAMINATION BY MS. McCALL-TANNER:

15 Q. Good afternoon, Ms. Schoenemann.

16 A. Good afternoon.

17 Q. Ms. Schoenemann, you know why you've been called here
18 today?

19 A. Yes, I do.

20 Q. You are involved in something that occurred along with
21 the defendant here, Mr. Kenneth Williams?

22 A. Right. Yes.

23 Q. Now, you recognize Mr. Williams, the defendant, seated
24 in the courtroom?

25 A. Yes, I do.

1 Q. And how do you know him?

2 A. I met him on September 8th of 2007 or 8.

3 Q. And did you call him Kenneth Williams or did you call
4 him by some other name?

5 A. I called him by some other name.

6 Q. And what did you call Mr. Williams?

7 A. Shag.

8 Q. All right, and this day that we're talking about,
9 September 8, 2007, who else was involved?

10 A. Timothy Clint Skinner and Jenny Chase.

11 Q. Now, you said Timothy ---

12 A. Clint Skinner.

13 Q. And what did you call him?

14 A. Clint.

15 Q. Clint, and how did you know Clint?

16 A. I've known Clint for awhile. I hadn't seen him in
17 awhile, but he had come to where I lived at, and we started
18 speaking.

19 Q. Okay, and how about Jenny?

20 A. She was an acquaintance, but I didn't know her that
21 well.

22 Q. Now, Ms. Schoenemann, you've been charged along with
23 your co-defendants, and have you been made any promises or
24 any threats regarding your charge to come here and testify
25 today?

1 A. No, ma'am.

2 Q. You're coming to testify freely and voluntarily?

3 A. Yes, I am.

4 Q. Well, let's talk about the incident date. How does
5 your day kind of start?

6 A. It was a little crazy. I was getting, finishing up a
7 breakup that I have had with somebody, and he had a vehicle
8 in my yard, and somebody was coming to retrieve it that
9 day, and I was scheduled to work that night. And that's
10 when I noticed -- I was out handling business with this
11 person for the truck, and I had noticed Clint's van coming
12 through my trailer park where I lived. And I had finished
13 doing the business that I was conducting with the gentleman
14 to pick up the truck, and I had went back in my house, and
15 I got a knock on the door a little while later, and it was
16 Clint and Shag and Jenny.

17 Q. What time are you supposed to be at work that night?

18 A. I work 10:00 at night till 7:00 in the morning.

19 Q. And where were you working at the time?

20 A. Wal-Mart.

21 Q. All right. Okay. So, you get a knock at the door.
22 Who's at your door?

23 A. It's -- I want to say it was Clint.

24 Q. And what happened next?

25 A. They asked if they could come in. I let them come in.

1 They asked me what I was doing, and I said well, I got to
2 work later on that evening. And I asked them what they
3 were doing, and they said they were out, you know, riding
4 around, partying or whatever. And they asked me if I
5 wanted to come along. And I, and then I told them again
6 that I had to go to work. And they were like well, we'll
7 take you to work. I was like okay. So, I decided to go
8 with them.

9 Q. And did you get into Clint's van?

10 A. Yes, I did.

11 Q. And where did you guys go?

12 A. We went straight to Clint's house.

13 Q. All right, and about what time was it when you left to
14 go to Clint's house?

15 A. I would say it was around lateish afternoon. The sun
16 was still up, I recall.

17 Q. Now, once you get to Clint's house, what do you guys
18 do?

19 A. Have a few drinks, you know, talk, whatever. Said
20 something about going to a party at somebody else's house,
21 and basically getting ready for that.

22 Q. Now, you say drinks. What kind of drinks are we
23 talking about?

24 A. Alcohol. I'm guessing Vodka and something else.

25 Q. How many would you say you had?

L. SCHOENEMANN - DIRECT EXAMINATION BY MS. McCALL-TANNER

297

1 A. I honestly have no clue. I had quite a few.

2 Q. Quite a few?

3 A. Uh-huh.

4 Q. All right. Now, other than alcohol, were you
5 participating in any other substances?

6 A. Yes.

7 Q. All right. Can you tell us what you were doing?

8 A. Crack.

9 Q. Now, how long would say you guys did this at Clint's
10 house?

11 A. I really wouldn't know because I did not see a clock,
12 and, of course, I wasn't keeping really track of time. I
13 know it was dark.

14 Q. Well, let me ask you this. Did you make it to work at
15 10:00?

16 A. No, ma'am, I did not.

17 Q. At any point do you guys leave Clint's house?

18 A. Yes, we did.

19 Q. All right, and how did that come about?

20 A. Something to the fact of the matter that they had to
21 go and retrieve some money from somebody, and it was the
22 next destination to go and retrieve the money from this
23 person.

24 Q. All right. Did you know this person?

25 A. No, I did not.

1 Q. Did you hear them say who the person was going to be?

2 A. No, I did not.

3 Q. And did you guys actually leave to go do this?

4 A. Yes, we did.

5 Q. All right, and describe for us how you got there.

6 A. We took Clint's van.

7 Q. All right. Who was driving the van?

8 A. Jenny was.

9 Q. And who was in the front passenger seat?

10 A. Clint was.

11 Q. And where are you sitting?

12 A. In the back.

13 Q. And who is sitting beside you?

14 A. Shag.

15 Q. Okay. The defendant?

16 A. Yes.

17 Q. All right. All right, and do you arrive at some
18 destination?

19 A. Yes, we did.

20 Q. All right. Describe that for the jury.

21 A. Like I said, it was dark. I want to say it was either
22 a house or a mobile home of some sort, and I know it was a
23 fenced in yard. I stayed in the vehicle; I did not get out
24 of the vehicle. The only two that got out of the vehicle
25 was Clint and Shag.

1 Q. Do you recall if Jenny got out of the van?

2 A. If I recall, she did not.

3 Q. Would you say if it was possible she got out of the
4 van?

5 A. There's a possibility.

6 Q. What kind of condition were you in once, once you got
7 back in the van?

8 A. Her or he, ma'am?

9 Q. You.

10 A. Me?

11 Q. At this point, once you arrive at this, this
12 residence, what kind of condition are you in?

13 A. I'm pretty slouched.

14 Q. All right. Now, with that being said, to the best of
15 your recollection, what do you remember happening next?

16 A. I just basically, like I said, remember Clint and Shag
17 getting out of the van. How long a time frame of them
18 being gone, doesn't really seem that long. But they both
19 come back to the van. They looked a little sweaty, but
20 that was it.

21 Q. And do you recall any conversation with Mr. Williams
22 once he comes back to the van?

23 A. He didn't really say anything. Clint said something
24 possibly. Wish we could have got more money.

25 Q. Okay, and do you see any money?

1 A. No, ma'am, I never seen any money.

2 Q. Okay. All right. Now, once they get back in the van,
3 what do you guys do?

4 A. We leave from the house, and we go over to party that
5 I, that we had discussed earlier about going to.

6 Q. So, when you leave this residence, this residence, you
7 guys do continuè to party?

8 A. Yes.

9 Q. All right. Now, when you say you continue to party,
10 what are you guys doing?

11 A. We head to this -- you know, if I recall, we still had
12 some drinks in the vehicle, and like I said, we head to
13 this house and continue to drink there.

14 Q. Now, at some point you're contacted by law
15 enforcement.

16 A. Yes.

17 Q. And when that happens, do you talk to them?

18 A. Yes, I do.

19 Q. Do you cooperate with them?

20 A. Yes, I did.

21 Q. Did you tell them what you know about Mr. Williams and
22 everybody else involved ---

23 A. Right.

24 Q. --- including yourself?

25 A. Yes.

1 Q. Is there anything else about that night you recall
2 maybe I haven't asked you about?

3 A. Pretty much just what I think, what I've said because,
4 like I said, I was kind of intoxicated. And, I mean,
5 that's pretty much what I, you know, can recall to my best
6 ability.

7 Q. Where do you end up the next day, that Sunday morning?

8 A. Clint's house.

9 Q. Clint's house. Now, do you recall whose idea it was
10 to go to this residence to get the money?

11 A. I want to say Shag had said that this person had owed
12 him the money, and they were going to retrieve it.

13 Q. So, you remember it being Shag's idea to go there?

14 A. Uh-huh.

15 Q. This defendant?

16 A. Yes.

17 Q. Now, you said you were in the back seat of the van
18 with Mr. Williams.

19 A. Yes, I was.

20 Q. Were you behind the driver's seat or the passenger's
21 seat?

22 A. The driver's seat.

23 Q. The driver's seat. So, you were on the far left side
24 of the van?

25 A. Yes.

1 Q. So, that would have put Mr. Williams behind the
2 passenger seat?

3 A. Yes.

4 MS. McCALL-TANNER: No further questions. Please
5 answer anything defense counsel has for you.

6 THE COURT: Mr. Hood, you may cross-examine.

7 CROSS-EXAMINATION BY MR. HOOD:

8 Q. Who's going to provide the sexual services to Mr. Jack
9 once you got to his house?

10 A. I knew nothing about that. I do not recall anything
11 of that nature from me at all.

12 Q. Well, does that mean that you weren't going to provide
13 the sexual services?

14 A. No.

15 Q. That does not mean that you were not going to?

16 A. I knew nothing about that.

17 Q. You knew nothing about that?

18 A. To my knowledge, no.

19 Q. To your knowledge, you didn't know anything about
20 that. Well, how many statements have you made to law
21 enforcement?

22 A. One.

23 Q. Didn't you make two?

24 A. To Ms. Tanner, yes.

25 Q. Well, Ms. Tanner would make three, wouldn't it?

- 1 A. Okay. Yes.
- 2 Q. So, you've made three statements to law enforcement.
3 Isn't that correct?
- 4 A. Yes.
- 5 Q. Yes. Okay, and each one of those statements has been
6 a little bit different, haven't they?
- 7 A. Not to my knowledge, no.
- 8 Q. Lisa, you are charged with only one crime. Isn't that
9 correct?
- 10 A. Yes.
- 11 Q. And that crime is accessory after the fact to a
12 robbery. Isn't that correct?
- 13 A. Yes.
- 14 Q. That's the only crime you've been charged with, isn't
15 it?
- 16 A. Yes.
- 17 Q. So, the state -- in other words, Ms. Tanner -- and
18 nobody's promised you that they will do anything for you
19 for your testimony here today. Is that right?
- 20 A. No, sir, they have not.
- 21 Q. Because that's the only thing you're charged with?
- 22 A. Yes, sir.
- 23 Q. Okay. Okay. All right. Now, in your statements, and
24 I believe at least two of them were recorded. Isn't that
25 correct?

1 A. I know one was, yes.

2 Q. Okay, and in the first interview that you had with law
3 enforcement, you told one of these, this officer here that
4 Clint was the only person who was sweating when he returned
5 to the van. Isn't that true?

6 A. Yes, sir.

7 Q. Okay, and it was Clint who said we could have gotten
8 more money?

9 A. Yes.

10 Q. And it was Clint's van that you were in?

11 A. Yes, it was.

12 Q. And it was Clint's house that you stayed in?

13 A. Yes, it was.

14 Q. Okay, and it was Clint's alcohol that you ---

15 A. Yes.

16 Q. --- used?

17 A. Yes.

18 Q. It was Clint's drugs that you used?

19 A. Yes, sir.

20 Q. And did you use any powdered cocaine?

21 A. No.

22 Q. Okay. Did you use any marijuana?

23 A. No.

24 Q. Well, the day that Clint came to you at your home,
25 what did he tell you he was doing out there in your area?

L. SCHOENEMANN - CROSS-EXAMINATION BY MR. HOOD

305

1 What was he looking for?

2 MS. McCALL-TANNER: Your Honor, I'm going to object as
3 hearsay. He's asking what Skinner told her.

4 THE COURT: Mr. Hood, how would that be anything other
5 than hearsay?

6 MR. HOOD: Well, Your Honor, she has testified earlier
7 that ---

8 THE COURT: Okay.

9 MR. HOOD: --- Clint came to the door.

10 THE COURT: I understand.

11 MR. HOOD: Knocked on ---

12 THE COURT: I will allow you to. It's not offered for
13 the truth of the matter asserted.

14 MR. HOOD: That's, that's ---

15 THE COURT: I will, I will allow it. Go ahead. To
16 some, to some extent. Now, if he gets off in a whole
17 dialogue, we might have to break it off.

18 MR. HOOD: all right.

19 BY MR. HOOD:

20 Q. Well, what was he looking for when he came to your
21 house and he'd been out in your village there? Do you
22 know?

23 A. No, I do not know.

24 Q. Okay. All right. All right. So, anyway, you get in
25 the van with Clint and with Jenny and with Shag. Is that

1 correct?

2 A. Yes, I do.

3 Q. And you don't know Shag, do you?

4 A. No. I just met him that day.

5 Q. So, that's the first time you'd ever laid his eyes on
6 him.

7 A. Yes.

8 Q. Isn't that correct?

9 A. Yes.

10 Q. Okay, and so all of you go over to Clint's house?

11 A. Yes.

12 Q. And you start partying at that time?

13 A. Correct.

14 Q. Now, let me ask you a question. Before you left your
15 place, had you had anything to drink, any crack to smoke,
16 or marijuana, or anything at that time?

17 A. We had -- I know I had, I think -- I want to say a
18 drink. I had not done any drugs of any sort at that time.

19 Q. Okay. So, you leave your house and go to Clint's
20 house?

21 A. Yes.

22 Q. And I believe you indicated that Shag and Clint were
23 putting in a window in Clint's house. Isn't that correct?

24 A. Yes.

25 Q. Okay. And, and you were observing what they were

1 doing. Isn't that correct?

2 A. Uh-huh.

3 Q. Okay, and Clint was using a box cutter to cut some of
4 the insulation and stuff to put in the window. Isn't that
5 correct?

6 A. Yes, sir.

7 Q. Okay, and Clint had this box cutter, and he stuck it
8 in his shirt pocket like this. Isn't that correct?

9 A. I didn't see him stick it in his shirt pocket.

10 Q. Okay, but you remember him having it, right?

11 A. Yes.

12 Q. And you remembered that he had a little pocket on his
13 shirt. Isn't that correct?

14 A. If I recall, yes.

15 Q. Okay, and how was he dressed otherwise, other than the
16 shirt that he had on with the pocket and things of that
17 nature?

18 A. I want to say he had shorts on.

19 Q. Okay, he had shorts on. What kind of shoes did he
20 have on?

21 A. Sneakers.

22 Q. I'm sorry?

23 A. Sneakers, if I recall.

24 Q. Sneakers if you recall. Okay. All right. So, Shag
25 and Clint put this window in, and then what do you do?

1 A. Go back into the house.

2 Q. Okay, and how long are you inside of the house
3 drinking and smoking crack?

4 A. The sun had went down. It was dark by the time that
5 we left.

6 Q. Okay, and you went out there about -- and you left
7 your house to go to Shag -- I mean, to go to Clint's about
8 what time?

9 A. I could say the sun was still somewhat up when we left
10 my house to go to Clint's.

11 Q. So, would we say about 3:00 in the afternoon?

12 A. Give or take maybe somewhere in there, yes. It was
13 in, it was in the late afternoon.

14 Q. Okay. So, from somewhere around 3:00 you started
15 engaging in or indulging in the alcohol and the crack. Is
16 that correct?

17 A. Yes.

18 Q. Okay. Okay. Now, you get to Clint's house and
19 they're putting in the window and this and that and the
20 other, and you guys continue to drink and use crack. Is
21 that correct?

22 A. Yes.

23 Q. Okay. Do you go anywhere to buy anything?

24 A. I never leave Clint's until we leave to go to the
25 person that they were going to get the money from.

L. SCHOENEMANN - CROSS-EXAMINATION BY MR. HOOD

309

1 Q. Okay, and did anybody ever come to the house to
2 deliver drugs or anything of that nature to Clint?

3 A. Not to my acknowledgment.

4 Q. Not to -- you don't, you don't remember that?

5 A. No.

6 Q. Okay. Okay. So, did he, anybody ever drop by the
7 house at any time you were at Clint's house?

8 A. I do not, I do not remember.

9 Q. Well, you remember an individual by the name of Tony
10 Freeman, don't you?

11 A. That's the house that we were going to to party at.

12 Q. Well, how did you meet Tony?

13 A. I've known Tony for awhile.

14 Q. So, you've known Tony prior to this particular night.
15 Is that correct?

16 A. Uh-huh.

17 Q. Okay, and did Tony come by Clint's some time that day
18 or night?

19 A. I don't remember. When I was there, no.

20 Q. Okay. Okay. Now, did Jenny ever leave the house
21 after you guys left your place and went to Clint's? She
22 ever leave Clint's house after you guys returned?

23 A. I don't remember if she did or not.

24 Q. Okay. Was Mr. Williams wearing a Coca-Cola shirt?

25 A. I want to say I think he had a red shirt on.

1 Q. Was it Coca-Cola on it?

2 A. I don't recall what it said on it, but I'm pretty sure
3 it was a red shirt.

4 Q. Did he ever change clothes from the time he left your
5 house till later on that next day when you, when you, you
6 know, woke up?

7 A. I never noticed.

8 Q. Did he ever change clothes at Clint's house?

9 A. I didn't see him change clothes at Clint's house.

10 Q. Now, after you left Mr. Jack's house and went back to
11 Clint's house, who changed clothes and took a shower?

12 A. Clint did.

13 Q. And why did he do that?

14 A. Because he was extremely sweaty.

15 Q. And what -- do you remember what happened to --
16 between he and Jenny? Didn't they have an altercation of
17 some type?

18 A. I know voices were raised, but I do not know what they
19 were arguing about.

20 Q. Weren't they arguing about Jack, the individual that
21 you had been to his house?

22 A. They might have; they might have been, yes.

23 Q. Now, at the time you were at the house and you say
24 that Shag and Mr. Skinner got out of the van, went up to
25 the front porch, and knocked on the door. Is that correct?

1 A. Yes, sir.

2 Q. Then I believe you told the police that you heard
3 words to the effect of needing money for gas. Is that
4 correct?

5 A. Yes.

6 Q. Okay, and that at that point, both Shag and Clint went
7 into the house. Is that correct?

8 A. I'm guessing that they did, yes, sir.

9 Q. Wait a minute. Wait a minute. In your statement to
10 the police, didn't you tell them that Shag and Clint went
11 into the house, and the man closed the door after they went
12 inside?

13 A. Yes.

14 Q. And that they were in there for about fifteen or
15 twenty minutes. Isn't that correct?

16 A. Fifteen, twenty minutes, something like that, yes.

17 Q. And then they both came out. Is that correct?

18 A. Yes.

19 Q. And they both got in the van and drove off. Isn't
20 that correct?

21 A. Yes.

22 Q. Isn't it true that directions to the house,
23 this house that you were at, were given by Clint to
24 Jenny as to how to get to Mr. Jack's house? Isn't that
25 correct?

1 A. Yes.

2 Q. Okay. Shag never said a word, did he?

3 A. No.

4 Q. But he was the one that knew that Mr. Jack was
5 interested in some sexual entertainment. Isn't that
6 correct?

7 A. Like I said, that I'm hazy on because I do not really
8 know anything about that at all.

9 Q. Who was going to provide the sexual entertainment for
10 Mr. Jack?

11 A. I'm guessing it was going to have to be Ms. Chase
12 because it was not going to be me.

13 Q. Okay. So, it was going to be Ms. Chase. Did you guys
14 draw straws, or did you basically tell them that you were
15 so drunk that you really couldn't, couldn't handle the
16 situation?

17 A. I was very intoxicated. So, there was no way I was
18 going to handle that situation.

19 Q. So, you, so, you just stayed in the back of the van?

20 A. Yes. I stayed completely in the vehicle at all times.

21 Q. And you don't remember anything really about anything.
22 Is that correct?

23 A. Yes, sir.

24 Q. Yeah, and Jenny never got out of the van?

25 A. To my recollection, no, she didn't.

L. SCHOENEMANN - CROSS-EXAMINATION BY MR. HOOD

313

1 Q. She didn't get out of the van. Isn't it true that Mr.
2 Jack, when he came to the door, had a problem with one of
3 the girls? Do you remember that?

4 A. I don't recall.

5 Q. You don't recall telling the police that?

6 A. Yes. I guess.

7 Q. Yes, I guess. After you went back to Clint's house
8 and he took a shower and changed clothes ---

9 A. Yes, sir.

10 Q. --- you went to another house. Isn't that correct?

11 A. Yes.

12 Q. And whose house was that?

13 A. Tony Freeman's.

14 Q. Freeman's. Okay, and who was present at Mr.
15 Freeman's?

16 A. It was Mr. Freeman, his girlfriend, and I want to say
17 her son.

18 Q. And what was her son's name?

19 A. That I do not remember.

20 Q. Well, did you know it at one time?

21 A. I know I heard it, but I can't remember it now.

22 Q. Well, didn't he get in the van with you guys and ride
23 back to Clint's house at one time?

24 A. Yes.

25 Q. Okay, and he was at Clint's house for some period of

1 time, wasn't he?

2 A. Yes, after we got back to Clint's, yes.

3 Q. And how old was this person?

4 A. I'd say anywhere between the age of roughly eighteen
5 or early twenties.

6 Q. Early twenties, somewhere in that neighborhood?

7 A. Yes.

8 Q. Yeah, and Clint gave him a credit card, too, of the --
9 Mr. Jack's. Isn't that correct?

10 A. I did not see Clint give him a credit card.

11 Q. Well, weren't they back there in the computer room
12 trying to ---

13 A. But I was not back there.

14 Q. Well, you didn't go back there. Is that what you're
15 saying?

16 A. Yes.

17 Q. But what were they doing back there?

18 A. I have no idea.

19 Q. Okay. So, you don't know anything about any credit
20 cards?

21 A. No, sir.

22 Q. After these two supposedly returned to the van, Mr.
23 Williams and Clint, did anybody have any money or anything
24 of that nature?

25 A. I didn't see any.

L. SCHOENEMANN - CROSS-EXAMINATION BY MR. HOOD

315

1 Q. So, nobody tried to give you any money?

2 A. No, sir.

3 Q. And nobody tried to give anybody else in the van any
4 money ---

5 A. No, sir.

6 Q. --- that you saw? Okay, and did you see a wallet ---

7 A. No, sir.

8 Q. --- being opened? Okay. Did Shag ever complain of
9 cutting his finger?

10 A. Not that I can remember.

11 Q. Do you remember him indicating that he cut his finger
12 on the box cutter in Clint's pocket when he was pulling him
13 off of Mr. Jack?

14 A. Not that I can remember.

15 Q. Do you remember making the statement Jenny may be
16 prostituting to one of the police officers?

17 A. Yes.

18 Q. And Jenny and Clint were sleeping together, boy and
19 girlfriend, or something like that?

20 A. Something like that.

21 Q. Something like that.

22 MR. HOOD: Okay. Thank you.

23 THE COURT: Ms. Tanner, redirect.

24 MS. McCALL-TANNER: Yes, sir, just briefly.

25 THE COURT: Okay.

1 REDIRECT EXAMINATION BY MS. McCALL-TANNER:

2 Q. Ms. Schoenemann, when you get to the house where the
3 guys are going to get money, is it nighttime when you
4 arrive?

5 A. Yes, it's dark.

6 Q. And from the back seat of this van you're sitting in,
7 are you sitting up, or you're lying down on the seat?

8 A. A little to begin with. You can kind of say kind of
9 like slouched down a little bit, yeah.

10 Q. Okay. So, from where you're located, can you actually
11 see the front door of this residence?

12 A. Not really because of the lighting and stuff.

13 Q. So, when you told Mr. Hood that you saw both of them
14 enter the house ---

15 MR. HOOD: Your Honor, I don't, I don't mind her
16 leading the witness, but it's her witness and ---

17 THE COURT: All right.

18 MR. HOOD: --- I'd just as soon she ask.

19 MS. McCALL-TANNER: It's redirect.

20 THE COURT: Let me see where the question is going
21 just yet. If it's a responsive question, let me see how it
22 might be -- go ahead.

23 BY MS. McCALL-TANNER:

24 Q. Going back to cross-examination, Mr. Hood asked you
25 about seeing Mr. Skinner and Mr. Williams go in the house.

L. SCHOENEMANN - REDIRECT EXAMINATION BY MS. McCALL-TANNER 317

1 A. Yes.

2 Q. Are you referring to seeing them enter the porch, or
3 seeing them enter the actual door to the house?

4 A. The porch.

5 Q. To the porch. Not the door entering the home?

6 A. Right.

7 Q. Now, he also asked you about this box cutter that you
8 saw Clint with.

9 A. Yes.

10 Q. Where are you when you see the box cutter?

11 A. At Clint's house.

12 Q. Clint's house. Do you see him with it in the van?

13 A. No.

14 Q. When they return to the van, do you see blood on
15 Timothy Skinner?

16 A. No.

17 Q. Do you see any knife?

18 A. No.

19 Q. Do you see the box cutter?

20 A. No.

21 Q. None of that?

22 A. None of that.

23 MS. McCALL-TANNER: Nothing further.

24 THE COURT: Thank you, ma'am.

25 Mr. Hood, any follow up on those narrow points?

1 MR. HOOD: No, Your Honor.

2 THE COURT: Thank you.

3 Ms. Schoenemann, you can step down.

4 (THE WITNESS EXITS THE STAND.)

5 MS. McCALL-TANNER: May this witness be excused, Your
6 Honor?

7 THE COURT: Without objection, she can be excused.

8 MR. HOOD: No objection.

9 THE COURT: Thank you.

10 MS. McCALL-TANNER: Call Jenny Chase.

11 THE COURT: Ms. Chase, come forward please, ma'am, to
12 be sworn.

13 JENNY CHASE, HAVING FIRST BEEN
14 DULY SWORN, TESTIFIES AS FOLLOWS:

15 BAILIFF: Speak directly into the microphone please.

16 WITNESS: Yes, sir.

17 BAILIFF: Close as you can.

18 CLERK OF COURT: State your full name and spell your
19 last name, please.

20 WITNESS: My name is Jenny Chase. C-H-A-S-E.

21 DIRECT EXAMINATION BY MS. McCALL-TANNER:

22 Q. Good afternoon, Ms. Chase.

23 A. Afternoon.

24 Q. Ms. Chase, you know why you've been called here today?

25 A. Yes, ma'am.

J. CHASE - DIRECT EXAMINATION BY MS. McCALL-TANNER

319

1 Q. You are involved in an incident with Mr. Kenneth
2 Williams?

3 A. Yes, ma'am.

4 Q. And also a Lisa Schoenemann and a Kenneth -- Timothy
5 Skinner?

6 A. Yes, ma'am.

7 Q. How do you know these people?

8 A. I had met Timothy Skinner, I believe it was in 2004.
9 Two -- yeah, 2004. Lisa, I'm, I'm not too sure when I met
10 her, but it, it was -- I, I think actually 2005. And
11 Kenneth Williams, September of '08.

12 Q. Now ---

13 A. September '08.

14 Q. I say Timothy Skinner. Is that what you called
15 Timothy Skinner?

16 A. Clint.

17 Q. Clint. And Kenneth Williams, do you refer to him as
18 Kenneth Williams?

19 A. He said his name was Shag.

20 Q. And Lisa?

21 A. As Lisa.

22 Q. All right.

23 A. Yes, ma'am.

24 Q. Now, Ms. Chase, you have been charged as part of this?

25 A. Yes, ma'am.

1 Q. And as part of your testimony today, have you been
2 made any promises or any threats regarding your charges in
3 this case if you testify?

4 A. No, ma'am.

5 Q. Are you testifying freely and voluntarily today?

6 A. Yes, ma'am.

7 Q. All right. All right. Well, let's go back to the
8 incident date, September 8th to the morning of the 9th,
9 2007. Can you describe for the jury basically what your
10 life was like at that time?

11 A. On September 8th in the morning ---

12 Q. Well, how were you living back then?

13 A. I was on drugs really bad. Basically kind of like,
14 kind of like a drifter in a way. But I pretty much was
15 living here in, in Beaufort, and at that time, you know, I
16 was staying at Timothy Skinner's, his mother's home, I
17 believe. I wasn't, I wasn't living a good life at that
18 time, you know.

19 And, and that morning, you know, we just woke up and
20 somehow -- I just -- I can't, I can't remember, like, all
21 the details well. But I know we had Clint Skinner's,
22 Skinner's mom, that we got money from her. And I know that
23 we had gotten drugs and alcohol, and then at some point
24 Shag shows up at the house, or a truck drops him off, I
25 think. I've never met this man before in my life.

1 And the -- part of our day was we were going to put a
2 new window in at the mobile home. And during that, we went
3 and got -- we went to the liquor store. And the whole part
4 with, like, the money, I'm not sure if Clint Skinner's mom
5 left us the money that morning, or if she left the day
6 before and, like, hid the money for us.

7 But we went and we got some alcohol, and then we ended
8 up going to Lisa's house, and at that point we were
9 drinking some -- we went back to the house and that's,
10 like, drugs. We had crack. We'd gotten some crack. And,
11 you know, for the most part of that date, you know, we were
12 at the house. Lisa, we convinced her to call out of work,
13 just stay and, you know, to hang out and party with us at
14 the house.

15 And then some time in the night, Shag had mentioned
16 about going to this gentleman's house that he had been with
17 earlier, and that earlier he was trying to hook Jack up
18 with some woman. And, you know, I'm not sure of, like, if
19 they were going to, you know, try and, like, have her,
20 like, be a prostitute or something. I don't know. But he
21 had mentioned that, and I guess that plan fell because her
22 husband showed up or something.

23 And he had mentioned to us, you know, that, you know,
24 that the guy would -- wouldn't mind some women coming and
25 dancing or something. And he kept, you know, bringing it

1 up to us, bringing it up to us, and, you know, I, I, I was
2 like no, no. And, I mean, we just all continued to drink.
3 We did drugs, and the drunker I got, the more inviting the
4 thought was to go ahead and go and dance and make some
5 money. And he had said even if he doesn't want to, he said
6 that he's borrowed money from Jack many times.

7 Q. Now, you said he. Who is saying what?

8 A. Shag.

9 Q. That?

10 A. Yes. There was never any talk of robbing anyone;
11 there's definitely never any talk of attacking anyone or
12 murdering someone.

13 Q. Now, Ms. Chase, you do admit that at some point you
14 agreed that you would dance for money?

15 A. Yes, ma'am, I did.

16 Q. And did you ever go to Jack's house with Mr. Williams
17 to get money?

18 A. Yes, ma'am.

19 Q. How did you guys get there?

20 A. When we finally decided to go, Lisa and I went ahead
21 and got dressed, and we got in Clint Skinner's, Timothy
22 Skinner's van. I was the only one with a license. So, of
23 course I drove.

24 Q. Where is everyone else sitting in the van?

25 A. Skinner is in the passenger's front seat, Lisa's

J. CHASE - DIRECT EXAMINATION BY MS. McCALL-TANNER

323

1 behind me, and Shag is behind Skinner, and we pull up to
2 the house. Me, Shag, and Skinner got out of the van and
3 went up on the porch.

4 Q. And where's Lisa?

5 A. She's in the back seat. She was so drunk. I mean she
6 just -- she, she was, she was drunk. I mean, she just --
7 there was no way that she could have gotten out. You know,
8 I mean, that just -- from what I'm remembering. And so we
9 went ---

10 Q. You get out of the van?

11 A. Yeah. The three of us got out of the van, and we
12 walked up to the door and knocked on the door. I don't
13 remember which one knocked, and then this man opened the
14 door, and it was Jack, and I actually knew this man.

15 Q. How did you know Jack?

16 A. I knew him from -- I wait, waited tables at a
17 restaurant in Port Royal for a couple of years, and he was
18 a regular customer. He would drive and go get, like, some
19 eclairs for the company, and then he was part of their
20 business as well when they moved onto Boundary, Boundary
21 Street. So, I mean, I was familiar with, with Mr. Jack.

22 Q. Before you got there, did you know that this Jack Mr.
23 Williams was talking about was this Jack that you knew?

24 A. No, ma'am.

25 Q. All right. Now, you said you knocked, somebody

1 knocked on the door. Is it the screen door, or do you
2 actually enter the porch?

3 A. We, we're on the porch at the front door.

4 Q. Okay. All three of you?

5 A. Uh-huh, and that's when he opened the door. And, you
6 know, it's, like, we're all, like, hey. How you doing. I
7 don't remember the exact conversation. And I saw Jack, and
8 I said hi, Jack, it's Jenny. And then that time, too, he's
9 saying you guys need to get out of here. I'm going to call
10 the police.

11 Q. Who said that?

12 A. Mr. Jack did. And that, that scared me because, you
13 know, I'm driving. I'm drunk. I'm in, and I'm in Port
14 Royal, and, you know, I don't, I don't want to have to
15 drive through Port Royal, especially having the police
16 called. So, I left the porch immediately, and I got in the
17 van.

18 I don't know how soon after I got in the van that
19 Skinner did, but he did get in the van and, and -- well,
20 before -- when he got in the van, you know, I was, like,
21 I'm leaving. I'm getting out of here. I'm not staying.
22 They're, like, wait, wait, wait, wait, wait, and I said I'm
23 not staying, you know. I was embarrassed. I show up at
24 this person's house that I know and whom I have respected
25 for a long time. You know, I've known him for a long time.

1 Q. And when you returned to the van, what does Timothy
2 and Kenneth do?

3 A. I don't know how long they were on the porch, but
4 Skinner came and got in the van because I had started the
5 van up and I was leaving. And I said I'm not staying here,
6 I am going. I say he's going to -- say he's going to call
7 the police, and so Skinner said all right, let's just go.

8 And so we backed out, or I backed out, and went down
9 towards the Naval Hospital from his house, and Skinner said
10 well, let's just flip around and maybe, you know, he was
11 able to talk to him, you know, and he probably had gotten
12 some money or something or was able to calm him down. It
13 was ---

14 Q. Who are you talking about?

15 A. Skinner was talking about Shag and Mr. Jack, like
16 maybe he was able to calm, Shag was able to calm Mr. Jack
17 down, you know. Or, like, talk to him and borrow money
18 because he said ---

19 MR. HOOD: Your Honor.

20 A. --- while we're at the house ---

21 MR. HOOD: I object to all of this as it's hearsay. I
22 think she's testifying about what Skinner said.

23 WITNESS: No.

24 THE COURT: All right.

25 MS. McCALL-TANNER: Well, we'll stay away from what

1 ---

2 THE COURT: It's hearsay, that's right.

3 MS. McCALL-TANNER: Yes, sir.

4 BY MS. McCALL-TANNER:

5 Q. Just stay away from what Skinner said. That's
6 hearsay.

7 A. Okay.

8 Q. Now, you can talk about what you did. You get back in
9 the van?

10 A. Yes, ma'am.

11 Q. How much time passes before someone else comes back to
12 the van?

13 A. I know it's less than a minute.

14 Q. But who comes back to the van?

15 A. Skinner and, and in that time I had, I cranked the
16 van, and, you know, and that van is not a quiet van. It's
17 a big, loud -- it's, it's a big van.

18 Q. Now, once Clint comes back to the van ---

19 A. Yes, ma'am.

20 Q. --- what do you do?

21 A. I tell him, I said, you know, I'm not staying. I'm
22 leaving, and he's just, like, no. Wait, wait.

23 MR. HOOD: Your Honor.

24 Q. Not what he said.

25 A. Oh, sorry.

J. CHASE - DIRECT EXAMINATION BY MS. McCALL-TANNER

327

1 Q. What did you do?

2 A. What did I do? I put the van in reverse, and I backed
3 out, and I left and then ---

4 Q. At this point, is Kenneth Williams with you?

5 A. No. He was still, from what I know, he was -- he
6 never got off the porch. I never seen him leave the porch,
7 nothing like that from the time that I left the porch, got
8 in the van, backed out, and went down the street.

9 Q. Did you look back to see if he went in the house?

10 A. No. I was just -- I was, I was freaking out, you
11 know. I was scared because I was in Port Royal. I'm in
12 this, this van, you know, and I don't, I don't want to get
13 arrested. You know, I don't want to get a DUI, you know.
14 I, you know, I don't, I don't want to have to deal with,
15 you know, all the costs or deal with all the consequences
16 that would come with the law being called.

17 Q. Okay. So, you say you put the van in reverse?

18 A. Yes, ma'am.

19 Q. And where do you go?

20 A. I backed out and I went past, towards the ball field.
21 There's a ball field on the right going towards, like,
22 where the Naval Hospital is, and I got down to that stop
23 sign and Skinner ---

24 Q. Don't say what Skinner said.

25 A. Okay. Well, I went ahead and flipped around and went

1 back because maybe, you know, he was done talking to him by
2 then.

3 Q. Who he?

4 A. Shag. And when I came, came back up, no Shag. So, we
5 went up to the next road, landing, and I said I am not
6 driving through Port Royal. I said I'm going to end up
7 going straight through downtown Port Royal. I said, so,
8 we're not doing it. And I said, you know, we'll go ahead
9 and flip back around one more time. And when he flipped
10 back around, went down, Shag was walking down the road just
11 past Mr. Jack's house on the other side where -- the side
12 of the ball field. Skinner got out, Shag jumped it, and we
13 proceeded to drive. I was pissed off. I was very mad. I
14 was cussing because ---

15 Q. Let's go back.

16 A. Sorry.

17 Q. You said Skinner, Skinner jumped out. Does he leave
18 the van?

19 A. No. He got out of the van so Shag could get back in.

20 Q. And how did that work? What did you ---

21 A. It's, it's bucket seats in the van. So, you know, he
22 just -- Skinner went ahead and just got out, and so then
23 Shag just, you know, went through the seats. He went and
24 sat back behind Skinner, and I was driving and Lisa was
25 behind me.

J. CHASE - DIRECT EXAMINATION BY MS. McCALL-TANNER

329

1 Q. Okay. Are you saying he has to crawl in the front
2 door to get to the back seat?

3 A. He, he, he, he had -- he, he didn't have to crawl, I
4 mean, but, you know, he could scoot -- oh, sorry. He could
5 scoot over and get into the back seat.

6 Q. Okay. So, when Kenneth Williams gets back in the van,
7 where does he sit?

8 A. Behind Skinner.

9 Q. Back seat?

10 A. In the back seat, yes, ma'am.

11 Q. And does Skinner get back in the van?

12 A. Uh-huh. Yes, ma'am.

13 Q. Okay. So, at this point all four of you are back in
14 the van?

15 A. Yes, ma'am.

16 Q. Okay. What happens then?

17 A. They're -- I was cussing. I was very upset. I was, I
18 was mad about the whole police thing. I've told them I
19 can't believe it was Mr. Jack, that was Mr. Jack, and, you
20 know, I was just, I was, I was embarrassed. I was just --
21 I was upset and it was, like, a wasted trip. I'm a, I'm a
22 drug addict at that time in my life, and then I -- they
23 said he was able to borrow \$57.

24 Q. Who said that?

25 A. Shag was -- no, Shag was able to do -- and he handed

1 the money to Skinner, and Skinner and Shag were both going
2 to have 20 and they were giving me 17, and I told them I
3 did not want the \$17. If you -- and you, and you -- living
4 the life of a drug addict on the streets, that's just,
5 that's just not acceptable to some people who do drugs, you
6 know, especially if you've a driver or something, and I
7 told them, I said I don't want this money. And so Skinner
8 went ahead and took money and put it in this little center
9 console.

10 We went to Smokers Express over near Wal-Mart, which
11 is a conveniences store, and in that time we bought some
12 beer, met up with a dope dealer. I saw Shag get in the
13 back seat of the car, and then we all went to my girlfriend
14 Phyllis's house.

15 And, I mean, through that whole time, there was never
16 any mention of robbing. I mean, I didn't even see him
17 sweating. I mean, it's just -- everything was just normal,
18 you know. I ---

19 Q. Did you see blood on the ---

20 A. I just don't understand how somebody ---

21 Q. Let me ask you if you saw blood on Skinner or
22 Williams.

23 A. No.

24 Q. Did you see Timothy Skinner with any kind of knife or
25 box cutter?

J. CHASE - DIRECT EXAMINATION BY MS. McCALL-TANNER

331

1 A. No, but, I mean, I'm sure he probably had a lot of
2 them. I mean, he was a painter and, I mean, he had a van
3 with a ---

4 Q. But he owns them?

5 A. Yeah. Yes.

6 Q. You didn't see him with them?

7 A. I didn't see -- no. No, ma'am. But, I mean, I
8 just -- I didn't see anybody with any blood or any sweat.
9 I mean, I'm telling you when all four of us got back
10 together ---

11 Q. What do you ---

12 A. --- there was just no -- I didn't see anything that
13 could have gone wrong. I mean, everything was -- just
14 laughing and, you know, when I finally quit being upset
15 about the money, I mean, we just went to my friend
16 Phyllis's house. We were singing, dancing in the house.
17 They were -- and on the computer. You know, I ---

18 Q. So, after you left Mr. Jack's house, you guys partied?

19 A. Yes, ma'am.

20 Q. What did you do with Jack's \$57?

21 A. After that, after I -- that, that 17 was put in the
22 van. I know we got beer, and after that I didn't see where
23 -- I mean, I didn't get out and, like, go into the store
24 and buy anything. I did get out of the van because I did
25 see somebody that I used to buy drugs from, and I got out

1 and I said hi. Lisa, she was in the van. I mean, she was,
2 she was so drunk. I mean she, she didn't know. I mean,
3 she didn't know, like, if she was coming or going, you
4 know, when we showed up. At my friend Phyllis's, she did
5 finally get out, but then she had to go lay back down in
6 the van.

7 Q. Now, Ms. Chase, at some point after this, you're
8 contacted by law enforcement?

9 A. Yes, ma'am.

10 Q. And when you are first interviewed by them ---

11 A. Yes, ma'am.

12 Q. --- are you forthcoming and honest with them about
13 what you know?

14 A. No, ma'am.

15 Q. Why not?

16 A. At that time, you know, I just, I really, I wasn't
17 sure if that was, like, the actual day and, you know, the
18 person, people that were involved and the person that was
19 involved is where I was sleeping. It was, like, where I
20 was able to make a home and, you know, to, to feel safe at
21 and, you know, and I, I thought the less I said, you know,
22 that I wouldn't be put away. I wouldn't be arrested and
23 put in jail. You know, that's, that's where my thoughts
24 went was that. And so yes, I did -- I, I was not honest.

25 Q. And you lied to the police?

1 A. I, I did. Yes, ma'am.

2 Q. What part did you lie to them about the first time
3 they interviewed you?

4 A. About getting out of the van.

5 Q. And what did you tell them when you were first
6 interviewed?

7 A. I just told them that they were going to borrow money.
8 I was -- they kept asking, you know, if I was going to go
9 there to do sexual things.

10 MR. HOOD: Your Honor, again, she's talking about
11 hearsay. She's just ---

12 THE COURT: She, she -- I believe she said what the
13 police asked her, but ---

14 WITNESS: Yeah.

15 MR. HOOD: No, she's talking about what they --
16 she's ---

17 MS. McCALL-TANNER: She's telling about what the
18 police asked.

19 MR. HOOD: I, I -- maybe I misunderstood.

20 THE COURT: That's right. My understanding was that
21 she was talking with the, in follow up to what Ms. Tanner
22 was asking her about, lying to the police. But I think
23 that's a proper line of questioning for her. She can tell
24 what the police asked her and what she told them if she
25 said that she lied. I'll allow that. Go ahead.

1 BY MS. McCALL-TANNER:

2 Q. Continue with what you did lie about to the police.

3 A. About getting out of the van. I, I thought, if I
4 didn't admit to getting out of the van, that they couldn't
5 arrest me, you know, because I didn't, you know, I didn't
6 get out. So, yes, I did lie about that and we had -- the
7 whole thing, you know, with Skinner is I was living at his
8 house. That was my home. And, too, a lot of stuff I just
9 wasn't sure if it was that weekend or not. I mean, there's
10 a lot of stuff going on in my life at that point, and I
11 admit, yes, I held back ---

12 Q. So, with that being ---

13 A. --- stuff and I admit, yes, I did lie.

14 Q. All right, and with that being said, I need to ask you
15 then ---

16 A. Yes, ma'am.

17 Q. --- are you being honest today?

18 A. Yes, ma'am. Yes, ma'am.

19 MS. McCALL-TANNER: Ms. Chase, thank you. Please
20 answer anything defense counsel asks you.

21 WITNESS: Yes, ma'am. Thank you.

22 THE COURT: Mr. Hood, cross-examination.

23 CROSS-EXAMINATION BY MR. HOOD:

24 Q. Ms. Chase, this is actually the fourth time that
25 you've made a statement. Isn't that correct, including the

J. CHASE - CROSS-EXAMINATION BY MR. HOOD.

335

1 one you're making today?

2 A. Yes.

3 Q. Okay, and you made two to the law enforcement
4 officers. Isn't that correct?

5 A. No. One.

6 Q. Well, on one occasion they started questioning you,
7 and you refused to answer any questions. Isn't that
8 correct?

9 A. I, I don't remember.

10 Q. The first time? The first time?

11 A. They only interviewed me one time, and then they
12 arrested me and put me in jail.

13 Q. Well, on the second occasion when they arrested you
14 and put you in jail, they tried to interview you because
15 they had charged you with a crime. Isn't that correct?

16 A. They on -- they only interviewed me once. I don't --
17 I'm ---

18 Q. Did they not charge you with accessory after the fact
19 to robbery?

20 A. They charged me with that, yes, sir.

21 Q. And that is the only crime that you are facing in this
22 entire matter. Isn't that correct?

23 A. That's what I've been charged with, yes, sir.

24 Q. And isn't it true that after they arrested you and
25 advised you of the fact that they were charging you with

1 this particular crime, they had to read you your rights and
2 all of that kind of stuff, and you basically told them this
3 is F'd up?

4 A. Yes.

5 Q. Yes?

6 A. Yes, sir.

7 Q. And that's the only statement you ever made ---

8 A. I ---

9 Q. --- to them. Isn't that correct?

10 A. 'No. When, when I first initially -- when I was, when
11 I was there with them, they questioned me. They asked me
12 questions. I don't remember the questions. I believe it
13 was on tape. It was tape recorded. But, I mean I, I don't
14 know exactly how all the questionings went. But I will, I
15 will admit, yes, I did say this was F'd up.

16 Q. And basically, Ms. Chase, you made every effort, in
17 all of the statements that you have given, to protect
18 yourself and to protect Clint ---

19 A. I was ---

20 Q. --- Timothy Skinner. Isn't the true?

21 A. I really was trying to protect myself and, yes, I was
22 looking out for Mr. Skinner. But to really tell it all,
23 I'm a mom with two kids, and that was my driving force.

24 Q. And you were living with Mr. Skinner. Is that
25 correct?

J. CHASE - CROSS-EXAMINATION BY MR. HOOD

337

1 A. Yes.

2 Q. And you were asking ---

3 A. I had my kids taken away and my kids were my driving
4 force to try and -- you know, staying out of jail and, and,
5 you know, to be a good mom. Yeah, I lied and I did say it
6 was F'd up, yes.

7 Q. Isn't it true that when you and Shag and Clint -- and
8 what do you call Clint? Do you call him Clint or what name
9 do you use?

10 A. Skinner. Clint.

11 Q. All right. The three of you went up to the door?

12 A. Yes.

13 Q. And isn't it true that Jack opens the door, Skinner
14 says I brought you the girls?

15 A. I don't remember the exact words. I don't know who
16 said what first.

17 Q. And isn't ---

18 A. I don't know who said what first whatsoever. All I
19 know is what I said. I said hi, Jack, it's Jenny, and then
20 he was still saying I'm going to call the police. Turn
21 around and I walked off that porch, and I got in that van
22 and I started it ---

23 Q. Okay.

24 A. --- and I left.

25 Q. Please let's just try to answer the question, okay, as

1 I ask them. Okay, did Mr. Jack say get those whores out of
2 here?

3 A. I, I don't know. He could have.

4 Q. Okay.

5 A. He could have. He could not have. I don't know.

6 Q. And didn't Mr. Skinner take offense to that and hook
7 up with Mr. Jack?

8 A. What do you mean by that, hook up?

9 Q. Didn't Mr. Skinner take offense to this comment that
10 he was making about you?

11 A. I didn't, I don't know.

12 Q. I ---

13 A. I haven't heard nothing of whatever a hook up is and -
14 - or calling me a whore or Lisa a whore. I'm just -- I'm
15 telling you I, I don't know. I do not know.

16 Q. Did not Mr. Skinner put his hands on Mr. Jack and push
17 him into the house?

18 A. I did not see that happen. I did not see that. I'm
19 telling you, as soon as he said I'm going to call the
20 police and I said Mr. Jack, it's Jenny, and he still said
21 I'm going to call the police, I turned and I walked off
22 that porch. I did not see -- I didn't see anyone touch Mr.
23 Jack, okay? I did not see anyone touch him.

24 I just know I got in the van. Lisa stayed in the van.
25 Timothy Clinner -- Skinner got in the van with us and we

J. CHASE - CROSS-EXAMINATION BY MR. HOOD

339

1 left. That's, that's what I know. I don't know if Clint
2 pushed him when we were there. I don't know this. I don't
3 remember hearing Mr. Jack call me a whore or me, Lisa and I
4 a whore or anything like that. I don't recall that at all.

5 Q. But you were going there to provide sexual service ---

6 A. To dance.

7 Q. --- for this particular person. Isn't that correct?

8 A. We were to dance, to dance, and I made it very clear
9 to Shag that I would only dance. I made it very clear and,
10 and he, and he told me well, if he doesn't want you --
11 because I asked him. I said, well, what if he, you know,
12 has changed his mind. He says oh, this man let's me borrow
13 money all the time and I said okay. And, I mean, it took
14 me a good hour or so to, to convince myself, and a lot of
15 vodka, to get up enough nerve to go and do that.

16 Q. So, you were taking a lot of crack cocaine. Is that
17 correct?

18 A. Yes.

19 Q. And you were using vodka. Isn't that correct?

20 A. Yes, sir.

21 Q. And did Lisa agree to also dance?

22 A. She -- it was more like -- when I, when I talked to
23 her, it was, like, just, you know, come on, come with me,
24 you know. And so I, I helped do her hair, you know. I got
25 her an outfit. I mean jeans, t-shirt. I had on a dress.

1 You know, we weren't wearing no provocative clothing or
2 anything.

3 Q. Uh-huh. So, you two got dressed ---

4 A. Yes, sir.

5 Q. --- and got into the van ---

6 A. Yes, sir.

7 Q. --- with Clint and with Shag. Is that correct?

8 A. Yes, sir.

9 Q. And then you drove over to Jack's house in Port Royal?

10 A. Yes, sir.

11 Q. Is that correct? And Clint told you, gave you
12 directions of where you were going ---

13 A. Yes.

14 Q. --- and things of that nature.

15 A. Yes.

16 Q. Is that correct? Okay. So, Clint's telling you where
17 you're going and, and ---

18 A. Well, I don't know, Clint or Shag or one of them. All
19 I know is I got directions ---

20 Q. Uh-huh.

21 A. --- and I just went where they told me to go.

22 Q. All right. Now, let's forget what happens at
23 the house. But after you guys all get back in the van
24 together ---

25 A. Uh-huh.

J. CHASE - CROSS-EXAMINATION BY MR. HOOD

341

1 Q. --- you drive to where?

2 A. To Smokers Express ---

3 Q. Okay.

4 A. --- over near Wal-Mart across from where the
5 Winn-Dixie use to be.

6 Q. Okay, and how long do you stay there?

7 A. I think we were there a good ten minutes.

8 Q. Okay, a good ten minutes, and what do you do while
9 you're there?

10 A. I pulled the van up and it's on -- I pulled in on this
11 side where the Lowe's is.

12 Q. Uh-huh.

13 A. That side. I parked and we got -- well, three of us
14 got out. Lisa stayed in the back seat. I saw a guy that I
15 had boughten [sic] drugs from. I, I don't know if Clint
16 and Shag went in the store together. I don't know. I know
17 that Shag went and sat in the back seat of a car at the gas
18 station pump, and I know that me, and Skinner, and the, the
19 guy that I had bought drugs from before were standing up on
20 the sidewalk kind of, like, you know, where all the
21 vehicles were parked.

22 Q. And then you went to where?

23 A. And then we went to my friend Phyllis's.

24 Q. Okay. Okay, and who's at Phyllis's house?

25 A. It's Phyllis, her son, Jason ---

1 Q. Uh-huh.

2 A. --- and her boyfriend, Tony.

3 Q. Boyfriend Tony?

4 A. Yes.

5 Q. Okay, and you say you were laughing and, and, and
6 drinking and, and, and they were using the computer. Is
7 that correct?

8 A. Yes, sir.

9 Q. And who was using the computer?

10 A. Phyllis's son was in the computer chair ---

11 Q. Uh-huh.

12 A. --- controlling it.

13 Q. Yeah.

14 A. And Skinner and Shag were there. I walked in and they
15 had porn on it, and I said oh, gosh, you guys, and I walked
16 out, and I went back in the living room.

17 Q. Well, who had Jack's credit card?

18 A. I don't know.

19 Q. Well, how did they get into the van?

20 A. I don't know.

21 Q. Where did the account numbers come from for Jack's two
22 accounts?

23 A. I don't know. This is all new. This is all new news
24 to me.

25 Q. All right.

J. CHASE - CROSS-EXAMINATION BY MR. HOOD

343

1 A. Okay.

2 Q. So, you never saw any credit cards?

3 A. No, sir.

4 Q. And they were never talking to you ---

5 A. Never saw any credit cards.

6 Q. --- about any credit cards?

7 A. No, sir.

8 THE COURT: Ms. Chase, if you'll, if you'll let him
9 finish the question before you answer it, it will let
10 things go much smoother.

11 WITNESS: Yes, sir, sorry.

12 BY MR. HOOD:

13 Q. Did you ever see any credit cards while in this
14 friend's house?

15 A. No, sir.

16 Q. Okay. After you left the friend's house, where did
17 you go?

18 A. Well, they left for awhile.

19 Q. Who is they?

20 A. It's Shag, Skinner, and Phyllis's son Jason, and Lisa
21 was passed out in the back seat, and I know it, half --
22 they were gone for quite a while. I kept trying to call,
23 kept trying to call. No one would answer, no one would
24 answer, and I would -- I -- Phyllis ended up going to
25 sleep, and I ended up going on the computer, and I was

1 conducting an email to my oldest son's father.

2 Q. Okay. Okay. Okay.

3 A. At 4:20 a.m.

4 Q. And eventually you end up back at Skinner's house. Is
5 that correct?

6 A. Yes, sir.

7 Q. And you and Skinner ---

8 A. It's about 6:30 in the morning, something like that.
9 I remember it was getting light.

10 Q. Right. Right, and you and Skinner get in the bed,
11 Shag and Lisa are in the other bed, back bedroom. Is that
12 correct?

13 A. Yeah. The whole sleeping arrangement, I, I don't
14 remember the sleeping arrangements. I don't know if we
15 went to the front room or in the back room. I just -- I
16 don't know. I just -- I don't remember. I mean, because
17 we would sleep on the couch. We had this bedroom, you
18 know, this back bedroom. I just -- I don't, I don't know.

19 Q. Now, ma'am, in your first interview with law
20 enforcement, Mr. Griffith here, Lieutenant Griffith, you,
21 do you recall telling law enforcement Shag and Jack went
22 into the house?

23 A. I don't remember.

24 Q. And that Jack closed the door?

25 A. I don't remember. I'm telling you I don't remember.

J. CHASE - CROSS-EXAMINATION BY MR. HOOD

345

1 This is just so long ago. Everything is really wishy washy
2 in my head. You know, I just, I just -- I don't know some
3 things. I just don't know them.

4 Q. And you and ---

5 A. If I knew, I would be happy to give you any, anything
6 that I know ---

7 Q. Okay.

8 A. --- or can remember.

9 Q. All right. Right. I'm sure. Haven't you and Skinner
10 discussed this matter since this event occurred?

11 A. We discussed it and Skinner, and Skinner's mother ---

12 MS. McCALL-TANNER: Your Honor, I think we're getting
13 into hearsay again.

14 THE COURT: Yes.

15 MS. McCALL-TANNER: She's asking what Skinner said.

16 MR. HOOD: Your Honor, all she had to do was answer
17 the question ---

18 THE COURT: That's right.

19 MR. HOOD: --- yes or no.

20 THE COURT: That -- no, that's right. That would have
21 been good, but the answer's hearsay. So, that's -- the
22 objection is well taken. Thank you.

23 BY MR. HOOD:

24 Q. Did you and Skinner discuss what took place ---

25 A. No.

1 THE COURT: What took place when? Do you know what
2 he, the question he was asking?

3 WITNESS: Go ahead. I'm sorry.

4 THE COURT: I don't know what the question is. The
5 jury doesn't know what the question was.

6 WITNESS: Sorry.

7 THE COURT: We need to know what the question was
8 before you answer it. If you'd complete the question
9 please, sir.

10 BY MR. HOOD:

11 Q. After you were arrested, after Mr. Skinner was
12 arrested, isn't it true that you and he have talked about
13 this case?

14 A. Yes.

15 Q. Okay. Okay. Isn't it true that after you left Jack's
16 house and before you went to your girlfriend's house, you
17 went back to Skinner's house and Skinner took a shower and
18 changed clothes?

19 A. I don't remember that.

20 Q. You don't remember?

21 A. No. I remember going straight to Phyllis's.

22 Q. You were driving the van. Is that correct?

23 A. Yeah. We went from Jack's to the store to Phyllis's.
24 We didn't go from the store to Skinner's house. We went to
25 Phyllis's house. I know they left sometime in that night

J. CHASE - REDIRECT EXAMINATION BY MS. McCALL-TANNER 347

1 and were out and about for a couple hours, and I could not
2 get in touch with them.

3 Q. When did Skinner change clothes?

4 A. I don't know; I just don't remember.

5 MR. HOOD: I don't have any further questions.

6 THE COURT: Thank you.

7 Ms. Tanner.

8 MS. McCALL-TANNER: Very briefly.

9 REDIRECT EXAMINATION BY MS. McCALL-TANNER:

10 Q. Jenny, that night did you see Skinner change clothes
11 while you were with him?

12 A. Not that I recall, no, ma'am.

13 Q. And to follow up what Mr. Hood asked you, it was Shag
14 that wanted you to dance for money. Isn't that correct?

15 A. Yes, ma'am.

16 Q. And it was Shag that talked about getting the money
17 from Jack?

18 A. Yes, ma'am.

19 MS. McCALL-TANNER: No further questions.

20 THE COURT: Thank you. Any follow up, Mr. Hood?

21 MR. HOOD: No, Your Honor.

22 THE COURT: Thank you.

23 All right. Ms. Chase, you can step down.

24 (THE WITNESS EXITS THE STAND.)

25 MS. McCALL-TANNER: May this witness be excused, Your

1 Honor?

2 THE COURT: Certainly. Without objection she can be
3 excused.

4 Ladies and gentlemen, we kept you a little longer than
5 usual today. We start looking for a stopping break around
6 5:00, but today we didn't have one until the witness is
7 finished. So, I'm sorry about that, but we -- I'm sure you
8 -- it makes more sense to you and to all of us to continue
9 with the witness until we complete it from that procedure.
10 So, if it's any consolation, we're on the tail-end of the
11 5:00 traffic and not right in the teeth of it. So, have a
12 safe trip home.

13 I'll see you back at 9:30 tomorrow morning. Please
14 don't discuss this case with anybody or expose yourself to
15 any information about it. Thank you.

16 BAILIFF: Everybody else remain seated until the jury
17 is excused.

18 THE COURT: Thank you.

19 (THE JURY EXITS AT 5:25 P.M.)

20 BAILIFF: The jury's clear. The door's closed, Your
21 Honor.

22 THE COURT: Thank you, sir.

23 Anything before we break for the day from the state?

24 MS. McCALL-TANNER: Nothing from the state, Your
25 Honor.

1 THE COURT: Mr. Hood.

2 MR. HOOD: Nothing, Your Honor.

3 THE COURT: Okay. 9:30 in the morning then, folks.

4 MS. McCALL-TANNER: Yes, sir.

5 THE COURT: We'll get started at 9:30.

6 (WHEREUPON, THE CASE IS AT EASE.)

7 WEDNESDAY, JULY 28, 2010

8 (COURT RESUMES AT 9:36 A.M.)

9 THE COURT: Ms. Tanner, is the state ready to proceed?

10 MS. McCALL-TANNER: The state is ready, Your Honor.

11 THE COURT: Defense ready, Mr. Hood?

12 MR. HOOD: Yes, sir.

13 THE COURT: Bring the jury.

14 (THE JURY ENTERS AT 9:40 A.M.)

15 BAILIFF: The jury is seated, Your Honor.

16 THE COURT: Thank you.

17 Madame Forelady, members of the jury, thank you again

18 for your prompt return this morning as we continue the

19 trial of this case.

20 In this morning's *Beaufort Gazette*, there was an
21 article about this trial. If you looked at your paper when
22 you got it out of the box, you couldn't miss it because it
23 was the headline above the fold. Apparently it was a slow
24 news day in Beaufort yesterday, so this case made the
25 headlines. And so I know you saw if you looked at the --

1 you saw the headlines, so that doesn't disturb me at all.
2 But did any of you inadvertently read the whole article or
3 read the article itself? If so, I just need to ask you
4 some questions about, about it. If you didn't, that's
5 fine. But if you did, that's fine, too. I just need to
6 ask you questions about it.

7 (THERE IS NO AUDIBLE RESPONSE BY THE JURY.)

8 THE COURT: All right. All right. Thank you. I
9 appreciate very much your conscientious abiding by my
10 instructions in that regard. You can put those newspaper
11 articles on the shelf and you read them tomorrow, the next
12 day, or whenever this trial is over if you wish to.

13 You're, you're not going to learn a whole lot from
14 reading those articles that you don't know about this case
15 itself. You have been sitting twenty feet away from this
16 case the whole time. This case is been happening in this
17 jury -- this witness chair right here. So, you really
18 don't need to, to read the newspaper to see what's going
19 on.

20 Another thing, too. I don't think we'll have any more
21 television cameras. We're old news now. This is the third
22 day of this trial, and the TV is moved on to other things.

23 The cameras were here on Monday. Our rules
24 specifically prohibit television cameras or news, still
25 photos, or anything of that nature, any depictions being

1 taken of the jury itself. You're entitled to the anonymity
2 that, that you should have as jurors. And so your images
3 can't be spliced across the television screen or in the
4 newspaper simply because you're a juror in this case.
5 You're not required to give up that degree of privacy that
6 each of you has in order to serve as a juror.

7 I tell you that in case, if the cameras show up again,
8 don't be concerned about that. So, you don't need to go
9 get your hair cut or your hair fixed or anything like that
10 if the camera shows up. You're not going to be on
11 television or in the newspaper, and I can tell you that's a
12 good thing, being a juror. And so I should have told you
13 that the other day when I saw the cameras here, but I
14 neglected to do it.

15 We continue now as the state continues to offer
16 evidence and testimony in this case.

17 Ms. Tanner.

18 MS. McCALL-TANNER: Thank you, Your Honor. May it
19 please the court, Your Honor?

20 THE COURT: Yes, ma'am.

21 MS. McCALL-TANNER: The state calls Stephanie Stanley
22 to the stand.

23 THE COURT: Come forward, please, and be sworn.

24 STEPHANIE STANLEY, HAVING FIRST
25 BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

1 CLERK OF COURT: All right, be seated. State your
2 full name and spell your last name, please.

3 WITNESS: My name is Stephanie Stanley, S-T-A-N-L-E-Y.

4 VOIR DIRE EXAMINATION BY MS. McCALL-TANNER:

5 Q. Morning, Ms. Stanley.

6 A. Good morning.

7 Q. Where are you employed?

8 A. I'm employed by the South Carolina Law Enforcement
9 Division. It's commonly referred to as SLED.

10 Q. And what are your duties and responsibilities at SLED?

11 A. I'm a forensic scientist assigned to the DNA case work
12 section at SLED. I'm responsible for analyzing biological
13 evidence that's submitted to the laboratory, developing
14 profiles, DNA profiles, and comparing those to known
15 standards to see if they match. I then write a report and
16 testify in court as needed.

17 Q. And what kind of training or education do you have to
18 be a forensic scientist examining DNA?

19 A. I have a Bachelor's of Science degree from Clemson
20 University. I've also been trained by court-qualified
21 analysts at SLED in evidence handling, DNA technology,
22 serology, which is identifying body fluids. I've also been
23 trained in court testimony and statistics as it relates to
24 DNA analysis.

25 Q. And have you ever testified in court with regards to

S. STANLEY - DIRECT EXAMINATION BY MS. McCALL-TANNER 353

1 DNA testing?

2 A. I have.

3 Q. And were you qualified as an expert in this field when
4 you testified?

5 A. Yes. I was qualified in forensic serology and DNA
6 analysis.

7 MS. McCALL-TANNER: Your Honor, at this time the state
8 moves Ms. Stanley as an expert in the analysis of DNA

9 THE COURT: All right.

10 Mr. Hood, *voir dire*?

11 MR. HOOD: None, Your Honor.

12 THE COURT: Thank you. Without objection, Ms. Stanley
13 is so qualified, Ms. Tanner.

14 MS. McCALL-TANNER: Thank you, Your Honor.

15 DIRECT EXAMINATION BY MS. McCALL-TANNER:

16 Q. And, Ms. Stanley, you said that you are a forensic
17 analyst in DNA. What does that mean?

18 A. As a forensic scientist, I receive evidence from law
19 enforcement agencies around the State of South Carolina who
20 bring the evidence to SLED for DNA testing. What we would
21 do is get a small piece of an item, a cutting or a swab
22 usually. We attempt to remove the DNA from that item and
23 develop the DNA profile to find out whose DNA is on an
24 item. We then will take DNA profile developed from
25 evidence stains and compare them to the DNA profile of the

1 known standard.

2 A known standard is one of two forms accepted by SLED
3 It's a blood standard or a Buccal swab. A blood standard
4 is collected by medical personnel in the presence of the
5 law enforcement officer so we know that it came from a
6 particular person.

7 A Buccal standard or oral standard, these are sterile
8 swabs that are rubbed on the inside of somebody's mouth to
9 collect skin cells. They're allowed to dry and packaged by
10 the law enforcement agency and submitted to SLED as a known
11 standard.

12 Once we see if these match, we can guess, make a
13 probability of how likely it is to find the DNA from
14 another person. We then write a report and testify in
15 court.

16 Q. Now, what is DNA? I think we all know, I think we
17 know what it is, but can you give us the scientific
18 definition of DNA?

19 A. Yes. DNA is an abbreviation for deoxyribonucleic
20 acid. It's a chemical that's found in all of our cells,
21 with the exception of our red blood cells. DNA is
22 responsible for the passing of genetic information from
23 generation to generation. So, half your DNA will come from
24 your mother, and the other half of your DNA comes from your
25 father.

S. STANLEY - DIRECT EXAMINATION BY MS. McCALL-TANNER 355

1 Now, most of our DNA is same among humans. We all
2 have two arms, two legs. We have a head, two eyes. But in
3 forensics, we're interested in a very small portion of our
4 DNA that makes us different. It allows us to tell
5 individuals apart. And in our lab we look at fifteen of
6 these locations on the DNA, and the information from all of
7 these locations combined is what we call a DNA profile, and
8 no two people will have the same DNA profile with the
9 exception of identical twins.

10 Q. So, nobody in this room has the same DNA?

11 A. Unless they are identical twins of each other.

12 Q. So, you said that you compared known standards to an
13 unknown standard?

14 A. Yes.

15 Q. And so a known standard, you're told who the DNA came,
16 came from. Is that correct?

17 A. Yes. It's usually labeled with donor identification.

18 Q. An unknown standard could be from ---

19 A. These are usually swabs collected at a crime scene.
20 They can be an article of clothing: a t-shirt or pants, for
21 example. We sometimes would get swabs from an item, and
22 that's just the agency is removed the stained area, or we
23 could get the actual item in itself and make smaller
24 cuttings, and they're looking usually for blood, semen, or
25 saliva for us to test for.

1 Q. Now, what kind of protocols or system do you have at
2 SLED as far as reviewing your work?

3 A. The work that I complete, I followed a protocol
4 throughout my analysis from start to finish. Once I'm
5 finished, I will generate a report. That report is then
6 reviewed by another qualified analyst, and they not only
7 review my report, they review everything that I've done in
8 that case. They start at the very beginning and review
9 everything that I've handled and done in that case.

10 After that has happened, that person agrees with my
11 results, they agree with my analysis, I then turn it over
12 to a second qualified analyst for an administrative review.
13 These are typically supervisors. And they, again, will do
14 everything to make sure that they agree with my analysis
15 and my results before a report is issued.

16 Q. So, before I find out what your results are, you have
17 been through a peer review?

18 A. Yes.

19 Q. At least twice?

20 A. Yes.

21 Q. Now, when it comes down to reviewing the results of
22 another analyst's work, can you do that?

23 A. Yes, I can.

24 Q. And you are here today, and I believe your lab, lab
25 number will be L07-13249. Is that correct?

S. STANLEY - DIRECT EXAMINATION BY MS. McCALL-TANNER 357

1 A. Yes, that is correct.

2 Q. Suspect, Kenneth Williams. Victim, Jack Koch.

3 A. Yes.

4 Q. And there are multiple items that were submitted to
5 SLED in this case. Is that correct?

6 A. That is correct.

7 Q. Now, did you perform the analysis on every piece of
8 evidence that was sent to SLED in this case?

9 A. I did not.

10 Q. Have you reviewed the results of the analysis
11 performed on these pieces of evidence?

12 A. I have.

13 Q. But you have -- have you performed analysis on any
14 pieces of evidence in this case?

15 A. I did.

16 Q. All right. Well, let's walk through some of the
17 pieces of evidence that were submitted in this case,
18 starting with I believe it's SLED Item Number 1, which is a
19 swab from a battery cover. Our State's Exhibit will be 49
20 for the record. Can you tell the jury what the results of
21 the analysis of that item was?

22 A. Blood was indicated on that item.

23 Q. And your Item Number 2, which is a swab from a phone
24 battery pack -- for the record, State's Exhibit 50 -- what
25 are the results of that analysis?

1 A. Blood was indicated on that item. The results of DNA
2 testing, the DNA profile developed item, my Item 2, which
3 is a swab from a phone battery, matches the DNA profile of
4 Jack Koch.

5 Q. Now, just to clarify, one -- what is the process you
6 use? First determine a substance, then work up to DNA, or
7 is that just done?

8 A. If we are asked to, we will first try to identify what
9 body fluid is present on an item. Usually that is blood,
10 semen, or saliva. We can perform analysis for touch DNA,
11 and that's simply skin cells that might be left on an item.
12 There is no presumptive testing for that. So, that would
13 go straight to DNA. But in a blood case, we try to see if
14 blood is present before we do DNA testing on that stain.

15 Q. What I heard is there is blood on the battery cover?

16 A. Yes.

17 Q. But there was no DNA result from that?

18 A. Correct.

19 Q. Now, just because there is blood on an item or saliva
20 or semen, can you get a DNA profile from every one of
21 those?

22 A. Not all the time. It just depends on how much DNA is
23 left on an item, whether we are able to get a DNA profile.

24 Q. And is DNA something that remains the same all of the
25 time? Is it something that if I bled on this today, that

S. STANLEY - DIRECT EXAMINATION BY MS. McCALL-TANNER 359

1 it was going to stay exactly the same forever?

2 A. It wouldn't stay exactly the same forever. DNA is
3 pretty stable in its dried form. If you have a dried blood
4 stain or a dried semen stain, it is, you know, relatively
5 stable at room temperature given no humidity. If you're
6 talking about DNA stains outside in Charleston for several
7 years and the rain, the summer heat, you know, we may not
8 be able to get DNA from that item.

9 Q. And what also about the fact that not only me, but
10 maybe a hundred other lawyers have touched the corner of
11 this podium?

12 A. Yes. Touch DNA is really hit or miss. If a person is
13 a shedder, that means they are actually shedding skin cells
14 when they are handling an item. We may be able to detect
15 them when we develop, try to develop a DNA profile. I
16 personally don't shed very many skin cells, and I have the
17 privilege of knowing that from working in the lab. So, by
18 me touching this podium, that's a pretty good chance you're
19 not going to find my DNA.

20 Q. Now, are there levels, when you do perform a DNA test,
21 are there levels of what I'm looking for, I guess a strong
22 sample versus a weak sample? Is there such a thing?

23 A. There are. In some samples we call them mixtures.
24 It's more than one person is contributing to a sample, and
25 we are sometimes able to tell who might have contributed

1 the most to a sample. Who was the most DNA on the item,
2 and who left the least amount of DNA on the item. We're
3 not able to do that in every sample, especially in low
4 level mixtures where there's just not enough DNA there to
5 tell.

6 Q. Okay. Back to our evidence in this case, your Item
7 Number 3, which would be State's Exhibit 37, a swab from
8 the driveway, can you tell the jury the results of that DNA
9 test?

10 A. Yes. Blood was indicated on that item. DNA testing
11 was performed and the DNA profile developed from Item 3, a
12 swab from a driveway, matches the DNA profile of Kenneth
13 Williams.

14 Q. Okay. So, we have Kenneth Williams's blood in the
15 driveway?

16 A. Correct.

17 Q. All right. Let's move to your Item Number 4, which
18 would be State's Exhibit Number 35, a swab from a porch
19 step.

20 A. Blood was indicated on that item. DNA testing was
21 performed, and the DNA profile developed from my Item 4,
22 swab from porch step, matches the DNA profile of Kenneth
23 Williams.

24 Q. Okay. So, we have Kenneth Williams's blood or DNA on
25 a porch step?

S. STANLEY - DIRECT EXAMINATION BY MS. McCALL-TANNER 361

1 A. Correct.

2 Q. All right. Moving to your Item Number 5, State's
3 Exhibit 30.

4 A. Blood was indicated on that item. DNA analysis was
5 performed, and the DNA profile developed from Item 5, swab
6 from porch floor, matches the DNA profile of Kenneth
7 Williams.

8 Q. So, swab from the porch floor is the blood and DNA of
9 Kenneth Williams?

10 A. Correct.

11 Q. Now, I believe that actually four swabs from the porch
12 floor were submitted to SLED by law enforcement, and that
13 would be your Item 5, 6, 7, and 8.

14 A. That is correct.

15 Q. And that would be State's Exhibit 30, 31, 32, 33.
16 Were DNA tests performed on all four swabs?

17 A. No, they were not.

18 Q. Were blood tests performed on all four swabs?

19 A. Yes. Blood was indicated on all four of those items.

20 Q. So, you do know that all four swabs are blood?

21 A. Correct. Well, it's a form of blood. We weren't able
22 to -- we don't say whether or not it's human blood, but
23 blood was indicated. There is a substance characteristic
24 of blood presented on those items.

25 Q. The one that was selected for DNA testing from the

1 porch floor is the DNA of Kenneth Williams?

2 A. That is correct.

3 Q. And we talked earlier about the strength of a sample,
4 a strong sample versus a weak sample. Is there any
5 quantitative amount given to the strength of these swabs,
6 and that includes the driveway, the porch step, the porch
7 floor. Any indications how strong that sample is?

8 A. I didn't perform these exact tests, but when I perform
9 analysis and I have multiple swabs from the same item, I
10 would perform presumptive testing. I would test for blood
11 in this case on all four of those items, and then I would
12 choose my strongest stain, what appeared to have the most
13 concentrated stain, and that is the one that I would do DNA
14 testing on.

15 Q. And in this case, what is the, the measurement given
16 or the percentage or the probability that this is Kenneth
17 Williams's DNA?

18 A. The DNA profile developed from Items 3, 4, 5, and 9
19 matches the DNA profile of Kenneth Williams. The
20 probability of randomly selecting an unrelated individual
21 having a DNA profile matching the DNA profile from these
22 items is approximately one in 320 quadrillion.

23 Q. We are one in 320 quadrillion percent sure that is
24 Kenneth Williams's blood?

25 A. If I was able to test 320 quadrillion people, I would

S. STANLEY - DIRECT EXAMINATION BY MS. McCALL-TANNER 363

1 expect to find this DNA profile one time out of those 320
2 quadrillion people.

3 Q. Okay. Quadrillion sounds like a big number.

4 A. It is.

5 Q. How many humans are there on the planet right now? Do
6 we know?

7 A. There's approximately six and half billion people on
8 the planet.

9 Q. How much bigger is a quadrillion than a billion?

10 A. It's approximately, I believe, a thousand times
11 greater than the population of the world.

12 Q. Okay. So, we're more sure than how many people are on
13 the planet right now that Kenneth Williams's DNA is in the
14 driveway, on the porch step, and on the porch floor?

15 A. If I had that many people to test, I would only expect
16 to find this DNA profile one time.

17 Q. Okay. Now, you mentioned your Item Number 9. That
18 would be State's Exhibit 28. That is a swab from the
19 living room floor. What was the DNA result from that swab?

20 A. That was blood indicated, and the DNA profile
21 developed from that item also matches Kenneth Williams.

22 Q. Kenneth Williams's DNA on the living room floor. Now,
23 is this also one in 320 quadrillion percent sure that
24 that's Kenneth Williams?

25 A. The statistic's the same. It's one in 320

1 quadrillion.

2 Q. Okay. Thank you. Now, moving to the analysis
3 performed on your Item Number 10, State's Exhibit Number
4 11, a swab taking -- taken from under the victim.

5 A. Yes. Blood was indicated and DNA testing was
6 performed. The DNA profile developed from Item 10, swab
7 taken from under the victim, matches the DNA profile of
8 Jack Koch.

9 Q. All right. Now, you also have another item. It is
10 your Item 12.1. Be State's Exhibit 23. That is hair that
11 was taken from the scene. Can you tell the jury what DNA
12 profile was that hair collected from the scene?

13 A. The DNA profile developed from Item 12.1, hair
14 collected from crack in door, matches the DNA profile of
15 Jack Koch.

16 Q. So, it's Jack Koch's hair?

17 A. Yes.

18 Q. And you also performed testing on -- these have not
19 been marked yet. I previously showed these to Mr. Hood
20 this morning.

21 MR. HOOD: No objection. Sorry.

22 MS. McCALL-TANNER: This will be State's 52, no
23 objection from the defense. Multiple items ---

24 THE COURT: 52 you said?

25 MS. McCALL-TANNER: --- in the bag. 52, yes, sir.

S. STANLEY - DIRECT EXAMINATION BY MS. McCALL-TANNER 365

1 THE COURT: Thank you.

2 MS. McCALL-TANNER: We'd like to mark them all as one
3 exhibit.

4 THE COURT: Okay.

5 MS. McCALL-TANNER: It's a cutting from victim's
6 clothes.

7 (CUTTINGS FROM VICTIM'S CLOTHING MARKED INTO EVIDENCE
8 AS STATE'S EXHIBIT NUMBER 52.)

9 BY MS. McCALL-TANNER:

10 Q. Be State's 52, multiple items inside. Can you just
11 tell me what would -- what is inside State's 52?

12 A. This is a heat-sealed pouch that was submitted to our
13 SLED laboratory. This is my laboratory case number on this
14 item, the L07-13249, and I can tell that one of my
15 co-workers, John Ortuno, did the analysis on this. These
16 are his initials where he has sealed this package.

17 In this package are cuttings. This one's from a long
18 sleeve shirt, some underwear, a belt, pants, and pants,
19 that were submitted to our evidence processing unit.

20 Q. And were testing for blood or fluids performed on
21 these items?

22 A. Yes.

23 Q. And what was the result of that?

24 A. Which item in particular?

25 Q. Is there any difference in the, the items?

1 A. The swab from the belt, no blood was indicated on that
2 item. The other swabs, blood was indicated and on certain
3 ones DNA testing was performed.

4 Q. And what items were DNA results gathered?

5 A. On 17.1, which is a cutting from pants; 19.1, cutting
6 from underwear; 20.1, cutting from shirt; and 20.2, cutting
7 from shirt; 20.3, cutting from shirt.

8 Q. And what were the DNA results of those cuttings?

9 A. The DNA profile developed from those items matches the
10 DNA profile of Jack Koch.

11 Q. Now, what is the purpose of taking the cutting? Can
12 you not at SLED take, let's say, State's Exhibit Number 17,
13 which would be the shirt. Has DNA been performed on every
14 spot of potential blood on this shirt?

15 A. It does not appear so.

16 Q. Okay. Where would -- well, show me this. This is
17 marked as 20.2. Can you tell us the relevance of that?

18 A. When items -- where I work in the DNA laboratory, I
19 have a very small space designated for DNA analysis. Any
20 item particularly larger than a pair of underwear are
21 usually sent to our evidence processing unit. There we
22 have forensic technicians that examine the items for
23 usually blood, semen, or saliva.

24 They will take swabs and make cuttings on a particular
25 item -- a shirt, pair of pants, hats that are sent in, ski

S. STANLEY - DIRECT EXAMINATION BY MS. McCALL-TANNER 367

1 masks, anything -- and they will submit the cuttings to us
2 in the DNA laboratory to run for DNA analysis. So, what
3 they would do is they mark the item with our laboratory
4 case number, and then the sub-item that they are taking.
5 And so that sub-item should match one of these cuttings
6 that I have.

7 Q. So, the DNA test that's performed is only performed on
8 the cutting that you receive?

9 A. Correct.

10 Q. So, only this amount of the shirt is what you have
11 actually tested for DNA?

12 A. That is the amount that was tested.

13 Q. And your opinion is based on the cutting you received?

14 A. Correct.

15 Q. So, you can't give an opinion on everything that
16 appears to be blood on this shirt, who it could have
17 belonged to?

18 A. No.

19 Q. Only what's been tested?

20 A. Correct.

21 Q. And that would be the same with the pants?

22 A. Yes, that would be.

23 Q. Now, going back to what is your State's, I'm sorry,
24 your exhibit or your Item Number 11 -- that would be
25 State's Exhibit Number 21, swab from the front door knob --

1 what can you tell us about that?

2 A. What was indicated, and DNA testing was performed, and
3 the DNA obtained from Item 11, the swab from the front door
4 knob, was a mixture. And Jack Koch and Kenneth Williams
5 cannot be excluded as possible contributors to this partial
6 DNA picture.

7 Q. Cannot be excluded, excluded. How is that different
8 than what you said about the other swabs, which is the DNA
9 of Kenneth Williams?

10 A. In mixtures, if I'm not able to specifically identify
11 a major contributor or a minor contributor, who's
12 contributed the most or the least to a sample, we would say
13 that a person appears to be in a sample. I'm not able to
14 exclude them from that DNA. If a person does not appear to
15 be in the sample, it would have said that a person is
16 excluded from a contributor.

17 Q. All right. Now, with that being said, you also -- so,
18 we know, based on your results, you had a known standard
19 Jack Koch. Is that correct?

20 A. Correct.

21 Q. You had a known standard from Kenneth Williams?

22 A. Correct.

23 Q. Did you also have a known standard from someone by the
24 name of Timothy Skinner?

25 A. Yes.

S. STANLEY - DIRECT EXAMINATION BY MS. McCALL-TANNER 369

1 Q. What can you tell me about Timothy Skinner's DNA and
2 the mixture on the door knob?

3 A. Timothy Skinner is excluded as a possible contributor
4 to this mixture.

5 Q. So, Timothy Skinner's DNA is not on that door handle?

6 A. No.

7 Q. Is Timothy Skinner's DNA on any item that was
8 submitted to you for analysis?

9 A. No.

10 Q. Now, your Item 25, that would be State's Exhibit 46,
11 this is a swab taken from the back seat of the van?

12 A. Yes.

13 Q. Did you perform an analysis on that item?

14 A. Yes. Blood was indicated and DNA testing was
15 performed. The DNA profile developed from Item 25, swab
16 from rear seat of van, also matches the DNA profile of
17 Kenneth Williams.

18 Q. Okay, and the strength of that. Is that the same as
19 the other swabs we talked about previously?

20 A. Yes. The probability of randomly selecting an
21 unrelated individual having a DNA profile matching the DNA
22 profile developed from that item, also one in 320
23 quadrillion.

24 MS. McCALL-TANNER: Thank you, Ms. Stanley. Please
25 answer anything defense counsel has.

1 CROSS-EXAMINATION BY MR. HOOD:

2 Q. Ma'am, you never saw any of this stuff. Isn't that
3 correct, except for the one piece that you did?

4 A. Item 25, which was the swab from the van, is what I
5 tested.

6 Q. Okay. So, you never even saw this? You never saw the
7 pants? You had nothing to do with the handling of any of
8 those items. Isn't that correct?

9 A. That is correct. The items were tested by a former
10 coworker who is since retired from SLED.

11 Q. Now, she was making a big to do about this mixture
12 business. That mixture, there was never a DNA profile even
13 taken on that mixture. Isn't that correct?

14 A. That is not correct.

15 Q. Well, you indicate in there that there is a mixture
16 and they, you say they cannot be excluded?

17 A. Correct.

18 Q. So, we don't know whose it is, but we can't exclude
19 Kenneth Williams or Mr. Crotch [sic]. Is that correct?

20 A. That is correct. Other people could be included in
21 the mixture. But the DNA profiles that I was given for,
22 I'm not able to exclude those two individuals.

23 Q. You didn't have -- you're saying that the other person
24 did this. Isn't that correct?

25 A. The other person did the analysis on the case. I have

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

371

1 since reviewed the case and am here to testify for that.

2 Q. All right. You had big to do about holding up these
3 pieces here, and, you know, you guys are responsible for
4 all of the evidence here. Isn't that correct?

5 A. Who is you guys?

6 Q. SLED. You did it.

7 A. Okay.

8 Q. You're to analyze it, right?

9 A. We are given particular items that are submitted to
10 SLED, yeah.

11 Q. And you take cuttings from them. Isn't that correct?

12 A. In this case, an evidence processing technician would
13 take the cuttings.

14 Q. Right. Right. Now, you know that you have two
15 people's or three people or four people's known standards.
16 Isn't that correct?

17 A. There were three submitted.

18 Q. Okay. Well, three in this case, but in each case you
19 have so many standards that are submitted to you. Isn't
20 that correct?

21 A. That is correct.

22 Q. And what you're looking for is that particular person
23 standard DNA on those items. Isn't that correct?

24 A. It depends on whose clothing it is as to whose DNA we
25 would be looking for.

1 Q. Well, if you know that a person is dropping blood in a
2 house, and you got a dead victim there in the house and his
3 clothing has blood on it, what do you do? Determine
4 whether it's the victim's, whether it's the person who
5 actually did the beating. Isn't that correct?

6 A. Correct. We would look to see whose DNA is on an
7 item.

8 Q. So, in other words, you're going to have -- you'll be
9 able to tell whether or not they're two DNA's on this
10 particular item if the person who is beating the individual
11 is actually bleeding on the person at the same time. Isn't
12 that correct?

13 A. That is not always correct. Sometimes the part of the
14 test that we do, we may or may not get both people. In
15 this particular case, we got one person. There may still
16 be DNA from another person on that item that was not
17 tested.

18 Q. Wait a minute. Wait a minute. You had DNA from
19 Kenneth Williams, didn't you?

20 A. Correct.

21 Q. And you had Jack Koch's DNA also, didn't you?

22 A. Correct.

23 Q. And you analyzed that DNA of this individual, Mr.
24 Williams, against what was on that shirt. Isn't that
25 correct?

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

373

1 A. Correct. There are other stains on that shirt that
2 were not tested that I cannot say whose DNA it is.

3 Q. Okay. Well, so what you're telling us is you don't
4 know whose blood is on that shirt altogether.

5 A. I do know that the DNA that I got matches Jack Koch
6 from that shirt. That's the DNA in this case. There
7 wasn't -- it wasn't asked for us to go back, I don't think,
8 to examine for anybody else. We have other DNA profiles,
9 and generally we stop when we get something probative.

10 Q. But did you find any DNA from Kenneth Williams on any
11 items of clothing belonging to Jack Koch?

12 A. No. His DNA profile was not present on any of the
13 items that we tested.

14 Q. Okay. Well, it wasn't on the phone or any of that
15 other stuff. Isn't that correct?

16 A. No. I believe those matched Jack Koch as well.

17 Q. Now, maybe I just misread Mr. Ortuno. Isn't that his
18 name?

19 A. Ortuno.

20 Q. Ortuno results. I mean, that's the guy you're talking
21 for, speaking for. Isn't that correct?

22 A. Correct.

23 Q. Okay, and you're, you're looking at his -- do you have
24 his results there?

25 A. I do.

1 Q. Okay. What does it say in paragraph 3?

2 A. Which report are you referring to?

3 Q. I'm talking about the one he signed.

4 A. I think that he issued three different ones.

5 Q. You have a different one than the one I have?

6 A. I have all the reports that were issued in the case.

7 MR. HOOD: May I approach, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. HOOD:

10 Q. Take a look at that one. Do you have that one?

11 A. What?

12 Q. This page here. Two page there.

13 A. Yes, I do have that one.

14 Q. Okay. That page right there, right there, last
15 paragraph, what does it say?

16 A. The DNA obtained from Item 11, which is a
17 swab from a front door knob, is a mixture.
18 Jack Koch and Kenneth Williams cannot be
19 excluded as possible contributors to the
20 partial DNA mixture.

21 Q. That's probably enough. What does the word possible
22 mean in the English language?

23 A. Whether a person can or cannot be as a possible
24 contributor.

25 Q. So, what you're saying is this one in 320 quintrillion

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

375

1 [sic] doesn't apply. Isn't that true?

2 A. It's one in 320 quadrillion, and, no, that does not
3 apply for this DNA mixture.

4 Q. Okay, okay, because I sure didn't want you to, you
5 know, misstate this other guy, Mr. Ortuno's document here.
6 Are there any other documents that I don't have there? I
7 mean, I've got this one here.

8 A. Yes.

9 Q. Do you have another Ortuno report?

10 A. I have ---

11 Q. I have one.

12 A. --- the report that he issued that contains Items 1
13 through 11, 12.1, 13, 14, 15, and 21, and then I have one
14 that I issued.

15 Q. Well, I guess the only one I'm missing is yours, but I
16 don't need yours ---

17 A. Okay.

18 Q. --- you know, because yours doesn't say anything
19 either, does it?

20 A. Yes, it does.

21 Q. What does it say?

22 A. The -- on the swab in the rear seat of the van, blood
23 was indicated. DNA testing was performed, and the DNA
24 profile developed from Item 25, swab from rear seat of van,
25 matches the DNA profile of Kenneth Williams.

1 Q. Kenneth Williams?

2 A. Yes.

3 Q. Okay, and that's the swab from the back seat of the
4 van ---

5 A. Correct.

6 Q. --- where Kenneth was sitting?

7 A. I do not know that.

8 Q. Oh, okay. Okay.

9 MR. HOOD: Thank you.

10 THE COURT: Ms. Tanner, redirect.

11 MS. McCALL-TANNER: Nothing further, Your Honor. May
12 this witness be excused?

13 THE COURT: Thank you.

14 Ms. Stanley, you may be excused. Thank you, ma'am.

15 (THE WITNESS EXITS THE STAND.)

16 THE COURT: Ms. Tanner.

17 MS. McCALL-TANNER: Thank you, Your Honor. The state
18 calls Dr. Michael Caplan.

19 THE COURT: Dr. Caplan, come forward, please, and be
20 sworn.

21 MICHAEL J. CAPLAN, HAVING FIRST
22 BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: State your full name for us, and
24 spell your last name for us, please.

25 WITNESS: My name is Michael Jeffery Caplan. Last

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

377

1 name is spelled C-A-P-L-A-N.

2 VOIR DIRE EXAMINATION BY MS. McCALL-TANNER:

3 Q. Good morning, Dr. Caplan.

4 A. Good morning.

5 Q. Dr. Caplan, where are you employed right now?

6 A. Right now I'm employed at Mercy Cadillac Hospital in
7 Northern Michigan.

8 Q. And back in September of 2007, where were you
9 employed?

10 A. Then I was employed at Medical University of South
11 Carolina.

12 Q. And what were your duties and responsibilities at the
13 Medical University of South Carolina?

14 A. There I had duties that involved teaching and
15 diagnostic services, which included performing autopsies,
16 both forensic and medical autopsies. That is people that
17 had died suddenly or unexpectedly, or patients that had
18 been in the hospital in, in which the permission for the
19 autopsy was given by the family. Also, I was also a
20 pediatric pathologist where I was involved in making
21 diagnoses on children's diseases and also perinatal
22 autopsies, which involved doing autopsies on babies and
23 fetuses to determine what the cause of the fetal demise
24 was. And other, other duties included teaching medical
25 students and residents.

1 Q. And what would be your title other than doctor? Do
2 you have a -- any area?

3 A. Yes. I was a pediatric and a forensic pathologist.

4 Q. And what is a forensic pathologist?

5 A. A forensic pathologist is a subspecialty of pathology
6 where pathology is the study of how the body reacts to
7 disease, and forensic is specifically application of that
8 to matters of the law and public interest. And forensic
9 comes from forum, which means a public place.

10 Q. And, Dr. Caplan, what is your educational and training
11 background so that you can be a forensic pathologist?

12 A. Well, I started in undergraduate college at Michigan
13 State University, and obtained a degree in forensic
14 science, and that covers not only pathology, but all of the
15 various sciences which include fingerprint analysis and DNA
16 analysis and trace evidence. And I obtained my Bachelor's
17 degree there in 1983, and then I went to medical school at
18 the University of Connecticut and obtained my M.D. degree
19 in 1987.

20 Then after that, I did specialty training in pathology
21 at the University of Michigan, which finished in 1992.

22 Then I did subspecialty training in forensic pathology in
23 the New York City Office of the chief medical examiner.

24 Finished that in 1993, and one more year in training in
25 pediatric pathology, which was at the University of

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

379

1 Pittsburgh in 1993 -- I'm sorry, 2003.

2 Q. And, Dr. Caplan, as part of your job as a forensic
3 pathologist, have you testified in court?

4 A. Yes, I have.

5 Q. And how many times would you say you've testified in
6 court?

7 A. I'd say somewhere between a hundred and a hundred and
8 fifty times, somewhere in that range.

9 Q. And of those times that you've testified, have you
10 been qualified as an expert in forensic pathology?

11 A. Yes, I have.

12 Q. Among other things?

13 A. Yes.

14 MS. McCALL-TANNER: Your Honor, at this time the state
15 moves to declare Dr. Caplan an expert in forensic
16 pathology.

17 THE COURT: Mr. Hood, *voir dire*?

18 MR. HOOD: I don't have any questions.

19 THE COURT: Thank you.

20 Dr. Caplan is so qualified.

21 MS. McCALL-TANNER: Thank you, Your Honor.

22 DIRECT EXAMINATION BY MS. McCALL-TANNER:

23 Q. Okay, Dr. Caplan, first kind of give the jury an idea
24 of, let's say an autopsy today. How, when you get a body
25 in, how do you start your autopsy and what are you looking

1 for?

2 A. Okay. Well, basically an autopsy is, is an
3 examination, the purpose of which is to not only determine
4 what the cause of death was or what killed the person, but
5 to try to reconstruct the events that were taking place
6 around the time of that person's death. And so really what
7 we do in an autopsy is we try to document, through various
8 means, the evidence that's available to us, and we do that
9 through taking notes, taking photographs, and then
10 ultimately writing a report.

11 And so when a body comes in, a person's body comes in,
12 the first thing that we do is -- because, you know, most
13 people wear, wear clothing, you know, during a life, and so
14 we document the clothing first as to what's on the body and
15 the condition of that clothing. Then after we've
16 documented that, then the clothing is removed, and then we
17 then look at the whole outside of the surface of the body
18 going from head to toe. Again, noting, identifying
19 features such as scars or moles, any tattoos that the
20 person might have, anything that would identify them. And
21 then also look for any injuries on the body such as an
22 abrasion, which is a scrape, or a contusion, which is a
23 bruise, or a laceration, which is a tear.

24 And then, after we have -- the, the other thing we do
25 is if there's been any kind of medical intervention such as

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

381

1 intravenous lines or tubes put, we would document that also
2 then, and, and photograph that.

3 Then, after the external exam is completed, then we do
4 the internal examination, and that's where -- a pretty
5 standard procedure where incisions are made from the tips
6 of the shoulders down to the breast bone and down to the
7 pubic bone, and then the, the rib cage is, is taken off.
8 And then we examine all the major organs in the chest and
9 the abdomen such as the heart, lungs, liver, spleen, things
10 like that, and intestine, again, looking for any evidence
11 of disease or injury. We also examine the, the neck
12 organs, the larynx and the, and the windpipe, and then also
13 all of the, the, the organs, the structures in the head,
14 including the scalp and the skull, and, and the coverings
15 of the brain and the brain itself.

16 And then also in the course of the autopsy, we also
17 take specimens for additional studies, most commonly --
18 which is toxicology -- where we're looking for evidence of
19 any drugs or poisons or medicines in the body. And we'll
20 take blood, urine, but also solid organs such as liver and,
21 and -- to correlate that with what's in the blood.

22 And then after all that's done -- that's just the
23 beginning because then what we have to do is, is make a
24 report based on all our findings. So, we dictate that
25 report, and then that gets typed. And then we would make

1 modifications or corrections in that, and then we look at
2 certain, certain organs under the microscope. And then
3 after we have all the results from the microscope
4 examination, the toxicology, and any police investigation,
5 then we all integrate that into a final autopsy report,
6 which usually takes a couple months after the original date
7 of the autopsy. So, that's basically the, the, nutshell,
8 the whole process.

9 Q. Now, as part of your final autopsy report, you issue
10 an opinion about the cause of death. Is that correct?

11 A. That is correct.

12 Q. And you also issue an opinion about the manner of
13 death. Is that correct?

14 A. That is correct.

15 Q. What is the difference between a cause of death and a
16 manner of death?

17 A. Okay, a cause of death is really the, the -- that is
18 the disease or injury which sets in motion the sequence of
19 events leading to death. Okay, so that's, that's the, the
20 actual underlying reason that that person died.

21 The manner of death describes the circumstances in
22 which the death occurred, and the best way to explain that,
23 I have to use the actual terminology. So, if death is due
24 only to disease such as heart disease or cancer, we would
25 call that a natural death. But if death is due to anything

1 other than disease, such as any kind of injury, we would
2 call that a violent death. And by violent I don't
3 necessarily mean foul play, but anything other than
4 disease, which is an injury. Then we would subclassify
5 injury such as to accident, which would be an injury where
6 there's no intent to do harm; or a suicide, where death is
7 due to a self-destructive act; or to homicide, where death
8 is due to the hand, at the hands of another person. Those
9 are some of the subclassifying or subcategorization of, of
10 manners of death.

11 Q. So, at the end of your autopsy, you will give an
12 opinion about a cause of death as well as a manner of
13 death?

14 A. That's correct.

15 Q. Now, Dr. Caplan, specifically, you performed an
16 autopsy on patient Jack Koch. Is that correct?

17 A. That's correct.

18 Q. And when was that autopsy performed?

19 A. That autopsy was performed on September 10, 2007.

20 Q. And can you, I guess, describe for the jury how, how
21 that autopsy, how that autopsy started out and what you
22 did?

23 A. Yeah, yeah. We received a notice of Mr. Koch's death
24 from Mr. Kirk Copeland, who was the Beaufort County
25 coroner, the day before actually on, on Sunday. And what

1 happens is that usually when we receive notice of a person
2 passing away from out of our county, that person's body is
3 brought in for an autopsy to be conducted the next day.
4 And so the next day at approximately 3:00 p.m. -- we had
5 some autopsies before that. Mr. Koch's body was -- had
6 been, had been stored in a refrigerated area to preserve
7 and prevent postmortem decay, and his body was brought into
8 the autopsy room. And, and at that time, we began to
9 conduct the examination.

10 So, as I described before, you know, with his clothing
11 on and then, and then with his clothing off, and then the
12 external and the, and the internal examination as I
13 described before. In Mr. Koch's case, there were injuries
14 and other markings that I noticed on the external
15 examination.

16 Q. Now, starting with the clothing, did you make any
17 observations about Mr. Koch's clothing?

18 A. Yes, I did.

19 Q. All right, and what were your observations about his
20 clothing?

21 A. Well, I think the thing that I noticed, first of all,
22 was that he was wearing a, a long sleeved, a blue collared
23 shirt, and the whole left side was blood stained a little
24 bit more on the right, but much more on the left, and it
25 extended to the sleeve, the front and the back. And I also

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

385

1 noticed that the -- three of the buttons, the, the first
2 two were, were still there, but the third to the fifth
3 buttons were, were missing, and also the button up on the
4 collar was missing. So, the blood staining plus the,
5 actually the four missing buttons on, on the long sleeve
6 shirt. I also noticed that in his, his pants -- he had
7 some dark, dark blue or black pants. Also that the, the
8 right rear pocket was ripped, and that there was also some
9 slight amount of blood stain in there, but not nearly to
10 the degree that was on the shirt.

11 Q. And once you have done that, do you or an assistant
12 remove the clothing from Mr. Koch?

13 A. Yes, we usually both do, especially if it's a heavy
14 person. It takes more than one person to remove the
15 clothing.

16 Q. And once you remove the clothing, what do you do with
17 it?

18 A. At that point, what we typically do with it -- it
19 depends on the case. If it is a, a suspected injury of
20 some kind, then we'll usually sign that over as evidence to
21 the investigating police agency. If it's a natural disease
22 and there's no police investigation, then usually the
23 clothing is returned to the family or the funeral home.

24 Q. And in this case, did you turn it over to law
25 enforcement?

1 A. Yes, I did. I turned it over to the Port, Port Royal
2 Police Department, Detective Falco.

3 Q. Okay. All right. Once you get beyond the clothing,
4 what observations do you make then?

5 A. The next observations I make after that are just the,
6 the, the general features of the person. And so, for
7 example, so, Mr. Koch, I noticed he was a large man. He --
8 we weighed him about 262 pounds, and he was fairly tall,
9 about six feet or maybe just a little over six feet tall,
10 and noticed also that he did have some jewelry still on his
11 body. He had a, a yellow metal chain around his neck. He
12 also had a, a Bulova watch on his left wrist, among other
13 things, and, and also there was dried blood around his
14 face. And then after we, we -- the clean -- after we
15 photographed that and after we cleaned the blood off, I
16 noticed that he did have several injuries on his face.

17 Q. We'll start at the top and, and work our way down.
18 What injuries do you document to his, to his face?

19 A. Okay. Well, starting off, he, he really had injuries
20 to the left and right side of his face and injuries to the
21 front of his head.

22 He had a large scrape that went all the way from the
23 right ear to the cheek bone, which was about four by two
24 inches. Kind of a band, going this way. He also had
25 several scrapes and, and, and small bruises around the

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

387

1 right ear, the top of the ear, and also in the little space
2 in between the ear. And then he also had a small, small
3 abrasion, about an inch or so, that was right on the eye
4 socket on the right side. So, that was on the right side.

5 On the left side he actually had two parallel
6 lacerations or tears that were both about an inch long that
7 were parallel to each other, and, and those were on the,
8 the, sort of the, the, the front of the face a little bit
9 behind the eye socket. And those were contained within a,
10 an area abrasion or scrape that was made of a bunch of
11 parallel lines. So, almost looked symmetrical to what was
12 on the right side, but different because you had the
13 lacerations on the left side and not on the right side.
14 And the abrasions were very fine, like a bunch of little
15 small lines running from the eye socket to up by the, the
16 temple area. And both of these, these lacerations, there
17 was what we call undermining where there was separation of
18 the underlying soft tissues, and you could actually put a
19 probe underneath that, and, and it was directed up, upward
20 and from the left side to the right side.

21 In addition to that, he also had another abrasion
22 right in front of the left ear, which is about a half an
23 inch, and then on the front of his, his face he also had
24 some injuries. He had two abrasions or scrapes right on
25 the, the inner parts of both eyebrows. Those were both

1 about an inch or inch and a half long. And he had some ill
2 defined, but some bruises that looked like they were on
3 the, the, the right side of the, the head just a little bit
4 to the right of the midline going towards the hairline.

5 He also had some abrasions on the bottom of the nose,
6 some scrapes, and he also had an abrasion that was going
7 across the bridge of the nose that was almost an inch. And
8 when you felt that, you could feel that the, that the, the
9 bone felt unstable or felt fractured there.

10 And then finally in the mouth, he had had a denture
11 plate in place, but the denture plate was partially broken.
12 So, there was missing -- where it was missing was right in
13 front of the right side of the mouth to the right of the
14 midline. And when we removed that denture plate, we could
15 see that there was bruising on the gingiva, the gum line,
16 right where that denture had been in place. And that was
17 right on the, again, on the right side of the upper jaw.

18 Q. And, Dr. Caplan, did you locate the denture plate, the
19 broken plate?

20 A. We did.

21 Q. And where did you find that?

22 A. We found that in the mouth, but not lodged into the
23 mouth. It was just, it was just in, in, sort of towards
24 the back of the mouth.

25 Q. And what did you do with that?

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

389

1 A. We took the, the broken piece and the denture plate
2 and also submitted that to Detective Defalco of the Port
3 Royal Police Department after we photographed it.

4 (COUNSELORS CONFER.)

5 MR. HOOD: No objection.

6 MS. McCALL-TANNER: And this will be State's 53.

7 (SET OF DENTURES MARKED INTO EVIDENCE AS STATE'S
8 EXHIBIT NUMBER 53.)

9 BY MS. McCALL-TANNER:

10 Q. All right, Dr. Caplan, showing you State's Exhibit 53,
11 can you identify that item?

12 A. Yes, I can.

13 Q. And what is that?

14 A. That is the denture plate that I described at Mr.
15 Koch's autopsy, along with a defect that's missing over the
16 right side going to the midline, and then the separate
17 fragment that was broken that were recovered from the back
18 of the mouth. Also is a computerized label with the
19 autopsy name, Mr. Koch, the autopsy number, FA07640, and
20 the date of the autopsy, 9/10/97, with, with my name on the
21 top.

22 MS. McCALL-TANNER: If I may publish to the jury, Your
23 Honor?

24 THE COURT: Yes, ma'am.

25 MS. McCALL-TANNER: Pass them around.

1 BY MS. McCALL-TANNER:

2 Q. Now, Dr. Caplan, these dentures, these are meant to
3 chew things. Is that correct?

4 A. That's correct.

5 Q. How hard are these things to break?

6 A. They're, they're pretty solid. You know, they're,
7 they're made of, of a synthetic plastic or material. I, I
8 don't know, you know, in numbers what amount of force it
9 takes. But it would take a significant amount of force to,
10 to break those.

11 MS. McCALL-TANNER: Your Honor, these have previously
12 been shown to defense.

13 MR. HOOD: We need to take up at the bench.

14 THE COURT: Okay.

15 MR. HOOD: May we approach?

16 (OFF-THE-RECORD BENCH CONFERENCE.)

17 THE COURT: Madame Reporter, if you'll document the
18 time of our conference. We will memorialize this outside
19 the presence of the jury.

20 Ladies and gentlemen, sometimes to keep from sending
21 you back into the jury room while we discuss these matters
22 of law, we do what we just did. We talk about this outside
23 your presence. I say outside your presence. I had the
24 microphone wide open. You may of heard everything I said.
25 I'm not sure if you did or not, but it doesn't matter.

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

391

1 If you're real curious about what we're talking about
2 up here behind your backs sort of rudely, when your role as
3 jurors in this case has ended, ended, if you'll come back
4 to me and ask me what we're talking about, if I can
5 remember what we're talking about, I'll be glad to tell
6 you. But there's a reason for us having to do it this way.
7 It simply saves time.

8 Ms. Tanner.

9 MS. McCALL-TANNER: Thank you, Your Honor. Have these
10 marked as State's Exhibit 54.

11 THE COURT: State's 54, 55, and 56 ---

12 MS. McCALL-TANNER: Yes, sir.

13 THE COURT: --- will come in over objection of defense
14 counsel.

15 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
16 NUMBER 54.)

17 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
18 NUMBER 55.)

19 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
20 NUMBER 56.)

21 BY MS. McCALL-TANNER:

22 Q. And, Dr. Caplan, I will show you these first and then
23 we will publish to the jury. 54's on top. Can you
24 identify State's 54?

25 A. Okay. Yeah, this is a, this looks like a very, very

1 close-up picture. Actually, to be honest with you, it's,
2 it's such a close-up picture, it's, it's a little bit hard
3 to, to recognize. But my -- it looks like the inside of
4 the, of the scalp where the, where the lacerations that I
5 described were.

6 Q. And would that be the left side? I think in the
7 corner you can see an eye.

8 A. Yes, I -- okay, and I, and I can see it now a little
9 better now that I -- yeah, this is the left eye. I
10 apologize. I was having trouble focusing there. Yeah,
11 this is the left eye, and then these are the two
12 lacerations that I had described of the -- of both about an
13 inch. They're parallel on the left side of the, of, of the
14 face, and then the, the abrasion or the scraping within
15 which they are. So, this is a very close-up view of the
16 left side of the face showing those injuries that I had
17 described.

18 Q. And would you look at State's 55, and I don't think
19 we've moved down to the chest yet, but ---

20 A. Yeah. Yeah, we're -- here we're, we're looking at
21 some, some, some blood staining, and, and some dried blood,
22 and also the, the, the, the yellow metal chain that I had
23 described that was around his neck. And there are also
24 some, some ill defined abrasions that are on the top of his
25 shoulder and, and clavicle, collar bone area, very small.

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

393

1 But there are some small scrape injuries in that area.

2 Q. And State's 56.

3 A. And then State's 56 is a, a close-up view of the
4 inside of the mouth, the right side of the mouth, or the,
5 or the upper jaw showing the area of contusion or bruising
6 that was -- that would have been right at the site where
7 the, the defect or the fracture of the denture plate was.

8 Q. Okay.

9 MR. HOOD: I don't, I don't have any objection to
10 them.

11 THE COURT: All right.

12 MR. HOOD: They're duplicates of the same thing, a
13 couple of them, but that doesn't matter.

14 THE COURT: We'll let him explain them, but is that --
15 without objection, we'll let them in.

16 MS. McCALL-TANNER: State's 57, 58, 59, and 60.

17 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
18 NUMBER 57.)

19 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
20 NUMBER 58.)

21 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
22 NUMBER 59.)

23 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
24 NUMBER 60.)

25 BY MS. McCALL-TANNER:

1 Q. Okay, Dr. Caplan, I know we started getting into
2 photographs, but what about the -- Mr. Koch's scalp? Did
3 you find any injuries to his scalp? I know we talked about
4 his face. Anything to his scalp?

5 A. Yes. After -- as I was describing before, after we do
6 the external examination, then we do the internal
7 examination. And part of that is reflecting the scalp, and
8 the way we do that is we -- if, if you -- is we start from
9 the bone that's just behind the ear, and then we make an
10 incision on to the top of the head, and then we reflect the
11 scalp forward or backward. And after I did that, I was
12 able to see a large bruise about six inches in diameter on
13 the left side of the head directly below the site where I
14 described the lacerations and the abrasion. There were
15 also some smaller blotchy bruises in the front of the head
16 in the forehead area, and those are individually much
17 smaller. Not, not more than a half or three-quarters of an
18 inch or so. But the, the dominant bruise was definitely on
19 the left side of the head, on the scalp.

20 Q. Did you observe any injuries below the facial area?

21 A. Yes, I did.

22 Q. Okay, and can you describe for the jury what injuries
23 you saw there?

24 A. Yes. I had started to make some reference to there
25 were some small, very small injuries, really just a

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

395

1 fraction of an inch, on the clavicle, the left clavicle or
2 shoulder area, a couple of small scrapes. And then there
3 was also on the top of the shoulder about a third of an
4 inch scrape up, up in this area. So, both on the clavicle
5 and on the top of the shoulder were some injuries that I
6 saw there. And there was also some very faint bruising
7 over on the left side of the hip area, and that was the,
8 that was the wounds in terms of what I saw on the torso.
9 Then I also saw some injuries on the extremities.

10 Q. And what injuries do you see there?

11 A. On the extremities I saw injuries on the, on the arm
12 between the elbow region and the shoulder. There were some
13 blotchy bruises all about, about an inch or so in, in, in
14 dimension, multiple areas of blotchy bruises that were on
15 the side of the arm, in front of the arm, and also on the,
16 the inner, the inner side of the arm over in, in that area.

17 I also saw that on the left hand on the, what we call
18 the dorsal, on the back of the hand. There was a bruise
19 that was a little over an inch in, in greatest dimension
20 just, just close to the web space between the index finger
21 and the thumb. So, it would have been in this area right
22 there, a bruise. And then there was a smaller bruise,
23 probably about a half an inch or so, that was right on the,
24 the, right in front of the thumb itself. So, two bruises
25 close together on the left hand, with a small scrape in

1 there.

2 Q. And is there anything particular about those injuries
3 to the hand that stand out for you?

4 A. Yeah, in a sense that those, that, that these are,
5 these are injuries on the, on the back of the hand. And
6 so, you know, in the, in the context of, of the facial and
7 the head injuries that he suffered, you know, there are
8 some, there are some connections or some logical
9 connections that could be made there.

10 Q. And what would those connections be?

11 A. Well, if somebody is sustaining injuries, you know, to
12 their head and face, if they're, if they're conscious and
13 they're trying to defend themselves, it would be common to
14 put your hands up in front of your face or your head to
15 protect yourself from the blows. And logically you're
16 going to put the back of your hands in front of your face.
17 You're not going to turn your hands over and, and do it
18 that way. And so, and so, your, your, your hands, the
19 exposed part of your hands would be at risk for injury if
20 you're trying to protect your head and face.

21 Q. And is there a terminology for those type of injuries?

22 A. We usually refer to those as defensive type wounds or
23 defense injuries.

24 Q. And, Dr. Caplan, if I could have the court's
25 indulgence for one moment, I'd like to publish to the jury

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

397

1 the photographs that are in and have you describe for them
2 what is ---

3 A. Okay.

4 Q. And, Dr. Caplan, if I could come -- have you come off
5 the stand?

6 A. Sure.

7 THE COURT: And, Doctor, if you'll stand just
8 wherever, wherever you end up so that you're generally
9 facing that court reporter, so she can hear you.

10 WITNESS: Sure.

11 MS. McCALL-TANNER: And we have a microphone for him
12 as well.

13 THE COURT: Okay. That will ---

14 MS. McCALL-TANNER: That should help.

15 THE COURT: That will take care of that. So, you can
16 stand wherever you want to as long as you talk into the
17 microphone.

18 BY MS. McCALL-TANNER:

19 Q. And, Dr. Caplan, we're going to start here with
20 State's Exhibit 54, and can you describe for the jury -- I
21 know we said it was a very close-up shot. Can you kind of
22 give them some orientation of what they're looking at?

23 A. Sure, and, you know, because it's so close-up, that's
24 why I was having a little trouble recognize -- recognizing
25 this. But if you look right here, this is actually the

1 eye, the left eye of the decedent right here, and we're
2 looking at a very close-up view of the whole left, the left
3 side of the face.

4 And so, and so what we have here, these are the two
5 lacerations or the, the tears, these parallel tears both
6 about an inch long, that are on the left side of the face
7 and a little bit difficult to see here. But there's
8 abrasion or very thin scrape lines within this, within this
9 area. And the underline that I talked about before means
10 that there was a tissue plane that allows you to put a
11 probe underneath here, and the direction of this was going
12 upwards toward the eyebrow.

13 Q. And, Doctor, Dr. Caplan, what can you tell me about
14 the differences in the injuries to the left side of his
15 face to the right side of the face? Is there any
16 difference in what you observed?

17 A. Yes. The differences between the left and the right
18 side of the face is where the right side of the face was
19 all pretty much a scrape injury. And the scrape is, is
20 basically due to any kind of a contact with a rough
21 surface. Whereas on the left side of the face, we have
22 evidence of blunt, more blunt impact injury, a little bit
23 more force required because you actually have a breaking of
24 the skin.

25 And, in addition, as I described when we reflected the

1 scalp, this is where we saw the six inch diameter bruise
2 that were, were in the scalp actually reflected as this
3 being that area. So, the amount of direct blunt force was
4 significantly greater on the left side than on the right.

5 Q. And can you describe for the jury a mechanism that
6 would cause that? How are you getting abrasions on the
7 right side if you have blunt-force trauma on the right
8 side?

9 A. Well, you know, one, one way that that would be
10 possible would be if the side that's receiving the blows is
11 exposed, but the side opposite is in a fixed position such
12 as against the wall or against the hard surface. And so as
13 you're striking this surface here and causing injuries, on
14 the opposite surface that's against another hard surface,
15 that's rubbing against that surface. And so you would
16 expect to have the blunt, the direct blunt-force injury
17 such as the tears or the bruising here. But the scraping
18 will be on the opposite side. And so that's, that's at
19 least one, one way that that would make sense.

20 Q. So, Doctor, are these injuries consistent with the
21 right side being against a wall or a floor and a punch
22 coming from the left?

23 A. Yeah, they're consistent with whatever mechanism, a
24 punch or whatever it is, to the left side. Yes, they would
25 be consistent with the right side of the face being against

1 a, a firm surface as the floor or a wall.

2 Q. Now we move to State's Exhibit 55. Can you orient the
3 jury as to what is depicted in this photograph?

4 A. Yes. We're looking here at the -- you've got a very
5 close-up view. This is the neck right here. The front is
6 the chest. The right shoulder, the right shoulder. This
7 is the yellow metal chain that I had described earlier, and
8 it's difficult to see because we have a lot of dried blood.
9 But in this clavicle and shoulder area are some kind of ill
10 defined little scrapes. And there also is right outside,
11 probably right outside of the picture, that would be on the
12 top of the left shoulder. So, these are just minor
13 injuries, but definite injuries in this left collar bone
14 shoulder area.

15 Q. Now, this is State's 56 and can you tell the jury what
16 is depicted in this?

17 A. Yes. Now we're looking at a close-up view of the, the
18 victim's face, and you can see here's his goatee beard.
19 Remember I described there was scrapes to the underside of
20 the nose, and that's right here. Okay, and again, scraping
21 comes from any kind of contact, any rough contact with a,
22 with a rough area, and so we see that here.

23 We also see the probe is helping keep this part. This
24 is actually the upper lip right here. These are the, the
25 lower part of the mouth. And right here what we're showing

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

401

1 is this is the upper part of the gum line on the right side
2 showing the bruising after we removed the denture plate.
3 And it was right here where that denture plate was and
4 where that defect was, the fractured denture plate. Just
5 beneath that area is where this bruising is, is being
6 shown.

7 Q. This will be State's 57.

8 A. Okay. Now we're looking at -- this is the right arm.
9 This is the chest wall right here. So, this will be the
10 right shoulder, and that will be the hand on this way. And
11 what I'm showing you is the bruises that I described, these
12 blotchy bruises that were on the outside -- we're looking
13 at the outside of the arm here. This is the front of the
14 arm here and the inside of the arm, and sort of almost
15 three ill defined blotchy bruises in this, all in this arm
16 area between the elbow and the shoulder. And they have
17 sort of a reddish-blue discoloration.

18 Q. 58.

19 A. This is really showing the same thing, just a little
20 bit of a different angle. Now we can see a little bit
21 better. This is the armpit area, the axilla right here.
22 This is the shoulder area, and now we can see a little bit
23 better the outside of the arm bruise, and then the -- one
24 of the front and toward the inside.

25 So, notice here you can see you've got bruises that

1 are separated by some areas of non-bruised skin.

2 Q. And, Dr. Caplan, what kind of mechanism caused these
3 types of injuries?

4 A. This, this kind of -- can be caused by, by either
5 blunt force here from a blow such as a punch or from a, a
6 -- or from pressure from, you know, from an object or a
7 hand or a finger. And sometimes what happens is that when,
8 when you have skin that's, that's squeezed in between,
9 sometimes you have areas that are unaffected in, in between
10 the areas that are affected. This also -- then these kind
11 of injuries could also be sustained during a struggle where
12 people, where both the victim and the perpetrator or the
13 suspect are moving with each other. So, any kind of
14 significant direct blunt force to the tissues can do this.

15 Q. State's 59.

16 A. Yeah, this is a little out of focus but, but this can
17 give you some more indication. We're looking at the, at
18 the back of the left hand. So, it's like, like this. And
19 this is the wrist area. That's the autopsy number, and
20 this is the web space between the thumb and the index
21 finger. It's like this.

22 Okay, what I'm saying -- showing is this area right
23 here, okay, which would correspond to about this area --
24 okay, thank you. You can see that blue discoloration right
25 there. That's the bruise that I was talking about that's,

1 that's on the back of the hand. And then there's a little
2 scrape as well right inside of that bruise.

3 What you really can't see as well is the smaller
4 bruise that would have been over the thumb areas and some
5 other tissues.

6 Q. What about 60?

7 A. Okay. Now what we're, what we're showing here is a
8 close-up view of the, of the left hand. Again, this is a
9 yellow metal ring also on the middle finger, and here you,
10 you can see also, not quite as well as the other picture,
11 but a little bit of the, the bruising that's, that's over
12 by the thumb area. But you really can't see the -- you,
13 you really can't see the, the, the thumb bruise as well.
14 So, actually the one before showed it better.

15 Q. All right. Thank you, Dr. Caplan, Caplan. If you'll
16 return to the stand.

17 Now, Dr. Caplan, when you were talking about the scalp
18 and the nose and the face, did you discover any fractures?

19 A. Yes, I did. The, the one fracture that I, that I did
20 discover was the one that was right to the bridge of the
21 nose, and that's what -- I could actually palpate or feel
22 that from the external examination. That was the only
23 fracture that I, that I detected other than the, the
24 fractured denture plate.

25 Q. And going back to the injuries on the left side of the

1 face, you said it was blunt-force trauma. What is that?

2 A. Blunt-force trauma is, is a term that we use that
3 results from trauma which doesn't actually penetrate the
4 body. So, when we talk about things like gunshot wound or
5 a stab wound, that's where the instrument actually, you
6 know, penetrates the skin and goes into the tissues.

7 Blunt-force trauma is when the force is, is, is -- the
8 actual object doesn't penetrate, but the force actually
9 does go into the deeper tissues. So, so, any, any, any
10 force which causes injury to the deeper tissues or doesn't
11 -- where the object doesn't penetrate itself, that's what
12 we mean by blunt force or non-penetrating trauma.

13 Q. And by looking at the injuries that you see,
14 particularly on the left side of the face, can you give an
15 opinion about what could have caused that blunt-force
16 trauma? If it was a hand or a foot or a mobile phone?

17 A. Yeah. If, if it's, it, the, the -- it's, it's a --
18 there -- many of those are possibilities. But the one
19 thing that I could say is that because of the fact that you
20 had those, those lacerations -- they're linear lacerations.
21 Usually those are created when there is, when there's force
22 from a relative narrow surface area.

23 So, for example, the, the side of a phone or, or, or
24 the side of a, of a hand, some relative small area where
25 there's surface, where there's a significant amount of

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

405

1 force could, could do that. The edge, the edge of any, any
2 heavy object could do that as well.

3 Q. And can you tell anything about observations from the
4 top of the head, what type of injury would -- was given
5 from the top of the head?

6 A. Well, there really wasn't, there really wasn't much
7 injury to the top of the head. But the, the -- most of the
8 injuries -- there were injuries to the forehead and, and to
9 the nose and, and so that would have been, again, the
10 combination of, of probably direct blows, you know, to that
11 area, especially the, the gum line that I described, and
12 that could also explain the fracture itself.

13 But then there also could have been some injuries
14 sustained if the victim had fallen, had become unconscious
15 and fallen, and just from the weight of the body on that,
16 on that front of the face because there was some injuries
17 that were on the, what we call the protuberant parts of the
18 face as well.

19 Q. And, Dr. Caplan, in your examination, did you find any
20 injury that would be consistent with, say, his head or face
21 being forced into a wall, creating a hole or tear in it?

22 A. Any of those, those mechanisms that I described could
23 account for that as well that he had. As I said, he had
24 injuries to the, you know, to the, to the left side of his,
25 of his face and there was, there was hair there. So, that

1 certainly could have been one mechanism. Also, the, the
2 injuries to, to the face or the front of the head, that
3 also could have been part of that mechanism. It's a little
4 bit difficult to know for certain because there were
5 injuries to multiple parts of his face, the front, the
6 right side, and the left side.

7 Q. So, Dr. Caplan, in your observation of the body, are
8 we talking about more than two injuries, or what are we
9 talking about here?

10 A. In my opinion, we're talking about a multiplicity,
11 more, more than one injury. We're probably talking about
12 several.

13 Q. Several injuries. Now, do you perform any type of
14 analysis on Mr. Koch's brain?

15 A. Yes. That's part of the -- that, that would be part
16 of the, the whole process of the autopsy.

17 Q. And when you first observed the brain, what do you
18 see?

19 A. Well, after we took the skull cap off, what I noticed
20 was that on the left side of his brain, underneath the
21 other areas of injury, there was some very thin -- that
22 there was some blood on the surface of the brain, and we
23 call that subarachnoid hemorrhage. And we use that term
24 because the, the blood vessels on the surface of the brain
25 look like a spider web, and that space on there is called

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

407

1 the arachnoid space. And so there was some, some thin,
2 layered bleeding on that surface.

3 Q. So, you actually do find bleeding on the brain?

4 A. Yeah, a very, a very slight amount on the surface of
5 the brain. Not in the brain, but on the surface, yes.

6 Q. And what would cause bleeding on the surface of the
7 brain?

8 A. That most commonly is -- it can -- it is due to
9 trauma, due to rupture of those tiny blood vessels. You
10 can also get bleeding from natural diseases such as a
11 ruptured aneurysm, but that bleeding would be in a very
12 different place; that would be on the bottom of the brain
13 rather than on the outside surface.

14 Q. And did you perform tests on Mr. Koch to rule out any
15 natural cause of that bleeding on the brain?

16 A. Yes. In other words, in, in terms of the, the course
17 of the autopsy, yeah, we, we, we looked for any other
18 causes, natural causes that could, that could account for
19 that bleeding.

20 Q. Is it your opinion that the blunt-force trauma
21 actually is the cause for the bleeding on Mr. Koch's brain?

22 A. Yes, it is.

23 Q. Okay, and moving down to your observations of Mr.
24 Koch's collar bone and arms, what do those injuries tell
25 you?

1 A. What those injuries tell me, in conjunction with
2 examining Mr. Koch's clothing, is that that's evidence of a
3 struggle taking place where, where the victim and the
4 assailant are both moving in a forceful manner. I
5 described the buttons being gone from the shirt. And so as
6 that shirt is being, you know, torn or twisted or moved,
7 that's going to cause friction on the surfaces of the skin
8 that are involved. And so in my opinion, those injuries
9 are, are consistent with that struggle or movement between
10 assailant and victim.

11 Q. All right. Now, all these injuries that, that you
12 have discussed and that you observed, are any of those the
13 actual cause of death?

14 A. Actually my opinion, no, they're not. They're not the
15 actual -- I believe that they played a contributory role,
16 but they are not the main cause of death, in my opinion.

17 Q. So, Doctor, then can you tell us the -- that, based on
18 your examination, what the cause of death of Mr. Koch would
19 be?

20 A. Yes. In my opinion, the cause of Mr. Koch's death is,
21 is his significantly enlarged heart that was attributable
22 to his obesity, and that, that he sustained an abnormal
23 rhythm or arrhythmia of that heart as a result of that
24 enlarged heart.

25 I believe that the injuries contributed to the death

1 in that they caused a degree of physical and emotional
2 stress that triggered that abnormal rhythm in his heart at
3 the time of the assault. So, while they didn't actually
4 cause his death by themselves, they took advantage of his
5 heart, which was already weakened by his obesity, and, in
6 my opinion, caused the abnormal rhythm at that time.

7 Q. Now, Doctor, let's just be clear. You said that he
8 has a weak heart. Can you describe what condition his
9 heart is in?

10 A. Yes, and what I mean by a weak heart was that his
11 heart was, was significantly enlarged. Most people have
12 hearts that are approximately 350 to 400, 400 grams. His
13 heart was twice that. His heart was 640 grams and his, and
14 his wall was also dilated. In other words, his cavities
15 were larger than normal. And so his heart, because of the
16 enlarged heart and because of the increased amount of
17 volume of blood that his heart had to pump because of his,
18 because of his body weight, that made his heart weaker and
19 more susceptible to an abnormal rhythm than a heart of a
20 normal weight.

21 Q. Now, when you say an abnormal rhythm, what is that?

22 A. Well, an abnormal rhythm is something that doesn't
23 allow the heart to pump blood in a systematic matter. Most
24 of us that, that were -- you know, we're living and
25 breathing consciously. We have a, a heart rate that's,

1 that's set by our pacemaker in our heart that's in the, in
2 what we call the sinus node. And then that allows us to --
3 our heart to beat at a certain rate in a regular fashion.

4 An abnormal rhythm is where the heart is no longer
5 beating in that regular fashion, and, therefore, blood is
6 not able to be, be pumped to the vital organs in a, in a
7 regular manner to sustain our lives. So, abnormal rhythm
8 is just something apart from the normal heartbeat that's,
9 that's generated by our sinus node.

10 Q. So, in layman's terms, if the heart beats widely, your
11 brain doesn't get enough blood?

12 A. That's correct, yeah, and the, and the brain -- and
13 there's -- that's, that's exactly right. And there's,
14 there's about a period of about ten to fifteen seconds
15 where your heart can start to beat wildly, and we call that
16 -- the term that we use, the medically -- is ventricular
17 fibrillation, but beats wildly. There's about ten to
18 fifteen seconds where there's still enough blood flow to
19 the brain to be conscious, but then after that there's not
20 enough blood flow, and then a person would become
21 unconscious after that.

22 Q. So, you're saying once the heart starts beating
23 wildly, in about fifteen seconds they're going to be
24 unconscious?

25 A. That's correct.

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

411

1 Q. And once that happens, where does it go from there?

2 A. Well, where it goes from there is that unless somebody
3 can be resuscitated, you know, within a very short period
4 of time, within a few minutes, if they're -- if there's a,
5 a period where the heart rhythm cannot be resuscitated or
6 put back to normal after, and that's usually in adults
7 about five minutes, then that would be usually enough for
8 irreversible injury. And once it gets to the point where
9 you have irreversible brain injury, which takes a few
10 minutes, then because of the way that the heart and the
11 brain are connected, that would ultimately cause the heart
12 to stop beating. And again, that usually takes a few
13 minutes for it to complete the whole cycle.

14 Q. So, going back to Mr. Koch, are you telling us that
15 within seconds of the wild heart beat from the excitement
16 of the beating, he would have been unconscious?

17 A. In my opinion, yes.

18 Q. And within minutes of that, he would have been
19 deceased?

20 A. Most likely, yes.

21 Q. Now, I want to be clear about the, the heart part. We
22 hear about heart attacks and blood clots, and we all worry
23 about our cholesterol. Is that the kind of heart attack
24 that you're talking about with Mr. Koch? Did he have a
25 blood clot? Did he have artery -- did you find any

1 evidence of that?

2 A. No, I didn't, and, and to clarify that, there are many
3 different causes for a, quote, heart attack. The most
4 common ones, as you've referred to, Ms. Tanner, are, are a
5 blood clot in one of the arteries supplying blood to the
6 heart, what we call the coronary arteries. So, a classic
7 heart attack is precipitated by a blood clot that's
8 superimposed on plaque in an artery that causes stoppage of
9 blood flow to that muscle.

10 However, there are also -- that is not the only type
11 of, of injury that can cause the heart to stop. So, not
12 only blocked arteries, but if the heart muscle is too big
13 and there's too much blood to pump, then that heart muscle
14 becomes irritable and is predisposed to these abnormal
15 rhythms that I've talked about.

16 And one thing that's known is that people, even people
17 that don't have significant coronary artery disease, which
18 Mr., Mr., Mr. Koch did not have, people that are obese that
19 have clean coronary arteries are still predisposed to
20 deaths from abnormal rhythms based upon their heart size
21 and their heart weight. And, and the, and, and it's
22 believed that the -- when the increased heart muscle and
23 the increased heart weight, that it interrupts the normal
24 electrical flow through the heart. So, not a blood clot,
25 but increased heart size as, as the reason for this

1 abnormal rhythm.

2 Q. So, Mr. Koch did not have disease of his arteries?

3 A. Not his coronary arteries. Not significant disease,
4 that's correct.

5 Q. He did not have a blood clot that causes his, quote,
6 heart attack?

7 A. That is correct.

8 Q. And I say, quote, heart attack. So, what causes, in
9 your opinion, in your examination, what causes his heart to
10 beat wildly?

11 A. In my opinion, what caused his heart to beat wildly
12 was that his heart was already enlarged from his weight and
13 that superimposed -- so that was, that was the underlying
14 disease in his heart. But then the trigger or the
15 precipitating factor, in my opinion, was the physical and
16 emotional stress that he sustained while he was being
17 beaten.

18 Q. Even with his enlarged heart, Dr. Caplan, had that
19 trigger not occurred that day, could Mr. Koch be alive
20 today?

21 A. In my opinion, yes.

22 Q. So, we've been through cause of death from your
23 report. Do you issue a manner of death in your report?

24 A. Yes, I do.

25 Q. And based on your findings, what is your manner of

1 death in this case?

2 A. My manner of death was homicide.

3 MS. McCALL-TANNER: Thank you, Dr. Caplan. Please
4 answer anything defense counsel has.

5 THE COURT: Mr. Hood, cross-examine.

6 MR. HOOD: Thank you, Your Honor.

7 CROSS-EXAMINATION BY MR. HOOD:

8 Q. Dr. Caplan, we've met before, haven't we?

9 A. I don't remember.

10 Q. Let me ask you a question. You were looking at the
11 body and examining the clothing and, and the chains and the
12 watch and this and that and the other, and all of his items
13 that were attached to the body. Is that correct?

14 A. Yes, at, at the -- during the beginning part of the
15 autopsy, that's, that's what we do. We look at the
16 clothing and items that are attached to the body, and then
17 we look at the surface of the body itself.

18 Q. And, and did you find a gold money clip anywhere on
19 the body?

20 A. I don't recall seeing a, a money clip on the body.

21 Q. Okay. Okay. Now, based on your examination of the
22 person, Mr. Koch, is it your opinion that none of the
23 injuries which occurred to Mr. Koch, the body of Mr. Koch,
24 could have caused his death. Is that correct?

25 A. Now, that's not exactly what I said.

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

415

1 Q. Okay. So, go ahead. I mean, could any of the
2 injuries that Mr. Koch sustained on the body have caused
3 his death?

4 A. Yes, in my opinion they could have.

5 Q. Okay. What injury?

6 A. Specifically the injury to -- the, the, the injury,
7 the blunt-force injury to his head with the, with the
8 bruising on the surface of the brain and subarachnoid
9 hemorrhage. That conceivably could have caused enough,
10 enough blunt-force injury to the head. That could have
11 precipitated an abnormal rhythm of the heart all by itself.
12 We have a term for that. We call that colloquial *cerebri*,
13 which basically means concussion or a -- of, of the brain
14 that turns out to be fatal. So, yes, in my opinion, it, it
15 could have.

16 Q. But are you saying that any of the other injuries
17 could have caused death also?

18 A. No. I'm, I'm, I'm just talking about specifically
19 about the head injury.

20 Q. Okay. So -- and we -- when you, when you were talking
21 about that particular injury, again, it was the -- not
22 bleeding actually inside of the brain. Isn't that correct?

23 A. Correct. It was on the surface. There was some
24 bleeding on the surface of the brain.

25 Q. And basically ---

1 A. That's correct.

2 Q. --- what you're saying is that, that, that blunt-force
3 trauma could have caused the arrhythmia of the heart to go
4 crazy basically. Is that correct?

5 A. Well, what I'm saying is that, is that -- what I, what
6 I was trying to say is that even without emotional stress,
7 if somebody just had a sudden blow to the head, even that
8 by itself could cause a fatal arrhythmia of the heart.

9 Q. Okay. That's, that's what I thought you were saying.
10 In other words, a person could just get -- be hitting by
11 his -- by their own hand hard enough to be able to cause
12 that particular injury, isn't that correct, and cause the
13 arrhythmia?

14 A. That is possible. That would be very unlikely by
15 their own hand, but it's possible.

16 Q. Okay. Now, also what we have here basically, from
17 your examination of the body, was someone who was in a
18 fight. Isn't that correct?

19 A. Yes, somebody who was in struggle, correct.

20 Q. Okay.

21 A. I saw ---

22 Q. Now, when you say in a struggle, it takes two to
23 struggle. Isn't that correct?

24 A. Yes.

25 Q. Okay. So, basically what we have is these wounds to

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

417

1 the hand and things of that nature could have been caused
2 by blows inflicted by Mr. Koch. Isn't that correct?

3 A. Possible, but unlikely, and I can explain that if
4 you'd like.

5 Q. Well, I just asked. I mean, you know, if it's, it's
6 possible. Isn't that correct?

7 A. Yes, but unlikely because of the, because of the
8 distribution of, of those injuries on his hand.

9 Q. Well, can you tell whether the person who inflicted
10 these blows on Mr. Koch's body was right-handed or
11 left-handed?

12 A. No, I cannot.

13 Q. Can you tell whether they were black or white?

14 A. No, I cannot.

15 Q. Caucasian or ---

16 A. No.

17 Q. You can't? Okay, and is there any way for you to be
18 able to tell exactly how long this person lived after they
19 ended up on the floor?

20 A. I couldn't tell you exactly, no.

21 Q. So, it could be ten minutes or it could be twenty
22 minutes. Isn't that correct?

23 A. Possible.

24 Q. Okay, and isn't it true that just stress and
25 excitement could cause the arrhythmia of the heart that

1 we're talking about here in this particular person's body?

2 Isn't that correct?

3 A. Yes, that -- I would agree with that.

4 Q. Okay. In other words, if he got really mad and his
5 size, with his problems, he could cause the abnormal
6 arrhythmia of the heart. Isn't that correct?

7 A. Yes, that is true.

8 Q. Okay. Okay. Now, this hit below that you're talking
9 about there, that could be caused from a fall. Isn't that
10 correct?

11 A. It could be caused from a fall, but it wouldn't
12 explain the two lacerations that were about one inch on the
13 left side of the face.

14 Q. Okay. Well, if you fall against a door which has ribs
15 in it, and cracks the door, could it end up causing these
16 abrasions to the side of the head?

17 A. Yes, possibly if, if those -- if it, if it -- if he
18 fell in such a way that, that, that he contacted two thin
19 surfaces that were the right distance apart to explain
20 that, that would be possible. Or if he was pushed or, or
21 fell, either way, yeah, that, that is a possibility.

22 Q. Now, the person who inflicted these wounds, do you
23 have any idea about the size of the person or the strength
24 of the person, anything of that nature that you can tell us
25 just from what your autopsy discovered?

S. STANLEY - CROSS-EXAMINATION BY MR. HOOD

419

1 A. All I -- I, I would have no information about the
2 size. All I could say was, was with regard to strength,
3 given the size of the decedent, Mr. Koch, I would believe
4 that he would have to have some degree of strength.

5 Q. Because ---

6 A. Or she.

7 Q. --- Mr. Koch was a pretty big man, wasn't he?

8 A. Yes, he was. As I said, about six feet and 262
9 pounds.

10 Q. Okay. Now, this person who inflicted these wounds and
11 was beating Mr. Koch with his fists, would you be able to
12 look at a hand and say yeah, that hand looks like it was,
13 you know, recently involved in some kind of attack on
14 somebody or abrasions and things of that nature? Would you
15 be able to tell that?

16 A. Oh, possibly if, if that hand had injuries at those
17 contact points. But if the hand had a, a glove or other
18 protection, you might not see anything.

19 Q. But generally you would expect at least the knuckles
20 and things, scrapes on the hands because there's a lot of
21 scrapes and things of that nature on, on the body of Mr.
22 Koch. Isn't that correct?

23 A. Yes.

24 MR. HOOD: Thank you.

25 THE COURT: Ms. Tanner, redirect?

1 MS. McCALL-TANNER: No further questions, Your Honor.
2 May this witness be excused?

3 THE COURT: Thank you, Dr. Caplan. You can be
4 excused. Thank you very much.

5 WITNESS: Thank you.

6 THE COURT: You can return to the cooler climes of
7 Northern Michigan. Have a safe trip back.

8 WITNESS: Thank you.

9 (THE WITNESS EXITS THE STAND.)

10 THE COURT: Thank you.

11 MS. McCALL-TANNER: Your Honor, with that, the state
12 rests.

13 THE COURT: Ladies and gentlemen, the state has now
14 rested its case in chief. That means you have heard all of
15 the evidence and testimony that you will hear from the
16 state in presentation of evidence in this particular case.

17 Necessarily, at this juncture I have to take up
18 matters of law outside of your presence, and that could
19 take some few moments, and you haven't had a break yet this
20 morning. And so I'm going to combine the morning recess
21 with an early lunch break for you all and get you back at
22 12:45. That's an hour and fifteen minutes. Can you eat
23 lunch this early? Let's try. Do the best you can. It's
24 the best way to use our time, and we've got to get things
25 ready to present the rest of this case to you. And that's

1 the best way for us to do it rather than send you out for a
2 few moments and bring you back.

3 So, you'll be in lunch recess until 12:45. That's an
4 hour and fifteen minutes, and remember, as always, when you
5 get back to the jury room at 12:45, don't discuss this case
6 among yourselves. Thank you very much.

7 (THE JURY EXITS AT 11:27 A.M.)

8 BAILIFF: The jury's clear, Your Honor.

9 THE COURT: Thank you.

10 Okay, let's take about fifteen minutes, folks, and
11 start back at quarter of the hour, and then we'll deal with
12 motions and, and whatever else we need to do next.

13 MS. McCALL-TANNER: Yes.

14 THE COURT: Okay.

15 MS. McCALL-TANNER: Thank you, Your Honor.

16 (OFF THE RECORD.)

17 THE COURT: All right, Mr. Hood, I'll be glad now to
18 hear motions from you on behalf of the defendant.

19 MR. HOOD: Your Honor, do you want us to go ahead and
20 let you know whether or not we're going to proceed?

21 THE COURT: You know, I, I -- what can -- I'm thinking
22 about? I just presumed, and I am so sorry. I should not
23 have.

24 MR. HOOD: I -- that's all right. You presumed right.
25 We're going to rest.

1 THE COURT: Okay. Yeah. Okay. Yeah. I, you know, I
2 had it in my mind, and I had -- and I'm sorry. A couple
3 things before we even get to that, another housekeeping
4 matter that Ms. Harris just reminded me of. I need to
5 document our sidebar conference regarding the introduction
6 of three photographs, three autopsy photographs.

7 These are state's objection -- motion -- State's
8 Exhibits 54, 55, and 56. The record should reflect that
9 Mr. Hood made a timely objection at sidebar as we were
10 reviewing that. I allowed them in over his objection.

11 These are autopsy photographs. One showing the scalp
12 area showing bruising. The other showing the upper chest,
13 neck area with a laceration or a cut of some sort, and the
14 other showing the inside of the mouth with a broken denture
15 plate.

16 I allowed them in on two bases. First of all, as
17 evidence of malice. This is a case in which the cause of
18 death, as Dr. Caplan has testified, is a result, according
19 to his testimony, the arrhythmia, arrhythmia of, of Mr.
20 Koch, which was caused by a beating. So, there's a chain
21 of events which leads to it in that particular case. So,
22 evidence of malice obviously is a significant issue in this
23 particular case. And the, the photographs are evidence, if
24 the jury chooses to accept them as such, of malice, which
25 is an essential element of the state's burden of proof.

1 In addition, the, the photographs were an aid to the
2 jury in understanding Dr. Caplan's testimony. He used
3 those photographs to explain his testimony regarding the
4 distinction between the cause and the manner of death.

5 The two cases that I rely upon in that regard are
6 *State vs. Ward* found at 649 S.E. 2d 145, which is a Court
7 of Appeals case from 2007. That is the case which deals
8 with evidence of malice. Most of the cases dealing with
9 introduction of autopsy photographs are death penalty
10 cases, and so it took me a while to find one that was
11 actually not a death penalty case. It was a homicide by
12 child abuse case, as I recall.

13 The case regarding the admissibility of autopsy
14 photographs to explain the pathologist testimony is *State*
15 *vs. Jarrell*, J-A-R-R-E-L-L, 564 S.E. 2d 363, Court of
16 Appeals case from 2002.

17 Mr. Hood, I'll be glad for you to add anything that
18 you want to the record to, to further document it.

19 And, Ms. Tanner, you can be heard as well if you wish
20 to be.

21 MR. HOOD: Judge, my only objection to them was they
22 were inflammatory ---

23 THE COURT: Right.

24 MR. HOOD: --- was basically it.

25 THE COURT: I understand. Okay.

1 Ms. Tanner, do you want to add anything to the ---

2 MS. McCALL-TANNER: Yes, Your Honor. I would like to
3 make State's -- Court Exhibit for appellate record if that
4 becomes the case.

5 THE COURT: Right.

6 MS. McCALL-TANNER: These are other photographs. This
7 will indicate that the state did the best we could. We
8 picked the most non-inflammatory photos out of the bunch to
9 obviously depict what we were ---

10 THE COURT: Right.

11 MS. McCALL-TANNER: --- putting them in for. So, I
12 would make -- they're four photographs. We can make them
13 one court exhibit and, and they may staple them together
14 so ---

15 THE COURT: If you'll do that.

16 MS. McCALL-TANNER: --- that they are part of the
17 record.

18 THE COURT: That's right.

19 MS. McCALL-TANNER: So ---

20 THE COURT: That can be a part of the analysis in
21 which we normally conduct a, a comparison. They'll be
22 Court's Exhibit next, Madam Reporter.

23 (AUTOPSY PHOTOGRAPHS MARKED INTO EVIDENCE AS COURT'S
24 EXHIBIT NUMBER 3.)

25 THE COURT: Thank you.

1 MS. McCALL-TANNER: Thank you, Your Honor.

2 THE COURT: Good. All right. Now, Mr. Hood, do you
3 wish for me to inquire of Mr. Williams about his right to
4 testify or not to testify?

5 MR. HOOD: I do, Your Honor.

6 THE COURT: Okay. Thank you.

7 All right, Mr. Williams, if you'll please stand where
8 you are and raise your right-hand.

9 Mr. Clerk, would you put Mr. Williams under oath?

10 CLERK OF COURT: Yes, sir.

11 THE COURT: Thank you.

12 (WHEREUPON, THE DEFENDANT IS SWORN.)

13 THE COURT: You can have a seat. Mr. Williams, you
14 understand that, that you, under the law, have a right to
15 testify in this particular case if you choose to in your
16 own behalf. You also have a right not to testify under the
17 law. The Fifth Amendment of our United States Constitution
18 and a similar provision of our South Carolina Constitution
19 says that no person in any criminal proceeding can be
20 forced or compelled to testify against himself.

21 This is a criminal proceeding obviously, and the law
22 says that you cannot be forced or compelled to testify
23 against yourself. That's a right that the law gives to
24 you. You're the only one who can exercise it; you're the
25 only one who can give it up.

1 If you choose not to testify, as you have a right to
2 do, the jury will be instructed at the conclusion of this
3 trial that they cannot take into account the fact that you
4 did not testify in their consideration of your guilt or
5 your innocence. They cannot even discuss that matter among
6 themselves as they deliberate this case. They will be
7 advised, as I advise you, that you have a constitutional
8 right not to talk, and if you choose to exercise that
9 right, that fact cannot and must not be held against you.

10 On the other hand, if you give up your constitutional
11 right not to testify and choose to take the stand, then you
12 will be examined not only by your own lawyer, Mr. Hood.
13 You'll be cross-examined by Ms. Tanner, and you can be
14 impeached and cross-examined on any issue that is relevant
15 to this particular case, and so you will waive or give up
16 your right if you take the stand. Do you understand that?

17 DEFENDANT: Yes, sir.

18 THE COURT: Do you understand your rights concerning
19 testifying and not testifying?

20 DEFENDANT: Yes, sir.

21 THE COURT: Do you have any questions you want to ask
22 me about those rights?

23 DEFENDANT: No, sir.

24 THE COURT: So, I take it that whatever your decision
25 is in that regard, whether you testify or not, it will be

1 done with a full knowledge and understanding of what your
2 rights are. Is that right?

3 DEFENDANT: Yes, sir.

4 THE COURT: Okay. Thank you.

5 Now, Mr. Hood, I -- have I -- do you wish for me to
6 ask him any more questions?

7 MR. HOOD: No, Your Honor, and defense rests, Your
8 Honor.

9 THE COURT: Good. All right. We'll deal now with
10 motions. And as a procedural matter, when the jury comes
11 back at 12:45, I'll allow you to rest in the presence of
12 the jury, and we'll go straight to arguments at that time.
13 So -- but, but before we get to that, let's deal with the
14 motions. Okay.

15 MR. HOOD: Your Honor, first off, we make a motion for
16 directed verdict on the murder charge. Obviously ---

17 THE COURT: Right.

18 MR. HOOD: --- in the defendant's opinion, there has
19 been absolutely no evidence presented to show the elements
20 of malice aforethought with respect to this particular
21 crime of, of murder that, that has been alleged against Mr.
22 Williams. There is a lacking of, we think, all of the
23 testimony that we have, in the, in the course of this
24 trial.

25 Basically what we have is an argument which takes

1 place between two parties supposedly. We're not even sure
2 which parties the argument took place with, based upon the
3 testimony that we have. But we do not have any evidence
4 from the state that the -- either party, who may or may not
5 have committed this crime, went to Mr. Koch's house with
6 any intent to commit a crime against Mr. Koch. That the
7 best evidence that we have and the only evidence that we
8 have is that some kind of an argument may have taken place,
9 and that's, that's basically it.

10 The testimony of the statements of the defendant
11 basically put the defendant at the location where this
12 incident occurs, along with Mr. Skinner and the two young
13 ladies. That there is an argument which takes place
14 between Mr. Skinner and Mr. Koch over the woman or women
15 that had been presented by Mr. Skinner. A fight began
16 between the parties, according to the best evidence that we
17 have, and that Mr. Skinner got Mr. Koch apparently down on
18 the floor and was striking him, and that Mr. Williams came
19 to his aid, pulled Mr. Skinner off, and then left the
20 residence.

21 But nowhere in there do we have any of this malice, of
22 the malignant heart. There is no deadly weapon. There is
23 none of this. The pathologist basically says he could have
24 died from just getting mad. That could have caused that
25 particular manner for his heart to go into arrhythmia, the

1 -- that he got excited, could have done the same thing.
2 So, there is absolutely no evidence of any of this intent
3 to do serious bodily injury or, or any type of injury that
4 would cause death to this particular individual.

5 So, I'm just, and I'm, I'm at a loss as to how the
6 state can proceed on a murder when there's absolutely
7 nothing in the record that amounts to any evidence to
8 reflect that this was a murder.

9 THE COURT: What about, do you recall when you and I
10 were in law school, Professor Richards was teaching us
11 criminal evidence and criminal procedure? We talked about
12 the Felony Murder Rule. I remember that very well because
13 it's the only question I answered -- I asked -- I answered,
14 I think, successfully the whole freshman year of law
15 school. We don't have the rules as such, but it has been
16 adopted as evidence of malice. That is murder which is,
17 is, or a homicide which takes place during the commission
18 of a felony.

19 In this particular case, the charge of felony burglary
20 in the first degree is there. How would you deal with
21 that?

22 MR. HOOD: Where is there burglary? Where is there
23 entry into the home with the intent to commit a crime
24 therein? They were already there; they were already inside
25 of the house. By all accounts from everybody, they're

1 inside of the house when this incident starts. If there is
2 a pushing of Mr. Koch or a striking of Mr. Koch or a
3 hooking up, as my client described it, of, of Mr. Koch and
4 Mr. Skinner, it takes place inside of the house. It does
5 not take place outside and they go -- the door is opened by
6 Mr. Koch, according to all of the witnesses involved in
7 this case.

8 And if you believe some of them, some of them even say
9 they went inside. The door was closed, and then several
10 minutes later they came out. But not one witness, other
11 than my client in his testimony, or statements that he gave
12 to the police, were Mr. Koch opened the door, that there
13 was a -- words spoken between Mr. Skinner and Mr. Koch
14 about the females, and he recognizes something. There was
15 something between Mr. Koch and the female or something of
16 that nature. And the next thing he knows, Mr. Skinner and
17 Mr. Koch are hooked up.

18 So, where's the intent to commit a crime therein? I
19 mean, there is no intent prior to entry for there to be a
20 crime to be committed inside of that, that residence. They
21 hook up and they, you know, are inside of the residence
22 already.

23 THE COURT: All right. Thank you.

24 Let me hear from Ms. Tanner in regard to all of those
25 points. Ms. Tanner, on the issue of malice in this

1 particular case.

2 MS. McCALL-TANNER: Well, Your Honor, I think clearly
3 there is evidence of malice. Malice can be implied from
4 the circumstances that demonstrate a wanton or reckless
5 disregard for human life, or reasonably prudent man would
6 have known, according to common experience, there was a
7 plan and likelihood that death could follow from that.

8 I think that it could be contemplated that if you beat
9 an eighty-one year old man about the head and the body and
10 you leave him unconscious in a pool of blood, that he can
11 die from that. So, I believe at, at a minimum that malice
12 can be implied from the acts that are observed and the
13 consequences that are observed during the attack.

14 At a minimum, Mr. Williams's statement says that he
15 observed it. He actually sees blood coming from Mr. Koch's
16 mouth. Even in his self-serving statement, he at least
17 admits that much. He admits seeing Mr. Koch beaten about
18 the head with the mobile phone. So, even in his
19 self-serving statement, you have implied malice and
20 reasonable expectation that, that death could have followed
21 from these acts.

22 But beyond that, we do have the Felony Murder Rule,
23 and while I understand it's not specific, it is a sign of
24 malice. They do go there to rob, and they do enter that
25 house and commit a burglary. There's been no testimony

1 that they were invited into that home, and there's some
2 other witnesses, when Mr. Hood was questioning them, said
3 something about they went into the house. But on redirect,
4 they said they went on the porch. They equated going in
5 with entering the screened-in porch.

6 No one testified that they watched them go into the
7 house or be invited into the house. All the testimony was
8 that Mr. Koch was screaming leave, get off my property, I
9 will call the cops. So, any entry after that, however
10 slight, was a burglary with the intent to commit a crime
11 therein, which is evidenced by the robbery.

12 We do know that Mr. Koch's wallet was never recovered.
13 At a minimum, his phone is never recovered. So, there is a
14 taking and there is a robbery that occurs, and that all
15 leads back to the Felony Murder Rule and the malice.

16 THE COURT: All right. As we know, Rule 19 of the
17 Rules of Civil -- of Criminal Procedure is the salient rule
18 that we deal with in this particular case, and the cases
19 that are cited under that rule give us instruction as to
20 how this court must view the motion for directed verdict by
21 the defendant at this, at this juncture.

22 We know, as a threshold matter, that all of the
23 evidence has to be considered in a light most favorable to
24 the state. And if there is any direct or circumstantial
25 evidence, looking at the evidence in that light from which

1 the guilt of the accused can be determined, then the motion
2 must be denied.

3 And in this particular case, there is evidence from
4 the various witnesses in piecemeal fashion obviously, Mr.
5 Hood. And granted, there is no one clear, cogent, and
6 cohesive line of testimony from any of the witnesses who
7 are there that is completely consistent in every regard or
8 is consistent in all of the, in all of the material
9 elements of this particular case.

10 However, there is evidence taken from the, the various
11 witnesses from which this jury could conclude that the
12 parties went there to extract money by force or some other
13 means from Mr. Koch. And when they got there, he said
14 leave, immediately leave. Mr. Williams's own statement
15 placed him at the scene during the altercation and the
16 fight that he contends occurred between Mr. Skinner and Mr.
17 Koch. And so according to his testimony, he was there.

18 According to the testimony of Ms. Chase, I believe it
19 was, Mr. Koch said everybody leave right away and -- or I'm
20 going to call the police. At that point in time she says
21 she left. She says Mr. Skinner left, and she comes back a
22 while later and finds Mr. Williams walking down the road
23 sweating.

24 Now, I realize there are inconsistencies in her
25 testimony, as there are in all the witnesses, but the jury

1 has the right to believe or disbelieve any or all of the
2 testimony of any single witness, and if they do that and if
3 I apply the rule as I'm required to do, I must deny your
4 motion for directed verdict as to the charge of murder.
5 So, we'll move on to, to the next motion.

6 MR. HOOD: What about the burglary, Your Honor? Do
7 you, do you find that there was some evidence that, that
8 would amount to with the intent to commit a crime therein,
9 that that's ---

10 THE COURT: Yes. The -- first of all, the entry,
11 there is evidence to indicate that the entry was against
12 his wishes and consent, and without his consent. That
13 evidence, I guess, was forcibly was the evidence of Ms.
14 Chase. I believe it was her testimony or one witness. He
15 said get away from here. As a matter of fact, I believe in
16 cross-examination you, you indicated that one of the
17 statements somewhere said get these whores off of my porch
18 or something like that. I'm not sure. That fact itself is
19 not in evidence because I don't think the statement is in
20 evidence. But there is evidence from which the jury could
21 conclude that he didn't want them in his house.

22 I recall testimony that he was pushed in the chest and
23 was pushed back into his home at some point, and that the,
24 that the entry followed.

25 As to the intent to commit a crime, the evidence in

1 that regard is somewhat more nebulous, but I think it is
2 there. They went there to get money, and the testimony is
3 that Mr. Williams said he had worked for him in the past.
4 And if he didn't want these women to dance for him, he
5 could probably lend him the money.

6 The jury could infer from that, if it chose to, that
7 going there and confronted with the fact that he didn't
8 want the women, and didn't appear to be amenable to lending
9 anybody any money because he said get off my porch, that
10 the entry into his house at that point in time was to get
11 money. And the testimony was that money was taken. And I
12 think that is -- that that would be a logical inference
13 that the jury could draw if it chose to draw it -- draw it
14 given the, the evidence.

15 I'll allow Ms. Tanner to put any other evidence on the
16 record which she recalls from her testimony, from her view
17 of the evidence in that regard if she wants to. But that,
18 those are the things that occur to me to, to bear on that
19 particular issue. Ms. Tanner, do you want to address the
20 issue of the intent to commit a crime?

21 MS. McCALL-TANNER: No, Your Honor. I won't add
22 anything. I think that's sufficient to get beyond the
23 motion for directed verdict.

24 THE COURT: All right. Okay. All right. Mr. Hood,
25 any, any further motions?

1 MR. HOOD: That's, that's it as far as directed
2 verdict.

3 THE COURT: Okay. Let's, let's deal now with, with
4 charge request, and then I'll hear other motions that may
5 come out of this because there's -- yes, sir.

6 MR. HOOD: Excuse me. As to, you know, the, the --
7 this is my motion for directed verdict as to the
8 prosecution's case. And obviously I've rested now and, and
9 I would renew that same motion for directed verdict, you
10 know, again, even though it's ---

11 THE COURT: I understand.

12 MR. HOOD: We just heard it, but with no new grounds
13 or anything of that nature.

14 THE COURT: Exactly, and that's, that's a good point,
15 Mr. Hood. In the absence of any additional grounds or any
16 new motions, I would simply renew my rulings that were just
17 put on the record in that regard.

18 MR. HOOD: Thank you, Your Honor.

19 THE COURT: Let me go over the charges which I think
20 apply in this case, and then I'll hear from you all with
21 any request for additional charge, or any exceptions to
22 these, to these charges.

23 My standard felony charge in cases of this sort
24 contains a reasonable doubt definition from *Victor vs.*
25 *Nebraska* or *State vs. Darby*. That is the firmly convinced,

1 real possibility dichotomy that the case law has set up in
2 that regard.

3 Of course, you all are free to argue any other
4 definition of reasonable doubt which our court has adopted.
5 I just didn't want either side to be saying that the judge
6 will tell you that a reasonable doubt is the type of doubt
7 that would cause a reasonable person to hesitate to act
8 because that's not what I'm going to tell them. I didn't
9 want to get you all out on a limb in that regard thinking
10 that's what I'm going to say. I'm not going to say that.

11 I will charge the fact that the defendant did not
12 testify in this particular case. I will charge the
13 credibility of the witnesses and expert witness testimony
14 in that regard. And in that credibility, of course, I talk
15 about whether the witness had a reason or a cause to be
16 biased or prejudice in favor of the testimony that he or
17 she was given. In other words, did they have an interest
18 to be served. That's my way of dealing with the fact that
19 two of the witnesses, of course, had outstanding charges.

20 And, of course, Mr. Hood, you're free to argue that if
21 you choose.

22 I will, I will charge as to expert witness testimony.
23 The murder charge that I give is a standard murder charge,
24 and the, and the malice definition that I give. Obviously
25 we're not dealing with a deadly weapon in this particular

1 case. So, we don't deal with a normal charge that arises
2 from the inference that can be drawn of malice and the use
3 a of deadly weapon. So, they will not hear that in this
4 regard. They will hear the other standard definitions of
5 malice and the way that malice can be manifested. I will
6 charge first degree burglary, the elements of first degree
7 burglary. I will charge the elements of common law or
8 strong-arm robbery. I will charge criminal intent as a
9 necessary element of each crime. I will charge
10 circumstantial evidence. I will charge the hand of one is
11 the hand of all.

12 And let me hear any exceptions to those or request for
13 additional charge, first of all, from the state. Ms.
14 Tanner.

15 MS. McCALL-TANNER: Your Honor, I don't have any
16 exceptions other than the burglary first. I think our
17 indictment included two possibilities as far as
18 aggravation, which would be it occurred at nighttime ---

19 THE COURT: Right.

20 MS. McCALL-TANNER: --- and that a nonparty was
21 injured during the commission of the burglary.

22 THE COURT: The jury will be instructed that they can
23 choose first degree burglary from proof of either of those
24 if the other elements are proven, which, of course, is the
25 intent to commit a crime upon entry, which is an issue

1 that, that Mr. Hood is raised.

2 All right, Mr. Hood, I'll be glad to hear any
3 exceptions or additional charge from, from you.

4 MS. McCALL-TANNER: Judge, I'm sorry. I do have
5 prepared charges. I believe you've covered most of them.
6 I want to pass these up ---

7 THE COURT: Okay.

8 MS. McCALL-TANNER: --- for you to have a copy of,
9 Your Honor.

10 THE COURT: Okay. I will use my standard charge on
11 the hand of one is the hand of all, and it probably won't
12 be as nearly complete as your request, your number two.
13 But it will certainly, it will encompass all of the issues,
14 all of the salient elements of that. Certainly among them
15 will be the mere presence at the scene.

16 Mr. Hood, I think that is something that you would
17 obviously want to see in the hand of one charge if I'm
18 going to give it. But you will get the mere presence at
19 the scene is not sufficient, of course, with more. Mere
20 knowledge is not sufficient. Those, those things will be
21 included in my charge. The malice charge which you have
22 given sounds like it's almost my charge. Your charge
23 number four is a repetition of some of these things, the
24 hand of one is the hand of all. I looked over those, but I
25 think I'm going to embody the significant points. I'm not

1 going to charge it to that extent or that length obviously.

2 MS. MCCALL-TANNER: Yes, sir. Thank you, Your Honor.

3 THE COURT: Okay.

4 MR. HOOD: What about number one? Are you going to
5 charge that?

6 THE COURT: I don't, I don't think so. I think it
7 will be, it will be embodied, to some extent, in my, in my
8 the hand one of one is the hand of all.

9 MR. HOOD: I, I -- well, the only objection that I
10 would have is to the instruction of the hand of one is the
11 hand of all.

12 THE COURT: I understand.

13 MR. HOOD: I would object to that because I do not
14 think it applies in this particular case at all.

15 THE COURT: Okay.

16 MR. HOOD: I don't think the state has presented any
17 evidence to ---

18 THE COURT: Okay.

19 MR. HOOD: --- to warrant that particular instruction.
20 That's the only objection I have.

21 THE COURT: Okay. Let me just tell you what my hand
22 of one charge is. I'll read it to you now so that you can,
23 you all can see, and I'll look at the ones that have been
24 given to see.

25 I charge you all, ladies and gentlemen, that

1 when two or more persons aid, encourage, and
2 abet each other in the commission of the
3 crime, all who are present are principals
4 and are equally guilty. When two or more
5 persons combine together to commit a crime
6 and the crime is committed, all those who
7 are present to aid, and abet, and assist in
8 the commission of that crime are guilty.

9 The act of one becomes the act of all; the
10 hand of one becomes the hand of all. It
11 makes no difference by whose immediate
12 agency or hand the crime is committed. All
13 are principals. However, mere presence at
14 the scene of the crime, even with knowledge
15 of the commission of the crime, but without
16 an intent to aid, abet, or assist in its
17 commission would not constitute guilt. So,
18 the burden is upon the state to establish
19 beyond a reasonable doubt that this
20 defendant and another were present, was
21 present, and that he or they were there with
22 a criminal intent. That is to say with the
23 intent to aid, encourage, abet, and abet
24 each other in committing the offenses
25 charged in this particular case.

1 That, I think, embodies the essence of the, of the law
2 in that regard. And if there's anything critical to the
3 presentation of that case or to the defense of that case on
4 the issue of hand of one that is included in these other
5 charges, I'll be glad to get it, give it if somebody will
6 tell me what it is.

7 Okay. All right, Mr. Hood, any other exceptions,
8 objections, or requests?

9 MR. HOOD: The request that I have is basically for an
10 instruction on involuntary manslaughter. I think that
11 there's ample evidence in the record to show that, in fact,
12 what we have here, whoever perpetrated this particular
13 crime did so as an involuntary manslaughter as opposed to
14 either a murder. Obviously, there is no evidence in the
15 record I can find as far as voluntary manslaughter is
16 concerned. But I can certainly find a lot of evidence with
17 respect to involuntary manslaughter.

18 THE COURT: All right, Ms. Tanner, what says the state
19 in that regard?

20 MS. MCCALL-TANNER: I don't think there's any evidence
21 that it's involuntary manslaughter. These are definitely
22 intentional acts, and it's not a reckless disregard. This
23 is during the commission of other crimes: burglary,
24 robbery. I don't think there's any indication that this is
25 an involuntary under any scenario put forth by the state or

1 the defense. The defense didn't even put forth the well,
2 maybe this was just a horrible accident and we shouldn't
3 have done that, which is layman's terms for involuntary
4 manslaughter. But I, I just don't think there's evidence
5 presented that would suffice under that statute.

6 THE COURT: A good definition of involuntary
7 manslaughter, quoting from *McAninch*, says:

8 A good general definition of involuntary,
9 involuntary manslaughter in its modern sense
10 is the unintentional killing of another
11 without malice while, number one, engaged in
12 an unlawful activity that is not a felony.

13 Well, that's not a, that's not the issue here because
14 the unlawful act is a felony.

15 And does not naturally tend to cause death
16 or great bodily harm; or, number two,
17 engaged in a lawful activity with a reckless
18 disregard for the safety of others.

19 Well, there's not a lawful activity. The ---

20 MR. HOOD: What I, what I'm saying, Your Honor,
21 is that if there's ample evidence in that regard for the
22 jury to find that there was never any intent to commit a
23 robbery ---

24 THE COURT: Right.

25 MR. HOOD: --- when they went into that house, there

1 was never any intent to commit a crime inside of that
2 house.

3 THE COURT: Right.

4 MR. HOOD: That these two individuals got into an
5 argument, hooked up, and then fought each other.

6 THE COURT: Right.

7 MR. HOOD: The stronger one being the younger one
8 ended up taking advantage of the older one. Did not aid,
9 assist, or otherwise after the event occurred, and left.
10 He takes his victim as he finds them. Unfortunately, this
11 person had an enlarged heart, and he didn't know that.

12 But unless you can find that he had intent to commit a
13 crime at that time -- he had no intent to commit a crime
14 based upon the evidence that we have in the record. We
15 don't have -- you know, we have some evidence that would
16 lead one to believe, if you believe it, that there was --
17 they were going to get some money. But not one of those
18 witnesses says, and the last witness was, what's her name,
19 Jenny ---

20 THE COURT: Chase.

21 MR. HOOD: I don't remember the last name now, but
22 anyway, she indicated that there was never any talk of a
23 robbery, and the same thing with the other young lady.
24 There was never any talk of any robbery of anything. They
25 were going there to dance for the -- Mr. Koch and, boom,

1 get some money as a result of their dancing.

2 THE COURT: All right.

3 MR. HOOD: So, where is there any evidence that there
4 was going to be a robbery, a taking of property from this
5 man by means of force and violence? I, I just -- I don't
6 see it, and, and so therefore, if there is no robbery, then
7 they get into an argument over the quality of the goods
8 that Mr. Skinner presented perhaps. We really don't know,
9 and we really don't know whether Mr. Skinner had ever been
10 there before with these same young ladies. We don't know
11 any of that.

12 But we can, can speculate because Ms. Jenny knew Mr.
13 Koch and it's me, Jenny. Jack, it's me, Jenny. So, she's
14 making all of these statements, you know. Look, look
15 closer. It's me. I'm, I'm here, you know. It's me again.

16 Now, so the bottom line is that there is no evidence
17 in the state's case or in, in the statements of the
18 defendant that there was ever going to be a robbery.

19 THE COURT: But in some point in time, apparently
20 intent was formed because it's without a doubt. There's
21 evidence that the money was taken.

22 MR. HOOD: We have a ripped pocket, and we have
23 evidence from my client and from the other two young ladies
24 that indicate that money was taken from the victim. But
25 that occurred after everything else had occurred, it sounds

1 like. Apparently, the individual is sort of like -- you
2 know, you get into a fight with somebody and, boom, you
3 knock them down. And the next thing you see is money
4 starts rolling out of the pocket, and you reach down there
5 and say -- and you take all of their money and you stuff it
6 in their pocket and leave.

7 What crime have you committed? The crime you have
8 committed is a larceny, not a robbery because it wasn't
9 your intent, and the force and violence was not being done
10 at that time for the purposes of taking money. The force
11 and violence was being done to injure this person, to hope
12 that because this person had been insulted you or whatever,
13 and you form your intent after the person lands on the
14 floor. You say oh, might as well take money, too.

15 THE COURT: I'm, I'm not really sure that wouldn't be
16 a robbery, Mr. Hood. But, but I -- the more, the more
17 difficult question, quite frankly, seems to me -- I haven't
18 had a chance to research this; I've been researching
19 everything during Dr. Caplan's testimony -- is the issue of
20 the, of the, of, of the difficulty in dealing with the
21 cause of death issue, quite frankly.

22 At the end of the day, I think Dr., Dr. Caplan closed
23 all of the, all the loopholes and, and his testimony was
24 that, that the arrhythmia, arrhythmia was brought upon, was
25 brought about by the blow. Mr. Hood, you successfully got

1 him to say it could have been caused by the excitement
2 alone without the blow, and so we're confronted with a case
3 where none, none of the blows that were struck, as damaging
4 as they were and as, and as painful as they must have been,
5 caused the death. It was a result of what those blows set
6 into force that caused the death.

7 But that, that's a proximate cause issue which you, I
8 think you're free to argue to the jury obviously. And if
9 the death was not caused by these actions, then of course
10 as to the crime of murder, then the verdict would have to
11 be not guilty. So, I think that has become a jury issue.

12 I was concerned, quite frankly, as to whether it
13 created issues of lesser-included charges outside of the
14 realm of homicide. But, but I hadn't been able to satisfy
15 myself from my research that that would be appropriate, and
16 nobody's raised it. So, I'm not going to, going to go any
17 further with that.

18 But on the issue of involuntary manslaughter, as I
19 considered the definitions of involuntary manslaughter, it
20 has been defined in the past as an unintentional, unlawful
21 killing without malice. That's the -- an old definition
22 from *State vs. Barnette*. The more recent definition which
23 I gave you all a few moments ago was from a 2005 case, and,
24 and I'm not sure -- well, when we're dealing with a case
25 like this where there is, there is some evidence from which

1 a jury could conclude that there was no intent to kill in
2 this case, and of course they're going to be charged that
3 the intent has to be proven by the state. And where the
4 death was an -- was indirectly caused by the blows that
5 were struck or were caused circumstantially by the blows
6 that were struck, whether or not the element of intent was
7 present.

8 But the more I look at it more, and the more I look at
9 the law on voluntary or involuntary manslaughter, I think
10 that's going to be a matter for the jury to determine what
11 the intent was from the facts and circumstances which
12 existed at the time. And if they don't find that the
13 necessary intent was there, if they, if they -- if the
14 intent to commit the crime was there, then the state has
15 not met its burden of proof.

16 I'm going to look at this. The jury will be back at
17 12:45. We're not going to be ready at 12:45. It will be
18 1:00 before we get them out, but we'll get them out then.
19 But I'm not inclined at this point in time to charge a
20 lesser included of involuntary or anything else. I'm going
21 to -- it's going to be a straight murder of guilty or not
22 guilty. The, the issue of, of whether the intent was
23 present or not is going to be an issue that goes to the
24 underlying charge of murder itself. Not as to whether it
25 reduced the charge to, to involuntary manslaughter.

1 The unintentional killing of another without malice
2 would be, would be an appropriate definition, except the
3 law now apparently requires that that unintentional killing
4 without malice must be done while engaged in an unlawful
5 activity that is not a felony, and that does not naturally
6 tend to cause death or great bodily harm. The problem here
7 is that, that the unlawful activity is a felony.

8 Now, what do I do if they find that he is not guilty
9 of the felonies in this case, Ms. Tanner, but, but does
10 find him guilty of, of murder? Well, if they find that,
11 they'll find that malice was present. I don't think I can
12 get around that reasoning. I don't think I can get around
13 the fact that, that...

14 MR. HOOD: Well, I, I, I personally believe that
15 there's any evidence would supports an instruction, then it
16 must be given, and ---

17 THE COURT: And you're right.

18 MR. HOOD: And that's what I would say.

19 THE COURT: And you're right.

20 MR. HOOD: I'm not saying that involuntary
21 manslaughter can be found in this case, but that jury can
22 believe that never once did these people intend to commit a
23 robbery when they arrived at that house. Number two, that
24 there was no burglary. That they entered that house, that
25 house freely or either they hooked up, engaged in a

1 confrontation, a fight which ended up inside of the house,
2 and there was no intent at the time the person was drawn
3 into the house by the victim. And that in the hooking up,
4 that they were going to, you know, commit this crime. So,
5 that's what I am saying.

6 So, they can, they can find hey, there wasn't, there
7 absolutely was not a robbery intended to be committed in
8 this case and, boom, there wasn't a burglary that was
9 intended to be committed, a crime that was intended to be
10 committed at the time they went in. That's what they could
11 find. And once they find that, then they're faced with the
12 fact that you have somebody who has been beaten and has
13 died. Whether it's, you know -- and, and if that is true,
14 then what we have is a circumstance where this person has
15 committed an involuntary manslaughter.

16 Now, the money was taken and, and we still, we, we
17 know that probably for a fact because we have testimony
18 that there was money taken from the victim.

19 THE COURT: It was gone. We know that.

20 MR. HOOD: But we do not know, again, when that
21 robbery intent was made. Was it after the fact of the guy
22 being on the floor unconscious or not moving, or just
23 simply being vulnerable that the person rips his pocket and
24 takes his wallet out? Or we just, we just don't know all
25 of those things because we have no evidence. But we know

1 that, circumstantially, that this is a logical conclusion
2 that the jury can come to.

3 THE COURT: All right. I've got thirty minutes to
4 further research the issues. It's just been raised and
5 I've been thinking about other lesser included. I will --
6 we'll get back at 1:00 and be prepared to argue and charge.
7 And I will let you all know obviously before the jury comes
8 in as to whether or not that's going to be presented to the
9 jury.

10 MR. HOOD: I do have one other that I might hand you
11 up.

12 THE COURT: Okay. Go ahead.

13 MR. HOOD: What I'm, what I'm -- as far as Mr.
14 Williams is concerned and, and basically -- again, we're
15 going back to the testimony that's been presented by the
16 state. And that logically I think that the state -- that
17 the testimony could lead to an instruction on accessory
18 after the fact to a crime by Mr. Williams.

19 Even in Mr. Williams's own statements that he gave to
20 police, he, he basically, once this thing has occurred, he
21 hides that fact from the police when confronted with this
22 matter.

23 THE COURT: I don't believe accessory after the fact
24 is a lesser included of any of the charges contained in any
25 of these indictments, is it?

1 MR. HOOD: Well, it may not be a lesser included, but
2 I think it is. I think it's -- I think any, any, any -- I
3 think an accessory can be a lesser included offense if you
4 are charged with the principal crime.

5 MS. McCALL-TANNER: Your Honor, I think there's ample
6 case law that you cannot be an accessory and a principal
7 in ---

8 MR. HOOD: Well, if you're ---

9 MS. McCALL-TANNER: --- the same event.

10 MR. HOOD: If you're using a hand of one is the hand
11 of all theory is what I'm concerned with.

12 THE COURT: Well ---

13 MS. McCALL-TANNER: Obviously you cannot charge them
14 with both. You cannot be both.

15 THE COURT: All right.

16 MS. McCALL-TANNER: They are not lesser included
17 offenses.

18 MR. HOOD: Well, I'm just making the request.

19 THE COURT: All right, sir. I'm going to decline to
20 charge accessory after the fact. I don't think it's a
21 lesser included, and I don't think that he can be convicted
22 of that since it's not a lesser included, and since he's
23 not been indicted for it.

24 MS. McCALL-TANNER: Your Honor, can I add one thing
25 from the earlier argument? With regard to the robbery, the

1 burglary, the murder, they either are going to believe he's
2 guilty or not guilty. There's been no evidence presented
3 that there is a lesser offense that occurred.

4 THE COURT: Right.

5 MS. McCALL-TANNER: Either these offenses occurred or
6 they didn't.

7 THE COURT: Right.

8 MS. McCALL-TANNER: They are going to make decisions,
9 and we don't know what juries are going to do. They're
10 either going to say he's guilty or he's not guilty.

11 THE COURT: Right.

12 MS. McCALL-TANNER: And that's either this principal,
13 or under the hand of one is the hand of all. There's no
14 evidence that's been presented, and Mr. Hood's thrown out a
15 lot of theories since the jury left the courtroom. But if
16 we go back to the testimony that the jury heard and that
17 the jury will be considering, no evidence has been
18 presented that a lesser offense occurred. He either did or
19 he didn't. He either did it or he didn't.

20 THE COURT: Right.

21 MS. McCALL-TANNER: He's guilty or he's not guilty,
22 and that's not to belabor the point, but I just wanted to
23 add that.

24 THE COURT: All right.

25 MR. HOOD: Your Honor, I, I would just like to make a

1 short comment. The hand of one, hand of all sort of takes
2 that out. But anyway, that's all I have to say.

3 THE COURT: All right. Folks, when the jury comes in,
4 we will, Mr. Hood, allow you, of course, to rest in the
5 presence of the jury, and we'll go immediately to the final
6 arguments.

7 Ms. Tanner, you will present the first of the final
8 arguments obviously. The state will have to do that since
9 there's been no evidence introduced by the defense.

10 MS. McCALL-TANNER: Yes, sir.

11 THE COURT: And then, Mr. Hood, you will, you will
12 conclude after -- we've tried cases together in the past,
13 and I, I normally ask lawyers how long you think you might
14 take. I realize that you all are experienced. You're not
15 going to take any more time than you think you need. It's
16 not important that I keep time on you. The jury is the one
17 who's going to be really keeping the time. So, I'm sure
18 you all will keep it within reasonable limits, mindful of
19 that.

20 And then I will instruct, as I've indicated to you, if
21 there are -- and I will advise you before I come back out
22 before we go to the jury as to whether any lesser included
23 will be, will be charged.

24 MS. McCALL-TANNER: Thank you, Your Honor.

25 THE COURT: All right, folks, then we'll take a few

1 minutes.

2 (OFF THE RECORD.)

3 THE COURT: Thank you. Please be seated. Good
4 afternoon. Ladies and gentlemen, I have determined that I
5 will not charge involuntary manslaughter. The definition
6 of involuntary manslaughter that I read from *McAninch* a few
7 moments ago indicated there that it was a suggested charge.
8 However, the Supreme Court has defined it more than
9 suggestively. They have indicated in the case of *State vs.*
10 *Reese* that:

11 Involuntary manslaughter is the killing
12 without malice and unintentionally while
13 engaged in either an unlawful act not
14 amounting to a felony, and not naturally
15 tending to cause death or great bodily harm;
16 or a lawful act with reckless disregard for
17 the safety of others.

18 I cannot find that the elements of involuntary
19 manslaughter as defined most recently in *State vs. Reese*
20 and prior to that in two other cases is applicable in this
21 particular case, and so I will decline over objection of
22 defense counsel to charge in that regard.

23 And so the verdict that will go to the jury, the form
24 of the verdict that will go to the jury on each of the
25 charges will be guilty or not guilty of the charges

1 contained in the indictment. I have copies of the verdict
2 form here if you all would like to look.

3 Madame Court Reporter, if you will mark these as the
4 court's exhibit next.

5 (STATE'S REQUESTS TO CHARGE MARKED INTO EVIDENCE AS
6 COURT'S EXHIBIT NUMBER 4.)

7 THE COURT: All right, Ms. Tanner, is the state ready
8 to go to the jury?

9 MS. MCCALL-TANNER: State's ready, Your Honor.

10 THE COURT: Mr. Hood, is the defense ready to go?

11 MR. HOOD: Yes, Your Honor.

12 THE COURT: Okay, thank you.

13 Bring us the jury, please.

14 (THE JURY ENTERS AT 1:15 P.M.)

15 BAILIFF: The jury's seated, Your Honor.

16 THE COURT: Thank you.

17 I apologize for the delay in getting you out. We've
18 been running on a pretty good schedule up until now, and I
19 haven't wasted a whole lot of your time. I apologize. It
20 took us a little longer during the lunch hour to do the
21 things that we had to do. As a matter of fact, I asked you
22 to be back here at a quarter till, and I think we finished
23 up at 25 till ourselves. And so we then had to put some
24 things in place, but we're ready now to continue.

25 You recall that when we left for lunch, the state has

1 rested its case in chief. The defendant now has the
2 opportunity to offer evidence and testimony but, as I told
3 you, is under no obligation to do so.

4 Mr. Hood.

5 MR. HOOD: Your Honor, with that, the defense also
6 rests, Your Honor.

7 THE COURT: Thank you.

8 MR. HOOD: Thank you.

9 THE COURT: The defense has rested now, ladies and
10 gentlemen. That means that you have heard all of the
11 evidence and testimony that you will hear in the trial of
12 this case, and so we're now ready to go to the final phase
13 of the trial, which will consist of the arguments that the
14 lawyers will present to you and the instructions on the law
15 that I will give you after that has been done.

16 The state, through Ms. Tanner, will present the final
17 arguments. And after she has presented her final argument
18 on behalf of the state, Mr. Hood on behalf of the defendant
19 will present the final argument. And then I will instruct
20 you as what the law is in this case.

21 You have been attentive throughout the case that
22 you've heard. You have listened to the testimony. You
23 recognize the seriousness of the issues that are involved
24 in this matter, and you have given the testimony the
25 attention that it deserves. And I ask that you continue to

1 give that same attention now to the lawyers as they present
2 their final arguments.

3 Ms. Tanner.

4 MS. McCALL-TANNER: Thank you, Your Honor. May it
5 please the court?

6 THE COURT: Yes, ma'am.

7 MS. McCALL-TANNER: Good afternoon. It's time now for
8 the verdict. Verdict is a Latin term. It means to speak
9 the truth, render justice. As the judge told you in the
10 beginning, and he'll remind you again at the end, that's
11 your duty, your job.

12 You heard in the beginning that my job was to present
13 the evidence and the facts as best I could. The judge's
14 job is to present the law. He will do that before you
15 deliberate. And the defense attorney, he has a job as
16 well, and that is to see that his client gets a fair trial.

17 Now, my words in my opening, I told you they also have
18 the opportunity to muddy the waters, and I'm sure that
19 causes offense to defense attorneys around the world.

20 MR. HOOD: Your Honor, I, I hate to object to a person
21 who's arguing. That term is not proper.

22 THE COURT: I'll sustain that objection certainly as
23 to, as to its implication.

24 You can go ahead and argue, Ms. Tanner.

25 MS. McCALL-TANNER: Thank you, Your Honor.

1 THE COURT: There are other ways you can say the same
2 thing.

3 MS. McCALL-TANNER: Yes, sir. That's what I'm doing
4 right now. I'm thinking.

5 All right, well, go back to what you observed during
6 the trial. What did you see? Witnesses were called. I
7 ask them questions about what did you see, what did you
8 hear, what did you do. I asked them about the facts. Then
9 there was cross-exam by defense. Had the opportunity to
10 ask the same thing.

11 But think back about the difference in the questions
12 and the defense attorney's questions. A little more
13 imagination to them. He asked Jenny Chase. Well, Jenny,
14 didn't you get angry, or didn't Tim get angry when Mr. Jack
15 called you a whore? And you recall Jenny's answer. What?
16 I don't recall hearing that. I never heard him call me
17 that. I didn't see Tim get angry.

18 So, that was Mr. Hood's question. That was not the
19 answer. So, when you're evaluating the evidence, you're
20 evaluating the facts, you're evaluating the answers, not
21 the questions asked because recall the answer when that
22 question was asked. No. That didn't happen. That was Mr.
23 Hood's imagination through his question.

24 Again when Mr. Hood was talking to Dr. Caplan, he
25 asked, well, Dr. Caplan, isn't it possible that this mark

1 on Mr. Koch's face, he fell just so and hit his cheek on a
2 door frame. And what Dr. Caplan say? I guess it could
3 have possibly. But then he followed up to, well, that
4 doesn't explain the other injuries, the multiple injuries
5 to the face, to the chest, broken dentures, bruising on the
6 arms, defensive wounds to the hands while he's being
7 beaten. Door frames don't explain that.

8 You heard the judge tell you that under the law, I
9 argue to you first. Mr. Hood gets to go last. I don't get
10 to come back here and argue with him anymore, so I have to
11 imagine what it is he might talk to you about. I imagine
12 he's going to want to talk to you about Timothy Skinner,
13 not Kenneth Williams. So, again go back to what you heard.
14 Go back to the evidence; go back the facts.

15 What did you hear about Timothy Skinner? Well, you
16 heard a lot about Timothy Skinner through Mr. Hood's
17 questions, but recall the answers to those questions. No
18 evidence puts Timothy Skinner in Jack Koch's home.

19 Now, there is one statement made by Mr. Williams that
20 came in through Detective Griffith that mentions Timothy
21 Skinner, so let's evaluate that. You recall that before he
22 was arrested and he talked to law enforcement, he said --
23 when they asked him about theft, what was his response? Is
24 this about that old guy with the blue truck? That was his
25 response before, and what did he say about that day? Where

1 was he that day? Well, I was partying. He gave some
2 options. I think he said he was with somebody named Mikie
3 or Jazz or Fats, or gave some options, gave some locations,
4 but I wasn't in that old guy's house.

5 And what about that cut on your hand? Oh, this cut on
6 my hand? Yeah, that was a thorn bush. Pre-arrest, that
7 was a thorn bush. That's what he told the officers.

8 Then at some point he's arrested. He's charged, and
9 he's told what we know. So, now that we know and you're
10 under arrest, what do you want to tell us? Oh, okay.
11 Well, if you know I'm there, then I must have watched some
12 other guy do it. Yeah, Timothy Skinner did it. You've got
13 me there. Okay, I watched Timothy Skinner do it.

14 Oh, yeah, and this cut, I must have gotten that when I
15 pulled Timothy Skinner off Mr. Koch because apparently
16 there were some box cutters in Timothy Skinner's pocket in
17 his shirt that only Mr. Hood knows about because you
18 remember he asked about it. No witness, no evidence came
19 out about that. That's Mr. Hood's imagination. But how
20 convenient, and how self-serving after arrest that now the
21 statement is okay, I was there, but I watched some other
22 guy do it.

23 So, now back to the facts, back to the testimony, back
24 to the evidence, the facts. Kenneth Williams picked out
25 the victim. Kenneth Williams, uncontroverted by any

1 testimony or any evidence, Kenneth Williams says I know
2 where we can get some money. I know Jack. He picked the
3 victim. Before they even left, he had picked Jack Koch out
4 to be the victim.

5 More facts. The day after the murder, September 10th,
6 Kenneth Williams is outside of his home scrubbing his
7 tennis shoes; Kenneth Williams is seen scrubbing those
8 shoes. And when they go back with the search warrant to
9 collect those shoes, they're gone. Never saw them again.
10 Shoes are gone.

11 More facts. The victim's bankcard, this card right
12 here has got the victim's checking account and his savings
13 account numbers. This is found at the feet of where
14 Kenneth Williams was sitting. Not Timothy Skinner, not
15 Jenny Chase, or Lisa. At the feet of where Kenneth
16 Williams was sitting. All witnesses agreed; no one
17 diverged from that. Kenneth Williams is sitting on the
18 back seat on the passenger's side. Oh yeah, beside his
19 blood. Remember Kenneth Williams's blood is found on the
20 back seat behind the passenger just above the victim's bank
21 card. Facts. Not questions, not imagination. These are
22 facts.

23 And while we're on Kenneth Williams's blood, starts in
24 the living room near the body. Then it the trails across
25 the porch. Then it walks down the steps. Then it walks

1 out the driveway, Kenneth Williams's blood. No one else's.
2 His. He's in the house. He's bleeding as he leaves.

3 Now, in Mr. Hood's opening statement, he said maybe
4 we're prosecuting Kenneth Williams because he was the black
5 guy in the van. Well, no. Maybe we're prosecuting Kenneth
6 Williams because his blood is red, and he left it at a
7 murder scene.

8 The judge will read you the law for each charge, and
9 you'll hear that you will decide them independently; each
10 charge will be decided independently. One will be the
11 common-law robbery, also referred to as strong-arm robbery.

12 Is there any doubt that force was not used to rob Mr.
13 Koch? Well, he didn't hand over his wallet. It was ripped
14 away from him. Force was used to rob Mr. Koch. This is
15 hair where his head slammed into the wall. Force, robbery.

16 Burglary in the first degree will be the next charge.
17 It's unlawful entering of a dwelling either at nighttime,
18 or injury occurs while commission of the burglary proceeds.
19 Well, Mr. Koch did not invite Mr. Williams in. In fact,
20 according to the witnesses, he said what? Get off my
21 property or I'm calling the cops. That's not an invitation
22 into the home.

23 In fact, he is pushed into his home. You've seen the
24 clothing. You've seen the buttons from his shirt. You
25 heard Dr. Caplan explain the injuries caused from that.

1 He's grabbed, he's pushed, his head slammed into the wall.
2 He's forced back into his own home and robbed. Everybody
3 agrees it was at night. And there's no question he was
4 injured inside the home.

5 Then you're going to come to murder. I know we talked
6 before about television, what your concept of murder is.
7 Maybe give you a little more difficulty than the other
8 charges. But the malice involved in the killing of Jack
9 Koch, consider his dentures were cracked in half. Consider
10 a hole in the wall with hair in it. Consider he's
11 eighty-one years old, and he might be a big fellow. He's
12 tall, he's heavy, but he's eighty-one years old. Not his
13 fighting stance that maybe he was forty years prior.

14 Consider that both sides of his face are injured.
15 Now, remember what Dr. Caplan said. The right side showed
16 signs that it was pressed against something hard -- a wall,
17 floor -- when the left side received the blunt-force
18 trauma. Was he already lying on the floor when he took
19 some of those blows to the left side of his head? Consider
20 the malice.

21 Consider the injuries to his arms, to his chest, his
22 broken nose. His brain was bleeding. Consider the malice.

23 Consider the terror of all of it that sent an
24 eighty-one year-old's heart beating wildly. And remember
25 he fell where he was beaten. He didn't walk around the

1 house. He didn't go back to his porch and sit down. He
2 fell where he was beaten, and he died in his pool of blood
3 where he went down. He never got up from that beating.
4 And if you remember back to Kenneth Williams's statement
5 after arrest, he even tells you that he saw when Mr. Koch
6 bleeding from the mouth while he was lying on the ground.

7 The malice. After seeing that, after doing that, what
8 does he do? He continues his party. He leaves Mr. Koch
9 just like this: lying on his floor in his home in a pool of
10 his own blood. And Kenneth Williams takes Mr. Koch's \$57,
11 and what does he do with it? Parties all night. Jenny,
12 Lisa, Timothy partied all night.

13 But for Kenneth Williams, Mr. Koch and his son would
14 probably still be cleaning that house today. And if an
15 eighty-one year-old man being robbed, being beaten, and
16 dying as a result of that is not murder, then what should
17 we call it? Thank you.

18 THE COURT: Thank you, Ms. Tanner.

19 MS. McCALL-TANNER: Thank you, Your Honor.

20 THE COURT: Mr. Hood.

21 MR. HOOD: May it please the court?

22 THE COURT: Yes, sir.

23 MR. HOOD: My name is Gene Hood. I'm almost sixty-six
24 years old. Been practicing law for thirty-seven years.
25 Never once have I lied to a jury; never once have I

1 withheld information from a jury. It's not my job. My job
2 is to seek the truth just like every attorney who walks
3 into this courtroom. That's our job: to represent our
4 clients to make sure justice is done. We don't cheat. We
5 don't lie. We make sure that justice is done. That the
6 right person is convicted of the right crime. We don't
7 cheat. That's all I have to say about that. I hope that I
8 can get myself together.

9 Now I'm going to tell you a story. I'm going to tell
10 you what happened this particular day, night, or whatever.
11 We all know Kenneth Williams. We've, we've met him here
12 earlier during the course of this trial. Kenneth Williams

13 ---

14 And I wasn't supposed to turn my back on the court
15 reporter because she claims she can't hear me when I speak.
16 Well, I'm here. I'll turn this way a little bit more so
17 you'll get a better angle.

18 Kenneth Williams knew the defendant -- I mean, the
19 victim in this case. There is no doubt about that. He
20 worked for him. He had been working for him for a period
21 of time, and he and the victim in this case, Mr. Koch,
22 developed a relationship obviously. They became possibly
23 friends because Mr. Koch obviously was transporting Mr.
24 Williams around. And we know that based upon the police
25 when they make the stop on Mr. Koch for his driver's

1 license and things of that nature.

2 Well, happens that Mr. Williams is in that vehicle.
3 And why is he in that vehicle? This is where this all
4 starts. It all starts with Mr. Koch wanting Mr. Williams
5 to assist him in a matter, and that matter is providing a
6 woman to service Mr. Koch. And that's -- we know what
7 we're talking about here. We're grownups. The guy was
8 looking for sexual entertainment with a female.

9 Okay, is there any law against that? Well, maybe a
10 moral law. This, that, the other. He's eighty-one years
11 old. He can do as he pleases.

12 Mr. Williams was assisting him. Mr. Williams went
13 out, and they went together, and they rode around different
14 places trying to find a woman who could provide that
15 service for Mr. Koch. Unfortunately, they couldn't find a
16 woman to provide one. Everywhere they went -- and if you
17 remember correctly, Mr. Williams has told you, based on his
18 statement here, that, number one, they stopped at first
19 some woman's name by the name of Tina. She wasn't there,
20 or either the boyfriend arrived or husband arrived or
21 something. They went to another location, and they also
22 went by Timothy Skinner's house, but no one was home at
23 Timothy Skinner's house.

24 So, what did they do then? They go a little bit
25 further and, boom, they get stopped by the police. Now,

1 this is interesting because it all goes back to we were
2 talking about here where everybody now has circled the
3 wagons and they're after Kenneth Williams.

4 The police stopped him. They questioned Mr. Koch just
5 about his driver's license, about his registration and
6 whatever, and they're going to give him tickets. But what
7 does the police officer do? What, what does this deputy
8 do? He goes to Kenneth Williams, and he questions him
9 about what are you doing with this fellow, accusing him
10 already. And what does he write in his little report? I
11 can -- he said that they were looking for a housekeeper for
12 Mr. Koch, that Kenneth said that, and he became suspicious
13 because he was -- considered this a drug interdiction stop.

14 What does that tell you about the person we're dealing
15 with here? I mean, this officer. He is -- Kenneth
16 Williams is black. This fellow he's riding with is white.
17 Why did he even bother with Kenneth Williams? Again, it
18 goes back to what we're talking about here. We get into
19 the same situation. We're seeing it right here in this
20 courtroom. You saw it for two solid days, and you
21 witnessed it.

22 Kenneth Williams told them a story. Kenneth Williams
23 was picked up by the police. Kenneth Williams, before he
24 is picked up, has already been decided that he is a
25 suspect. He is the person who did this because he was

1 washing a pair of tennis shoes. My goodness, he was
2 washing the tennis shoes with soap and water, and he washed
3 the shoelaces. I mean, he did those things, and so he is
4 the first who committed this crime because he did that.
5 Because he was riding in the car with Mr. Koch, he was
6 involved in some kind of drug activity. Same thing.

7 So, what do we have? They pick him up, and they take
8 him in, and he tells them what happens. Now, you've heard
9 these witnesses, and we've had all the state's witnesses,
10 and you, you -- I told you to use your good common sense
11 and your, your knowledge of the ways of the world, and I
12 had -- you heard the witnesses here on the stand. You've
13 listened to them, and they have told a variety of different
14 stories obviously. And, and so I'm going to let you
15 decide, but I'm going to tell you what I think happened and
16 what Mr. Williams told the police that happened in this
17 case.

18 They all got together. Now, first off, Mr. Williams,
19 boom, goes over to Mr. Skinner's house, and Mr. Skinner's
20 got a little party going on, or maybe he doesn't at that
21 point in time.

22 But anyway, they get to drinking, and they're using
23 crack cocaine. Everything is being supplied now remember
24 by Mr. Skinner, okay? Mr. Skinner's supplying this house.
25 This is in his house, okay? His girlfriend's there.

1 That's Jenny, okay, and Jenny and he have been -- well, I
2 guess friends, I guess you'd say. Well, let's just be
3 adults about it. Dammit, they were sleeping together, and
4 they were having sexual intercourse together, okay?

5 And so Jenny's living there with Mr. Skinner. And,
6 boom, they're in there and they're drinking and they're
7 using crack cocaine. They're using other drugs perhaps,
8 marijuana or whatever and, boom, it's okay. And then they
9 decide, boom, we ran out of whatever. And so what does Mr.
10 Skinner do? They say well, let's get in the van. We're
11 going to go over to this particular trailer park where
12 we're going to buy some marijuana. I'm going to buy some
13 marijuana from my, my source or whatever.

14 So, they go over there. Boom, the guy isn't home, so
15 what do they do? They stopped by Lisa's. Well, let's see
16 if we can pick up Lisa because, after all, Mr. Williams
17 doesn't have a female. I mean, we've got, we've got Jenny
18 and, and Skinner hooked up and maybe Mr. Williams.

19 Well, anyway, they go by Jenny's. They pick up -- I
20 mean, pick up Lisa. Lisa, after a couple of drinks or
21 whatever, she decides yeah, well, I'll just skip work for
22 the day, you know, tonight and, boom, I'll go with you.

23 So, they go down to Mr. Skinner's house, where they
24 begin to party. And as she told you, they used a lot of
25 crack cocaine, booze, and a little bit of everything else.

1 And she said they were putting in a window, that Skinner
2 was putting in a window in this particular trailer or a
3 house, whatever it was. I think it was a trailer. And,
4 boom, he was using a box cutter to put that thing in
5 because you got to cut the insulation and this and that and
6 the other stuff, and she talked about that. But anyway,
7 boom, they finish doing that, and they continue on their
8 business, okay?

9 Now, some hours pass. I don't know how many hours
10 pass. Nobody knows, but anyway, they run out of money or
11 run out of crack cocaine, whatever it is they're using, and
12 they need some more money. Now, Mr. Williams says, well,
13 he knows -- he's been there before obviously earlier, and
14 that Mr. Koch wanted some sexual entertain from some
15 female. So, what does he do? He says, well, I know that
16 Pops wanted some, you know, sexual entertainment. And,
17 boom, the next thing you know, as Jenny would say and as
18 Lisa would say -- well, Lisa never really said anything.
19 She would say, well, we were going to go and dance for him.
20 Well, if you believe that, going to dance for him, what, is
21 there a table there? Or is this a talent show? What is it
22 that they're -- she thought they were going to be doing
23 there? She knew exactly what she was going there for. She
24 was going there to provide sexual services to this
25 particular person, okay?

1 So, boom, they get in the van because they know they
2 can get some money because he's going to, you know, pay for
3 the sexual services because he -- you know, that's what he
4 does. So, they drive over there. They get over there.
5 Boom, all three of them get out of the van. First time
6 around, Jenny has always said -- for two, three, I guess
7 two statements she indicated never got out of the van. I
8 never -- I drove the van but never got out, and neither did
9 Skinner. He never got out of the van. Clint never got out
10 of the van the whole time. You know, the only person that
11 got out of the van was Mr. Williams, Sammy. Sammy was the
12 only one that got out of the van.

13 Sammy walked up to the door and knocked on the door,
14 and Mr. Koch came to the door. Sammy went inside. They
15 closed the door. Sammy came out a few minutes later and,
16 boom, he had some money.

17 That's Jenny's original story. That's part of Lisa's
18 original story, except she says, Lisa, both of them went
19 inside. And then she says both of them came out and we got
20 into the van, and Mr. Skinner was smet -- sweaty and hot.
21 And, boom, he went back to the house. We went back to
22 Skinner's house, and Mr. Skinner took a shower and changed
23 clothes. Nobody else did. That's what's Lisa says, okay?
24 She's sort of stuck to that, but she also has changed her
25 statement.

1 All these people were charged with a crime obviously.
2 The two of them, Ms. Lisa and Jenny, are both charged with
3 -- I, I -- still baffles me. But anyway, accessory after
4 the fact to robbery, that's the charges that they have
5 pending, as you heard from the witness stand there.

6 So, what do we have? We have them arriving there, and
7 we have a variety of different stories coming from the
8 witness stand. And we finally have a story coming from
9 Jenny, which is the third, the fourth statement she's
10 given. She gave a couple to law enforcement. Then she
11 gives them to Ms. Tanner. Then she gets on the stand and
12 she makes another statement, okay? So, that's her fourth
13 statement.

14 So, what we have now is the van arriving at the -- at
15 Mr. Koch's house. Now, Kenneth Williams has always said
16 from the get go, from the first time that he finally says
17 okay. Listen. I'm not going down for this with Skinner.
18 Let me tell you what happened. I believe he told the
19 story, and the story was exactly as Lisa has now been -- I
20 mean, that Jenny is now telling, okay, because it matches
21 her story up to a point because now all three of them got
22 out of the van.

23 Jenny got out of the van, Mr. Williams got out of the
24 van, and Mr. Skinner got out of the van, and they went up
25 to the door. And if you remember, now Jenny is saying

1 knocked on the door and, boom, Jack comes to the door.

2 Whoa. I know Jack. And she says, remember what she says?

3 Jack, it's Jenny. Jack, it's Jenny. Been there before.

4 You know, have we been there before? What's the problem?

5 Skinner, Skinner is running everything. It's his
6 call, his house, his drugs, his woman. He's supplying all
7 of this. Get that whore out of here. We don't know what
8 was said. We know, based upon what Mr. Williams says, they
9 got into arguments, Skinner and Jack, Mr. Koch. They got
10 into an argument and, boom, the next thing he knows is
11 they're fighting. They're hooked up, and he goes in. He
12 hears a thud, boom. Probably, possibly when Mr. Koch has
13 hit, perhaps hits that door. We're not sure when he hit
14 the door, but let's just assume that that's probably what
15 happened because nobody testified they saw it, okay?

16 All this has been -- and when the pathologist was up
17 here, you know, talking about the fact that, you know, it
18 could have happened this way, these are defensive wounds,
19 that's all mere speculation, okay, because nobody was
20 there. Nobody has walked in and said I saw that happen,
21 okay? We don't have any eyewitness testimony. We just
22 have a bunch of people saying I think this is what happened
23 because none of us were there. None of us were there.

24 So, what happens? Sammy says, boom, he hears the
25 thud. He runs back in there. What he says about Jenny is

1 that Jenny is screaming and hollering get off of him, or
2 just screaming and hollering, okay? And, boom, he rushes
3 in, grabs him, cuts his finger trying to pull him off, you
4 know? And, boom, gets him off of him and away they go.

5 Go out to the van. They get back into the van. They
6 started to drive off. Skinner pulls out the wallet. He's
7 got the wallet, and Skinner divides, tries to divide the
8 money up. Apparently nobody would take any money. If they
9 did, they won't admit it or whatever. But anyway, the
10 money is supposedly in Skinner's possession, along with the
11 wallet, okay?

12 Now, that's the story that we have, and that's the
13 only story that we know about what transpired inside of the
14 house, okay, because the only person who can tell you what
15 the inside the house looked like and where the victim was
16 inside of the house was Sammy because Sammy says I went in
17 there, and I pulled him off and, boom, we left. I got the
18 hell out of there because, you know, I was scared..

19 I mean, he's scared. I mean, he's down there, but he
20 doesn't see, and he doesn't think it's as serious as what
21 it turns out to be. Nobody did. Nobody believed that this
22 was going to be death, you know? And I'm sure Skinner
23 didn't believe it.

24 I'm sure Skinner is probably -- you know, we didn't
25 hear from him because -- the state listed him as a witness.

1 They were going to call him in here because he was going to
2 testify that Sammy did it, they thought. Bizarre. You
3 didn't hear from Mr. Skinner, did you? State listed him as
4 a witness. They were going to call him. Never showed up,
5 did he? Never showed up.

6 The bottom line is that nobody, nobody ever went to
7 that house with the intent to commit a robbery, okay?
8 Skinner didn't. He didn't. Skinner had no intentions of
9 robbing this man. They went there for the purpose of
10 providing sexual entertainment for Mr. Koch, which he had
11 been looking for. That's what, that's what this is all
12 about.

13 They get there. Something happens, and what happens
14 probably is that Mr. Koch either recognizes Jenny, or he
15 takes a look and he says not on your best day. No way.
16 You get that, you get that away from my house. And Mr.
17 Skinner takes offense to that because it's his girlfriend;
18 it's the one he's sleeping with. And he's the one that's
19 -- let's just say pimping, pandering, whatever you want to
20 call it, okay? But he's the one that is upset about this.

21 Sammy could care less. It ain't his girlfriend. All
22 he was doing was saying, you know, he's interested in a
23 woman, and he'd already taken him to Skinner's house one
24 time before. But he didn't know that Jenny, Mr. Jack knew
25 each other, or she had been there before or whatever. We

1 don't know anything about that. We just know, based upon
2 her statement, she knew him because he says Jack, it's me,
3 Jenny. Jack, it's Jenny.

4 Nobody knew Skinner -- I have to admit this -- ever
5 intended to do any harm to Mr. Crotch -- Koch. I mean, it
6 was just, just no way, but the explosion occurred when that
7 woman was not accepted, and that happened between Mr.
8 Skinner and the victim in this case.

9 Mr. Williams, he was present and so were these other
10 two young ladies. They were all present at the scene of
11 the crime that only Skinner committed. They got caught up
12 in this thing after the fact. They lied about it. Sammy
13 lied about it. The girls all lied about it, and they did
14 to the bitter end.

15 At least Jenny almost to the bitter end because she's
16 protecting Skinner, and she admitted it finally. He's the
17 bread and butter; he takes care of me. He provides me
18 dope. He provides me a place to live, provides me
19 everything. And he wasn't about to, you know, walk away
20 empty-handed, you know? So, he did what he had to do.

21 I mean, I don't know who the aggressor was. I don't
22 know who, who actually started this particular fight. Mr.
23 Koch was not a small man. He was a big man. He was a
24 merchant marine or sailor or whatever. And, and you heard
25 from his son, you know, he was healthy. He was a big guy,

1 and he wasn't about to take anything off of anybody, and
2 they probably fought. There ain't no doubt about it.

3 Now, Mr. Skinner's a big fellow, too. He's bigger
4 than my client, if you believe the police here, and it was
5 probably a pretty good fight for a short period of time.

6 And why did he die? He died because he had simply a
7 large -- enlarged heart. He could have gotten -- just
8 getting mad, just getting excited could have caused that
9 heart to cause his death. Even the doctor said that. You
10 know, I mean, there's not one particular thing that could,
11 could have caused this. A lot of things could have
12 happened to him to have this thing caused and happen.

13 But nobody ever intended that, not even Timothy
14 Skinner. I'll have to go to his defense on this thing.
15 Not even he intended for this thing to happen the way it
16 happened, at least in my opinion. I don't know for sure,
17 but I know based upon what I see of these facts that Mr.
18 Skinner was just like everybody else: shocked and surprised
19 and shocked that this occurred, that this happened.

20 What did Sammy do the next morning? Sammy gets up,
21 and 7:00 he's out working on the yard, some woman, to help
22 them clean a yard in the same area. They don't think
23 anything's wrong. Nobody even remotely thinks there's
24 been any harm.

25 Now, if you recall correctly, there was some other

1 people involved in this thing, and it's, it's been a long
2 time. It's been over three years, or not quite three years
3 yet. This happened in September next month, month, two and
4 a half, whatever, you know. It'll be, it'll be Sept --
5 there were three other people who could shed an awful lot
6 of light on what happened at that house because we know,
7 based upon all of the statements given. Sammy gave the
8 first statement which indicated they went to this guy's
9 house who was a friend of Skinner's by the name of Tony.
10 He told the police that, and then the girls, both Lisa and
11 Jenny, we went to this particular house where there was a
12 guy by the name of Tony. And we even had the last name
13 Freeman because Lisa says I've known him all my life, or
14 something like that, if I recall correctly.

15 And again, if you recall this, what I'm saying,
16 different, use what you remember, not what I'm telling you,
17 because I'm not here to mislead you, deceive you, or
18 otherwise.

19 But I think one of them said they had known this guy
20 all their life, or something along that line. But we know
21 that they were friends. We know that Lisa, we know that
22 Jenny, and we know that Clint were all close friends.

23 The odd man out in this case has always been Sammy
24 because Sammy had no relationship. Jenny didn't know Sammy
25 until that day. Lisa didn't know Sammy until that day.

1 The other three were friends; they had been friends for a
2 long period of time. They went to school together, this,
3 that, and the other.

4 This other group that they're talking about where the
5 three people were in the house together, where they were
6 using the computer -- and if you believe Jenny, they were
7 using the computer to look at pornography. Well, they had
8 Jenny. Why would they want to look at pornography when
9 they had Jenny there, you know? But anyway, that's what
10 she claims they were doing. But those numbers ended up in
11 the truck, you know, in that van. And, you know, that was
12 Timothy's van.

13 And if I notice correctly, there are doors on the side
14 of that van, and they were talking about crawling over
15 people, and he only got out to let him out, and he got back
16 in and all this other kind of stuff. You saw the doors.
17 You see -- I think maybe they didn't open the doors because
18 they were afraid of a littering charge or something of that
19 nature, you know? There was a bunch of trash in there, and
20 how that stuff got in there obviously came from, you know,
21 people that took the walk, and that person is Mr. Skinner.

22 If you even believe Jenny a little bit about what
23 Jenny says -- Jenny, Jenny will tell you quite a few
24 things. But most importantly, Jenny says when they pick up
25 -- and oh, by the way, that blood trail only led to the

1 side of the, you know, the driveway there. Remember, if
2 you recall correctly, if I recall correctly, Jenny says,
3 well, we've picked up Mr. Williams, Sammy, walking down the
4 street away from the house. Well, there would have been a
5 trail of blood out there, too. They didn't find any out
6 there. So, maybe they're mistaken. Maybe he actually got
7 in the van right there in the driveway, you know, like he
8 said, Sammy said.

9 But anyway, Jenny says when Sammy got into the van, he
10 gave the \$57 to Mr. Skinner, you know? I gave -- he gave
11 the money to Skinner. Why would Sammy do that? It's, it's
12 his money. He's taken the money. Why in the world would -
13 - he would give it away, you know? Give it to -- all to
14 Skinner? Come on now. Use your common sense.

15 So, what I'm trying to tell you is yes, Mr. Koch was
16 injured and yes, somebody did it and yes, that person was
17 Mr. Skinner. There is no doubt about it, at least based
18 upon what I see in the evidence in this case. You may see
19 it differently; you may understand the testimony entirely
20 differently from the way I see it. You may find that Mr.
21 Williams went there with the intent -- in other words,
22 Sammy, that Sammy left that house, left Mr. Skinner's house
23 and went there with the intent to rob Mr. Koch, Pops. That
24 he intended at the time he drove up into that yard to rob
25 Mr. Koch, and that he intended, when he went through that

1 door of Mr. Koch's house -- which is a burglary, okay? If
2 you intend when you enter that house to commit a crime
3 therein, that at the time he entered Mr. Koch's house, it
4 was his intent to commit a robbery of Mr. Koch, you believe
5 that, then you can find him guilty of all these crimes,
6 including the murder, if you believe that. But I don't
7 think you can. I think that what you're going to find is
8 basically what I've said.

9 You've got to decide who actually did this because no
10 one really intended to do anything in the way of a robbery
11 until after the fact. After the fact that Mr. Koch had
12 been on the ground that someone ripped the wallet out of
13 his pocket possibly. We don't even know that for a fact.
14 All we know is based upon what Sammy tells you is that when
15 they got back into that van, Skinner had Mr. Koch's wallet.

16 Police interviewed all of these people, and they
17 interviewed them routinely, and they made tapes of
18 everything that these people said. And you had the tapes
19 of Sammy that you could have listened, but the state didn't
20 present those. And I had to go through meticulously with
21 the testimony of Sammy that Sammy gave, you know, to the
22 police in order for you to be able to understand what Sammy
23 told the police.

24 Now, Sammy told them on several different occasions,
25 you know, bits and pieces of what happened. The final

1 occasion, they played a little bit of a tape, and you, you
2 have to listen to that tape over and over, but you can pick
3 out certain words. And every one of those words, when you
4 put them together with the facts that you now know are
5 significant because they tell you a story -- they tell you
6 the same story that I've been telling you, and the same
7 story that Sammy told the police.

8 Notice the fact that each time people were questioning
9 people involved in this crime, they were not interested in
10 but one thing: convicting Sammy, convicting Sammy. We,
11 we've got to get Sammy because he's the only one that we
12 can prove positively was inside of the house. We got
13 Skinner who says -- and, and again you've got to remember
14 the testimony -- yeah, I was in the house, but maybe it was
15 earlier or something. You know, who knows? Who knows what
16 he said to the police because we didn't -- we never had
17 testimony.

18 But more importantly is the fact that Lisa, Sammy,
19 these, these people made these statements about when they
20 left Mr. Koch's house. Where did they go? They went back
21 to Mr. Skinner's house. And what did they tell the police?
22 When they got back there, Mr. Skinner took a shower and
23 changed clothes. The only person that they asked well, why
24 did he do that was Sammy, and Sammy said it was because he
25 thought he had blood on his shorts. Never asked Lisa. I

1 mean, just blew right by her because we're not
2 investigating Skinner. It's got to be Sammy because he was
3 washing his shoes.

4 But there is absolutely not one shred of evidence,
5 competent evidence in all these pictures, in anything that
6 anybody stepped in any blood, that got any blood on their
7 feet, you know, in any way. But you remember who was
8 washing the bottoms of his shoes and the tops of his shoes?

9 Take it for what it's worth, but I think after
10 listening to all the testimony, it, it's, it's one of those
11 cases where it's just almost impossible to decide exactly
12 what happened. You, you're going to have to pick out
13 somebody who had no motive to lie, okay, or, or to
14 fabricate anything of that nature, and, and that's almost
15 impossible in this case.

16 So, what you have to do is pick out the most
17 consistent things. And the most consistent things are that
18 nobody ever intended to commit a robbery. That nobody ever
19 intended to burglarize a house. That a fight started and
20 during the course of that fight, a person took the wallet
21 of the victim in this case. Nobody ever intended for that
22 victim to die period. That, unfortunately, is what
23 happened. Thank you very much.

24 THE COURT: Thank you, Mr. Hood.

25 Now, Madame Forelady and members of the jury, give me

1 your attention for just a few more moments now because it
2 is my responsibility to instruct you or charge you as to
3 what the law is in this case. You have been patient, and
4 you have been attentive throughout this trial. I think you
5 understand the importance of your attention to these
6 remarks that I'm about to give you as I charge you as to
7 what the law is in this case because it now becomes my duty
8 under our constitution to give you that instruction under
9 the law. And it becomes your duty as jurors to accept and
10 apply the law as I will state it to you.

11 As jurors, it is your exclusive duty to decide all of
12 the issues of fact in this case. And for that purpose, you
13 have to determine the effect and the value and the weight
14 and the truthfulness of the evidence and the testimony that
15 you have seen and heard. Both the State of South Carolina
16 and this defendant have the right to expect that you will
17 conscientiously consider and evaluate the evidence, and
18 that you will apply the law of the case to that evidence so
19 that both the state and the defendant will receive a fair
20 and impartial trial at your hands.

21 Throughout the course of this charge, when I use the
22 word defendant, I'm referring to Mr. Kenneth Sammy
23 Williams. Mr. Williams has been indicted by the grand jury
24 of Beaufort County and charged in indictment 1918 with the
25 crime of murder. That indictment accuses him here in

1 Beaufort County on or about September the 8th of 2007 with
2 malice aforethought murdering Jack Koch -- Koch, I'm
3 sorry, Jack Koch by means of beating him about the head
4 during a robbery. And that Jack Koch did die in Beaufort
5 County as a proximate result thereof on September the 8th
6 of 2007.

7 Indictment number 1919 charges Mr. Williams with
8 robbery, common-law robbery. Strong-arm robbery it's
9 sometimes called. And that indictment accuses Mr. Williams
10 here in Beaufort County on the same date, September the
11 8th, 2007, with taking and carrying away the wallet of Jack
12 Koch by means of force or threats or intimidation, and with
13 the intent to deprive Jack Koch permanently of that
14 property.

15 Indictment 1920 charges Mr. Williams with burglary in
16 the first degree. And that indictment alleges that on the
17 same date, September the 8th, 2007, Mr. Williams entered
18 the dwelling of Jack Koch at in Port Royal
19 without his consent and with the intent to commit a crime
20 therein. And that in addition, the entering occurred
21 during the nighttime. And while he was there, Mr. Williams
22 caused physical injury to Jack Koch in violation of the
23 law.

24 Now, ladies and gentlemen, the indictments which I
25 have just read to you are not evidence, nor are they proof

1 of the charges that they contain. As I told you earlier,
2 they are simply charging documents, legal documents that
3 tell you or me or anybody else who reads them what this
4 case is all about.

5 As you know, to the charges contained in those
6 indictments, Mr. Williams has entered pleas of not guilty.
7 And the plea of not guilty by a defendant in a criminal
8 trial operates to place the burden of proof on the state to
9 prove by evidence the guilt of the accused beyond a
10 reasonable doubt before you can convict him and find him
11 guilty.

12 The defendant, Mr. Williams, is presumed in law to be
13 innocent of the charges contained in these indictments. It
14 is a fundamental rule of our law of evidence that an
15 individual, regardless of the nature of the charges, the
16 seriousness of the charges, or the number of the charges,
17 will always be presumed innocent of the crimes for which he
18 is indicted unless and until his guilt has been proven by
19 evidence that satisfies you as a jury of his guilt beyond a
20 reasonable doubt.

21 The presumption of innocence is not a mere legal
22 theory; it is not an empty legal phrase. The presumption
23 of innocence is a substantial right. It has been likened
24 to a robe of righteousness which is placed about the
25 shoulders of a defendant. And it assigns to that defendant

1 the class known as the innocent. And that presumptive robe
2 of righteousness continues to rest about the shoulders of a
3 defendant throughout the course of this trial, and even as
4 you go into your jury room to deliberate the verdict in
5 this particular case. That robe of righteousness continues
6 on his shoulders until you as a jury reach the conclusion
7 that it has been, that it has been stripped from his person
8 by evidence, evidence that satisfies you of that guilt
9 beyond a reasonable doubt. And so that's the burden, then,
10 of the state: to prove the defendant guilty beyond a
11 reasonable doubt.

12 Some of you may have served as jurors in civil cases
13 before and if you did, you were told by the judge in the
14 civil case that in order for the side that has the burden
15 of proof to prevail, that side just has to present evidence
16 to you that is more likely true than not true. Or that the
17 evidence on that side is more convincing than the evidence
18 is on the other side. But in criminal cases, the state's
19 proof has to be more powerful than that. In criminal
20 cases, it must be proof beyond a reasonable doubt.

21 And so what do we mean by the phrase proof beyond a
22 reasonable doubt? Proof beyond a reasonable doubt is proof
23 that leaves you firmly convinced of the defendant's guilt.
24 Now, there are very few things in this world that you and I
25 know with absolute certainty. And in criminal cases, the

1 law does not require proof that overcomes every possible
2 doubt. And so if, based on your consideration of the
3 evidence, you are firmly convinced that the defendant is
4 guilty of the crime charged, you must find him guilty. If,
5 on the other hand, you think that there is a real
6 possibility that he is not guilty, you must give him the
7 benefit of the doubt and find him not guilty.

8 Reasonable doubt could arise from evidence in the
9 case. It might arise from the lack of evidence in the
10 case. But you, ladies and gentlemen, have to decide
11 whether or not reasonable doubt exists as to the guilt of
12 this defendant.

13 I tell you that the defense is entitled to every
14 reasonable doubt which arises in the case. And so if on
15 any issue of fact which is necessary to a conviction and a
16 verdict of guilty you have a reasonable doubt as to how
17 that issue should be resolved, it is your duty to resolve
18 that reasonable doubt in favor of the defendant because the
19 defendant is never required to prove his innocence. The
20 state is required in law to prove every essential element
21 of the offense charged against him by evidence that
22 satisfies you of his guilt beyond a reasonable doubt before
23 you can convict him and find him guilty.

24 And in that regard, I instruct you now and I emphasize
25 to you that the fact that the defendant in this case did

1 not himself testify is not a factor to be considered by you
2 in any way and in your consideration, in your deliberations
3 on the question of his guilt or innocence. It must not be
4 considered by you in any matter whatsoever. And it must
5 not militate against him in any respect whatsoever because
6 the defendant had a constitutional right to remain silent.
7 And if he chooses to exercise that constitutional right,
8 that fact cannot and must not be considered by you in your
9 deliberations.

10 And so under your oath, then, you are to reach no
11 inference and draw no conclusion whatsoever from the fact
12 that this defendant did not himself testify. That should
13 not even be discussed by you in the jury room. The burden
14 is on the state. The defendant has no obligation to prove
15 his innocence, and the burden of proof remains upon the
16 state to prove guilt beyond a reasonable doubt. And the
17 fact that the defendant did not testify is not a factor to
18 be considered by you.

19 And so if, then, upon the whole case you have a
20 reasonable doubt as to the guilt or the innocence of the
21 defendant, he is entitled to that reasonable doubt and
22 would be entitled to an acquittal and a verdict of not
23 guilty. But, on the other hand, if upon the whole case you
24 find that the state has proven by evidence that satisfies
25 you as a jury of his guilt beyond a reasonable doubt, then

1 in such circumstances it is equally your duty to convict
2 the defendant and to find him guilty.

3 Now, during this trial, ladies and gentlemen, each of
4 us, you and I, have our certain duties to perform. As the
5 trial judge, it is my responsibility to preside over the
6 trial of this case. And I also have the duty to rule upon
7 or pass upon the admissibility of the evidence which has
8 been offered during the course of this trial. And you are
9 to consider only the competent evidence that has been
10 offered during the course of this trial. That is the
11 testimony offered from this witness stand and the items of
12 evidence which have been introduced in the record of this
13 case.

14 I have the additional duty to charge you as to what
15 the applicable law of the case is because as the presiding
16 judge, I am made the sole judge of the law of the case.
17 And it is your duty to accept and apply the law as I now
18 state it to you to be the correct law.

19 You may have brought with you into your service as
20 jurors this week some ideas about what you think the law
21 is. You might have some preferences about what you would
22 like for the law to be. But I tell you now, folks, if what
23 I am telling you now about the law differs from what you
24 think the law ought to be, under your oath you are bound
25 and obligated to forget what you would like for the law to

1 be or what you think the law is because under your oath,
2 you are bound to accept the law as I charge it to you now
3 to be the correct law.

4 Now, in every case tried in this courtroom before a
5 jury, you as a jury become the sole and exclusive judge of
6 the facts of the case. You're the judge of the facts; I'm
7 the judge of the law. Our constitution has said that as a
8 trial judge, I'm not allowed to make any comment upon the
9 facts of the case. I can't hint to you about how I might
10 feel about this case, or what I think you ought to do in
11 this case, and I don't do so.

12 Since you're the sole judge of the facts, you're not
13 to gather from anything that I have said during this trial,
14 or anything that I am saying to you now during this charge
15 that I have an opinion about the facts. The law doesn't
16 allow me that opinion. That is solely a matter for you,
17 ladies and gentlemen, to determine. And so as jurors,
18 then, it becomes your duty to determine, as I have told
19 you, the effect, the value, the weight, and the
20 truthfulness of the evidence which has been offered during
21 this trial.

22 Now, as you determine what the facts of the case are,
23 you have to necessarily pass upon the credibility or
24 believability of the witnesses who have testified in this
25 case. And you have to decide the value and the weight that

1 you will given to what they've -- that you will give to
2 what they've told you. You and you alone have to decide
3 the force and the effect as well as the truthfulness of
4 what you have heard from this witness stand.

5 Now, as you make this decision about credibility and
6 believability, there are a lot of things that you can take
7 into account. You can take into account the appearance,
8 the manner of the witness as he or she testified from the
9 witness stand. We sometimes call that the demeanor of the
10 witness. Was the witness forthright, or was the witness
11 hesitant? Was the witness's testimony consistent, or did
12 it contain discrepancies? What was the ability of the
13 witness to know the things that he or she was telling you
14 about? Did a witness have a cause or reason to be biased
15 or prejudiced in favor of the testimony that he or she was
16 giving? In other words, did the witness have an interest
17 to be served by his or her testimony? Was the testimony of
18 a witness made stronger by other evidence in the case, or
19 was it made weaker by other evidence in the case?

20 You have heard the testimony in this particular case
21 of a witness or witnesses who have been qualified as expert
22 witnesses. Normally, you and I as lay people aren't
23 allowed to take the stand and testify about our opinions on
24 things. We can talk about what we saw or what we heard,
25 but we can't talk about we concluded from those things.

1 But expert witnesses are witnesses who have been qualified
2 because of their knowledge and their experience and their
3 training in certain matters to render their opinions on
4 those matters in which they have been trained.

5 But expert witness testimony is to be judged by --
6 just like any other testimony. You could accept it or
7 reject it, and give it the weight you think it ought to
8 receive, considering the witness's education and
9 experience, and the reasons given for the opinion, and all
10 of the other evidence in the case because, ladies and
11 gentlemen, as jurors, you've got the right to believe a
12 small portion of the testimony of a single witness and to
13 disbelieve the larger portion of the testimony of that same
14 witness. Or you can do it the other way around. You can
15 believe the larger part and disbelieve the smaller part.
16 You can believe all of what a witness tells you or none of
17 what a witness tells you.

18 There's got to be some reason, however, for you to
19 make those decisions because what we require you to do is
20 to exercise that good common sense that I told you
21 yesterday you're going to need in this case. You use your
22 mental process. And so as you determine what you consider
23 to be true, you use your good judgement, your sound reason,
24 your experiences in life, and you bring those things that
25 each of you has individually and independently of each

1 other because of your unique experiences in life and your
2 own personalities. You bring those abilities to bear on
3 what you have heard in this courtroom, and you'll decide
4 what the truth is.

5 And once you have decided where the truth lies, you
6 will take the truth that you find, and you will wrap it in
7 the mantel of the law that I am now giving you. And those
8 two things will come together -- the truth that you find
9 and the law that I give you -- to result in a verdict which
10 will speak the truth of this case.

11 Now, ladies and gentlemen, let me instruct you as to
12 what the law is on the specific charges in these
13 indictments. The defendant is charged, first of all, with
14 the crime of murder. Murder is defined in our law as the
15 killing of any person with malice aforethought, either
16 expressed or implied. And so in order for the state to
17 prove the defendant guilty of murder, it must be proven
18 beyond a reasonable doubt that the defendant killed a
19 person, and that the killing was done with malice
20 aforethought. The state is not required to prove any
21 motive for the killing, but it is required to prove malice
22 and to prove it beyond a reasonable doubt.

23 And so then what do we mean by malice? What is
24 malice? Malice is the intentional doing of a wrongful act
25 without just cause or excuse, and with the intent to

1 inflict injury. Malice aforethought is the deliberate and
2 well formed purpose to do the unlawful act.

3 Aforethought means that the intention must -- to do
4 the unlawful act was conceived or planned some time before
5 the actual commission of the unlawful act. But malice need
6 not exist for any particular length of time prior to the
7 act in order to render it malice aforethought.

8 Malice is a word that suggests a wickedness or a
9 hatred, or a determination to do what one knows to be
10 wrong.

11 As I have said, malice need not be in the mind of the
12 one doing the act for any particular length of time before
13 the act of killing in order to render the killing murder.
14 If it is present in the mind of the one doing the killing
15 any length of time before the act, then its presence would
16 be sufficient to render the killing murder.

17 Malice can be expressed malice, or it can be inferred
18 malice. Malice is said to be expressed where there's
19 manifested or shown a violent, deliberate intention to
20 unlawfully take away the life of another person. Malice
21 can be inferred where no excuse or legal provocation for
22 the killing appears, and when circumstances attending the
23 killing show an abandoned heart, a malignant heart, a heart
24 fatally bent on mischief.

25 Implied malice exists when circumstances demonstrate a

1 wanton and reckless disregard for human life. Or when a
2 reasonably prudent person would have known that, according
3 to common experience, there was a plain and strong
4 likelihood that death would follow the contemplated act.

5 Although malice must be aforethought, it is not
6 required that it exist for any appreciable length of time.
7 It may be conceived at the very moment the act occurs. But
8 there must be a combination of the evil intent and the act
9 producing the result.

10 The defendant is not required to prove the absence of
11 malice, but the state is required to prove the presence of
12 malice and to prove it beyond a reasonable doubt in order
13 to meet its burden of proof as to the element of malice.

14 The defendant is next charged with common-law robbery.
15 Strong-arm robbery it is called. In order for you to
16 understand what we mean by robbery, I'm going to define for
17 you, first of all, larceny, and then I'm going to define
18 for you robbery because robbery includes the lesser crime
19 of larceny.

20 So, what is larceny? Larceny is the wrongful carrying
21 away by any person of the goods or personal property of
22 somebody else with a felonious intent to permanently
23 deprive the owner of that property, and to convert it to
24 the taker's own use. The essential elements of larceny
25 which you and I commonly refer to as stealing -- that's all

1 that larceny is -- is the wrongful taking into the
2 possession of somebody else's personal property. And
3 secondly, there is a carrying away and the removal of that
4 personal property from the person who owned it. And
5 thirdly, there is a wrongful intent to steal it so as to
6 permanently deprive the owner of that property and to
7 convert that property to the taker's own use. That's
8 larceny, stealing.

9 So, what makes larceny robbery? Robbery is the
10 wrongful taking and carrying away of the personal property
11 of value of any person from his person or in his presence
12 by violence, or by putting him in fear of violence. So,
13 robbery includes larceny, and all the elements which are
14 necessary to constitute larceny are also necessary to
15 constitute robbery.

16 So, the elements of robbery are, first of all, the
17 property taken must be the subject of larceny. And I tell
18 you that personal property -- a wallet, money -- is
19 personal property in the law. There must be the felonious
20 or wrongful taking and carrying away of that personal
21 property with the intent to steal it. That is, the intent
22 to permanently deprive the owner of that property to
23 convert it to the taker's own use.

24 And finally, the aggravation circumstances which are
25 necessary to constitute robbery are that the property must

1 be taken from the person of other. If it is taken from his
2 presence, it is constructively taken from his person. And
3 the taking must be not only without his consent, but it
4 must be accomplished with violence, or by putting him in
5 fear of violence.

6 By way of example and example only and has no
7 relevance to the facts of this particular case, if someone
8 were to break into someone's car and steal a purse or a
9 wallet or a CD player or something in the car and the
10 person was not present in the car, that would be larceny.
11 On the other hand, if someone were to break into somebody
12 else's car while the person was sitting in the car and had
13 that property taken, that would be robbery in the eyes of
14 the law. I remind you again that it is the responsibility
15 and the burden of the state to prove each of the elements
16 in the charge of robbery in order to meet its burden of
17 proof beyond a reasonable doubt as to that charge.

18 And finally, ladies and gentlemen, the last indictment
19 charges the defendant with burglary in the first degree.
20 Burglary in first degree is defined in our law, section
21 16-11-311, in the following way:

22 A person is guilty of burglary in the first
23 degree if the person enters a dwelling
24 without the consent, and with the intent to
25 commit a crime in the dwelling; and either

1 when going into the property, or while
2 there, or while leaving, he causes physical
3 harm to a person who is not a participant in
4 the crime; or the entering or the remaining
5 occurs in the nighttime.

6 And so first, the state must prove beyond a reasonable
7 doubt that the defendant entered a dwelling without the
8 consent of the person who was occupying it. A dwelling
9 obviously is where somebody resides, where somebody
10 ordinarily sleeps. In order to prove that the defendant
11 entered the dwelling, it doesn't have to show that the
12 defendant's entire body entered the dwelling. The smallest
13 entry is sufficient; it can be any part of the body in
14 order to satisfy that requirement in the law.

15 Next, the state has to prove beyond a reasonable doubt
16 that at the time the defendant entered the dwelling, he
17 intended to commit a crime, either a felony or a
18 misdemeanor, at the time, as I said, that he entered the
19 dwelling. The mere entry into the dwelling without consent
20 itself is not burglary. If the intent to commit a crime is
21 formed after the entry, it is not burglary. On the other
22 hand, if the defendant intended to commit a crime at the
23 time of the entry, it is a burglary even if the intent was
24 abandoned after the entry. It doesn't matter that the
25 intended crime itself was not, was not completed.