

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Marlboro County

Honorable G. Thomas Cooper, Circuit Court Judge

JOHN L. HOGAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002452

APPENDIX

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF MARLBORO) 2010-GS-34-00696

STATE OF SOUTH CAROLINA)
 PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD
)
 JOHN L. HOGAN, JR.)
 DEFENDANT)

November 1, 2010
 Bennettsville, South Carolina

B E F O R E:

THE HONORABLE HOWARD P. KING, JUDGE.

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COLLOQUY

(WHEREUPON, State's Exhibit Nos. ONE THROUGH EIGHT were marked for identification only.)

THE COURT: All right. The matter before the Court this morning is with regards to the case of the State v. Lamont Christopher McClellen; is that correct?

MS. JOHNSON-LEE: No, Your Honor. This is the State v. John Lee Hogan, Jr.

THE COURT: Okay. Well, the warrants that are on my desk belong to somebody else. All right. Go ahead and put this matter on the record, Ms. Johnson-Lee.

MS. JOHNSON-LEE: Yes, Your Honor. This is Docket Number 2010-GS-34-0696. State v. John Lee Hogan Jr. Indicted for murder. True billed September 30th 2010, and I'll hand a copy up to the Court.

THE COURT: All right. It is my understanding of the status of this matter is that it was originally scheduled for trial this week. Then it developed that Judge Nettles, who was assigned for this term of Court, had to be away for -- due Tuesday and Wednesday, and since I had a free week I agreed to swap with Judge Nettles and come over here add hear this matter.

Then it turned out that the State had discovered some other evidence that they wish to have tested, I believe. Is that correct, Miss Johnson Lee?

1 MS. JOHNSON-LEE: That's correct, Your Honor.

2 THE COURT: And, therefore, did not wish to call the
3 case for trial this week. But wanted to go ahead and get
4 the motions resolved with the view of trying it in
5 January. And when is your January term, Ms. Johnson-Lee?

6 MS. JOHNSON-LEE: It's January 9th 2012.

7 THE COURT: And I believe that I am scheduled to be
8 here that term of court, and that was the reason that the
9 motions could be scheduled today before me. I'm pulling
10 up the schedule right now, and I see that I am scheduled
11 for the term of court beginning January the 9th 2012.

12 Now, my understanding is that one of the motions that
13 we need to consider today involves an expert. This is
14 from an in chambers pretrial conference that we had a few
15 minutes ago with Mr. Blake and Ms. Johnson-Lee. And that
16 one of the witnesses that Mr. Blake proposes to call is an
17 expert who would not be available on January the 9th of
18 2012. Many of the motions that are scheduled to be heard
19 today will have to be heard by the judge that tries the
20 case and that was the reason for bringing them before me.

21 But I understand your expert, and I'm not sure at
22 this point he, you know, can testify in this matter. I
23 haven't heard any of the things so I don't know that. I'm
24 just trying to resolve the scheduling issues, but he's not
25 available the 9th of January but is available the 16th; is

1 that correct?

2 MR. BLAKE: February 6th, the term of court, I
3 believe.

4 THE COURT: Okay. When is the next term of court
5 that you've got, Ms. Johnson-Lee?

6 MS. JOHNSON-LEE: I believe he's correct on that,
7 Your Honor.

8 MR. BLAKE: Judge, I did look at the schedule and
9 it's February 6th then March 12th.

10 THE COURT: All right. Hold on just a minute here.
11 Let me see what I've got February the 6th. Okay. And
12 then the next -- and March the what?

13 MR. BLAKE: March 12th.

14 THE COURT: Okay. Okay. I am scheduled for
15 Fairfield on February the 6th. I mean on February the --
16 yeah, February the 6th. And for Lexington on March the
17 12th.

18 MR. BLAKE: I can give you the two days if you like.

19 THE COURT: Sir?

20 MR. BLAKE: I can give you the two dates in April and
21 May.

22 THE COURT: I'm not scheduled anywhere in April and
23 May. What are the April and May terms?

24 MR. BLAKE: April is April 16th. May is May 21st.

25 THE COURT: All right. Let me look just a moment.

1 Judge Burch is scheduled to be in here for the January
2 term as it seems right now. And Judge John is scheduled
3 to be here for the March term. Judge Burch for the April
4 term. And Judge Burch for the May term. Interestingly
5 enough Judge Burch is in Sumter this week.

6 Counsel, I think before we get into these matters I
7 need to try to call Judge Burch and see if he would be
8 willing to go to Fairfield for me on February the 6th and
9 I can come here on February the 6th and we could dispose
10 of this matter. That way that would be about a little
11 less than a month's delay of what your schedule was,
12 Ms. Johnson-Lee. If he's willing to do that then I can
13 let him take my Fairfield term and I can come over here
14 and take the February 6th term and we could hear the
15 matter then.

16 MS. JOHNSON-LEE: Yes, Your Honor.

17 THE COURT: So but I guess before we get into the
18 matters today that since many of them have to be heard by
19 the trial judge the appropriate thing to do would be for
20 me to see if I could call Judge Burch. I do happen to
21 know the number where he would be so I can give him a
22 call. So let me take about five minutes and see if I can
23 reach Judge Burch and see if he would be willing to swap
24 my Fairfield term on February 6th. All right. Let's be
25 at ease for a few minutes. Let me see if I can reach

1 Judge Burch.

2 (WHEREUPON, Court was in recess at 9:58 a.m. and
3 reconvened at 10:00 a.m.)

4 THE COURT: All right. Back on the record with
5 regards to the matter of State v. John Lee Hogan, Jr.
6 Indictment Number 2010-GS-34-0696. I just spoke with
7 Judge Burch on the phone, and he and I have agreed to
8 switch terms. I am going to come here for the
9 February 6th term. And he will take my term in Fairfield
10 County on February the 6th. And so the matter will be
11 scheduled for trial that week.

12 MS. JOHNSON-LEE: Yes, Your Honor.

13 THE COURT: All right. Now, having resolved that
14 let's go back just a moment, and I have Ms. Johnson-Lee's
15 e-mail to me of last week I think, which she outlined
16 motions that needed to be heard. And then Mr. Blake has
17 also sent an e-mail indicating a motion that needed to be
18 heard as well.

19 Counsel, what I'd like to do is to hear as many or
20 most of these as I can today and then there may be some
21 that I need to reschedule between now and maybe the end of
22 the year if we don't get to all of them. And I don't
23 necessarily have to rule on them all today. I'd like to
24 get into those that we need to get testimony on
25 especially. But let me hear you, Ms. Johnson-Lee, as to

1 what motions the State wants heard.

2 MS. JOHNSON-LEE: Judge, the State has a motion in
3 liminie to request that the Defense be prohibited from
4 using intoxication as a defense because we do not have
5 that defense here in South Carolina. And further to
6 prohibit them from using that as a mitigating factor
7 because intoxication is only a mitigating factor in a
8 captain murder case.

9 THE COURT: All right. Does that motion require
10 testimony or legal argument?

11 MS. JOHNSON-LEE: No testimony required, Your Honor.

12 THE COURT: All right. That's one motion for the
13 State would be motion to prohibit evidence of
14 intoxication, first, as a defense. And, second, as a
15 mitigating factor, right. What other motions by the
16 State?

17 MS. JOHNSON-LEE: And, Your Honor, and Mr. Blake is a
18 fine man, but I have known that in past trials with him he
19 did quote from the bible a good bit. And I think that
20 that's all wonderful, well and good, but I would ask that
21 that not be allowed during this trial due to the fact that
22 those bible quotes are not relevant and I think it would
23 constitute jury nullification doing that during open and
24 closing arguments.

25 THE COURT: All right. Again, legal argument only?

1 It's not testimony, is that correct?

2 MS. JOHNSON-LEE: Correct, Your Honor.

3 THE COURT: All right. What else from the State?

4 MS. JOHNSON-LEE: Your Honor, we received no
5 reciprocal Rule Five from the Defense and would just ask
6 that the Defense either be prohibited from putting in any
7 evidence, physical evidence, or turn that over to us since
8 the trial was not in February. At least by the January
9 term if they could turn any evidence over to us that they
10 intend to use or introduce at trial.

11 THE COURT: All right. So provision of any evidence
12 not disclosed pursuant to Rule Five. All right.

13 MS. JOHNSON-LEE: Prior convictions, Your Honor. We
14 would intend to use prior convictions if he testifies,
15 Your Honor, for impeachment purposes.

16 THE COURT: Of course, that issue just comes up if
17 the defendant takes the stand.

18 MS. JOHNSON-LEE: Correct, Your Honor.

19 THE COURT: And we can look at those at some point in
20 time, but that is something that I -- generally, at the
21 time that I advise the defendant of his Fifth Amendment
22 rights against self-incrimination. We go into the prior
23 convictions because that impacts on the decision as to
24 whether or not to take the stand. However, it may be that
25 we will want to take a look at the prior convictions to

1 determine whether or not they would be impeachable
2 offenses under Rule 609.

3 MS. JOHNSON-LEE: Yes, Your Honor. Your Honor, I
4 mentioned prior bad acts, however, we are not going to
5 have any law witnesses here from Texas to testify. So
6 unless something change before trial that's out the window
7 now.

8 THE COURT: So prior bad acts under Lyle is not an
9 issue?

10 MS. JOHNSON-LEE: Not at this time.

11 THE COURT: All right.

12 MS. JOHNSON-LEE: And I believe the remainder would
13 be ---

14 THE COURT: All right. What about the Defense. Mr.
15 Blake, what motions on behalf of the Defense?

16 MR. BLAKE: I'm just still kind of thinking about
17 what you just said about the Lyle witnesses being from
18 Texas, prior bad acts. I do have a motion liminie that
19 the evidence be restricted to this case and this event.

20 THE COURT: She's indicated that she does not prior
21 -- does not intend to introduce any evidence of prior bad
22 acts is what I understood you to say; that is correct?

23 MS. JOHNSON-LEE: That is correct. There is
24 currently two cold cases in Texas for which he is being
25 investigated as a possible suspect. Cases from 1999 and

1 there has been mention by one of his relatives that he may
2 have been involved in other murders in Arkansas and
3 Florida. And I think that was what Mr. Blake was
4 referring to, but the State has no intention of bringing
5 any of those cases in or even mentioning those because
6 they're not relevant to this case.

7 THE COURT: All right. So the State has stipulated
8 that it does not intend to issue any or to it -- attempt
9 to introduce any evidence of any prior bad acts of alleged
10 involvement in murders in other states.

11 MR. BLAKE: And, Judge, just for the record here.
12 Obviously, that's a clear and convincing standard. I
13 don't think they are even close to that. Just mere
14 conjecture, and I just want to put that on the record. I
15 understand she's stipulated to it, but its colored the
16 whole proceeding you been involved so far.

17 THE COURT: Well, I rule that it's not admissible.
18 She's stipulated that it's not in, and I'm adopting her
19 stipulation and it's not admissible.

20 MR. BLAKE: Thank you. We do have a Jackson v. Denno
21 hearing that will obviously require witnesses.

22 THE COURT: Okay.

23 MR. BLAKE: My client made several confessions and
24 there is a videotape confession.

25 THE COURT: All right.

1 MR. BLAKE: There is also an issue of search warrants
2 as to a truck and his house where he was living.

3 THE COURT: All right.

4 MR. BLAKE: I guess I can respond in terms of how
5 they come up. I would like to deal with the 609 issues
6 today if it's possible. My client at this point does
7 intend to testified.

8 THE COURT: We'll see about that if we get time.

9 MR. BLAKE: Certainly.

10 THE COURT: How about the expert witness matter?

11 MR. BLAKE: I don't know if that is ripe for right
12 now, Judge. This witness was available to testify this
13 week. I know you -- we can also deal with that,
14 certainly. And I do have a motion, Judge, relative to the
15 photographs that will be used. There are voluminous
16 photographs and specifically as to the autopsy as well as
17 photographs related to how the body was found.

18 I don't have a problem with photographs found in
19 the -- I don't have a problem with the photographs of the
20 burial. I think it's extremely prejudicial to have
21 photographs of the body, Your Honor.

22 THE COURT: All right. Then looks like to me that
23 the State has got motions for prohibition against
24 intoxication as a defense or as a mitigating factor, not
25 allowed by the quotations prohibit any evidence not

1 disclosed pursuant to Rule Five, and the issue of the
2 prior convictions. Having stipulated that the prior bad
3 acts alleged involving murders in other states will not be
4 offered by the State.

5 The Defense has motions under Jackson v. Denno for
6 the voluntariness of the confession and for the
7 suppression of certain evidence, the question of the
8 expert witness, and I assume the State is challenging the
9 expert witness under State v. Counsel as well as
10 relevance.

11 Relevance, how about from the standpoint of
12 qualifications? Is that your issue or is your issue that
13 the testimony is not admissible because it's not relevant
14 to the issue? Is that what I understand your issue?

15 MS. JOHNSON-LEE: I think that is correct, Your
16 Honor.

17 THE COURT: All right. And then the photographs that
18 there are certain objections to. It seems like to me that
19 the matters that we need testimony on at least today
20 probably need maybe to get into the expert witness matter.
21 Maybe we will not be able to do into that today, but at
22 least we need to get into the Jackson v. Denno, the
23 voluntariness of the confession, and the suppression.

24 The State hasn't made issue of Jackson v. Denno. The
25 State hasn't made a motion to suppress the voluntariness

1 of the confessions. The burden shifts to the State to
2 show that the statement was voluntary. Ms. Johnson-Lee,
3 the State may present whatever testimony it wishes to
4 present in that regard.

5 MS. JOHNSON-LEE: Thank you, Your Honor. The first
6 witness stepped out. I'm going to move on with Shawn
7 Feldner.

8 SHAWN FELDNER, after being duly sworn, testified
9 as follows:

10 THE WITNESS: Shawn Feldner, F-E-L-D-N-E-R. Employed
11 with the Marlboro County Sheriff's Office.

12 DIRECT EXAMINATION

13 BY MS. JOHNSON-LEE:

14 Q. Investigator Feldner, did you have an opportunity to
15 interview John Hogan regarding this murder case that we're
16 here for today?

17 A. Yes, ma'am, I did.

18 Q. Okay ---

19 THE COURT: Excuse me just a minute. Let me get your
20 name.

21 THE WITNESS: Shawn. First name Shawn, S-H-A-W-N.
22 Last name Feldner, F-E-L-D-N-E-R.

23 THE COURT: Okay.

24 BY MS. JOHNSON-LEE:

25 Q. How many times ---

1 MS. JOHNSON-LEE: I'm sorry.

2 THE COURT: Go ahead.

3 BY MS. JOHNSON-LEE:

4 Q. How many times did you interview him?

5 A. I actually interviewed him for the first time at the
6 Sumter County Sheriff's Office. I interviewed him. We
7 talked again on the way home from the Sheriff's Office.
8 And I talked to him again at our Sheriff's Office here at
9 Marlboro County.

10 Q. Okay. Now, on what date did these interviews take
11 place?

12 A. July 23rd.

13 Q. Of what year?

14 A. 2010.

15 Q. Who was present during each of these interviews?

16 A. Investigator Larry Turner.

17 Q. And he is with whom?

18 A. Bennettsville Police Department seated in the chair
19 to my left.

20 Q. Okay. Now, what was the purpose for the interview at
21 the Sumter Sheriff's Office?

22 A. Investigator Turner had arranged a polygraph
23 examination of Mr. Hogan with -- and I believe it is
24 Sumter County for the morning of the 23rd if I'm not
25 mistaken. It was at 9:00 a.m. Myself and Lieutenant

1 Turner had talked at the Bennettsville Police Department
2 and about going to Sumter the prior evening which was the
3 22nd. He had asked Mr. Hogan and his wife to -- Mr. Hogan
4 to take a polygraph which he agreed. And it was set up.
5 He agreed to meet us at the Bennettsville Police
6 Department where we departed that morning with he and his
7 wife following us in a Ford pick up truck.

8 We arrived at the Sheriff's Office, and the polygraph
9 examiner took him in and administered the polygraph. And
10 Lieutenant Turner and I returned at a later time to find
11 out he indeed failed the polygraph. We asked the examiner
12 if they had an interview room for us to use, and he said
13 that they did; they would get it set up and take us to it.
14 We arrived in the interview room where we Mirandized Mr.
15 Hogan and also reminded him of the Miranda Warnings he
16 received from the polygraph examiner. Mr. Hogan agreed to
17 speak with us which at the time he did.

18 Q. Okay. So he had already received one Miranda Warning
19 from the polygraph examiner prior to the polygraph taking
20 place; is that correct?

21 A. He received from the polygraph examiner and then he
22 received it from me again, and if I'm not mistaken on the
23 21st while reviewing the case file he also received a
24 Miranda Warning, written Miranda Warning, from Lieutenant
25 Turner of the Bennettsville Police Department.

1 THE COURT: Counsel, excuse me just a minute. The
2 issue of voluntariness of the statement, of course, is
3 before the Judge and the Court for initial determination,
4 but is also a jury issue. And it seems like to me that I
5 should not be able to consider any issues the jury cannot
6 consider. And one of the issues that the jury can't
7 consider is this business about the polygraph, at all. It
8 can't even be mentioned.

9 I think your need to predicate your voluntariness
10 issue excluding all testimony with regards to the
11 polygraph or anything to do with the polygraph because you
12 are going to have to prove it. If I admit it you're going
13 to have to prove it again before the jury.

14 MS. JOHNSON-LEE: Yes, sir.

15 THE COURT: You will not be able to get into that
16 before the jury, and I should not consider anything the
17 jury cannot consider.

18 MS. JOHNSON-LEE: Yes, sir.

19 THE COURT: I would not consider anything with regard
20 to Miranda warnings or anything to do with -- surrounding
21 the taking of the polygraph.

22 And I will also tell you that for purposes of this
23 trial, if the matter does come up for trial, in the
24 context of the voluntariness of the statement or in some
25 other context, warn any witness all polygraph that

1 polygraph examination or being set up for polygraph or he
2 failed the polygraph or anything of that nature is
3 inadmissible.

4 MS. JOHNSON-LEE: Thank you, Your Honor.

5 BY MS. JOHNSON-LEE:

6 Q. You interviewed Mr. John Hogan the Third in an
7 interview room at the Sumter County Sheriff's Office on
8 July the 23rd 2010; is that correct?

9 A. That is correct.

10 Q. Okay. Who was present in that interview room?

11 A. Lieutenant Turner of the Bennettsville Police
12 Department.

13 Q. And, okay, who actually administered the Miranda
14 Warning to Mr. Hogan?

15 A. I did.

16 Q. Okay. What did you give him to be the Miranda
17 Warnings?

18 A. Verbally Mirandized him in the interview room itself.

19 Q. What did you say to him?

20 A. That he had the right to remain silent. Anything he
21 said will be used against him in a court of law. He had a
22 right to speak with an attorney before any questions if he
23 wished. If he cannot afford an attorney one will be
24 appointed to him to represent him, and that if he answered
25 any questions now without an lawyer he had the right to

1 stop at any time.

2 Q. How long were you in the interview room to question
3 him?

4 A. For a total -- between 20 and 30 minutes.

5 Q. At any point in time did he invoke his right to
6 remain silent?

7 A. No, ma'am.

8 Q. At any point in time did he ask to stop questioning
9 for any reason?

10 A. No, ma'am.

11 Q. At any point in time did he ask for an attorney to be
12 present?

13 A. No, ma'am.

14 Q. At any point in time did he ask to go to the bathroom
15 or ask for something to drink?

16 A. No, ma'am.

17 Q. Ask for anything at all?

18 A. No, ma'am.

19 Q. Okay. Did you deny him anything or would you have
20 denied if he asked for anything?

21 A. No, ma'am.

22 Q. Did you make any threats or promises to him in
23 exchange for him talking to you?

24 A. No threats, no promises, no coercion, no nothing.

25 Q. Now, was this interview taped in any way?

1 A. We were under the impression that it was on, but at
2 the end of the interview after the interview was stopped,
3 we, myself and Lieutenant Turner, exited the room fixing
4 to leave for Marlboro County. And I asked the Sumter
5 County guys that were around the computer to make us a
6 copy of the statement that they just heard or witnessed,
7 and they said it was not recorded. So at the time we
8 found out that it was not being recorded.

9 Q. Now, when that interview began was he under arrest?

10 A. No, ma'am.

11 Q. Was he free to go at the time the interview began?

12 A. Yes, he was.

13 Q. Did he ever ask to leave during the questioning?

14 A. No, ma'am.

15 Q. Was he there voluntarily?

16 A. Yes, he was.

17 Q. What types of questions did you use to initiate the
18 interrogation or interview of Mr. Hogan?

19 A. Actually, I just asked him to take me back to the
20 night that Monesha was in the vehicle with him, which
21 Lieutenant Turner had already advised me that he did say
22 that he was in the vehicle; that she had been dropped out
23 somewhere on a street. It was then that we led him into
24 the events that took place through that day and that night
25 up to the point where he said she got out of the vehicle.

1 I basically did not ask him any questions. I let him
2 tell what happened on that day, that evening. And once he
3 was finished with that is when I asked him the first
4 question.

5 Q. Okay. Well, what did he tell you then up to the
6 point you had to begin asking questions?

7 A. Basically, that he had met her; that he and another
8 individual along with her drove around to buy weed, buy
9 crack, smoke crack, drinkings some beer. And somewhere
10 around, if I'm not mistaken, it was around 11:00 or
11 11:00 p.m. he let her out of the vehicle.

12 Q. Once you began questioning him what did he tell you?

13 A. At that time when he concluded this portion I looked
14 at him and I said, "Mr. Hogan, you know as well as I do
15 that that's not what happened." I said, "You need to tell
16 me the truth so that I can go to the family and bring
17 enclosure to this family. And both of you know -- both me
18 and you know and Lieutenant knows that's not what
19 happened. Please tell me the truth."

20 He dropped his head and started shaking his head, and
21 he basically just said, "She's not living." And it was at
22 that time that I asked him to tell me what happened, and
23 he began to tell me the events from a Thursday all the way
24 to Sunday.

25 Q. Okay. What did he tell you specifically happened

1 from Thursday through Sunday?

2 A. That his wife and child had flown out of town to
3 visit her parents or grandparents. I'm not sure, in
4 Texas. And it was at that time he purchased some beer.
5 The drinking led to the smoking crack cocaine, and that it
6 was -- I believe he said on a Saturday because his wife
7 was coming back on Monday or Tuesday. I'm not sure
8 without reviewing the audio and video itself.

9 But that he had picked her up along with another
10 individual and basically drank the checking account that
11 he and his wife had and pretty much all of his paycheck in
12 buying cocaine, crack cocaine. They drove around smoking
13 crack cocaine, and the male individual got out of the
14 vehicle somewhere around Amelia Street here in
15 Bennettsville.

16 And he then drove back to his residence which is in
17 Marlboro County off of 15-401 traveling towards Society
18 Hill. Once they were inside the residence -- you want me
19 to go ahead with all of it?

20 Q. Yes, just tell the Judge what he said.

21 THE COURT: That's not really the issue here. The
22 issue here is the voluntariness of -- I'm really concerned
23 about the voluntariness of the issue not the content of
24 the statement.

25 MS. JOHNSON-LEE: Yes, sir. Then I have a few more

1 questions on that issue.

2 THE WITNESS: The interview went on, and once Mr.
3 Hogan had given his confession Lieutenant and I exited the
4 room where we called Marlboro County and spoke with the
5 police chief and the sheriff in the County to advise them,
6 let them know what was going on. It was at that time that
7 we went back in.

8 THE COURT: Just to summarize though. During the --
9 you put it this way so it will be on the record.. During
10 that period when he started speaking, basically, he
11 confessed to the matter?

12 THE WITNESS: Yes, sir, Your Honor.

13 THE COURT: Admitted to the killing?

14 THE WITNESS: Yes, sir, Your Honor.

15 THE COURT: Now, we can go with the voluntariness
16 issue.

17 MS. JOHNSON-LEE: Yes, Your Honor.

18 BY MS. JOHNSON-LEE:

19 Q. Did Mr. Hogan seem to have any trouble understanding
20 his rights when you initially read those to him?

21 A. No, ma'am.

22 Q. Did he answers your questions appear rational and
23 responsive?

24 A. No, ma'am.

25 Q. Okay. What do you mean that they did not appear

1 rational and responsive to your questions?

2 A. In my interview that morning with Mr. Hogan I found
3 him to be a fairly intelligent man in my own opinion; that
4 he knew right from wrong very much so, and was very much
5 remorseful when came to the actual confession of the
6 murder.

7 But I've done many interviews, but this is the
8 interview that I will never forget as far as the
9 intelligence of the man that I was speaking to and the
10 clearness of exactly -- the clearness of the detail and
11 everything he went into and the murder of Miss Brown.

12 Q. So as far as you're concerned you didn't see any
13 problem with him understanding the rights?

14 A. No, ma'am. None whatsoever.

15 Q. And did he waive those rights to speak with you?

16 A. Yes, he did.

17 Q. And to the best of your knowledge was his statement
18 to you freely and voluntarily given?

19 A. Yes, ma'am, it was.

20 Q. All right How long did that total interview take that
21 day at the Sumter County Sheriff's Office?

22 A. At the Sumter County Sheriff's Office, approximately
23 30 minutes.

24 Q. Now, who left together from the Sumter County
25 Sheriff's Office?

1 A. Myself, Lieutenant Turner and Mr. Hogan left in my
2 vehicle.

3 Q. Was he in custody by that time?

4 A. Yes, he was.

5 Q. And where did you go in your vehicle?

6 A. We came to Marlboro County where Mr. Hogan lead us to
7 the body.

8 Q. Okay, now, at any point in time during transport in
9 your vehicle was he re-Mirandized?

10 A. Yes, he was. Prior to getting in my vehicle I
11 retrieved a Miranda warning that the Sheriff's Office uses
12 which is a standard form that we use, and as soon as we
13 got into the vehicle Lieutenant Turner re-Mirandized him
14 again where Mr. Hogan signed it.

15 Q. Okay. And did you hear Lieutenant Turner issue the
16 Miranda warnings to Mr. Hogan?

17 A. Yes, I did.

18 Q. Did Mr. Hogan, did you hear him waive those rights?

19 A. Yes, I did.

20 Q. At any point in time in your truck when he was
21 talking to you and Lieutenant Turner and taking you to the
22 body did he ever invoke his right to the attorney?

23 A. No. Never.

24 Q. Did he ever attempt to change his mind and invoke any
25 of his rights?

1 A. Never.

2 Q. Did he ever ask you to just stop and say, 'I don't
3 want to do this any more'?

4 A. No.

5 Q. And after he led you to the body was he at some point
6 in time interviewed yet again by the Sheriff's Office?

7 A. He was. He lead us to the body. Once Lieutenant
8 Turner and I confirmed and felt sure that that was it
9 myself, Lieutenant Turner, and Mr. Hogan then went to our
10 Sheriff's Office where we had an interrogation room where
11 we had all the audio and video recording. He was placed
12 in there.

13 Lieutenant Turner and I went. I showed him a Miranda
14 Warning that Mr. Turner had given him on the 21st and also
15 reminded him of the Miranda warning in Sumter. And that
16 what we wanted to do at this time was to take what he had
17 told us in Sumter and on the way home and put it on video
18 for our record.

19 Q. So he was still on Miranda from the previous Miranda
20 warnings?

21 A. That is correct.

22 Q. And at any point in time in the interrogation room at
23 the Sheriff's Office did he change his mind and ask for an
24 attorney?

25 A. No, ma'am.

1 Q. Did he ever ask you to stop?

2 A. No. No, ma'am.

3 Q. Did he ever attempt to ask to remain silent or say,
4 'I just don't want to talk any more'?

5 A. No, ma'am.

6 Q. Was food or drink withheld from him in the truck or
7 at the Sheriff's Office?

8 A. If I'm not mistaken we did have something to drink at
9 the Sheriff's Office. We asked him if he needed something
10 to drink, and I think we did have something to drink. One
11 of us did go and retrieve a Pepsi or Mountain Dew.

12 Q. Now, once he was in the truck and then later at the
13 Sheriff's Office was he free to go any of those times?

14 A. No.

15 Q. Was he under arrested at those times?

16 A. Yes, he was.

17 Q. And was he aware at all times of the nature of the
18 investigation?

19 A. Yes, he was.

20 Q. And that would include the initial interview at the
21 Sumter County Sheriff's Office?

22 A. That, and if I'm not mistaken he had a prior
23 interview with Lieutenant Turner.

24 Q. At any point in time, when he was in the vehicle, did
25 he ever ask you to stop; that he had to go use the

1 restroom?

2 A. No, ma'am.

3 Q. At any point in time at the Sheriff's Office was --
4 did he ask for a break for any reason?

5 A. No.

6 Q. In the vehicle and at the Sheriff's Office,
7 subsequent to that, did he ever have any trouble
8 understanding your questions?

9 A. No.

10 Q. And to the best of your knowledge were the statements
11 in the vehicle and later at the Sheriff's Office freely
12 and voluntarily given?

13 A. Yes, they were.

14 Q. Let me show you what's been marked for identification
15 as State's Exhibit Four. Do you recognize that?

16 A. Yes, this is the standard Miranda Rights and Waiver
17 Form that the Marlboro County Sheriff's Office uses. At
18 the top it says, "Place, vehicle, Shawn Feldner." This
19 would be the Miranda Warning that was issued on the way
20 home from the Sumter County Sheriff's Office.

21 Q. Okay. Now, who signed that?

22 A. That was Lieutenant Larry Turner.

23 Q. All right. Thank you.

24 THE COURT: Let me see that, please.

25 MS. JOHNSON-LEE: Yes, Your Honor.

1 THE COURT: All right. Being offered for this
2 hearing? For purposes of this hearing only on behalf of
3 the State, Ms. Johnson-Lee?

4 MS. JOHNSON-LEE: Yes, Your Honor. I was going to
5 wait and have Larry Turner take the stand, but that would
6 just be duplicative, so I would go ahead move at this time
7 to do that.

8 MR. BLAKE: May I see it, please?

9 THE COURT: Sir?

10 MR. BLAKE: May I see it, sir?

11 THE COURT: Yes, sir.

12 MR. BLAKE: Without objection.

13 THE COURT: All right. It will be admitted as
14 State's Number Four for purposes of Jackson v. Denno
15 hearing without objection.

16 (WHEREUPON, State's Exhibit No. 4 was admitted into
17 evidence.)

18 THE COURT: All right. Proceed.

19 BY MS. JOHNSON-LEE:

20 Q. Now, you said at the Sheriff's Office a recording was
21 made of that interview?

22 A. Yes.

23 MS. JOHNSON-LEE: Now, Your Honor, I only have an
24 audio of that. Apparently, it was videoed, but my system
25 will only pick up the audio portion. Does Your Honor wish

1 us to hear the audio interview?

2 THE COURT: Does it contain issues dealing with
3 voluntariness and Miranda rights or it is just the
4 statement itself?

5 MS. JOHNSON-LEE: In the very beginning Officer
6 Feldner just references the prior Miranda that are being
7 given and you're still -- you're basically letting him
8 know that you're still continuing under that same one.
9 Other than that ---

10 THE COURT: I want to hear that portion it. That's
11 portions that I have to deal with. Any objection to that
12 portion of the ---

13 MR. BLAKE: No, Your Honor.

14 THE COURT: All right. And what is that marked?

15 MS. JOHNSON-LEE: That is marked as State's Exhibit
16 Number Two.

17 THE COURT: All right. State's Number Two is the
18 video, but it's not video? It's audio only?

19 MS. JOHNSON-LEE: Yes, that is correct.

20 THE COURT: Got audio of the interview at?

21 MS. JOHNSON-LEE: The Marlboro County Sheriff's
22 Office.

23 THE COURT: Marlboro County Sheriff's Office. All
24 right. You can play so much of it as it deals with
25 voluntariness issue.

1 MS. JOHNSON-LEE: Judge, we tested this before Court
2 this morning. It worked fine. We just need a few
3 minutes.

4 THE COURT: What you need is an eight year-old.

5 (WHEREUPON, State's Exhibit Number Two was played for
6 the Court.)

7 MS. JOHNSON-LEE: I think, basically, he's
8 referencing the prior Miranda warnings and then went on
9 and continued the statement, and our contention would be
10 that that Miranda continued.

11 THE COURT: All right. I understand, and that's for
12 purpose of the proffer. And, again, you may want to take
13 issue with this, Ms. Johnson-Lee, and I'll give you an
14 opportunity to do so. But, once again, he talked about
15 reference to a polygraph, so we've got to think about
16 that. Do you disagree with my statement that any
17 reference to the polygraph is completely inadmissible?

18 MS. JOHNSON-LEE: I agree with that wholeheartedly.
19 I think if that part were published to the jury that part
20 would have to be redacted, and it would have to begin
21 after anything referencing the polygraph is mentioned.

22 THE COURT: All right. There is a case that dealt
23 with -- well, several cases that have dealt with the
24 admissibility of the polygraph. I think there is one case
25 that says, basically, inadvertent reference to polygraph

1 does not automatically mean mistrial. It says it is
2 inadmissible when it was offered as part of the State's
3 case for whatever purpose. I still think the ruling about
4 the inadmissibility of the polygraph applies in this case
5 and that would have to be redacted.

6 MR. BLAKE: Yes, Your Honor.

7 MS. JOHNSON-LEE: Yes, Your Honor.

8 (WHEREUPON, State's Exhibit No. 2 was admitted into
9 evidence.)

10 THE COURT: Go ahead.

11 MS. JOHNSON-LEE: That would be all of my questions
12 at this time. I would ask you to answer any questions ---

13 THE COURT: Cross examination, Mr. Blake?

14 MR. BLAKE: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. BLAKE:

17 Q. Investigator Feldner, you're -- basically, your
18 interactions with my client was on July 23rd 2010?

19 A. Yes, sir.

20 Q. Relative to the confessions?

21 A. Yes, sir.

22 Q. And were you there when the polygraph took place?

23 A. I was not at the Sheriff's Office. We left and got
24 at break and came right back.

25 Q. I have not been provided with Miranda Form Four for

1 the polygraph. Is that in your case file?

2 A. No, it's not. We thought it was, but the only thing
3 the test itself in my case file.

4 Q. Sorry?

5 A. The only thing we actually have is the test itself.

6 Q. You were not present when the Miranda Warning you say
7 were given at the Sumter County Sheriff's Office?

8 A. That's correct.

9 Q. And then you say that you verbally gave my client
10 Miranda Warnings when you began to talk to him there at
11 the Sumter Sheriff's Office, you and Larry Turner?

12 A. That is correct.

13 Q. And why didn't you give a written Miranda at that
14 time?

15 A. We were -- Number One, I didn't have it in here.
16 And, Number Two, I was under the impression that it was
17 being recorded.

18 Q. So you say that you verbally gave those warning prior
19 to speaking to him in Sumter. Did you read the -- read it
20 or you got it memorized?

21 A. Prior to speaking?

22 Q. Yeah, you said you gave him Miranda Warnings there in
23 Sumter after the polygraph?

24 A. Yes, that is correct, in the interview room.

25 Q. And you read this sheet to him or just have it

1 memorized?

2 A. From my memory the way I just verbally gave it in
3 this Court.

4 Q. And you're sure of that?

5 A. Yes, sir, I'm positive of that.

6 Q. Okay. But you did then give him a Miranda form sign
7 once he was in the vehicle?

8 A. Larry Turner did; that is correct. I was driving.

9 Q. Okay. So this was actually while you were driving?

10 A. Yes, sir. We were pulling out of the parking lot
11 heading to Marlboro County.

12 Q. You came back to Bennettsville, he showed you where
13 the body was, and then you went to the Marlboro Sheriff's
14 Office?

15 A. Yes, sir.

16 Q. And we heard that. So that was a verbal recap of the
17 Miranda?

18 A. Yes, sir.

19 Q. And what was the size of the room there in Sumter
20 where the interview took place?

21 A. Approximately ten by ten.

22 Q. And how many people were in it?

23 A. Three.

24 Q. How long did that interview take place for?

25 A. Approximately 30 minutes.

1 Q. And what -- about how long was the drive from Sumter
2 back to here?

3 A. Hour. Hour, ten minutes.

4 THE COURT: You can make it faster than I can.

5 MR. BLAKE: I was going to say should we take
6 judicial notice.

7 BY MR. BLAKE:

8 Q. You've got those flashing lights?

9 A. Okay, we do.

10 Q. You came back, and then how long was it then between
11 Sumter and the body and then finally at the Sheriff's
12 Office with the videotaped interview?

13 A. An hour, hour ten minutes from Sumter. Once we
14 arrived here in Marlboro County we actually started on the
15 ride into the County where Mr. Hogan resided. We came in
16 on 15-401. He lives right on the inside of the County,
17 and then he lead -- it took us -- he had, at first, had a
18 little issue remembering exactly where we were going. And
19 he was physically telling me and describing to me the
20 terrain and the surroundings and how many times he had to
21 cross over Highway 38.

22 And we finally -- I kind of knew about where he was
23 talking about. So I would say once we were back in
24 Marlboro County 30 to 40 minutes before we arrived at the
25 sight. And it took us another five minutes for us to

1 locate the burial, and we immediately went to the
2 Sheriff's Office from that point. So an hour, hour and
3 ten minutes.

4 Q. Approximately?

5 A. Approximately two hours.

6 Q. And I guess, Sumter, their interview he was
7 handcuffed at this point?

8 A. No, sir, he was not handcuffed until we got to my
9 truck in the parking lot. He was never handcuffed in an
10 interview until the Sheriff's Office.

11 Q. I understand. So, essentially, there was a written
12 Miranda which you probably I guess testified to July 21st,
13 and then you had a written Miranda done in the car between
14 Sumter and Bennettsville?

15 A. That is correct.

16 Q. And I think you described my client as being
17 intelligent and understanding what was going on?

18 A. Yes, sir.

19 Q. You also said he was quite remorseful?

20 A. Yes.

21 Q. Do you feel like his being remorseful interfered with
22 his ability to communicate with you?

23 A. No, sir, I never found at any time, any time that I
24 talked to your client didn't have any trouble in talking
25 with me and understanding.

1 Q. So just to recap. He wasn't in custody until after
2 the Sumter interview, essentially when you handcuffed him?

3 A. At the Sheriff's Office; that is correct.

4 Q. And then in your opinion not any issues relative to
5 voluntariness?

6 A. No, sir. No issues whatsoever.

7 MR. BLAKE: No further questions.

8 THE COURT: Redirect?

9 MS. JOHNSON-LEE: No, Your Honor.

10 THE COURT: All right. Investigator Feldner, you may
11 step down.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: All right. You may call your next
14 witness, Ms. Johnson- Lee.

15 MS. JOHNSON-LEE: Thank you, Your Honor. Lieutenant
16 Larry Turner.

17 LARRY TURNER, after being duly sworn, testified as
18 follows:

19 THE WITNESS: Larry Turner, T-U-R-N-E-R.

20 DIRECT EXAMINATION

21 BY MS. JOHNSON-LEE:

22 Q. And where are you employed?

23 A. Bennettsville Police Department.

24 Q. And you're Lieutenant over investigations?

25 A. That is correct.

1 Q. And, now, did you also have occasion to interview
2 John Lee Hogan regarding the disappearance and murder of
3 Monesha Burns -- Monesha Brown, sorry?

4 A. Yes, I did.

5 MS. JOHNSON-LEE: Beg the Court's indulgence.

6 BY MS. JOHNSON-LEE:

7 Q. Now, what date did you first interview Mr. Hogan?

8 A. July the 21st.

9 Q. Of which year?

10 A. 2010.

11 Q. And what was the purpose of that interview?

12 A. A murder case of Monesha Brown.

13 Q. And, now, at that time did y'all have any information
14 that she was murdered or was she still considered a
15 missing person?

16 A. Actually, still missing.

17 Q. Okay. Now, where did you interview Mr. Hogan at?

18 A. At the Bennettsville Police Department. We have an
19 interview room at that location.

20 Q. Okay. Who all was present during the interview?

21 A. Myself along with Investigator Ira Dease.

22 Q. What time was the interview?

23 A. I would have to look at the interview sheet. I'm not
24 sure of the time.

25 Q. If I hand you the Miranda Warning would that refresh

1 your memory?

2 A. Yes, ma'am, it would. 10:24 p.m.

3 Q. Now, how did you come to interview Mr. Hogan at 10:24
4 p.m. on that day.

5 A. We received some information that he was the
6 individual that was last seen with Ms. Brown.

7 Q. Did you make contact with him yourself?

8 A. Yes, I did along with Investigator Ira Dease.

9 Q. Now, did he come in voluntarily?

10 A. Yes, he did.

11 Q. Was he free to go at any time?

12 A. Yes, he was.

13 Q. How long did your interview take place?

14 A. Forty-five minutes to an hour, maybe.

15 Q. Okay. Who all was present in the room?

16 A. Myself along with Investigator Ira Dease.

17 Q. And Mr. Hogan?

18 A. Mr. Hogan, yes, ma'am.

19 Q. Was that video recorded?

20 A. Yes, it was.

21 Q. And that's the video and audio?

22 A. That is correct.

23 Q. Now, during that interview did he ever request to
24 take a break?

25 A. No, ma'am.

1 Q. Did you issue any Miranda -- the Miranda Warnings
2 prior to conducting that interview?

3 A. Yes, ma'am, I did.

4 Q. Okay. Do you have a form that you use to do that?

5 A. Yes, ma'am, we have a standard form in the Police
6 Department that we use.

7 Q. Now, did you read those to him from the form?

8 A. Yes, I did.

9 Q. What did you read to him?

10 A. "Number One, you have the right to remain silent.
11 Anything you say can and will be used against you in a
12 Court of Law. You have the right to have a lawyer, have
13 him present with you while you are being questioned. If
14 you cannot afford to hire a lawyer one will be appointed
15 to represent you before any questioning if you wish any
16 time you make a statement or questioning. If you desire
17 to make a statement or answer questions you have the right
18 to stop at any time."

19 Q. Now, did do also have him initial on that form or any
20 of right that he understood and waived?

21 A. Yes, ma'am. I actually had him read each one and
22 advise me if he understood and initial.

23 Q. Did you have him read those after you published those
24 to him?

25 A. Yes, ma'am.

1 Q. Did he initial each one?

2 A. Yes, he did there.

3 Q. And did he also sign the form?

4 A. Yes, he did.

5 Q. At any point in time did he say, "I changed my mind.
6 I want to talk to an attorney?"

7 A. No, ma'am.

8 Q. At any point in time did he say, "I changed my mind.
9 I don't want to talk any more?"

10 A. No, ma'am.

11 Q. Was he advised of the nature of the investigation?

12 A. Yes, ma'am.

13 Q. Did he seem to understand why he was there?

14 A. Yes, ma'am.

15 Q. Did he seem to understand your questions?

16 A. Yes, ma'am.

17 Q. Were his answers to your questions rational and
18 responsive?

19 A. Yes, ma'am.

20 Q. Did he at any point seem not to understand his
21 warnings?

22 A. No, ma'am.

23 Q. Was his statement to you freely and voluntarily
24 given?

25 A. Yes, ma'am, it was.

1 Q. How did he respond when you first read him those
2 rights?

3 A. As normal as any other person that I've interviewed
4 before they were Mirandized.

5 Q. And what did he tell you?

6 A. He basically admitted that he was with Miss Brown.
7 He had her in his vehicle before, but he had dropped her
8 off the night and went home.

9 Q. Okay, now, is the Miranda going to be on the
10 videotaped statement? The issue of the Miranda form, is
11 that going to be on here also?

12 A. Yes, sir.

13 MS. JOHNSON-LEE: Does Your Honor wish us to publish?

14 THE COURT: Just that portion. Is there objection,
15 Mr. Blake?

16 MR. BLAKE: No objection.

17 THE COURT: Okay. Refer to the exhibit, Ms:
18 Johnson-Lee.

19 MS. JOHNSON-LEE: One, Your Honor, for the State.

20 THE COURT: State's One?

21 MS. JOHNSON-LEE: Yes, Your Honor

22 THE COURT: All right. State's One is the videotape
23 of the interview at the Bennettsville Police Department on
24 July the 21st. Admitted without objection for purposes of
25 the Jackson V. Denno Hearing.

1 (WHEREUPON, State's Exhibit No. 1 was admitted into
2 evidence.)

3 (WHEREUPON, State's Exhibit Number One was played for
4 the Court).

5 BY MS. JOHNSON-LEE:

6 Q. If I can interrupt for a minute. Was the Miranda
7 given before or after this?

8 A. Before this.

9 (WHEREUPON, State's Exhibit Number One continued
10 playing for the Court).

11 MS. JOHNSON-LEE: Since he had started talking before
12 it was over do you want to continue here?

13 THE COURT: I'm sorry?

14 MS. JOHNSON-LEE: Mr. Hogan had begun volunteering
15 information while he was signing the form. Do you still
16 want us to keep playing through this?

17 THE COURT: Yes.

18 MS. JOHNSON-LEE: Yes. Go ahead.

19 THE COURT: He's finished signing it now.

20 (WHEREUPON, State's Exhibit Number One continued
21 playing for the Court).

22 BY MS. JOHNSON-LEE:

23 Q. Now, approximately how long did this interview last?

24 A. 45 minutes.

25 Q. Now, at any point in time did you withhold or refuse

1 a bathroom break to him?

2 A. No, ma'am.

3 Q. Did you refuse any goods or drinks that he may have
4 requested?

5 A. No, ma'am.

6 Q. Did you threaten him in any way to get him to talk to
7 you?

8 A. No.

9 Q. Did you promise him anything in exchange for waiving
10 his rights and talking to you?

11 A. No, ma'am.

12 Q. And he did voluntarily waive his right and speak to
13 you?

14 A. Yes, ma'am.

15 Q. Now, that Miranda Form that you have in front of you
16 is that Mr. Hogan's signature on that?

17 A. Yes, ma'am.

18 Q. And did you sign as a witness?

19 A. Yes, ma'am.

20 Q. And did Ira Dease sign as a witness?

21 A. Yes, ma'am.

22 THE COURT: Any objection?

23 MR. BLAKE: No, Your Honor.

24 THE COURT: That's State's Number One?

25 MS. JOHNSON-LEE: This is State's Number Three, the

1 Miranda statement and the video is Number One. We would
2 move to have these ---

3 THE COURT: State's One is the video statement and
4 State's Number Three is the Miranda form?

5 MS. JOHNSON-LEE: Yes, Your Honor.

6 (WHEREUPON, State's Exhibit No. 3 was admitted into
7 evidence and State's Exhibit No. 1 was previously
8 admitted into evidence.)

9 BY MS. JOHNSON-LEE:

10 Q. Where is the other form from the Sheriff's Office?

11 MS. JOHNSON-LEE: May I have that form?

12 THE COURT: Yeah.

13 BY MS. JOHNSON-LEE:

14 Q. I'm going to show you what's been marked as State
15 Number Four. Is that your signature on that exhibit?

16 A. Yes, ma'am.

17 Q. And where was that Miranda Waiver signed at?

18 A. In the vehicle of Investigator Shawn Feldner on the
19 way back from Sumter County.

20 Q. Is was that after you left the Sheriff's Office in
21 Sumter?

22 A. That is correct.

23 Q. And did you read the rights to Mr. Hogan directly
24 from that sheet?

25 A. Yes, ma'am, I did.

1 Q. Okay. And, again, when did you read to him from that
2 sheet?

3 A. "You have the right to remain silent. Anything you
4 say can and will be used against you in Court. You have
5 the right to talk to a lawyer for advice before I ask you
6 any questions to have him present with you while you're --
7 during the questioning. If you cannot afford to hire a
8 lawyer the Court will appoint one for you before any
9 questions if you wish. If you decide to answer questions
10 now without a lawyer present you will still have the right
11 to stop answering at any time until you talk to a lawyer.

12 Waiver of Rights: I have read this statement of my
13 rights and I understand what my rights are, and I am
14 willing to make a statement and answer questions. I do
15 not want a lawyer at this time. I understand now what I
16 am doing. No promise or threats have been made to me and
17 no pressure, coercion of any kind was used against me by
18 anyone."

19 Q. Did he sign that form?

20 A. Yes, ma'am, he did.

21 Q. Okay. Did he put initials on this form also?

22 A. No, ma'am.

23 Q. Okay. Did he ever seem to not understand any of
24 those rights as you read those to him?

25 A. No, ma'am.

1 Q. Did he talk to you and Investigator Feldner freely
2 and voluntarily after receiving those rights?

3 A. Yes, ma'am.

4 Q. Did he have any trouble understanding what his rights
5 were when you read those to him?

6 A. No, ma'am.

7 Q. At any point in time did he attempt to revoke those
8 waiver of his rights?

9 A. No, ma'am.

10 Q. At any point in time did he ever ask y'all to pull
11 the vehicle over, he had to go to the bathroom?

12 A. No, ma'am.

13 Q. Did he ask y'all for anything to drink or eat?

14 A. No, ma'am.

15 Q. Were his answers to the questions you asked him in
16 the vehicle responsive and rational?

17 A. Yes, ma'am.

18 Q. Thank you. No further questions.

19 THE COURT: Cross-examination, Mr. Blake?

20 MR. BLAKE: Actually, Judge, this isn't a trial.
21 This is a bench hearing.

22 CROSS-EXAMINATION

23 BY MR. BLAKE:

24 Q. So you were present at the interview at the Sumter
25 County Sheriff's Office.

1 A. Yes, I was.

2 Q. Okay. And was a written Miranda form done there
3 prior to the speaking with my client?

4 A. Not by me.

5 Q. Were you present at the polygraph?

6 A. No, sir. We actually left when the polygraph
7 started.

8 Q. Did you witness a Miranda Warning going on before the
9 polygraph?

10 A. No, sir.

11 Q. So you were present the entire meeting between
12 yourself and Investigator Feldner and my client at the
13 Sumter County Sheriff's Office?

14 A. Yes, sir, that is correct.

15 Q. And did anything take place before you began that
16 interview?

17 A. No, sir. Other than the polygraph.

18 Q. And you would say approximately the same thing as
19 Shawn Feldner in terms of it took you about two hours from
20 Sumter, come back to Bennettsville, going to the site
21 where the body was, and then coming back to Marlboro
22 County Sheriff's Office?

23 A. Yes, sir.

24 Q. And you said that you did execute this Miranda Form
25 in the vehicle driving from -- as you're coming out, I

1 guess, from the Sumter Sheriff's Office?

2 A. Yes, sir.

3 Q. You were present at the videotaped interview on the
4 23rd at the Marlboro Sheriff's Office?

5 A. Yes, sir.

6 Q. And you recall at the point Investigator Feldner
7 recapping Miranda Warning?

8 A. Yes, sir.

9 MR. BLAKE: No further questions.

10 THE COURT: Re-direct, Ms. Johnson-Lee?

11 MS. JOHNSON-LEE: None, Your Honor.

12 THE COURT: All right. Thank you. You may step
13 down. All right. You may call any other witnesses you
14 have on this issue, Ms. Johnson-Lee.

15 MS. JOHNSON-LEE: Your Honor, I don't believe Jackson
16 v. Denno would apply, but I'm going to address it any way
17 just to be on the safe side. The Defendant wrote a letter
18 to the victim's family. His attorney hand delivered that
19 to my office to be given to the victim's family, but in it
20 he doesn't give all the details. He does basically
21 confess. The State does intend to reserve the right to
22 introduce part of that letter at least at trial.

23 THE COURT: All right. What's the Defense's position
24 on that with regard to the admissibility, Mr. Blake?

25 MR. BLAKE: Well, Your Honor, that does not apply to

1 the terms of Jackson v. Denno, and that's got other issues
2 in terms of whether or not to introduce it in parts. And
3 I would certainly say that they would have to introduce
4 the entire letter. Not just the little parts that they
5 want to use.

6 THE COURT: All right. So your position, though --
7 we can get into it if necessary. But you don't, first of
8 all, you don't think there are any Jackson v. Denno issues
9 with regard to that?

10 MR. BLAKE: Correct.

11 THE COURT: And, secondly, is that you don't -- the
12 question or contest the authenticity of it or require any
13 further authentication of it. Just a question as to what
14 parts if any are admissible, and your position will be,
15 basically, that the whole thing would have to be done, but
16 that's something I can rule upon later.

17 MR. BLAKE: I have no question about its authenticity
18 or his voluntariness in doing it.

19 THE COURT: Okay. All right. So I don't think we
20 need to go into that at this time, Ms. Johnson-Lee. So
21 I'm going to make a note here with regards to the letter
22 to the victim's family. No issue of voluntariness or
23 authenticity. All right. Anything else on the Jackson v.
24 Denno matter from the standpoint of the State, Ms.
25 Johnson-Lee?

1 MS. JOHNSON-LEE: No, Your Honor.

2 THE COURT: All right. Mr. Blake, your client has
3 the right to testify or present any evidence with regards
4 to this issue without waiving his Fifth Amendment right.
5 is there anything you'd like to present in the way of
6 testimony or evidence regarding authenticity -- I mean
7 regarding the voluntariness you may do so at this time.

8 MR. BLAKE: Defense calls John Hogan to the stand.

9 THE COURT: All right, Mr. Hogan. Come around,
10 please.

11 JOHN HOGAN, after being duly sworn, testified as
12 follows:

13 BY MR. BLAKE:

14 THE COURT: All right, Mr. Blake.

15 DIRECT EXAMINATION

16 BY MR. BLAKE:

17 Q. John, you heard their testimony and about the Miranda
18 warnings and your statements to them. Let's just in focus
19 on the key issue here. After the polygraph you spoke with
20 both Lieutenant Turner and Investigator Feldner, correct?

21 A. Yes, sir.

22 Q. You did not sign a Miranda Warning at that time?

23 A. No, sir.

24 Q. Was a verbal Miranda Warning given to you?

25 A. No, sir.

1 Q. Do you remember signing a written Miranda Waring for
2 the polygraph?

3 A. I remember the man that gave me the polygraph
4 Mirandizing me.

5 Q. Verbally?

6 A. Verbally, yes. I'm not sure I signed anything or
7 not.

8 Q. But you are sure that you were not re-Mirandized
9 prior to Turner and Feldner talking to you at the Sumter
10 Sheriff's Office?

11 A. Yes, sir.

12 Q. Then you were given a written Miranda on the way out
13 of Sumter County Sheriff's Office in the car?

14 A. Yes, sir.

15 Q. And you are not contesting anything that was said
16 there about the re-Miranda part prior to the videotaped
17 interview?

18 A. No, sir.

19 Q. Were you paying complete attention to him at that
20 point?

21 A. Yes, sir.

22 MR. BLAKE: No further questions.

23 THE COURT: Cross-examination?

24 CROSS-EXAMINATION

25 BY MS. JOHNSON-LEE:

1 Q. How old are you, Mr. Hogan?

2 A. Thirty-seven.

3 Q. How far did you get in your educational career?

4 A. Sophomore in college.

5 Q. Sophomore in college. What college was that?

6 A. Henderson State University.

7 Q. Henderson State?

8 A. Yes, ma'am.

9 Q. Where is that located?

10 A. Arkansas.

11 Q. Did you have any type of scholarships to go there?

12 A. No, ma'am.

13 Q. Okay. What kind of grades did you make your freshman
14 year and up through your sophomore year?

15 A. Freshman year, I had a pretty good GPA. My sophomore
16 year I didn't do so well.

17 MR. BLAKE: Judge, I think it's certainly not
18 contested as to his intelligence. I'd like to stick to the
19 issue of voluntariness if we could.

20 THE COURT: All right. I think that is relevant to
21 his ability to understand what was said to him. I'm going
22 to allow it.

23 MS. JOHNSON-LEE: Thank you, Your Honor.

24 BY MS. JOHNSON-LEE:

25 Q. Where were you employed prior to your most recent

1 arrest?

2 A. By Kellogg Logging Group.

3 Q. What kind of company is that?

4 A. It's a construction company.

5 Q. And what was your job with them?

6 A. My title was boiler maker.

7 Q. What did that entail?

8 A. Entails pipe fitting, demolition work. Just anything
9 and everything that had to do with building boilers..

10 Q. What type of experience do you have to have to get
11 that job?

12 A. Just -- you just have to start as a helper and work
13 my way up.

14 Q. How long did you do that job?

15 A. Little over four years.

16 Q. And did you travel around the country doing that kind
17 of work?

18 THE COURT: All right. I think we are getting a
19 little far afield.

20 MS. JOHNSON-LEE: Yes, sir, Your Honor. Thank you.

21 THE COURT: Ms. Mary Thomas, I think we need to stick
22 with the issue here.

23 MS. JOHNSON-LEE: Yes, Your Honor.

24 BY MS. JOHNSON-LEE:

25 Q. Have you been arrested in the past?

1 A. Yes, ma'am.

2 Q. Okay. And you had convictions in the past?

3 A. Yes, ma'am.

4 Q. Okay. What were your prior convictions for?

5 MR. BLAKE: Judge, I'm going to object.

6 THE COURT: What does that have to do with this
7 issue?

8 MS. JOHNSON-LEE: Well, Your Honor, prior cases he
9 would have been very well aware of what his legal rights
10 were and Mirandize.

11 THE COURT: No. I think that's getting into prior
12 bad acts that may or may not be convictions that would be
13 admissible before the jury. Again, I've got to consider
14 the matters that would be admissible before the jury. If
15 you've got specific evidence of particular crimes which
16 you think are admissible under 609 I'll hear from you.

17 MS. JOHNSON-LEE: Yes, Judge.

18 BY MS. JOHNSON-LEE:

19 Q. Were you convicted of a stabbing in Texas in 1999?

20 A. Yes, ma'am.

21 Q. Okay. What did you actually ---

22 THE COURT: For purpose of this hearing in which --
23 why do you take it that that is not admissible, Mr. Blake?

24 MR. BLAKE: Judge, that's very similar to this crime.
25 Under extensive case law it would be extremely prejudicial

1 if that conviction were brought in.

2 THE COURT: Well, it's not being offered for the
3 truth of the matter. It's being offered to show, I think
4 what she's offering it for is to show that he would be
5 aware of the Miranda warnings and things of that limit
6 purpose and for this hearing only, and I'm going to allow
7 it.

8 MS. JOHNSON-LEE: Thank you, Your Honor.

9 THE COURT: But maybe not before the jury. We'll
10 see. That's a chance you're taking as to whether you want
11 me to rely on it or not rely on it because if it goes --
12 as I say I think you need to stick in this hearing to
13 matters that will be admissible before the jury because
14 the jury is going to rule on admissibility as well.

15 And maybe at some future time I will rule that
16 inadmissible in a Jackson v. Denno hearing or not before
17 the jury. It would be Jackson v. Denno before the jury.
18 It would be just the issue of voluntariness. I might
19 exclude it. I don't know, but you can go ahead for this
20 hearing for that limited purpose. I'll hear it. I'm not
21 sure it's appropriate on the issue of voluntariness. I'll
22 hear you with regard -- I understand what you're
23 proffering it for.

24 BY MS. JOHNSON-LEE:

25 Q. At the time of that conviction were you represented

1 by counsel?

2 A. Yes, ma'am.

3 Q. And during the investigation of the case were you
4 read Miranda Warnings?

5 A. Yes, ma'am.

6 Q. Were those warnings the same as those you were read
7 by either Larry Turner or Shawn Feldner in this case?

8 A. As far as I remember, yes.

9 Q. Okay. Now, who do you recall getting Miranda
10 Warnings from? You recall get them from Larry Turner?

11 A. Yes, ma'am.

12 Q. You remember getting them from Shawn Feldner?

13 A. No, ma'am.

14 Q. Okay.

15 THE COURT: All right. I'm going to stop you right
16 there. For the purpose of this hearing and any subsequent
17 hearings, if there is any subsequent testimony, I do think
18 it would be admissible, possibly admissible to ask him if
19 he had been Mirandized in the past and did he understand
20 them; and that might be my limit, but not with regard to
21 any specific charges. All right.

22 BY MS. JOHNSON-LEE:

23 Q. Did you have any difficulty understanding your
24 Miranda Warnings in the past case?

25 A. No, ma'am.

1 Q. Okay, now, did you have any problem understanding
2 your Miranda Warnings in this case?

3 A. No, ma'am.

4 Q. Now, let's go back to the first interview with Larry
5 Turner at the police department on July 21st 2010. Is
6 this your signature on the Miranda form?

7 A. Yes, ma'am.

8 Q. And are those your initials on the form?

9 A. Yes, ma'am.

10 Q. And I'm going to move forward and also go ahead and
11 show you State's Four from the vehicle of Shawn Feldner is
12 this your signature?

13 A. Yes, ma'am.

14 Q. Thank you. Now, at the time you were being
15 questioned by Investigator Turner at the police department
16 on July 21st did you ever ask for a break to go to the
17 bathroom?

18 A. No, ma'am.

19 Q. Ever ask for food or drink?

20 A. No.

21 Q. Ever ask them to stop questioning?

22 A. No, ma'am.

23 Q. Okay. Let me finish the question first, okay?

24 A. Yes, ma'am.

25 Q. Did you ever ask for an attorney?

1 A. No, ma'am.

2 Q. Did you ever ask them to stop questioning you?

3 A. No, ma'am.

4 Q. Was your question -- was the answers you were giving
5 freely and voluntarily being given?

6 A. Yes, ma'am.

7 Q. Now, in the interview room at the Sumter County
8 Sheriff's Office when you were speaking with Lieutenant
9 Turner and Investigator Feldner do you remember either one
10 of them telling you what your rights were?

11 A. No, ma'am.

12 Q. When you were being questioned in that room were your
13 answers freely and voluntarily being given?

14 A. Yes, ma'am.

15 Q. Did you ever ask for an attorney?

16 A. No, ma'am.

17 Q. Did you ever ask them to stop because you wanted to
18 be silent?

19 A. No, ma'am.

20 Q. Did you ever ask to go to the bathroom?

21 A. No, ma'am.

22 Q. Did you ever ask for food or drink?

23 A. No, ma'am.

24 Q. Was your complete statement in that room freely and
25 voluntarily given to him?

1 A. Yes, ma'am.

2 Q. Now, in the vehicle leaving the Sheriff's Office in
3 Sumter County you did sign a Miranda form? Do you
4 remember Lieutenant Turner reading you your rights?

5 A. Yes, ma'am.

6 Q. At any point in time in the vehicle did you ask them
7 to pull over for any reason?

8 A. No, ma'am.

9 Q. Ever tell them you had to go to the bathroom?

10 A. No, ma'am.

11 Q. Ever tell them you needed some drink or something to
12 eat?

13 A. No, ma'am.

14 Q. Ever say, "I changed my mind. I want to be silent?"

15 A. No, ma'am.

16 Q. Ever say, "I changed my mind. I want a lawyer?"

17 A. No, ma'am.

18 Q. Were your statements to them in the truck freely and
19 voluntarily given to them?

20 A. Yes, ma'am.

21 Q. Now, after leading them to the body and going back to
22 the Sheriff's Office do you remember going into the
23 interview room there with both Officers Feldner and
24 Turner?

25 A. Yes, ma'am.

1 Q. Do you remember Officer Feldner reminding you of your
2 prior Miranda warnings that you'd been given?

3 A. Yes, ma'am.

4 Q. Did you ever say, "I need to know what these rights
5 are again?"

6 A. No, ma'am.

7 Q. Did you remember what these rights were?

8 A. Yes, ma'am.

9 Q. Did you ever say, "Well, I want an attorney?"

10 A. No, ma'am.

11 Q. Did you ever say, "I need to go to the bathroom?"

12 A. No, ma'am.

13 Q. Did you ever say, "I need something to eat or drink?"

14 A. No, ma'am.

15 Q. Did you ever change your mind and say, "I just don't
16 want to talk to you any more?"

17 A. No, ma'am.

18 Q. Was everything you said to them at the Sheriff's
19 Office in Marlboro County freely and voluntarily done?

20 A. Yes, ma'am.

21 Q. Thank you.

22 MS. JOHNSON-LEE: No more questions.

23 THE COURT: Redirect?

24 MR. BLAKE: No, Your Honor.

25 THE COURT: All right. Thank you, Mr. Hogan. You

1 may step down. Anything else from the State on the
2 voluntariness issue on the Jackson v. Denno hearing, from
3 the State, Mr. Blake?

4 MS. JOHNSON-LEE: No, Your Honor.

5 THE COURT: No, from the State. I'm sorry. From the
6 Defense?

7 MR. BLAKE: No, Your Honor.

8 COLLOQUY

9 THE COURT: Okay.. All right. That will conclude the
10 testimony with regard to this issue, and we'll come back
11 maybe in a few minutes and hear from you by way of
12 argument. Well, in fact, let's do that now. Mr. Blake
13 it's your motion to suppress the statement so I'll be glad
14 to hear from you.

15 MR. BLAKE: Your Honor, I think the only issue here
16 in contention is the giving of the Miranda warnings prior
17 to the interview on July 23rd at the Sumter Sheriff's
18 Office. We have Investigator Feldner indicating that he
19 gave verbal Miranda warnings. When I asked Lieutenant
20 Turner about that he didn't mention it. My client says
21 that that didn't happen.

22 THE COURT: My recollection of the only testimony or
23 the only thing he said with regard to that before he
24 started -- before the parking lot where he does admit that
25 they were given to him I believe in the parking lot or in

1 the vehicle. But the only thing he says with regard to
2 that is was that, correct me if I'm wrong, was that he did
3 encounter the victim. They rode around. He dropped her
4 off. I don't believe any connection in any of that
5 statement. There was no admission of anything other than
6 contact with the victim. I don't believe there is any
7 admission of a homicide at that point.

8 MR. BLAKE: That's the July 23rd interview at the
9 Bennettsville Police Department, correct, Your Honor?

10 THE COURT: Well, no. I'm talking about at the
11 Sumter Police Department. Isn't that the one you're
12 talking about? The verbal warnings?

13 MR. BLAKE: No, the Sumter Sheriff's Office.
14 immediately after the polygraph.

15 THE COURT: Right.

16 MR. BLAKE: Where we do not have a written Miranda,
17 but my client does admit to being given Miranda warnings
18 verbally.

19 THE COURT: Okay, but ---

20 MR. BLAKE: In his testimony he did, Judge. He did.

21 THE COURT: Which ones? I'm confused? Which
22 statement do you say that he denies that he was given any
23 verbal warnings? Which interview?

24 MR. BLAKE: On July 23rd immediately after the
25 polygraph at the Sumter Sheriff's Office with Feldner and

1 Turner.

2 THE COURT: Okay. That's what I thought, but my
3 recollection is did he admit it at that time?

4 MR. BLAKE: He did, Judge. He gave a full
5 confession.

6 THE COURT: All right. I'll hear from you,
7 Ms. Johnson-Lee.

8 MS. JOHNSON-LEE: Well, Judge, Officer Feldner does
9 recall he gave the verbal Miranda, and if you recall from
10 the stand he didn't even have to look at a card. He knew
11 them all by memorization straight from the forms. Said
12 that he did give those Miranda Warnings there at the
13 Sumter County Sheriff's Office, and again, in the vehicle
14 he was given the Miranda Warnings in the presence of
15 Office Feldner by Lieutenant Turner.

16 Mr. Hogan remembers receiving those warnings and
17 admits that is his signature on the form and admits that
18 his statement was freely and voluntarily given in the
19 truck. Also the Miranda given at Bennettsville Police
20 Department initially Mr. Hogan remembers giving that one,
21 and says that his statement was freely and voluntarily
22 given. And Mr. Hogan for the last statement given after
23 the body was found at the Sheriff's Office admits that he
24 does remember Officer Feldner reminding him, 'we've
25 previously given you Miranda warnings,' and he said under

1 questioning from me that he does remember what his rights
2 were and still freely and voluntarily gave a statement to
3 them. So we would ask that any statements he made be
4 allowed in.

5 THE COURT: Okay. All right.

6 MR. BLAKE: Judge, if I can for just a second.
7 Without playing around tit for tat, he never -- he knew
8 what the warnings were. He did not invoke his rights.
9 There was no time passed between what he admitted happened
10 in the polygraph and what was in the second set. So I
11 don't really there is any giant issue here.

12 THE COURT: The only issue is about whether or not
13 Mr. Feldner verbally told him that or Mr. Feldner didn't
14 verbally tell him that. That's really the only issue
15 we've got in the Jackson v. Denno. All right. It is
16 eczematic that a defendant in a criminal case is entitled
17 to an independent evidentiary hearing to determine the
18 voluntariness of the statements made prior to the
19 submissions of such statements to the jury.

20 Thus, where there is a conflict in the evidence about
21 a statement the Court must first make a finding as to the
22 validity of the statement. And if the statement is found
23 to be valid by the Court it should be submitted to the
24 jury. In making the determination the trial judge should
25 examine the totality of the circumstances including the

1 background, experience and conduct of the accused to
2 determine whether or not the State has met its burden of
3 proof as so to warrant the admission of the confession.

4 The test of the admissibility of a statement is
5 whether it was voluntarily, knowingly and intelligently
6 given. A confession may not be extracted by any sort of
7 threat or violence or obtained by any direct or implied
8 promises however slight or by any exertion of improper
9 influence. Part of the State's burden during the hearing
10 is to prove by a preponderance of the evidence that the
11 statement was voluntarily and -- was voluntary and taken
12 in compliance with Miranda v. Arizona which is the Supreme
13 Court case dealing with the rights that a defendant must
14 be given prior to the time that any statement is taken.
15 The State bares this burden of proof even if a defendant
16 has signed a Waive of Rights form.

17 Although custody is a factor to be determined -- to
18 be considered in determining the voluntariness, the
19 defendant need not show that he was in custody at the time
20 the statement was made to request a Jackson v. Denno
21 hearing on the voluntariness of the statement. So that's
22 what we have been doing for the last hour is to take
23 evidence and determine the circumstances and facts
24 surrounding the various statements given in this case.

25 Having heard all of the testimony and observing the

1 witnesses and the demeanor of the witnesses and weighing
2 the credibility of the witnesses, which this Court has to
3 do in connection with the voluntariness issue, the Court
4 finds that's all of the statements made in this case were
5 knowingly, intelligently, voluntarily made; that the
6 defendant may not have been in custody but he was
7 certainly in the police department.

8 So I do think it was necessary that the Miranda
9 Warnings be given. I would find the Miranda Warnings were
10 given in all statements based upon both the testimony of
11 the officers and the -- well, the -- there is really no
12 issue with regard to the one where he signed the written
13 waivers. It's only in regards to whether or not Officer
14 Feldner gave him Miranda Warnings, and I find that his
15 testimony is credible in that regard. The statements made
16 by the defendant in this case are therefore voluntary and
17 admissible into evidence.

18 All right. The next issue then becomes I think the
19 one that probably needs testimony and need to resolve
20 today if possible would be the suppression of certain
21 evidence pursuant to a search warrant or incident to
22 arrest. I'm not sure of the circumstance surrounding the
23 evidence. Tell me what the search warrant is about. Tell
24 me what the search revealed. What we're looking at here,
25 Ms. Johnson-Lee.

1 MS. JOHNSON-LEE: Your Honor, the first search
2 warrant was obtained on July 21st 2010. It is the search
3 warrant of the vehicle. It was actually executed on
4 July 22nd. There is a Scribner's error that we testified
5 to. The search warrant was served on Mr. Hogan the night
6 of the 21st when he was at the police department, but the
7 search was actually conducted by Paul Larosa from S.L.E.D.
8 along with the police department the next day. And
9 recovered from the vehicle was a small piece of gray duct
10 tape with pink fibers on it. That was what was recovered
11 that is significant to this case.

12 THE COURT: All right. So the first thing is a
13 search pursuant to the warrant dated July 21st ---

14 MS. JOHNSON-LEE: Correct, Your Honor.

15 THE COURT: --- 2010. Search of vehicle pursuant to
16 warrant. All right. What's the other one?

17 MS. JOHNSON-LEE: Okay. Now, on July 22nd law
18 enforcement obtained a search warrant. It was obtained by
19 Larry Turner of the Police Department. However, they
20 realized that the house actually was in the County not in
21 the City limits. The wife, Summer Hogan, wife of
22 Mr. Hogan, gave a consent to search to Shawn Feldner and
23 Susan Alderman from the Sheriff's Office and S.L.E.D.
24 Agent Paul Larosa with them. And they did do a search of
25 the home on July the 22nd.

1 At that time they retrieved a comforter, pieces of a
2 smashed wall, cuttings from the den floor and a welding
3 sleeve from above the washer and dryer.

4 THE COURT: So you're relying on the search warrant
5 for the July 22nd 2010 or are you relying on the consent?

6 MS. JOHNSON-LEE: The consent, Your Honor.

7 THE COURT: All right. So the consent issues has --
8 that's of the arrest?

9 MS. JOHNSON-LEE: Yes, Your Honor.

10 THE COURT: All right.

11 MS. JOHNSON-LEE: That was prior to the confession.
12 After the confession another search warrant was obtained
13 on July 23rd for the residence. And seized at that time
14 from the residence was a roll of duct tape, cuttings of
15 carpet from near the bathtub, window blinds from the
16 bathroom, D.N.A. swabs from the hallway and from the
17 kitchen near the wall. Also a set of kitchen knives.

18 THE COURT: All right. Okay. So the three -- those
19 are the three searches?

20 MS. JOHNSON-LEE: The three searches.

21 THE COURT: All right. What is the defendant's
22 position with regard to the search warrant? You
23 contest -- with regards to the searches? You contest all
24 three of them or what?

25 MR. BLAKE: Judge, I'd just like to clarify that

1 there was another search warrant that I have. It was
2 given in discovery. It was from July 14th 2010 done by
3 Sergeant Larry Bowman, and it was to a wireless telephone
4 company, Verizon.

5 THE COURT: All right. Is any evidence obtained as a
6 result of the search warrant issued to Verizon for
7 telephone records of -- Ms. Johnson-Lee, is that something
8 that the State wishes to introduce?

9 MS. JOHNSON-LEE: Beg the Court's indulgence. State
10 doesn't intend to use those, Your Honor.

11 THE COURT: All right. The State is not going to
12 introduce anything as a result of the July 14th 2010
13 search warrant issued to Verizon Wireless. So that it is
14 not an issue.

15 MR. BLAKE: Judge, if I could clarify information
16 from New Star that is included on this disk.

17 MS. JOHNSON-LEE: Yes. There was -- the last
18 individual in the vehicle with Mr. Hogan and the victim
19 had given a statement to law enforcement that he had used
20 Mr. Hogan's telephone to make a call. The purpose for
21 getting the record, phone records, was just to see if that
22 number that he said he called was correct. They were
23 trying to determine his veracity for the truth. It's not
24 something we intend to use at trial in the prosecution of
25 Mr. Hogan.

1 THE COURT: Okay. All right. The State will not use
2 Verizon records so search warrant, not an issue.

3 All right. So we're talking about then, Mr. Blake,
4 the search warrant for the defendant's vehicle issued on
5 July 21st 2010, the consensual -- alleged consensual
6 search of that residence on July 22nd 2010, and the search
7 of the residence -- search warrant for the residence dated
8 July 23rd 2010 after the video statement. Those are the
9 three searches that the State contends that they obtained
10 evidence that they wish to introduce. Does the Defense
11 contest any or all of these?

12 MR. BLAKE: All of them, Judge.

13 THE COURT: All right.

14 MR. BLAKE: Can we take a short break before we
15 begin?

16 THE COURT: Sir?

17 MR. BLAKE: Can we take a short break before we
18 begin?

19 THE COURT: Yes, sir. We'll take ten minutes.

20 (WHEREUPON, Court was in recess at 11:30 a.m.

21 And reconvenes at 11:42 a.m.)

22 THE COURT: All right. We're back on the record with
23 regard to the matter of the State v. John Lee Hogan, Jr.
24 as Docket Number 2010-GS-34-09690. 0696, I'm sorry.
25 Mr. Hogan is in Court with his attorney, Mr. Blake. The

1 State is represented by Ms. Mary Thomas Johnson-Lee. At
2 the time we took the break we were starting to address the
3 matter of the suppression of the searches, three different
4 searches. In order to limit the testimony and to be
5 focused on this, Mr. Blake, let me ask you what is the
6 basis for your contesting the matters seized in the search
7 warrant for the vehicle on July the 21st 2010? What's the
8 legal basis for that?

9 MR. BLAKE: Judge, if I could locate that. This is
10 the search warrant issued by Lieutenant Turner.

11 THE COURT: One for the vehicle dated July 21st 2010.
12 First one Miss Johnson-Lee referred to.

13 MR. BLAKE: Just establishing the probable cause and
14 basis for the search warrant.

15 THE COURT: So basis for that is lack of probable
16 cause. All right, what about consent of the residence;
17 that being the search of 7-22-2010. What's the legal
18 basis for that?

19 MR. BLAKE: Whether there was truly consent.

20 THE COURT: Lack of consent.

21 MR. BLAKE: Um hum.

22 THE COURT: And, finally, the search warrant of the
23 house dated July the 23rd 2011.

24 MR. BLAKE: Lack of probable cause.

25 THE COURT: All right.

1 MR. BLAKE: And could I just clarify with the Court
2 and the Prosecutor. I think she's spoke of this. The
3 search warrant issued for -- well, requested on July 22nd
4 by Investigator Turner that became the July 23rd because
5 of jurisdictional problems.

6 THE COURT: She's not relying on the search warrant
7 for the July 22nd search. I understand that is the one
8 that she is relying by consent.

9 MS. JOHNSON-LEE: Correct, Your Honor. July 22nd
10 search warrant became the July 22nd consent to search.

11 THE COURT: Okay.

12 MR. BLAKE: She had mentioned something about Turner
13 getting a search warrant then became ...

14 MS. JOHNSON-LEE: Yes, sir, Your Honor. On July 22nd
15 Lieutenant Turner obtained a search warrant for the single
16 wide mobile home. Notice the return. There is nothing on
17 it. That's because it turned out that that address was in
18 the County. So instead of the Sheriff's Office then going
19 to get a search warrant they just spoke with the wife, the
20 Sheriff's Office did.

21 THE COURT: They're not relying on the search warrant
22 for that search. They're relying on the consent for that
23 search.

24 MR. BLAKE: I understand, Judge. I was just trying
25 to clarify.

1 THE COURT: All right. Ms. Johnson-Lee, you may call
2 your witnesses in regard -- let's start in chronological
3 order. July 21st 2010. Excuse me.

4 MS. JOHNSON-LEE: Lieutenant Larry Turner.

5 THE COURT: You're still under oath.

6 LARRY TURNER, after previously being duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MS. JOHNSON-LEE:

10 Q. Lieutenant Turner, did you obtain a search warrant on
11 July 21st 2010?

12 A. Yes, ma'am.

13 Q. And was that for a vehicle owned by John Hogan?

14 A. Yes, ma'am, that is correct.

15 Q. What was your basis for obtaining that search
16 warrant?

17 A. For a witness.

18 Q. Okay.

19 A. Casey McCall.

20 Q. What did that witness, Casey McCall, tell you?

21 A. He basically put himself in the vehicle alleged with
22 Miss Brown and the Defendant, Mr. Hogan.

23 Q. Now, and this was a missing person's case on Miss
24 Brown?

25 A. Yes, ma'am.

1 Q. And how long had she been missing by this time?

2 A. It was a good while.

3 Q. Over 30 days?

4 A. Yes, ma'am.

5 Q. Now, had Casey McCall done work for you? Given you
6 reliable information of this nature in the past?

7 A. Yes, ma'am, for almost ten years.

8 Q. Okay, and you never had a problem with his
9 reliability in the past?

10 A. No, ma'am.

11 Q. So what did Casey McCall tell you that led you to get
12 the search warrant?

13 A. That on the night of the incident that he was in the
14 vehicle with Mr. Hogan along with Miss Brown.

15 Q. And by the night of the incident you mean the last
16 time she was seen alive?

17 A. Yes, ma'am.

18 Q. And was that on or about July 5th 2010?

19 A. Yes, ma'am.

20 Q. I'm going to show you the search warrant. This is
21 marked as State's Five. Okay. Do you recognize that
22 document?

23 A. Yes, ma'am.

24 Q. Okay?

25 A. It's a search warrant I obtained.

1 Q. Does it also have a return attached to it?

2 A. Yes, ma'am. It's filled out by Investigator Dease.

3 Q. Now, you obtained the search warrant on July 21st; is
4 that correct?

5 A. Correct.

6 Q. Was it served on Mr. Hogan on that date?

7 A. Yes, it was.

8 Q. Okay. What time on July 21st was the search warrant
9 served on Mr. Hogan?

10 A. 1130 p.m.

11 Q. Now, why was it served on Mr. Hogan on that day?

12 A. That was the night we interviewed him, and we took
13 his vehicle that night.

14 Q. Okay. And when you took his vehicle into your
15 possession that night what did you do with it?

16 A. We drove it from the police department to the fire
17 department, secured and evidence taped the doors and
18 initialled.

19 Q. And the vehicle was searched when?

20 A. On the 22nd.

21 Q. Okay. And you were present for that?

22 A. Yes, ma'am.

23 Q. Okay. Thank you.

24 MS. JOHNSON-LEE: Move to submit the search warrant
25 in evidence?

1 THE COURT: All right. Any objection, Mr. Blake?

2 MR. BLAKE: Just look at it for a moment, Judge.

3 THE COURT: All right.

4 MR. BLAKE: Without objection.

5 THE COURT: All right. Let me see it, please. All
6 right.

7 (WHEREUPON, State's Exhibit No. 5 was admitted into
8 evidence.)

9 THE COURT: State's Number Five admitted into
10 evidence for purposes of this hearing without objection.
11 This would be the search of the vehicle issued on July
12 21st. All right. Ms. Johnson-Lee, you want this back for
13 questioning?

14 MS. JOHNSON-LEE: Thank you.

15 BY MS. JOHNSON-LEE:

16 Q. Was any item seized from the vehicle the next day it
17 was searched?

18 A. I couldn't hear you.

19 Q. Were any items seized on the next day when it was
20 searched?

21 A. Yes, ma'am, it was.

22 Q. What was seized from the vehicle?

23 A. Small piece of gray duct tape with pink fibers and
24 four condoms.

25 Q. Now, the duct tape with the pink fibers, where was it

1 located?

2 A. It was in the vehicle, and one in the back
3 compartment. I'm not sure which one.

4 Q. And that evidence later becomes significant?

5 A. Yes, ma'am.

6 MS. JOHNSON-LEE: And I'm trying not to get much into
7 the case itself and keep it to the search warrant.

8 THE COURT: Keep to the basis of the search warrant.

9 MS. JOHNSON-LEE: I don't think I'm going to have
10 further questions. I think at this time I'll let Mr.
11 Blake ask any questions he has.

12 THE COURT: Let me see it. All right, Mr. Blake.

13 MR. BLAKE: Your Honor, this, of course, is a
14 suppression hearing based on what was taken in the vehicle
15 on that date, and until we hear the testimony I did not
16 know that there was a gap in time between the search
17 warrant being served and then sitting at the fire
18 department.

19 CROSS-EXAMINATION

20 BY MR. BLAKE:

21 Q. But the first issue is simply the reliability of the
22 Confidential Informant, Casey McCall. You said that he
23 had been a confidential informant for you about ten years?

24 A. Yes, sir. I've known him off and on.

25 Q. How regular is that?

1 A. That can be -- with Casey you might hear from him
2 three, four times a week. And it may be six months the
3 next time you hear from him. Basically based off what our
4 needs were. We need somebody to stay in the area we
5 contact him.

6 Q. Any he's been in prison?

7 A. I assume so, yes, sir.

8 Q. Clearly. And were you paying him for these?

9 A. Yes, sir.

10 Q. He was a paid informant?

11 A. Yes, sir.

12 Q. And he has some prior crack issues, correct?

13 A. I guess so. You would have to ask him that.

14 Q. Ever use him on any crack buys?

15 A. Sir?

16 Q. Ever used him on any purchases of crack cocaine?

17 A. Yes, sir.

18 Q. Okay. So sellers sell him crack cocaine?

19 A. Yes, sir.

20 Q. You don't want to make the giant step and say that he
21 uses crack cocaine?

22 A. Correct.

23 Q. All right. And so in the last ten years -- well,
24 actually, during that time he was in prison. But how many
25 times did you use him as an informant in that period of

1 time?

2 A. Over the ten year period, I'd say maybe between 20
3 and 30 times.

4 Q. And how many of those times were purchasing drugs?

5 A. Just off the top of my head I probably say maybe 15
6 or 20 times where he actually purchased some drugs.

7 Q. So that's over half purchase drugs?

8 A. Yeah.

9 Q. And the other times?

10 A. He would supply information, and numerous times over
11 the ten years he would supply information and sometimes he
12 didn't get paid for it.

13 Q. Paid money?

14 A. Correct.

15 Q. He worked himself out of some various legal issues?

16 A. He has done that on occasion, but there were times
17 when he just came forth and gave us information.

18 Q. You stated in your testimony, and this is the first
19 I've known of this, It's not indicated on the search
20 warrant. The search warrant return says that it was
21 executed on July 21st 2010, and that's when you went and
22 seized the vehicle, correct?

23 A. Yes, sir, that is correct.

24 Q. And then you took it from the Police Department to
25 the Bennettsville Fire Department?

1 A. Yes, sir, correct.

2 Q. And you said that it was in a bay at the Fire
3 Department?

4 A. We locked it in one of the bays.

5 Q. It was locked inside, correct?

6 A. Yes, sir.

7 Q. And did anybody have access to that bay besides
8 yourself?

9 A. The firemen did.

10 Q. So that was around 11:30 p.m? About what time you
11 left it in the Fire Department bay?

12 A. Somewhere after 12:00. I'm not sure exactly what
13 time.

14 THE COURT: Mr. Blake, excuse me. I thought the
15 issue here was probable cause?

16 MR. BLAKE: It is, Judge, but we're talking about
17 suppression of the evidence, and I had no idea until this
18 testimony that in fact there was a period of time when
19 this vehicle was left unattended before they actually ---

20 THE COURT: Your questions are still not dealing with
21 that. Your questions are dealing with the handling of the
22 evidence after it was seized. Is that an issue?

23 MR. BLAKE: I'm sorry, Your Honor.

24 THE COURT: Your questions are not directed to that
25 issue that you just raised. Your questions are directed

1 to the handling of the evidence after it was seized. Is
2 that an issue?

3 MR. BLAKE: Well, the ultimate issue is the
4 suppression of the evidence that was seized.

5 THE COURT: Okay.

6 MR. BLAKE: And so I'm simply trying to understand
7 that process between the issuance of the search warrant
8 and then the vehicle being left unattended. So the
9 ultimate issue is the suppression.

10 THE COURT: All right. I understand that we've got
11 three issues here. The first is probable cause is whether
12 the search warrant should be issued. That's what I
13 understood to be the issue. But now you're saying that
14 you didn't understand that there was a period of time
15 between the time the search warrant was issued and the
16 time the vehicle was actually searched? That is the
17 second issue.

18 The third issue is the one that you're going into
19 now. Is that after the seizure of the evidence as to
20 whether or not what was done with it. And it sounds like
21 to me that you're contesting whether it was properly
22 handled after seizure?

23 MR. BLAKE: No, Your Honor.

24 THE COURT: All right, then let's leave that alone.
25 Let's go to the issues of probable cause and whether or

1 not the search warrant was properly handled from the time
2 of the issuance until the time that the search was
3 actually conducted. Isn't that what your issue is?

4 MR. BLAKE: Yes, Judge.

5 THE COURT: Okay.

6 MR. BLAKE: The period of time between the seizure of
7 the vehicle and when they actually did the search.

8 THE COURT: Right.

9 BY MR. BLAKE:

10 Q. What time did you end up searching the vehicle?

11 A. It was the next day on the 22nd.

12 Q. What time?

13 A. I'm not sure of the exact time.

14 Q. Well, was it in the morning? In the evening? It was
15 around noon?

16 A. I'm not sure.

17 Q. Did you participate in that?

18 A. No, sir. S.L.E.D. Crime Scene Unit did.

19 Q. Okay. And you're the one who left it at the fire
20 department?

21 A. Yes, sir, correct.

22 Q. I believe you said you put evidence tape around the
23 door?

24 A. We sealed the door. That way if anybody went inside
25 we would be able to tell.

1 Q. If the tape itself was broken? You're saying that
2 the tape was broken?

3 A. Yes, sir. Somebody would have been able to get
4 inside the car if the tape would have been broken.

5 Q. Could have been possible that the tape could have
6 been broken and replaced by someone else, correct?

7 A. If they had police evidence tape.

8 Q. And you're saying that you left it at the fire
9 department approximately midnight?

10 A. Yes, sir.

11 Q. Okay. And you're telling us that it was a locked bay
12 at the fire department?

13 A. Yes, sir, that is correct. And the evidence tape was
14 also initialled by me.

15 Q. And then you, yourself didn't have keys to that
16 locked bay, did you?

17 A. No, sir.

18 Q. Only, people who had the keys to that apparently was
19 the fire department personnel?

20 A. Yes, sir, correct.

21 MR. BLAKE: No further questions.

22 THE COURT: All right. Ms. Johnson-Lee, any
23 questions -- further questions of this witness with regard
24 to the search warrant of the vehicle issued on July 21st
25 2010 and the subsequent search of that vehicle?

1 MS. JOHNSON-LEE: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. JOHNSON-LEE:

4 Q. When you put the tape on the vehicle to secure it
5 were your initials and the date both on there?

6 A. Yes, ma'am.

7 Q. And to open the door would that tape had to be broken
8 and separated?

9 A. Yes, ma'am.

10 Q. And that's something that S.L.E.D. would have
11 discovered the next day? That it had been broken?

12 A. Yes, ma'am.

13 Q. Thank you.

14 MS. JOHNSON-LEE: No further questions regarding
15 probable cause, Your Honor.

16 THE COURT: Redirect or re-cross, Mr. Blake?

17 MR. BLAKE: No, Your Honor.

18 THE COURT: All right. That concludes the testimony
19 with regard to the search warrant of the vehicle. Now,
20 let's talk about -- you need this witness for the consent
21 search?

22 MS. JOHNSON-LEE: No, Your Honor.

23 THE COURT: All right. You may step down. All
24 right. Let's go to the consent to search of the house on
25 July 22nd 2010.

1 MS. JOHNSON-LEE: We call Shawn Feldner.

2 THE COURT: You are still under oath, Mr. Feldner.

3 THE WITNESS: Yes, sir.

4 SHAWN FELDNER, after previously being duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. JOHNSON-LEE:

8 Q. Did you obtain consent to search from Summer Hogan
9 for their house on Marks Circle in Bennettsville?

10 A. Yes, ma'am, I did.

11 Q. Okay. Was that done on July 22nd 2010?

12 A. Yes.

13 Q. I'm going to hand you the consent. Now, whose names
14 are on that content to search?

15 A. My name along with Investigator Susan Alderman and
16 also Summer Hogan.

17 Q. Okay. What is the address of the home?

18 A. [REDACTED] Marks Circle. Bennettsville, South Carolina,
19 29512.

20 Q. Is that in the County and not in the City of
21 Bennettsville?

22 A. It is in the County.

23 Q. Now, is that the home of John Lee Hogan Jr?

24 A. Yes, it is.

25 Q. Is Summer Hogan his wife?

1 A. Yes.

2 Q. What was the purpose for asking Ms. Hogan for that
3 content to search?

4 A. Lieutenant Turner of the Bennettsville Police
5 Department made contact with us in regards to helping them
6 serve a search warrant. Once we received the search
7 warrant we that Mr. Turner or Lieutenant Turner had
8 obtained it. So there was a question in our mind or
9 alleged with his mind that maybe the search warrant
10 wouldn't be lawfully. So our plan was to talk to
11 Mrs. Summer Hogan. If she did not give consent we would
12 turn around and go with Larry Turner to magistrate court
13 and obtain a search warrant.

14 Q. And did you actually speak with Mrs. Hogan yourself?

15 A. Yes, ma'am, I did.

16 Q. Was Susan Alderman of the Sheriff's Office present?

17 A. Yes, ma'am.

18 Q. What did you tell Summer Hogan why you wanted to
19 search the house?

20 A. I told Mrs. Hogan who I was, who I was with, and who
21 else was with me. And that our purpose was to come to the
22 residence along with the Bennettsville Police Department
23 and S.L.E.D. which is the State Law Enforcement Division.
24 And if she would give us consent to search just the
25 residence itself, and she agreed. Her and I, we talked.

1 She told me who she was.

2 Matter of fact she volunteered so much information to
3 me that once the search began and right towards the end of
4 it she and I went to the Sheriff's Office where I
5 interviewed her.

6 Q. Now, what did you give her was the basis of wanting
7 to do the search?

8 A. I advised her that based on information from
9 Lieutenant Turner that her husband was last seen with
10 Miss Brown, and that we wanted to rule him out. And that
11 was our reason for searching to see if there was any
12 evidence that would pertain to the crime itself or her
13 being missing or to Miss Brown being in the residence.

14 He had already told us that she was inside the
15 vehicle and that she had been dropped off somewhere. I
16 wasn't sure at that time because it was still a missing
17 person's case. And as far as I was concerned it was still
18 the City of Bennettsville's case.

19 Q. Now, did Mrs. Hogan give -- admit limitations on the
20 search?

21 A. I'm sorry.

22 Q. Did Mrs. Hogan give any limitations on what you could
23 and could not search in the home?

24 A. No, ma'am. Like I said she started offering
25 information right away.

1 Q. Okay. And what parts of the home were searched?

2 A. We searched the living room area, the kitchen area
3 and the bedroom area that belonged to Mr. and Mrs. Hogan.
4 And if I'm not mistaken she had mentioned that there was
5 an individual living in the residence that used the back
6 living room which we never went in.

7 Q. Did you tell her that you would seek a search warrant
8 or could seek a search warrant if she did not consent?

9 A. No, I did not.

10 Q. Okay. At any point in time did she attempt to revoke
11 that consent?

12 A. No, she didn't.

13 Q. And who from S.L.E.D. was present at the search?

14 A. Paul Larosa.

15 Q. Were items seized from the search?

16 A. Yes, ma'am.

17 Q. Is there a list attached to that consent?

18 A. There is.

19 Q. And what were the items seized from that search?

20 A. Comforter, pieces of smashed wall, cutting from the
21 den floor, cutting from the den floor and a welding
22 sleeve. I believe it says from the cabinet above washer
23 and dryer.

24 Q. And do you know ---

25 A. Paul Larosa signed it, and give it to us.

1 Q. And do you know whether or not Mrs. Hogan actually
2 lived in that residence?

3 A. Yes.

4 Q. And did you see any evidence in the house to show
5 that she did not live there?

6 A. No, I did not.

7 Q. Okay. And did she and Mr. Hogan have a small child
8 together?

9 A. Yes, there was a small child.

10 Q. And was there evidence in the home that a baby or a
11 young child lived there also?

12 A. Yes.

13 Q. Have you at any time seen the baby?

14 A. I don't remember seeing a child. I remember her
15 bringing the child to the Sheriff's Office for the
16 interview, and I remember the child the following day. I
17 don't remember the child being at the residence during the
18 search.

19 Q. And whenever you've seen the child was the child with
20 her?

21 A. Yes. Yes.

22 Q. All right. Thank you.

23 MS. JOHNSON-LEE: Your Honor, I would like to move to
24 admit the Consent to Search and offer it into evidence as
25 State's Number Six -- excuse me, Eight?

1 THE COURT: All right. Show it to Mr. Blake.

2 MR. BLAKE: Judge, I'm going to object at this point.
3 They have not produced Mrs. Hogan. I guess they might
4 call Mrs. Alderman or not. It is a consent search. It
5 depends, of course, on the person giving that consent to
6 search. We have the testimony of at least one person.
7 There were several people there.

8 THE COURT: All right. Let me see the exhibit.

9 MS. JOHNSON-LEE: Yes, Your Honor.

10 THE COURT: I'll decide whether or not it's
11 admissible. All right. What say you to the issue with
12 regard to the admissibility with the person giving the
13 consent not being present?

14 MS. JOHNSON-LEE: Your Honor, I think it goes to the
15 credibility of the officers. Ms. Alderman -- Investigator
16 Alderman was present in the courthouse earlier. The State
17 is trying to make contact with her again now, but she was
18 present in the courthouse, Your Honor. She's here, Your
19 Honor.

20 THE COURT: Who is that?

21 MS. JOHNSON-LEE: This is Investigator Alderman. She
22 is also the one who signed on there.

23 THE COURT: All right. We'll hold off admissibility
24 of this until I hear further. All right. Won't be
25 admitted at this time. State's Number Eight is still for

1 I.D. only. All right. Go ahead, Ms. Johnson-Lee.

2 Anything else?

3 MS. JOHNSON-LEE: That would be all my questions.

4 THE COURT: All right cross-examination, Mr. Blake?

5 CROSS-EXAMINATION

6 BY MR. BLAKE:

7 Q. This was on July 22nd you say you spoke to
8 Mrs. Hogan?

9 A. Yes, sir.

10 Q. Mr. Hogan was not there?

11 A. No, he was not.

12 Q. Do you know where he was?

13 A. No, sir, I don't.

14 Q. And this was around 3:10 in the afternoon?

15 A. Somewhere around 1500 hours, yes, sir.

16 Q. Had you previously met Ms. Hogan?

17 A. Actually not.

18 Q. Did she present you with any kind of identification?

19 A. I'm sorry.

20 Q. Did she present you with any kind of identification?

21 A. No, sir.

22 Q. Okay. And who was present with you at this time?

23 A. You mean my talk with Mrs. Hogan? It was me, Susan
24 Alderman. I know that she and I spoke to her. I'm not
25 sure if Larry Turner was there. I know Paul Larosa, but

1 Paul had nothing to do with obtaining ---

2 Q. Paul Larosa in the courtroom today?

3 A. Yes, he is.

4 Q. And, apparently, there were no threat of you going to
5 obtain a search warrant if she didn't give her consent?

6 A. What do you think? Threats from me?

7 Q. Or anybody else rather?

8 A. No, sir. Actually, we pulled into the backyard and,
9 actually, me and Susan Alderman went on the inside with
10 Mrs. Hogan explaining everything to her while the other
11 agents waited on the outside until I received the consent.
12 And we went back out and give them consent and the search
13 was started.

14 Q. How long was that conversation go on for?

15 A. Just a few minutes as far as the consent was
16 concerned, it went on from the point of consent all the
17 way to the Sheriff's Office and through the interview. We
18 had a lengthy conversation.

19 MR. BLAKE: No further questions.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MS. JOHNSON-LEE:

23 Q. Was this lady that signed the form the same
24 Mrs. Summer Hogan that with John Hogan that came to the
25 Sumter County Sheriff's Office and brought the baby and

1 followed you there?

2 A. Yes, the same lady and same child.

3 Q. And did he ever say at any time, "That's not my wife.
4 It's somebody else?"

5 A. No.

6 Q. Thank you.

7 THE COURT: Recross?

8 MR. BLAKE: No, Your Honor.

9 THE COURT: Thank you. You may step down.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: All right. Again, still with regards to
12 the consensual search in this particular search the State
13 may call the next witness.

14 MS. JOHNSON-LEE: Susan Alderman.

15 THE COURT: All right, Ms. Alderman.

16 SUSAN ALDERMAN, after being duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MS. JOHNSON-LEE:

20 Q. State your name for the record?

21 A. Susan Alderman.

22 Q. Are you an investigator with the Marlboro County
23 Sheriff's Office?

24 A. I am.

25 Q. Were you present on July 22nd 2010 at the home of

1 John Hogan and Summer Hogan?

2 A. Yes.

3 Q. Who all was present?

4 A. There were the investigators with the Sheriff's
5 Office, Shawn Feldner. There were investigators from the
6 police department and also S.L.E.D.

7 Q. Okay, and S.L.E.D, Paul Larosa, there?

8 A. Yes, ma'am.

9 Q. Now, did you speak with Mrs. Hogan about signing a
10 consent to search that residence?

11 A. I remember being in there when she was -- when we
12 talked with her, and Investigator Feldner explained the
13 process to her.

14 Q. Now, what did you hear Investigator Feldner explain
15 to her?

16 A. He was explaining the reasons why we needed to search
17 the home. He also was explaining the situation that had
18 some up and the reason why we needed to go through the
19 home.

20 Q. Did she sign that consent to search in front of you?

21 A. Yes, ma'am.

22 Q. And at any point in time did she say, "I don't want
23 to sign this?"

24 A. No, ma'am.

25 Q. Did she have any questions about that form that

1 Investigator Feldner or you did not answer?

2 A. Not that I'm aware of.

3 Q. Do you remember if she ever had questions about it?

4 A. No, ma'am.

5 Q. Did she seem hesitant at all about you guys going
6 into the house and searching?

7 A. No, ma'am.

8 Q. What were the reasons Investigator Feldner gave her
9 for going into the home and looking around?

10 A. He had explained that we were investigating or
11 assisting the City investigating a missing person, and
12 that her husband was last seen with the missing person.

13 Q. Did she put any limitations on which rooms in the
14 house were allowed to be searched?

15 A. No, ma'am.

16 Q. Did she object to any items being removed from the
17 home?

18 A. No, ma'am.

19 Q. Was she helpful in the search?

20 A. She was very helpful.

21 Q. Thank you.

22 MS. JOHNSON-LEE: That's all the questions I have.

23 THE COURT: All right. Cross-examination, Mr. Blake?

24 MR. BLAKE: No further questions, Your Honor.

25 COLLOQUY

1 THE COURT: Anything else on this issue? How about
2 the exhibit itself?

3 MS. JOHNSON-LEE: We move to admit the exhibit, Your
4 Honor.

5 THE COURT: All right. Mr. Blake, what's your
6 position.

7 MR. BLAKE: I assume that the consent to search
8 includes the return?

9 MS. JOHNSON-LEE: That's correct.

10 THE COURT: This is State's Number Eight. What did
11 you say?

12 MR. BLAKE: I assume that the consent to search
13 includes the return, but we didn't get to the issue on the
14 July 21st search of the vehicle. And I thought the
15 statement was going to be introduced by Paul Larosa was
16 actually ---

17 THE COURT: I can't understand you. Please look up
18 at me when you speak and not down.

19 MR. BLAKE: Excuse me, Judge. We have not gotten to
20 what was obtained by that. It appears that Paul Larosa is
21 the one who signed the return. So it's a little informal
22 on the search.

23 THE COURT: I thought the issue -- that's why I asked
24 you before we started what were the issues. And I thought
25 the issue was consent. So I didn't have the State go into

1 what was received of that.

2 MR. BLAKE: Okay. No objection.

3 THE COURT: Sir?

4 MR. BLAKE: No objection.

5 THE COURT: No objection. All right. So State's
6 Eight is admitted into evidence without objection.

7 (WHEREUPON, State's Exhibit No. 8 was admitted into
8 evidence.)

9 THE COURT: All right. Thank you, Ms. Alderman. You
10 may step down.

11 MS. JOHNSON-LEE: Your Honor. We recall Shawn
12 Feldner for the last search warrant of July 23rd.

13 THE COURT: All right. This has to do with the
14 search warrant of the house on 7/23/2010. Mr. Feldner is
15 recalled. Mr. Feldner, you are still under oath.

16 THE WITNESS: Yes, sir.

17 SHAWN FELDNER, after previously being duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. JOHNSON-LEE:

21 Q. Mr. Feldner, did you request that the search warrant
22 of the home of July 23rd be obtained?

23 A. Yes, I did.

24 Q. Okay. And who did you request to go get the search
25 warrant for you?

1 A. Lieutenant Jamie Seales, who is my direct supervisor
2 at the Sheriff's Office.

3 Q. And did you have a chance to look at that search
4 warrant?

5 A. I did.

6 Q. All of the information here for the purpose of
7 obtaining the search warrant is that all information that
8 came directly from you?

9 A. Directly from me through Mr. Hogan.

10 Q. Okay. And the home was searched on the same date?

11 A. Yes.

12 Q. Okay. Was that done by the State Law Enforcement
13 Division and other officers?

14 A. That is correct.

15 Q. Okay. Now, what was the reason for obtaining this
16 particular search warrant of the home?

17 A. Based on the details of Mr. Hogan's confession led us
18 to believe that there were other items within the
19 household. Since I was privy on the first consent on the
20 22nd I knew what was obtained and felt that there were
21 more items to be obtained on those search warrants the
22 confession came through Mr. Hogan.

23 Q. I'm going to hand you a copy of the search warrant
24 which is marked as State's Exhibit Seven for
25 identification. Specifically, what information did you

1 give to Investigator Seales to go get that search warrant
2 for you?

3 A. Number Three, on the affidavits listed -- Your Honor,
4 on one, two, three, four, and five paragraphs for the
5 affidavit and reason to believe by James Seales, Number
6 Three reads, "An interview this week of Hogan led to him
7 admitting of being with Brown on the night in question,
8 and he agreed take a polygraph test." He ultimately
9 failed. Mirandized confession of the killing of Brown at
10 his residence listed herein. The same residence was
11 searched yesterday by the Marlboro County Sheriff's
12 Office."

13 This is Paragraph Four, Your Honor, "Marlboro County
14 Sheriff's Office, Bennettsville Police Department and
15 S.L.E.D. for forensic evidence and potential evidence was
16 collected. This happened in the field since the
17 confession today. The second search for items listed
18 herein is necessary in that the facts of the crime have
19 been relayed to investigators as they unfolded and new
20 avenues for search or required for example more in depth
21 forensic testing for blood and cleaning products. Also to
22 include the knife Hogan says he used to kill Brown."

23 Also Paragraph Number Five, "To further solidify the
24 statement of Hogan, he carried investigators to a wooded
25 area off of Highway 38 South where he disposed of Ms.

1 Brown's body in a barrel that came from the storage
2 building in the yard and property listed herein. There
3 has been in fact a barrel found that appears to be fluids
4 leaking out and a smell that I know and has experience
5 that is consistent with that of a decomposing human body."

6 Q. And was all that information correct?

7 A. Yes, it's all correct.

8 Q. And the search took place on that same date?

9 A. Yes, it did.

10 Q. And were items seized as a result of that search?

11 A. Yes, ma'am.

12 Q. Okay. What was seized as a result of that search?

13 A. Reading from the return dated July 23rd 2010, "Roll
14 of duct tape from fireplace area, cuttings of carpet from
15 bathtub, window blinds from bathroom, swabs for D.N.A.
16 from hallway, swabs for D.N.A. from kitchen near -- I
17 can't read the writing. I'm not sure what the last two
18 words are. And the last, set of kitchen knives." I think
19 that's swabs for D.N.A. kitchen from holes in the wall. I
20 think that's what it is.

21 MS. JOHNSON-LEE: And the State would move to admit
22 State's Exhibit Seven.

23 THE COURT: All right. Yes, sir. Any objection?

24 MR. BLAKE: Could I ask a couple of questions,
25 please, Judge?

1 THE COURT: Yes, sir. I'll give you -- she's
2 offered -- I assume she's finished with his testimony. Go
3 ahead.

4 CROSS-EXAMINATION

5 BY MR. BLAKE:

6 Q. Who were the officers who signed the return?

7 A. Can I see the return? The inventory is signed by
8 Scott Hardy, and Paul Larosa and signed by Jamie -- Jamie
9 Lynn Seales. I'm not sure.

10 Q. That would be your boss?

11 A. Actually, that's James Campbell. I'm sorry: Also
12 known as Hog Head.

13 Q. Campbell. So it's Scott Hardy and Paul Larosa were
14 also there?

15 A. Yes, sir.

16 MR. BLAKE: No further questions.

17 COLLOQUY

18 THE COURT: Any objection to the admissibility of
19 State's Number Seven?

20 MR. BLAKE: No, Your Honor.

21 THE COURT: All right. You have it?

22 THE WITNESS: Yes, sir, I do.

23 THE COURT: All right. Be admitted into evidence
24 without objection; that being the search warrant of the
25 house dated 7-23-2010.

1 (WHEREUPON, State's Exhibit No. 7 was admitted into
2 evidence.)

3 THE COURT: All right. Anything further of this
4 witness, Ms. Johnson-Lee?

5 MS. JOHNSON-LEE: Not of this witness, Your Honor.

6 THE COURT: All right. Step down. Please.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: All right. Ms. Johnson-Lee, anything
9 else with regards to the search warrant -- the probable
10 cause on the search warrant issued for the search of the
11 house on 7-23-2010?

12 MS. JOHNSON-LEE: The issue is limited just to
13 probable cause or pertaining to the search warrant, no.

14 THE COURT: Then is that your only objection, Mr.
15 Blake?

16 MR. BLAKE: Yes, sir.

17 THE COURT: Okay.

18 MS. JOHNSON-LEE: If that's his only objection, Your
19 Honor, I would not have to call Paul Larosa.

20 THE COURT: All right. All right, Mr. Blake,
21 anything from the State in the way of testimony -- I mean
22 from the Defense by way of testimony with regards to any
23 of these three searches: The original search of the
24 vehicle, the search warrant, the consent search of the
25 house or the search warrant issued for the search of the

1 house on 7/23. Anything in the way of testimony I'll be
2 glad to hear from you in the way of argument, but any
3 evidence you wish to present on those issues.

4 MR. BLAKE: Judge, I would like to call Paul Larosa
5 as to the July 21st search warrant of the vehicle.

6 THE COURT: All right. Come around.

7 PAUL LAROSA, after being duly sworn, testified
8 as follows:

9 CLERK OF COURT: Please take a seat and state your
10 full name.

11 THE WITNESS: My name is Paul Larosa. Last name is
12 spelled L-A Capital R-O-S-A.

13 DIRECT EXAMINATION

14 BY MR. BLAKE:

15 Q. And you work with S.L.E.D?

16 A. Yes, sir. I'm a Sr. Special Agency for the State Law
17 Enforcement Division.

18 Q. And at that time you were in the Crime Scene Unit?

19 A. Yes, sir, that is correct.

20 Q. And you are in a different unit now?

21 A. Yes, sir. I'm in the Behavioral Science Unit.

22 Q. And were you there on July 21st relative to the
23 vehicle or did you just simply go on July 22nd to the fire
24 department?

25 A. I believe that the paperwork, whatever day that we

1 came down. I believe that it was the day after the
2 vehicle had been secured.

3 Q. The reason I'm asking is the paperwork is unclear,
4 but you came down the day after the paperwork was secured?

5 A. Yes, sir. After the warrant had been obtained.

6 Q. Okay. And you -- tell us how you got in there to the
7 fire department?

8 A. Yes, sir. When the lieutenant had called the
9 previous night he asked our advise on what was the best or
10 proper way to secure the vehicle. The evidence that we
11 were looking to obtain would have been inside the vehicle.
12 So we told him to secure the vehicle with what we call
13 evidence tape which isn't the tape you string out and
14 says, 'police line. Don't cross'.

15 It's actually very sticky, one sided tape that you
16 can affix to any piece of evidence or a door where the
17 crack in the door is. You can put the tape across it and
18 initial it and sign it and then that way if somebody opens
19 the door or if somebody intends to mess with the vehicle
20 or interrupt some of the evidence it will be seen. And
21 that's how it was secured that night, and that's how it
22 was when we arrived.

23 Q. Okay. That's the condition that it was when you
24 arrived?

25 A. Yes, sir, it was.

1 Q. What time was that?

2 A. I believe we got there about 9:00, 9:30 a.m.

3 Q. You said, 'we'. Who else?

4 A. It would have been an individual who would have been
5 in the Training Program with S.L.E.D, Scott Larry Hardy.
6 He was a special agent.

7 Q. Was that bay unlocked when you got there?

8 A. I can it was secured. It was secured as the bay
9 doors were down and we had to go in through the front door
10 of the fire department from the bay.

11 Q. The fire department give you the key?

12 A. They were present within the front office area and
13 walked us into the back.

14 Q. When you approached the vehicle you said the tape
15 itself was intact?

16 A. Yes, sir. When we got there the first thing we do is
17 document the condition of the vehicle including the crime
18 scene photographs which we did. It indicated that that
19 seal was still secured and as part of the normal procedure
20 we would ask the lieutenant to look at it and say, yes,
21 that is his signature. The tape that he used, and so on
22 and so forth.

23 Q. And at some point then you broke the tape and got
24 inside?

25 A. Yes, sir. After the initial walk through we would

1 take pictures and then cut the tape and enter the vehicle.
2 It became basically -- it became my piece of the evidence
3 at that time. And so I was the responsibility of opening
4 and making sure everything was secured at that time.

5 Q. When you opened the vehicle and took paragraph in the
6 inside?

7 A. Yes, sir.

8 Q. And how long did that search take of the vehicle?

9 A. I'm, without looking at my run sheets which I believe
10 I provided a copy of, it would have taken about two, two
11 and a half hours.

12 Q. So you went through the entire vehicle then?

13 A. Yes, sir, the inside of the car.

14 Q. And the two things that you found then from the small
15 piece of the gray duct tape, the pink fibers?

16 A. That's one of the things, yes, sir.

17 Q. Was there anything else in the vehicle?

18 A. Not that there were any signs of a disturbance within
19 the vehicle. That's primarily what we were looking for
20 because at that point we weren't sure what we had. We had
21 a missing person. So anything and everything could have
22 been -- that could become evidence. We just weren't sure
23 if Ms. Monesha was alive, dead, deceased, how long she had
24 been missing at that point.

25 Q. All right. So no signs of a disturbance to the

1 vehicle?

2 A. None that we could tell that were -- that jumped out
3 to being my experience as a sign that of a struggle or a
4 murder or an assault had taken place inside the bed of the
5 truck.

6 Q. Did you spray it with Luminol?

7 A. No, sir. Not at that time we didn't see anything to
8 indicate that there was a need to use Luminol. Luminol is
9 kind of t.v. talk. We don't really use Luminol as much as
10 we use amino black and L C.D.

11 Q. Did you use anything?

12 A. No, sir. We didn't see anything to indicate somebody
13 has been bleeding on the inside of the truck.

14 MR. BLAKE: No further questions.

15 THE COURT: Mrs. Johnson-Lee, anything further of
16 this witness?

17 MS. JOHNSON-LEE: I just want to show him some
18 photographs, Judge. If I could get these pre-marked,
19 please.

20 THE COURT: Isn't the issue here not what was found
21 but what was voluntariness -- I mean probable cause.

22 MR. BLAKE: Judge, I just want to extend it a little
23 bit being in the fire department. I think it's been made
24 very clear that it was secured. Nothing happened.

25 MS. JOHNSON-LEE: And it's only purpose of the

1 photograph ---

2 THE COURT: It's not the issue of the relevance of
3 the photographs.

4 MR. BLAKE: I don't see the need of going any further
5 with this. From the Defense side it's clear nothing
6 was ---

7 THE COURT: All right. We won't do it. Everybody
8 stick around. If he argues that I'll issue a ruling, Ms.
9 Johnson-Lee.

10 MR. BLAKE: Thank you, Your Honor.

11 THE COURT: Thank you. You may step down.

12 MR. BLAKE: Thank you, Your Honor.

13 COLLOQUY

14 THE COURT: All right. Ms. Johnson-Lee, anything
15 else with regards to -- oh, no. Mr. Blake's witness. Mr.
16 Blake, anything with regard to -- any or anything by way
17 of testimony with regard to any or all of the three
18 searches? One of the vehicle by search warrant? One of
19 the house by consent? And one by the house by search
20 warrant? Anything by way of testimony?

21 MR. BLAKE: No, Your Honor.

22 THE COURT: All right. That being the case then the
23 motion to suppress, Mr. Blake, is yours. So I'll be glad
24 to hear from you by way of argument.

25 MR. BLAKE: I really don't have much argument at this

1 point. Through this hearing I did learn more than I knew
2 from the original paperwork. I don't think -- we don't
3 have any issue with the July 21st search warrant. It went
4 to the fire department bay. There was obviously no
5 tampering. As for the July 22nd, it's really just the
6 matter of whether or not Mrs. Hogan did consent. She, of
7 course, is not here. And then July 23rd, there is clearly
8 probable cause for that search warrant.

9 THE COURT: All right. The Defense admits and it has
10 no issue with regards to the search warrant of the vehicle
11 dated 7-21-2010. And, therefore, that search warrant is
12 valid and the evidence seized admissible.

13 The consent to search of the house, the Court will
14 find, even though Mrs. Hogan is not here, that there was
15 valid consent given. The witnesses testified that she
16 gave her consent. The Court will hold that the consent to
17 search was also valid, and the evidence from that search
18 was admissible as well.

19 And, finally, the search warrant issued by -- for the
20 house on July the 23rd 2010. The State does not -- the
21 Defense does not contest the validity of the probable
22 cause for the issuance of that search warrant. The thus
23 the evidence from the search warrant would be admissible
24 as well. That takes care of the three search warrants,
25 all of which the Court would rule are valid searches and

1 the evidence admissible based on the totality of the
2 circumstances and the evidence presented to the Court:

3 All right. Now, that brings us to -- I might look at
4 them here in a few minutes. The expert witnesses, one
5 question that we're going to have to have is the
6 admissibility of that witness's testimony. And I don't
7 think I can rule on that without a proffering of the
8 testimony and knowing what the witness is going to testify
9 to under State v. Council as to whether it is relevant,
10 whether or not this witness is qualified.

11 So what I think I'm going to have to do is to convene
12 a hearing for that purpose, but we'll come back to that in
13 just a few minutes. Now, perhaps there may be a matter
14 that we do need to deal with and talk about a little bit
15 is the State has got the photographs which the State would
16 plan to introduce at this -- in this matter.
17 Specifically, the autopsy photographs and how the body was
18 found.

19 Ms. Johnson-Lee, have you gone over with your
20 officers and determined which of those photographs you
21 want to introduce or you prefer to decide that, talk with
22 Mr. Blake about it, and then address it at some point in
23 time since we're going to have another hearing when the
24 expert witness comes in the prior to the trial and
25 specifically decide on the photographs at that time and

1 see if Mr. Blake agrees to them and we'll address the ones
2 he doesn't agree to.

3 MS. JOHNSON-LEE: We can do that, Your Honor.

4 THE COURT: All right. Keep in mind that the rules
5 under State v. Nance, the rules for admissibility of the
6 photographs that they do need to prove some point in issue
7 or before the Court and are not unduly cumulative. But
8 look at the ones that you decide you wish to introduce and
9 go over those with Mr. Blake and we'll take these up at
10 the next hearing.

11 Now, those are the matters that Mr. Blake had raised
12 in this matter. Let's take a look, counsel, at the -- I'm
13 just saving some notes on the computer. All right. All
14 right, Mr. Blake, I am available. Let me ask you about --
15 Madam Clerk, when have you got -- I know you don't have
16 any more General Sessions after this term until when?

17 CLERK OF COURT: December the 12th is our next
18 General Sessions.

19 THE COURT: All right. And that's Judge Burch?

20 CLERK OF COURT: Yes.

21 THE COURT: And what about Common Pleas? When is the
22 courtroom going to be available?

23 MS. JOHNSON-LEE: Your Honor, if I may interject. On
24 the week that Judge Burch is coming there is no court on
25 Monday, and Judge Burch is going to be in Dillon Tuesday

1 and Wednesday. We won't be having court here that
2 Thursday and Friday.

3 THE COURT: I don't think I'm available. I think I'm
4 in court somewhere else. Let me look at December. Yeah,
5 I've got General Session in Sumter that week. What about
6 Common Pleas? What have you got then?

7 CLERK OF COURT: Judge Nettles has got a special for
8 November 21st and 22nd.

9 THE COURT: Okay. How about the 28th?

10 CLERK OF COURT: I don't see anything.

11 THE COURT: The week of November 28th?

12 CLERK OF COURT: I don't see anything.

13 THE COURT: No Family Court or anything?

14 CLERK OF COURT: No.

15 THE COURT: All right. Mr. Blake, what I want to do
16 is I want you check with your ---

17 MR. BLAKE: Judge, I can tell you already that I have
18 to be in court in Federal Court on the 28th.

19 THE COURT: All right. How about later on that week?

20 MR. BLAKE: That will be fine.

21 THE COURT: What about your expert? What's his
22 availability? If I need to proffer the expert's testimony
23 I need to know when I'm going to hear it in chambers -- I
24 mean in camera on the record under State v. Council to
25 determine admissibility and whether he's qualified. So

1 we're going to have to have the expert here to proffer
2 that testimony. I'm available on the 29th. Actually, I'm
3 available -- yeah, I'm available the 28th. I would be
4 available the 29th or the 30th of -- pretty sure of -- let
5 me go back and just make sure of November.

6 MR. BLAKE: Judge, what day of the week is that?

7 THE COURT: The 28th is Monday. The 29th would be
8 Wednesday. Thursday would be -- the 29th would be
9 Tuesday. 30th would be Wednesday.

10 MR. BLAKE: Can I check with them then and get back
11 to you?

12 THE COURT: Tentatively, let's plan to have a hearing
13 on November the 30th at a time to be agreed upon, but see
14 if he's available that morning or that afternoon. And
15 I'll come over and we will address the matter of the
16 expert witness' testimony and decide that and give you
17 plenty of time before the matter is scheduled the end of
18 February, Ms. Johnson-Lee. Give both of you plenty of
19 time.

20 I'd like to get him done before -- he said he was
21 going to be out of the country in January so I'd like to
22 get that out of the way during that week of November the
23 28th. And I'm available either the 29th or the 30th,
24 whatever day suits y'all. Got any preference,
25 Ms. Johnson-Lee?

1 MS. JOHNSON-LEE: I would prefer the 29th. I have an
2 appointment that's been set up for two month now for
3 personal issue on the 30th. I can check and see this
4 afternoon to see if I can do it that morning or see if I
5 can that afternoon.

6 THE COURT: You and Mr. Blake get together and see
7 which one of those two days is best for you, and I will
8 schedule for one of those times. Check with the expert.
9 I'll be available either the 29th -- November the 29th or
10 November the 30th to hear the matter with regard to the
11 expert's testimony. Both with regard to relevance,
12 content and qualifications.

13 MR. BLAKE: Judge, are you available that following
14 week if need be?

15 THE COURT: No, that it would be the week of December
16 the -- no, I'm in Lee County the week of December the 5th
17 and Sumter the week of December the 12th. And I really
18 prefer not to do it during the week of December the 19th
19 or get close to Christmas at that time. I'd like to get
20 this matter heard that last week in November or the first
21 couple days in December, preferably the 29th or the 30th.

22 MR. BLAKE: I don't know what his schedule is. We
23 can go to Lee County or Sumter to do that?

24 THE COURT: Well, Lee County is kind of like
25 Chesterfield. It usually doesn't last very long, so I

1 would probably be available the latter part of the week in
2 Lee County or come over here if it breaks down over there.
3 I'll have to check and see what they've got that would be
4 a possibility the week of the 5th or the latter part of
5 the week. I don't know. The 8th, 9th, something along in
6 there. Check with the expert and see, and y'all get back
7 to me.

8 All right. Now, we've got a few more minutes, and
9 what I'd like to hear from you now is at least by way of
10 argument or at least -- let's go to the State's matters.
11 We addressed the matter -- I already addressed the matter
12 of the Defense with the exception of the photograph and
13 y'all get together on those.

14 The intoxication as a defense as a mitigating factor
15 really has to do with the expert's testimony, does it not?

16 MR. BLAKE: Yes, sir.

17 THE COURT: So we will address that at that time.
18 Tell me, Mr. Blake, what your position is on the State's
19 motion that there not be reference or comments or
20 arguments regarding the biblical quotations?

21 MR. BLAKE: Judge, I guess I need clarification.
22 Obviously, open and closing arguments relate to the
23 evidence. Certainly closing arguments only speak about
24 what's in the evidence. But are we talking about -- for
25 instance, the Chesterfield Courthouse. If you're inside

1 the courtroom it's got a quotation from the book of Amos.
2 I just don't know ---

3 THE COURT: Quotation of what?

4 MR. BLAKE: From the Book of Amos. Right there right
5 over the bench. Everybody sits in the courtroom ---

6 THE COURT: Behind me?

7 MR. BLAKE: Yes. So I don't know what
8 Ms. Johnson-Lee is getting at. I kind of get an idea of
9 her intent, but I'd like to clarify what she's actually
10 speaking to. I mean is she talking about subjects such as
11 justice? Biblical?

12 THE COURT: Well, you know we've got to develop a
13 balance between separation of church and State. And I
14 don't know what she's talking about either. I really
15 don't see where any argument, opening or closing, as to
16 what the Bible says about guilt or innocence or judging or
17 not judging or any of those things really is relevant.

18 You know I don't have any idea what she might be
19 asking for, and I've been asked this many times that of
20 the Bible says, "Judge not and you be not judged." Be
21 you've got to keep that in context, and I think we're
22 getting far afield if we start getting into biblical
23 quotations. What are you thinking about, Ms. Johnson-Lee?

24 MS. JOHNSON-LEE: Judge, I'll just recall the last
25 trial I had with Mr. Blake where throughout his closing

1 argument he repeatedly referenced verses from the Bible
2 and uses the bible as much as the law to convince the jury
3 or sway the jury, and I would just ask that that not done
4 in this trial.

5 THE COURT: Well, here is my position on it, and I'll
6 make -- clarify this as we get closer to it. First of
7 all, the opening statements are not arguments, and so they
8 should not be any reference to anything that is not going
9 to be shown in the evidence. That's what the purpose of
10 opening statements is to give the jury an outline of what
11 they think the evidence will show.

12 If it's outside -- if it's something that is outside
13 what the jury think or what the parties think the evidence
14 will show then it's not proper in opening statement.

15 Obviously, in close statement, if there is no
16 evidence to that effect then it's not admissible in
17 closing statements as well, and I can't imagine that there
18 is going to be any evidence regarding what the Bible says
19 about certain issues. For purposes of this hearing the
20 Bible is no different than any other book. The testimony
21 of what's contained in the book is not admissible whether
22 it's the bible or whether it's Darwin theory on evolution
23 or whether it is an author.

24 So I don't think that any quotations from a
25 particular treatise or work is admissible. And if it's

1 not admissible then it wouldn't be referred to. That's my
2 opinion. And I will clarify that later as we get closer
3 to the trial, but that's the way I feel about it. I think
4 we've got to avoid the references to biblical quotations
5 or any writing that are not relevant to the issues in this
6 case, and that would be the Court's ruling. I'll think
7 about it a little bit more and clarify the -- discuss it
8 further on.

9 MR. BLAKE: Judge, if you could add to that. The
10 Amos quote that I told you about does come from Judge
11 Anderson's book on close arguments. It's just a
12 general -- talking about reference ---

13 THE COURT: Well, I'll be glad to hear from you if
14 it -- again, Judge Anderson's book is not admissible
15 either. As much respect as I've got for Judge Anderson
16 his -- you know anything with regard to a treatise is not
17 admissible. It's hearsay. Judge Anderson's book is
18 hearsay as far as this Court is concerned, and with all
19 the respect that I might have, and I don't know if you're
20 referring to Judge Ralph King Anderson or Judge Joe
21 Anderson.

22 But it's still hearsay and I don't know that that
23 makes that admissible because it comes from Judge
24 Anderson's book, but I'll hear further argument on it, but
25 my initial impression is that biblical quotations or

1 quotations from any written work are not admissible in
2 opening statement until it is anticipated that that will
3 be in evidence. And it is not admissible in closing
4 statements or closing argument if it is not in evidence.
5 And I can't imagine a situation where it would be in
6 evidence, but that's the Court's ruling at this time.

7 Then the State has also a matter to prohibit any
8 evidence not to exclude the search in Rule Five. I would
9 tell both parties to make the connection that I will hold
10 that matter open until the hearing scheduled for the later
11 part of November, first part of December. But all Rule
12 Five requirements and Brady requirements must be met by
13 the December hearing. Anything that is not disclosed to
14 either side by the hearing will be prohibited.

15 MR. BLAKE: Judge, can we hold that open until 30
16 days before the trial? Part of the hearing in December
17 will -- late November is going to be relative to the
18 expert.

19 THE COURT: All right. We'll hold that open until my
20 January term of Court. I've got a January term here
21 scheduled for January when we were going to try this issue
22 originally. So the matter of the disclosure would be hold
23 open for the Marlboro term in January.

24 All right, Ms. Johnson-Lee, have you shared with the
25 Defense your matters that you think are prior convictions

1 admissible under 609?

2 MS. JOHNSON-LEE: I've given him the ---

3 THE COURT: Rap sheet.

4 MS. JOHNSON-LEE: Rap sheet. I specifically
5 discussed with him previously his Texas conviction.

6 THE COURT: That was when?

7 MS. JOHNSON-LEE: 1999.

8 THE COURT: And what did he get? That would be
9 outside the ten years, but ---

10 MS. JOHNSON-LEE: Yes, sir.

11 THE COURT: --- but I assume he was convicted and
12 would be inside the ten years from the time he was
13 released from custody?

14 MS. JOHNSON-LEE: Beg the Court's indulgence. Yes,
15 sir, he's got convictions for aggravated assault with a
16 deadly weapon. The disposition date is June 19th of 2001.

17 THE COURT: July of 2001?

18 MS. JOHNSON-LEE: June of 2001.

19 THE COURT: June of 2001.

20 MS. JOHNSON-LEE: And the incident date for this case
21 was in June of 2010.

22 THE COURT: Okay. You contest that as being an
23 impeachable offense, Mr. Blake?

24 MR. BLAKE: Yes, sir.

25 THE COURT: Why?

1 MR. BLAKE: First of all, and you can go down the
2 various aspects. I don't know what the actual impeachment
3 value is. Of course, this rule is to determine --
4 essentially to help the trier of fact to determine whether
5 Mr. Hogan, when he testified, is telling the truth.
6 Certainly, not to help convict him for something that
7 happened in the past that could be completely
8 inadmissible. I'm not sure the truth telling nature of
9 the assault conviction at that point brought out in the
10 case or doesn't happen ---

11 THE COURT: So you're basis for objecting to it is
12 what?

13 MR. BLAKE: Well, I was just beginning, Your Honor.
14 I don't think it has anything to do with telling the
15 truth. That's the first factor.

16 THE COURT: All right. Relevance.

17 MR. BLAKE: Second, is that it's obviously quite
18 remote.

19 THE COURT: Now, wait a minute. That's what I want
20 to ask you about. It's within the statute as far as
21 remoteness is concerned under 609(B), is it not?

22 MR. BLAKE: Yes, it is.

23 THE COURT: Okay.

24 MR. BLAKE: I'm just talking about the balancing
25 test.

1 THE COURT: You're talking about -- not talking about
2 the remoteness? You're talking about, first of all, that
3 it's not admissible under 609 because it's not relevant.
4 And secondly, is that even if it is relevant the
5 prejudicial effect outweighs the probative value?

6 MR. BLAKE: Yes, sir. And there are already a number
7 of cases that were -- the similarities to past trials and
8 charged crimes could lead the jury to convict my client
9 just based on that similarity itself.

10 THE COURT: All right. Well I'm not going to rule on
11 that right now. I'll hear from you and let you present
12 the cases at a later time. Either in November or in
13 January. It does not become an issue unless and until the
14 Defendant testifies.

15 All right. You have anything else other than that
16 that you would be relying on? Or that you wish to be used
17 as impeachment?

18 MS. JOHNSON-LEE: Beg the Court's indulgence. And I
19 have to verify if a particular case was him, Your Honor.

20 THE COURT: All right. Well, again, I'll do the same
21 thing there that I'll do with the photographs. I want you
22 to furnish to the Defense by the November hearing that
23 we're going to have the matter that the State wishes to
24 reply on by way of impeachment, and I wish both of you to
25 be prepared to address the admissibility of those

1 including any case law or anything that you wish to
2 present to me so that I can have ample time to make a
3 determination even though it does not come up unless the
4 Defendant testifies.

5 But I do think it is relevant to the Defendant's
6 decision to testify. So he is entitled to know what the
7 Court's ruling is going to be prior to the time that the
8 Defense has presented their case, but I'll let you know.

9 MR. BLAKE: Judge, it was the beginning of December,
10 the hearing at the end of November. This is the timeframe
11 for the prosecutor and I to at least tell me which ones
12 she wants to try to bring in.

13 THE COURT: Before the hearing scheduled with the
14 expert.

15 MR. BLAKE: I'd like some time to be able to research
16 myself. Two weeks?

17 THE COURT: Well.

18 MS. JOHNSON-LEE: I can go ahead and put him on
19 notice now that the two main ones that I'll be looking at
20 are the aggravated assault with the deadly weapon, the
21 2001 conviction. And then pulling from the Texas, State
22 of Texas, sorted county site, there is a burglary from
23 2003.

24 THE COURT: All right. So those are the two she's
25 going to be relying on.

1 MS. JOHNSON-LEE: Those are the two.

2 THE COURT: I'll be glad to hear from you at the
3 November hearing or early December hearing on that. All
4 right. Now, we've got issues of intoxication either by
5 drugs or alcohol first as a defense and mitigating factors
6 which he is pretty well going to be relying -- pretty well
7 contingent on the expert witness.

8 The requirement that all evidence by both sides
9 comply with Rule Five by the January term when I'm here --
10 over here for General Sessions.

11 That we will address the matter of prior conviction
12 at least I'll hear argument on the matter of prior
13 convictions when I hear testimony with regard to the
14 expert witness.

15 And, again, I'll keep -- think about the situation of
16 the biblical quotations. Maybe even issue a written order
17 on that at some time prior to trial.

18 I've already ruled on the admissibility of the
19 statement under Jackson v. Denno. And the search warrants
20 as all having been properly issued and the evidence seized
21 therefrom is admissible.

22 Again, we'll hear from the expert witness and address
23 the matter of the photographs in late November or early
24 December. Whenever, whatever day we schedule for the
25 expert testimony to get that resolved as well.

1 Are there any other matters on behalf of the State
2 that we need to address today?

3 MS. JOHNSON-LEE: No, Your Honor.

4 THE COURT: Mr. Blake, is there anything on behalf of
5 the defense?

6 MR. BLAKE: No, Your Honor.

7 THE COURT: All right. Counsel, y'all get together
8 and decide on that date. Get with me. We'll be out of
9 town from this evening through the weekend. I'll be back
10 in my office on Monday. But let me know about what date
11 you want to conduct the hearing of the expert and I will
12 make arrangements with Court Administration to schedule a
13 hearing for that day. And also let the Clerk's Office
14 know what day we will need the courtroom.

15 Okay. Thank you, counsel. We will be in recess
16 until rescheduled.

17 END OF TRANSCRIPT OF RECORD

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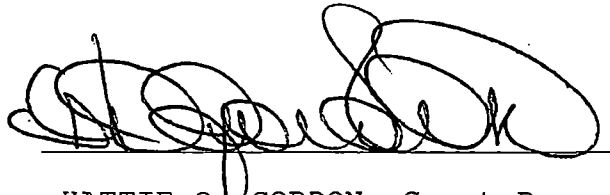
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Marlboro County, South Carolina, on the 1st day of
November, 2011.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

May 25, 2012

A handwritten signature in black ink, appearing to read 'Hattie O. Gordon', is written over a horizontal line.

HATTIE O. GORDON, Court Reporter

State of South Carolina) In the Court of General Sessions
) Fourth Judicial Circuit
County of Marlboro) 2010-GS-34-0696

State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 John L. Hogan,)
)
 Defendant.)
)
)

December 9, 2011
Bishopville, South Carolina

B e f o r e:

The Honorable Howard P. King, Judge

A p p e a r a n c e s:

Mary T. Johnson-Lee, Esquire
W. Shipp Daniel IV, Esquire
Attorneys for the Plaintiff

Daniel L. Blake, Esquire
Attorney for the Defendant

Bonnie H. Kelly
Circuit Court Reporter

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1	NO.	DESCRIPTION	ID EVID
2	S-20	Photograph	5
3	S-21	Photograph	5
4	S-22	Photograph	5
5	S-23	Photograph	5
6	S-24	Photograph	5
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8	S-26	Photograph	5
9	S-27	Photograph	5
10	S-28	Photograph	5
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1 (Pre-marked Court's Exhibits 1-4; pre-marked State's
2 Exhibits 1-14 in evidence; pre-marked State's Exhibits
3 15-31 for identification.)

4 (Whereupon, the proceeding was commenced at 12:51 p.m.)

5 THE COURT: All right. We're on the record with
6 regard to the matter of the *State v. John Lee Hogan*. This
7 is a Marlboro County case; the indictment number is 2010-
8 GS-34-0696. First of all, let me ask counsel to state your
9 appearances for the record. For the State, please, Ms.
10 Johnson-Lee?

11 MS. LEE: Yes, Your Honor. Mary Johnson-Lee for the
12 State.

13 MR. DANIEL: Shipp Daniel for the State.

14 THE COURT: For the defense?

15 MR. BLAKE: Your Honor, Dan Blake for the defendant.

16 THE COURT: All right. I thank you. And Counsel, I -
17 - I believe everyone was agreement as far as venue is
18 concerned. This would actually -- might be a matter that
19 needs to be heard in Marlboro County, or proper venue would
20 be Marlboro County. But everyone is agreeable to waiving
21 that venue and conducting the hearing here in Lee County
22 today; is that correct, Ms. Johnson-Lee?

23 MS. LEE: Correct, Your Honor.

24 THE COURT: Mr. Blake?

25 MR. BLAKE: Yes, Your Honor.

1 THE COURT: All right. All right. Counsel, in order
2 to expedite the matter, because we are running late and of
3 course, it's not the fault of anyone here in the courtroom.
4 Ms. Kelly was gracious enough to get ready and come over
5 here and serve as the court reporter because of a
6 miscommunication between Court Administration and the
7 person that was assigned. And we are ready to go forward.

8 We can address some of the issues that need to be
9 addressed probably afterwards. And probably the most
10 important thing that we need to do today is to address the
11 matter of the admissibility of the expert witness that the
12 State wishes to call, the -- both the qualifications and
13 admissibility of that witness's testimony.

14 Just for the record, I'll state that I do have a term
15 of court scheduled in Marlboro County in January. And then
16 I believe this matter is set for the February term in
17 Marlboro County. But if we have any loose ends that we
18 need to address in January, we can address them when I go
19 to Bennettsville.

20 But having said that, the Court now needs to make a
21 determination regarding the admissibility of the expert
22 testimony. And Mr. Blake, I'll allow you to make your
23 proffer.

24 MR. BLAKE: Your Honor, I'll call William Alexander
25 Morton to the stand.

DIRECT EXAMINATION BY MR. BLAKE - WILLIAM ALEXANDER MORTON 7

1 THE COURT: All right. Come around, please, sir.

2 (The witness complies.)

3 WILLIAM ALEXANDER MORTON, having been first duly
4 sworn, testifies as follows:

5 THE WITNESS: Good afternoon, Your Honor.

6 THE COURT: Good afternoon. I'm sorry to hold you up.

7 THE WITNESS: Oh, that's okay. I understand.

8 COURT CLERK: State your -- state your full name for
9 the record.

10 THE WITNESS: My full name is William Alexander
11 Morton, Jr., M-o-r-t-o-n.

12 MR. BLAKE: Judge, I have his curriculum vitae, which
13 I've marked as Court's Exhibit 1. I'd like to hand that up
14 to you.

15 THE COURT: Well, he's got it -- you can -- I'll let
16 you introduce -- for purposes of this hearing, I'll let you
17 introduce it into evidence. And make sure that Ms.
18 Johnson-Lee has a copy of it.

19 (To Ms. Lee) Have you received a copy of it? All
20 right.

21 And then if there's anything you want to offer in
22 addition to that, we can -- to what's on there, then you
23 can ask him questions about that. But that'll be admitted
24 into evidence as Defense Exhibit No. 1.

25 (Defendant's Exhibit No. 1, curriculum vitae document,

DIRECT EXAMINATION BY MR. BLAKE - WILLIAM ALEXANDER MORTON 8

1 in evidence.)

2 DIRECT EXAMINATION BY MR. BLAKE:

3 Q Dr. Morton, how would you describe your profession?

4 A I am a psychopharmacologist and have practiced for the
5 last 35 years in this area in a number of different
6 situations.

7 Q Okay. And could you be specific as to some of those
8 areas in which you have practiced?

9 A Yes. I've practiced primarily at the Medical
10 University of South Carolina, where I am currently
11 professor emeritus of -- of pharmacy and associate clinical
12 professor of psychiatry and behavioral sciences.

13 I am formally retired from there, but still consult
14 there. But I was active there full-time for about 28 years
15 and practiced in inpatient and outpatient areas -- numerous
16 areas. I actually gave -- I think I gave you a diagram
17 that kind of showed that. I -- I could go over that. But
18 I can also list those without going over it too.

19 THE COURT REPORTER: I'm sorry. What?

20 THE WITNESS: A -- a diagram.

21 THE COURT REPORTER: You said "list" something.

22 THE WITNESS: I could list the practice areas, if
23 you'd like for me to.

24 Q We can get into that in a minute. Taking a step
25 backwards, would you tell us a little bit about your

DIRECT EXAMINATION BY MR. BLAKE - WILLIAM ALEXANDER MORTON 9

1 education.

2 A Yes. I received my B.S. in pharmacy from the
3 University of North Carolina in 1972. I received my Doctor
4 of Pharmacy from the University of Tennessee in 1975, and
5 completed a residency in -- in pharmacy practice at the
6 University of California, 1976.

7 Q And what would you say your area of specialty is?

8 A My area of specialty is psychopharmacology, which
9 involves study and applicability of three primary
10 substances. And that would be substances that are legal,
11 like -- like Prozac, Ativan, Oxycontin, Valium, Haldol;
12 drugs that are not considered drugs but are drugs, which
13 would include alcohol and nicotine; and then drugs that are
14 illegal in -- in our country, which would include drugs
15 like cocaine, methamphetamine, heroin, LSD.

16 And -- and primarily, what I would do is -- is study
17 how these drugs work, where they work, the doses that are
18 usually used, what the indications are, what the
19 precautions are, what the contraindications are, what the
20 warnings are; the -- the likelihood of producing addiction,
21 the likelihood of these drugs affecting different factors
22 that affect addiction, side effects, adverse reactions, how
23 these drugs are eliminated from the body, how they're
24 absorbed, drug interactions, the toxicity of the drug, and
25 the availability of the drug.

DIRECT EXAMINATION BY MR. BLAKE - WILLIAM ALEXANDER MORTON 10

1 So there are numerous factors on each of those drugs
2 that I would address. But for the most part, I would
3 address it in -- in clinical settings in humans, and not so
4 much -- some people might address those in animals. But
5 I've always addressed those in practice with mostly adults;
6 sometimes children and adolescents, but mostly adults in a
7 formal setting, such as the Medical University of South
8 Carolina, where I was -- practiced for about 28 years.

9 Q And that involved interviewing patients, discussing
10 their case histories?

11 A Yes. I would routinely be involved in collecting data
12 from patients, assessing what they were taking, and
13 rendering opinions, both on an inpatient and outpatient
14 basis.

15 On an inpatient basis, for probably all of my 28
16 years, I would practice on an inpatient service and be
17 involved in making rounds, which included sit-down rounds,
18 where we would discuss the patients; and then walk rounds,
19 where we would see the patients.

20 And sometimes I would be asked to -- to make a
21 discussion and recommendation on sit-down rounds as well as
22 in walk rounds. The -- the team leader, whoever that might
23 be, would say, "Dr. Morton, would you -- would you ask this
24 patient about his withdrawal symptoms?" or "Would you ask
25 this patient about how he responded to lithium?"

DIRECT EXAMINATION BY MR. BLAKE - WILLIAM ALEXANDER MORTON 11

1 And so I might do that on my rounds, at the same time,
2 teaching about why I ask what I ask, what additional I
3 would ask, because we would have -- we might have between 6
4 and 10 people, a lot of trainees, with us -- trainee
5 psychiatrists, trainee students.

6 Q Psychiatric interns and who else?

7 A Psychiatric interns, psychiatric residents, pharmacy
8 interns, pharmacy residents, medical students, pharmacy
9 students, one of each sometimes. A -- a Ph.D. candidate
10 for psychology might be there doing their internship.

11 I was in both the College of Medicine and the College
12 of Pharmacy, so I had a joint appointment. So I was
13 actually involved teaching medical students and medical
14 residents about specific areas of psychopharmacology, such
15 as how to interview patients, how to -- what to expect from
16 an interview, how to assess various drug interactions, how
17 to assess if the drug is working/not working. And that
18 would often be while I was seeing patients at the same
19 time.

20 Sometimes it would be a discreet lecture in -- in a
21 classroom, where I might do lectures, as many as 90 to 100
22 lectures a year. Now I probably lecture one or two times a
23 year, and they call me since I've -- I've -- I live a
24 little bit further away than I used to -- I've moved. And
25 so a lot of times, it would be on phone calls that someone

DIRECT EXAMINATION BY MR. BLAKE - WILLIAM ALEXANDER MORTON 12

1 might consult with me.

2 For instance, someone might say, "We have a patient
3 that's taken 300 milligrams of Valium. How should we detox
4 them?" And they might want to know about that, because I'm
5 -- I have areas of specific expertise in those.

6 Q Could you explain ---

7 THE COURT: Hold on just ---

8 Q --- to us ---

9 THE COURT: --- just a minute. Yes, sir, Mr. Daniels?

10 MR. DANIEL: Judge, I just want to say: For purposes
11 of this hearing right now, we don't have any objection to
12 the -- to Mr. Morton being declared an expert in these --
13 in these fields where he has apparently testified several
14 times. We take Mr. Morton's word ---

15 THE COURT: All right. So -- so there's two parts to
16 the normal admissibility of expert testimony: One is in
17 the fields of qualifications, and the other is in the field
18 -- the actual content of the proffered expert's testimony;
19 that is, the admissibility of the offered testimony.

20 So what you're saying is that you don't object to his
21 qualifications as an expert in the field of pharmacology.

22 MR. DANIEL: That's correct. Certainly, we would have
23 an objection to the relevance of this and the admissibility
24 of this at trial. But we don't have any objections -- I --
25 I firmly believe that Mr. Morton is an expert in what he

CROSS-EXAMINATION BY MR. DANIEL - WILLIAM ALEXANDER MORTON 13

1 claims to be an expert in.

2 I would like to ask him two very simple questions at
3 the appropriate time.

4 THE COURT: All right. Well, let me ask you: Mr.
5 Blake, exactly what do you proffer him as an expert in what
6 field? And state that for the record.

7 MR. BLAKE: Expert in addictions and
8 psychopharmacology.

9 THE COURT: Psychopharmacology?

10 MR. BLAKE: Yes, Your Honor.

11 THE COURT: And ask him to define that for me, please.

12 THE WITNESS: Psychopharmacology would be the study
13 and utilization of medicines that affect the brain so that
14 they would affect a person's thinking, behavior, and mood.

15 THE COURT: All right. Now, as I understand it, Mr.
16 Daniel, then, you do not object to his qualification in the
17 field of addiction and psychopharmacology.

18 MR. DANIEL: That's correct.

19 THE COURT: Okay. All right. Now, you say you have a
20 couple questions. Do they deal with that qualification?
21 Since you are not objecting to that, I assume they don't --
22 don't ---

23 MR. DANIEL: They do ---

24 THE COURT: --- apply?

25 MR. DANIEL: --- go to that. But -- but it -- it's

CROSS-EXAMINATION BY MR. DANIEL - WILLIAM ALEXANDER MORTON 14

1 just -- just that I'm curious. If I may, at the very ---

2 THE COURT: Yes, sir. Go ahead. We can ---

3 CROSS-EXAMINATION BY MR. DANIEL:

4 Q Have you been to medical school? Are you a doctor?

5 A I am a doctor, but I'm not a doctor of medicine. I am
6 not a physician or a psychologist. I'm -- I have my doctor
7 in pharmacy. And I've taught in medical school, but I did
8 not attend medical school.

9 Q Okay. And I -- I'm certainly not -- I -- I mean no
10 disrespect. I'm not trying to lessen your -- your area of
11 expertise at all. I'm just -- I'm trying to figure out
12 exactly how to encapsulate this.

13 Would it be fair to say that you are, in part, a -- a
14 -- a pharmacist like we would see at -- at a drugstore,
15 with additional training in the fields of addictions?

16 A That would be one way to look at it. I -- I could
17 possibly work in a drugstore and practice as a pharmacist.
18 I've not chosen to do that. I've -- I've maybe done that
19 eight or ten days in my life. I -- I've -- I've done that
20 at -- at times. I -- I have the ability to do that.

21 I am more certified -- I'm -- I'm board-certified in
22 psychiatric pharmacy practice, of which there are about 553
23 people this -- this year, in the world. So I -- I -- I'm
24 more involved in research, teaching, and actual service to
25 patients.

1 MR. DANIEL: Thank you. That ---

2 THE WITNESS: Sure.

3 MR. DANIEL: --- did it. Thank you.

4 THE COURT: All right. So the State has stipulated to
5 the qualifications of -- and I assume, Dr. Morton, to a
6 degree, you list on your C.V. as being a doctor of
7 pharmacy. Is that Ph.D.? Is that what it's actually
8 considered?

9 THE WITNESS: It's considered a Pharm.D., P-h-a-r-m,
10 period, D, period ---

11 THE COURT: All right.

12 THE WITNESS: --- Pharm.D.

13 THE COURT: All right. And the State has -- has
14 stipulated as to his qualifications in the field as -- as
15 an expert in the field of addiction and psychopharmacology.
16 And so the Court will accept that.

17 Now, the next issue that we need to go to is to the
18 testimony that you would be -- expect this witness to
19 testify to. And then we can get into the questions of
20 whether or not that testimony is admissible.

21 Of course, the State would have the right to cross-
22 examine on that. But you may -- you may proffer of the
23 content of the statement -- content of the witness's
24 testimony at this time, Mr. Blake.

25 MR. BLAKE: Okay. Judge, I'd -- if I could clarify,

1 you want to know the general content of what he would be
2 testifying to?

3 THE COURT: Yes, sir. He's -- I don't want to know
4 the general content. I want to know the exact content.
5 Because under *State v. Council*, when admitting scientific
6 evidence under Rule 701 of the South Carolina Rules of
7 Evidence, the trial judge has got to make a determination
8 that the evidence will satisfy or assist the trier of fact
9 -- and of course, that would be the jury -- that the expert
10 is -- is qualified and underlying science is relied. At
11 this point, the only one of those three factors that has
12 been met is that the expert witness is qualified, and
13 that's by stipulation.

14 But it's up to me to apply the *Jones* factors to
15 determine reliability. And then once I make a
16 determination of admissibility under Rule 702 of the rules
17 of evidence, then I need to make a determination under Rule
18 403 of the rules of evidence as to whether the probative
19 value is outweighed by the prejudicial effect.

20 So it's up to you to meet the other requirements, in
21 addition to qualifications, which is just one of the three
22 things that is required by *Council*.

23 Yes, sir.

24 MR. DANIEL: And the State, Your Honor, is going -- is
25 prepared to argue that we would get to that point; that

1 based on case law that we have prepared, that -- that ---

2 THE COURT: Well, I'm ---

3 MR. DANIEL: --- none of this ---

4 THE COURT: --- going to let him make his proffer, and
5 then you ask your questions and we'll get into the
6 arguments later. But I'm going to let him make his proffer
7 of whatever he wants to -- to state at this time. Go
8 ahead, Mr. Blake.

9 MR. BLAKE: Judge, you're first concerned ---

10 THE COURT: It's up to him -- it's up to Mr. Blake to
11 -- to establish the admissibility of the testimony under
12 Rule 702.

13 THE COURT REPORTER: (To the Court) 70 -- I'm sorry.
14 Rule 70 -- Rule 70 what?

15 THE COURT: Well, it's 702 and -- 701, 702, and 703.
16 It's all under -- specifically under 702.

17 THE COURT REPORTER: Thank you.

18 MR. BLAKE: So, Judge, your -- you said one of the
19 concerns you have is the reliability of the evidence?

20 THE COURT: I'm not going to tell you how to do it,
21 Mr. Blake. That's up to you.

22 MR. BLAKE: All right. Well, under 702, of course,
23 the issue, as I understand it, is whether or not the
24 testimony offered by the expert will assist the trier of
25 fact to understand the evidence or to determine a fact in

DIRECT EXAMINATION BY MR. BLAKE - WILLIAM ALEXANDER MORTON 18

1 issue. And certainly, one of the facts in issue here --
2 the whole trial is based on whether or not it is voluntary
3 manslaughter or murder. And we're dealing, of course,
4 within his -- client's state of mind.

5 DIRECT EXAMINATION BY MR. BLAKE:

6 Q Dr. Morton, you have testified previously in trials?

7 A Yes, sir, I have.

8 Q Okay. And you've testified to these very issues
9 related to cocaine use and its effect on one's cognitive
10 abilities?

11 A Numerous times. Yes.

12 Q Okay. I know that you prepared some charts for me,
13 and I believe defense counsel has copies of those. You
14 have a copy for yourself?

15 A Yes, I do.

16 Q Of course, the first one on that chart simply lists
17 your experience that's been stipulated to.

18 A Yes, sir. Just as prosecution was not sure what I
19 actually did, this -- this -- whether I worked in a
20 pharmacy or what I would do in -- at the hospital, this
21 lays out what I did over 28 years on one piece of paper.

22 The darker areas, which is hard to see in this
23 particular copy, signifies work on an inpatient unit. And
24 the blank white signifies an outpatient unit. So I might -
25 - in a week, I might be working in three or four different

1 areas that -- that week.

2 THE COURT: Okay. What is this that's been given to
3 me?

4 MR. BLAKE: I have not introduced it, Judge. It's ---

5 THE COURT: All right. Well, I'm going to look at it
6 again.

7 MR. BLAKE: Okay. (To Mr. Daniel) Do you have any
8 objection to -- to -- that you've already seen this?
9 Court's Exhibit No. 2?

10 (Counsel confer.)

11 MR. DANIEL: No objection.

12 MR. BLAKE: All right. That'll be ---

13 THE COURT REPORTER: What -- Your Honor, you wanted me
14 to mark it as a defense exhibit. Now they're talking about
15 ---

16 THE COURT: Yeah. Offered by the defense. What
17 difference does it make? I'm going to -- we'll mark it as
18 a defense exhibit. It's not my exhibit. It's not
19 something the Court would read. It's a defendant's
20 exhibit. It would be -- any objection, Mr. Daniel?

21 MR. DANIEL: No objection. Is this for purposes of
22 this hearing or just ---

23 THE COURT: That's right.

24 MR. DANIEL: No objection, Your Honor.

25 THE COURT: Defendant's Exhibit 2.

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1 (Mr. Blake confers with the court reporter.)

2 THE COURT: None of the rulings today will affect the
3 -- well, they might later on; they would affect the matter
4 of trial. But just -- just because they're admitted for
5 today does not make them admissible at trial time.

6 (Brief pause as exhibits are marked.)

7 (Defense Exhibits 2(A) through 2(J) are marked.)

8 THE COURT: All right. Defense Nos. 2 through what?

9 MR. BLAKE: Judge, it's 2A through 2J --

10 THE COURT: All right.

11 MR. BLAKE: -- "J" as in John.

12 THE COURT: All right. All right. Proceed.

13 DIRECT EXAMINATION BY MR. BLAKE (CONTINUES):

14 Q Dr. Morton, go ahead.

15 A The first page, called "Time Line for W. Alexander
16 Morton, Pharm.D.," looks at, again, my whole career at the
17 Medical University and what I might have been involved in.

18 The -- towards the top that is outpatient settings,
19 where I work at the V.A. psychiatric unit, the inpatient
20 unit at MUSC, consulting at the Charleston County
21 psychiatric unit, which was a eight-bed county hospital
22 unit. And then, when we opened our center for drug and
23 alcohol programs -- program there, which was new in -- in
24 '90/'91, I started working there on the inpatient unit.

25 And at the Medical University, we would think about if

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1 you were there, you were there 100 percent of the time.
2 And on -- going on the left, it would -- it would signify
3 how much of my time was spent in those areas. So some
4 places I might spend 100 percent; some places I might spend
5 only 5 percent of my time.

6 Outpatient involved working in a medical screening
7 clinic, working in the -- of the V.A. mental health clinic,
8 where I had a -- a -- a population of patients that I was
9 their primary practitioner of providing care for about 126
10 patients. These were patients that required only
11 medication. So I'm practicing under a plan where a
12 psychiatrist is my superior, and I -- I consult with them.
13 But I basically am the patient's primary care clinician.

14 So I -- I've done that in a number of settings, but
15 mainly the V.A. mental health clinic, the MUSC
16 psychopharmacology clinic; and then, in -- in the clinical
17 research section, where I worked for about 17 years in
18 various capacities, where I was seeing patients,
19 individually, providing care in a clinical research
20 setting, so maybe looking at new antidepressants. We -- we
21 were using Prozac right when it was first coming out, but
22 also studying if Paxil was useful in various types of
23 anxiety disorders; if medicines were useful for various
24 manic-depressive disorders; if medicines were useful to
25 help treating alcoholism; if medicines were useful to help

DIRECT EXAMINATION BY MR. BLAKE - WILLIAM ALEXANDER MORTON 22

1 decrease craving for cocaine. Those were some of the 63
2 clinical research studies that I was involved with in the
3 clinical research section.

4 Also, in the MUSC psychopharmacology clinic, I would
5 be supervising residents -- third-year psychiatric
6 residents. They have to go four years after they get their
7 M.D. degree before they can practice. I would supervise
8 them, and they would see outpatients. I would hear what --
9 how they presented the patient, and then I would make
10 recommendations.

11 I would probably then see the patient for 30 seconds
12 to 2 minutes and say, "We're not going to start medication
13 today, sir or ma'am, but we'll probably start it next week;
14 we want to get more of a history before we start you on a
15 medicine for your depression." And then I would walk out
16 the door. And -- and the main practitioner for them would
17 then go on and explain kind of what I had just said in --
18 in -- in more detail.

19 So I did that for approximately -- about 16 to 17
20 years, supervising patients. And at our largest, we had
21 about 260 patients that we were seeing on a regular basis:
22 weekly or monthly or every-three-month basis.

23 The clinical research section, I probably worked with
24 about -- about 700 individual patients. But I did a large
25 number of screening of larger patients to see if they could

DIRECT EXAMINATION BY MR. BLAKE - WILLIAM ALEXANDER MORTON 23

1 fit into clinical research.

2 In our particular research section, if you had
3 addictive disorder or were using drugs, you could not
4 participate, because those people's brain chemistry is
5 different than people that have not been using drugs.

6 So if you had panic attacks and it was secondary to
7 cocaine, you could not be in a panic-attack study. If you
8 were depressed and had panic attacks, you could not be in
9 that panic-attack study, because those people's
10 biochemistry is different.

11 That's -- I also work on the inpatient-consult
12 service. So if someone maybe had a -- a burn and became
13 suicidal, the burn doctors would consult with our consult
14 service to -- for us to see them to see if a antidepressant
15 was indicated. It might be, if someone was on the
16 orthopaedic unit and starting to act psychotic, we might --
17 they -- and -- and they were taking a large amount of -- of
18 Valium before they came in and then it was stopped because
19 they were in a car wreck, we might assess them for Valium
20 withdrawal or alcohol withdrawal and recommend that we
21 start them on a withdrawal medication so they wouldn't die
22 from their withdrawal. We don't like them to do that.

23 A lot of the times, I'm involved with side effects of
24 medications. Most of the medicines we prescribe, the
25 medicines that people use, have a large potential to

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1 produce problems. I'm somewhat biased that -- that our
2 medicines don't do as much as what people would like for
3 them to do. And -- both practitioners and patients expect
4 the medicines that we prescribe to produce amazing things
5 with little side effects. And I think they produce
6 moderate effects with sometimes many side effects. So a
7 lot of times I focus on how can we diminish those side
8 effects and is it even indicated for them to take that
9 medication.

10 Q The next slide there begins to talk about some of the
11 science involved here?

12 A Drugs and their effects on the brain: There -- there
13 are seldom one area of the brain that drugs work on. And
14 there are numerous parts of the brain which control various
15 functionings, either from thinking and making clear
16 decisions; to moving your body, walking in a certain way;
17 to maintaining your blood pressure, your pulse, your
18 respirations; to thinking and remembering things, recalling
19 memory; to doing things on a regular basis which involves
20 the reward circuits of -- of the brain so that a human
21 being would be able to stay alive.

22 So we do things on a regular basis, such as drink
23 fluids, water; eat food. If the human race is going to
24 continue, there would be reproduction involved. And then,
25 after the baby is born, you would want to make sure that

DIRECT EXAMINATION BY MR. BLAKE - WILLIAM ALEXANDER MORTON 25

1 the baby's nurtured. If any one of those four things is
2 done erratically, the health and population of humans would
3 diminish fairly quickly.

4 So it's done on a regular basis. And we've found that
5 the reward circuitry in the brain is there to ensure that
6 we do these things regularly. And people feel rewarded;
7 when you hold a baby and cuddle a baby and take care of a
8 baby, you feel good.

9 Q All right. Now, you worked at MUSC for 28 years?

10 A Twenty-eight years, yes.

11 Q Essentially a research hospital?

12 A It's a teaching-research ---

13 Q Teaching ---

14 A --- hospital.

15 Q --- research ---

16 A Yes, sir.

17 Q --- hospital.

18 And what is the -- you just described a "reward
19 circuit." What is the basis of the science that -- that
20 leads you to those conclusions?

21 A The basis of the science that we talk about this has
22 been discovered over the last 30 to 40 years. Tremendous
23 advances have been -- been being made, I would say since
24 the last -- the late '50s.

25 We understand this reward circuitry. We understand

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1 the brain chemicals that are involved. We understand --
2 we're understanding how medicines affect various brain
3 chemicals to either increase or various -- or -- or
4 decrease certain brain chemicals that then result in
5 various responses or side effects.

6 And this has been well defined and -- and continues to
7 get more defined, almost on an individual basis. That's
8 where we're trying to go to learn from a individual how an
9 individual respond to a medication verse 50 people would
10 respond to this medication. We're looking at that.

11 I -- I'm not involved with that as much now, looking
12 at the human genome and -- and people's individual DNA and
13 how they would respond differently. I'm -- I've been out
14 of that the last few years.

15 Q Is there anything else you want to say about Slide 2 -
16 - 2B ---

17 A Well, there -- there -- drugs will affect certain
18 areas of the brain. There's only one drug that really
19 affects every brain cell and that's ethyl alcohol. It
20 affects not only brain -- every brain cell, but every cell
21 in the body. It affects membrane permeability: what goes
22 in and what goes out. That's one of the few drugs that
23 affects every cell in the body.

24 Cocaine might just affect certain areas, as far as
25 reward, memory, blood pressure, judgment. But it may not

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1 affect vision so much. It may not affect coordination,
2 except in massive amounts. It may not have much effect on
3 pain threshold, whereas -- whereas Oxycontin would
4 definitely affect the pain threshold. It may also have
5 some side effects on memory and reward. But it wouldn't
6 maybe affect people's ability to move. It may affect
7 judgment, but -- but only at higher doses.

8 So that's -- that's the point: that -- that drugs can
9 have varying effects on different parts of the brain. And
10 as -- as the doses increase, it can have -- those effects
11 can change.

12 Q You got slide 2-C there? It's the third slide for
13 you.

14 A The third slide is looking at crack cocaine's initial
15 effects. And I say "crack cocaine," as compared to a
16 powder cocaine, because crack cocaine provides effects
17 faster because you get it into a vapor, which immediately
18 goes to the brain. We're talking between a few seconds to
19 five or eight seconds, which is a dramatic time response.

20 To put definitions of how one responds, it -- it's
21 very hard to describe how I might experience pleasure, how
22 you might experience pleasure, how other people would
23 experience pleasure. But indescribable for -- for some
24 people. It's very intense, feeling wonderful, feeling of
25 ecstasy. Anything that you generally do is an -- is

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1 experienced as more pleasurable when you're doing it
2 initially with cocaine.

3 For some people this may be the first time that they
4 have ever experienced a good feeling, especially someone
5 that's been depressed for a large part of -- part of their
6 life. And -- and it occurs -- this new effect might occur
7 in five to eight seconds. So it's pretty impressive.

8 Cocaine has been used in an abusive fashion for over a
9 hundred years. But as far as our awareness, probably the
10 '80s was a time where we started seeing an increase in use.
11 In mid-'80s we started seeing crack provided to people in a
12 -- in a way that was cheaper to buy and easier to use. And
13 -- and over the last 20 to 30 years, I think we've seen a
14 tremendous amount of use, maybe overshadowed by
15 methamphetamine.

16 But it depends on what county, what area of the state
17 you're in, what's available. Some people do not have
18 availability of cocaine, but they have a lot of
19 methamphetamine. Some places it might just be the reverse.

20 To some degree, I think we've gotten numb to the -- to
21 the -- these effects of -- of cocaine because we've heard
22 it so often.

23 Q Okay. What you're describing there -- you have sort
24 of a summary sheet on that slide. And could you describe
25 just how you arrived at that evidence, and what standards

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1 you used, in terms of scientific community.

2 A The standards in arriving at -- at these -- what I
3 would consider facts as -- as cocaine's initial effects --
4 would come from three sources in general. One would come
5 from what is in the literature and what is reported: what
6 is in the scientific literature; what gets published in
7 various journals; if it's peer-reviewed, meaning someone
8 does a research study and they submit it to the journal and
9 before it's published, it might be sent out to three or
10 four peers. And they would read it, and they would make
11 comments. They would say: "You should add this. You
12 should subtract this. You should publish it as-is. You
13 should not publish it ever." You might have three people
14 saying, "Absolutely," and one saying, "Well, kind of," and
15 then you're asked to make changes and it's resubmitted.
16 And then the editor will decide whether they -- they
17 publish it.

18 So what appears in a reputable journal is usually
19 peer-reviewed. And -- and it's -- it meets certain
20 standards. So at least in certain journals, you would
21 expect a certain level of excellence. And -- and -- and
22 these articles that appear on cocaine over the last 20 to
23 30 years have better described it scientifically than how
24 it was described in the '40s and '50s and the '30s, when it
25 was sporadically used. So that would be one source.

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1 The other source would be from colleagues who have
2 practiced in the field. The other source would be from my
3 practice in the field. When I've been asked to estimate
4 how many people I've worked with, the best estimate, based
5 on how many people came into our hospital and our clinic
6 and I -- and -- and Fenwick Hall Hospital, which was a
7 private hospital that I worked in, is between four and six
8 thousand patients that I would've come in contact with,
9 with problems with cocaine. That would be an estimate.

10 And I've had to estimate from that first sheet how
11 many patients we would see per week, per year, per month.
12 And that's probably about 15,150, is my estimate that I saw
13 in my career at this facility; of those, four to six
14 thousand people had problems with cocaine. It wasn't just
15 cocaine; it might also be alcohol and Valium. It may be
16 opioids.

17 I'm not sure that I've seen -- it may be a handful of
18 people that I've seen that were only using cocaine alone.

19 Q Referring to your curriculum vitae, you list -- it
20 looks like 40 -- 46 -- 46 different publications that you
21 were involved with.

22 A Yes, sir.

23 Q Were these in peer-review journals?

24 A Yes, sir, they were.

25 Q Okay. And you also then list a number of abstracts.

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1 Would you explain the difference between an abstract and a
2 publication?

3 A A publication is a more complete discourse on what the
4 title reflects. And it should have references for more
5 information. And it should supply what you want to know
6 about that particular topic.

7 An abstract might be one page. And it might be
8 presented at a meeting. So if you went to a meeting, you
9 would say, "Here's a interesting talk. And they're going
10 to talk about cocaine, its use in -- in children and how it
11 affects children that were exposed to cocaine. I think I
12 would like to go to that. They've got a population of a
13 hundred kids -- or -- or maybe it's only five kids. No,
14 I'm going to skip that if it's five kids." So it tells you
15 a little bit about what the presentation is going to be
16 about.

17 And it would be published in -- in meeting records.
18 So if you went to a -- a five-day meeting or -- I -- I --
19 I've been involved in -- in doing seminars for attorneys
20 and judges. We used to do this at the Medical University
21 on a regular basis. And we would do an abstract on what we
22 were going to talk about.

23 I remember I talked about drug -- new drugs -- at the
24 time, ecstasy, Rohypnol, and G -- GHB -- which were fairly
25 new drugs to a lot of us. So it was updating what those

DIRECT EXAMINATION BY MR. BLAKE - WILLIAM ALEXANDER MORTON 32

1 drugs were. And it -- it would -- I would say, "I will
2 discuss how ecstasy works and some of the adverse effects.
3 I'll be talking about GHB and where it came from and some
4 of the complications. And I'll also be talking about some
5 of the other newer drugs that may appear on the scene."

6 And that's all you would read. And you could decide,
7 Okay. I'll stick around for that one; or no, I'm -- I'm
8 not interested in that area. I'm more interested in
9 something else, so you can plan on what your time ---

10 Q You also mentioned paper presentations, invited
11 presentations. These are various papers you've presented
12 at symposiums, conferences?

13 A They would be symposiums, conferences, individual
14 talks, which would range from a local presentation -- say,
15 in Marlboro County to a presentation in southeastern South
16 Carolina to presentation in South Carolina. I presented at
17 the first cocaine conference in ---

18 THE COURT: I think we've -- we're talking about
19 qualifications here. We need to get on to the gist of the
20 testimony he's going to testify to. The State has already
21 stipulated as to his ---

22 THE WITNESS: Okay.

23 THE COURT: --- qualifications.

24 MR. BLAKE: Okay. Well, you're also about to find --
25 Judge, we're concerned with the *Jones* factors, in terms of

DIRECT EXAMINATION BY MR. BLAKE - WILLIAM ALEXANDER MORTON 33

1 reliability ---

2 THE COURT: Well, that is true. That -- that's really
3 true. I agree with that. But I'm -- I'm interested in --
4 in hearing and -- and what I've got to decide, of course,
5 is the reliability under the *Jones* factors, and I'm going
6 to do that. But I can read his curriculum -- his C.V. and
7 see what -- what his publications and all have been, and --
8 and pretty well get that idea.

9 I guess my -- my questions -- we need to get over --
10 we need to move it along. Let's just move it along. And
11 we're not -- this is not presenting this matter as you
12 would present it to a jury, but just enough that you think
13 would be necessary to show all of the factors necessary
14 under counseling.

15 DIRECT EXAMINATION BY MR. BLAKE (CONTINUES):

16 Q We've talked about publications and peer review of
17 this information about the effects of the cocaine.

18 A Yes, sir.

19 Q Okay. And this is something that's been studied in
20 universities and something that's a -- a matter of
21 professional study. These are not just theories that
22 you've made up.

23 A No, they're not theories. I have a review article,
24 which I -- I -- you may have submitted, which looks at --
25 as -- as up to 1999, some of the psychiatric side effects

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1 of cocaine, which are well documented. And you can see
2 where the sources -- where I got that information, if you
3 need to check those numbers that I've put in there. That
4 is the way scientific publications are. You say: "This
5 occurred 10 percent."

6 "And where did that number come from, Dr. Morton?"

7 "It came from Study A, B, and C."

8 And then, you could check it if you didn't believe it.

9 (Mr. Blake confers with opposing counsel.)

10 THE COURT: I can't hear you.

11 MR. BLAKE: I asked him if he had objection -- well,
12 sorry, Judge. That's your role.

13 Judge, we do have an article by Dr. Morton on cocaine
14 and psychiatric symptoms, published in the "Journal of
15 Clinical Psychiatry" in 1999. I have presented a copy of
16 that to the State. We would move to enter it in as
17 Defendant's Exhibit 3.

18 THE COURT: All right.

19 MR. DANIEL: No objection.

20 THE COURT: All right. Admitted into evidence as
21 Defendant's Exhibit 3.

22 (Marked Defendant's Exhibit 3, peer-review article.)

23 DIRECT EXAMINATION BY MR. BLAKE (CONTINUES):

24 Q I'm sorry to interrupt you. Go ahead. This article
25 was published in 1999?

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1 A Yes. And for the most part, it reviewed what you see
2 when someone is using cocaine; what you see when someone
3 has stopped using cocaine; how long these symptoms might
4 last; and how to treat it and how to address it. It's
5 something that was painfully obvious to me, working in --
6 in -- on the unit, that a lot of students, a lot -- and
7 residents and some practitioners did not know this cold.
8 It did not -- it didn't come up that they knew it.

9 And so as an educator I wanted to contribute something
10 to the educational process. So I thought, This hasn't been
11 done lately. I will put all this information together in
12 one -- one paper, rather than have to look at 40 papers.

13 Q And this was the "Journal of Clinical Psychiatry"; is
14 that correct?

15 A Yes, sir.

16 Q Is that a peer-reviewed journal?

17 A Yes, sir.

18 Q And there is a -- a list -- a number of references,
19 looks like about 39 references. Those were accepted
20 scientific studies?

21 A Yes, sir, they were.

22 Q Psychiatry today, of course, is mainly the treatment
23 of mental disorders with -- with medications.

24 A And -- yes, that's correct. And therapy.

25 Q Okay.

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1 A Some -- sometimes I'm involved in asking what medicine
2 would -- would help this particular problem. And I would
3 say, "I don't know of any medicine that would help that
4 particular problem. That's usually addressed with talk
5 therapy, behavioral therapy."

6 THE COURT REPORTER: (To the witness) And what other
7 therapy?

8 THE WITNESS: Talk therapy and behavioral therapy.

9 Q And you began your talk: "Some of the effects of
10 cocaine use." Talk about the initial effects, which is
11 described here in this Slide 2-C. You also talk about
12 cocaine dependence, paranoia and psychosis, violence. All
13 those different things described in this article are
14 connected to research -- scientific research.

15 A Yes, sir.

16 Q Okay. And these references you've described, they are
17 essentially a peer-reviewed publications.

18 A I view -- the references I -- I chose, I thought were
19 the standard cutting edge of science at that particular
20 time: articles that we had reviewed in our practice; in
21 our discussion of -- of treatment; some that -- I had -- I
22 was aware of in -- in research settings; our discussions.

23 People would come to the Medical University and
24 present their findings. So if I thought it was adequate
25 and great, I would look at their articles. And then I

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1 might look at other articles that they referred to.

2 So I would -- I -- I -- I thought I chose the articles
3 that were best representative at the time.

4 Q Slide 2-D deals a little bit with some of this
5 science, which I think was fairly new when you were talking
6 about neurotransmitters?

7 A It's old and new. We've learned more about it: how
8 the brain communicates. One brain cell talks to another
9 brain cell by the release of certain chemicals, and these
10 are called "neurotransmitters."

11 (Indicates) So the cell here in this picture on the
12 left has been stimulated. And what it does is it releases
13 a brain chemical, which goes to the other brain cell and
14 stimulates it, causing an effect. This has been well known
15 since the '60s. We -- we've better defined it, as far as
16 how drugs affect these brain chemicals.

17 Drugs do not necessarily cause an effect directly, but
18 they usually cause a release of a brain chemical, or brain
19 chemicals, or block brain chemicals. And it's very seldom
20 that the actual drug effects makes the actual effect. But
21 it's a intermediary; it affects brain chemistry.

22 Q Going into slide 2-E, you talk there about these three
23 prominent neurotransmitters and essentially what effect
24 they have; is that correct?

25 A Yes. These are three prominent neurotransmitters in

DIRECT EXAMINATION BY MR. BLAKE - WILLIAM ALEXANDER MORTON 38

1 the brain that are usually involved with cocaine, cocaine
2 use. Cocaine causes a tremendous release of all three of
3 these: dopamine, being the one that causes pleasure;
4 norepinephrine or noradrenaline, which is used to effect a
5 tension energy and anxiety and thinking; and then,
6 serotonin, more related to mood and making some stability.

7 And there's overlap. There's overlap. And you can
8 see -- I've tried to show this -- that one chemical might
9 not do all of this, but they fit together. But we
10 definitely know that cocaine causes tremendous increase in
11 -- in dopamine. And that feels good, but it also can feel
12 bad when there's too much dopamine released in certain
13 areas of the brain, which is not used to having that much
14 dopamine.

15 Q And that's the essence there of Slide 2-F.

16 Moving to Slide 2-G, which is psychiatric effects of
17 cocaine, you use there as a reference at the bottom your
18 article, which, again, your article is essentially
19 summarizing a whole field of research.

20 A With cocaine.

21 Q That's correct.

22 A With -- with cocaine. Because crack cocaine, at that
23 time, was not fully studied. And questions come up: Is
24 powder cocaine different than crack cocaine? And it is in
25 some -- some instances. Certain side effects, you'll see

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1 more with crack cocaine than you will with powder cocaine
2 or IV cocaine.

3 Q Okay. So you describe several psychiatric effects
4 from cocaine and crack cocaine ---

5 A These are side effects that you see from cocaine use,
6 usually the negative side effects. It certainly makes
7 someone agitated and restless. I -- I have yet to see
8 someone that says, "When I use cocaine, I just relax and --
9 and sit back on -- on the chair."

10 But it's more moving about, restless thinking,
11 restless behavior. Agitation is motion that really doesn't
12 provide you with anything. (Indicating) It might be
13 jiggling like this or -- or doing your hair like this,
14 pulling on -- it's not helping your hair when you pull it
15 or -- or it's not -- if you're doing something with your
16 mouth -- this would be an example of mild ---

17 Q What about paranoia?

18 A Paranoia, probably 60 to 85 percent of people that use
19 cocaine, if you asked them specifically, will talk about
20 being paranoid. For instance, they're thinking that other
21 people are out to get them; that people are following them;
22 that they'll be peeking out the blinds. They'll be talking
23 about peeping, specifically.

24 Q Is this based on your personal research or is this
25 research that's been done across the country or ---

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1 A It's ---

2 Q --- or the world?

3 A It's across the country with -- with that -- those
4 numbers of paranoia. I -- I do not -- I think I have not
5 ever talked to someone that has not endorsed peeping out of
6 a blind. So I would say that's a hundred percent, in my
7 experience. It's just normal. If they don't report it,
8 it's amazing to me.

9 Usually, I'll ask them about it. And they say, "Can
10 you read my mind?" No. It's just everyone I've talked to
11 before has talked about peeping out of the blind to see
12 what's out there. It's that type paranoia.

13 Q Well, just for instance, in "Paranoia and Psychosis,"
14 a portion of your article, you reference seven or so other
15 articles or studies. So this not just your individual
16 research.

17 A Oh, no, not at all. It's -- it's well established
18 that if you use cocaine, either in a controlled setting,
19 where you are administering cocaine one time to a -- a
20 known addict -- that's the only time you can use it -- if
21 someone has used it before, that they will get paranoid.

22 People that have been using paranoid will come into
23 your hospital being very paranoid if -- if they've been
24 using cocaine.

25 And also, if you're studying cocaine use, you might

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1 ask them about -- if they're trying to stop cocaine on
2 their own and they haven't come into treatment, you might
3 find out that they endorse a lot of suspiciousness and
4 paranoia, and -- and some of them to the level that their
5 thinking is totally delusional.

6 Q Next category on there, you have "hallucinations" and
7 "delusions," and in your article it's "violence." And you
8 have a number of studies which you reference there. What
9 is the connection between crack cocaine and violence?

10 A That it's prominent; that there is -- crack cocaine is
11 -- more violence seen with it than with powder cocaine.
12 There is the -- varying degrees of incidence there. But in
13 general, I think about 30 to 50 percent of people that --
14 that use cocaine report violent behaviors or being involved
15 -- either having violent behaviors or -- or being around
16 violent behaviors.

17 It comes as no surprise to me that -- that that might
18 occur. One thing that we try to sensitize physicians that
19 work in emergency room is that when people come in for
20 treatment of cocaine problems, you may get attacked by the
21 patient. So -- and this occurs, that you -- you're in
22 there, trying to help people, and they might beat you up
23 because they are suddenly explosively violent. And
24 usually, there are other symptoms there too.

25 So you need to know that you would need help working

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1 with that patient, rather than go in there individually
2 alone with a patient that has had hallucinations secondary
3 to cocaine.

4 So it's -- it's something that's addressed that
5 violence occurs, is reported, and you can see it in various
6 settings. It'll range from a -- a -- a -- a -- a different
7 percentage. But it's -- it's not surprising, I think, to
8 most people that if you use cocaine, it's liable to cause
9 violence.

10 Because one of things it does is it releases
11 tremendous amount of chemicals that are used if you were in
12 a violent situation to help you either fight or run away.
13 And that term is "flight or fight."

14 And to do -- either fight or run away, you've got to
15 have all this energy; you've got to have your heart racing.
16 You shouldn't be relaxed if you're going to try to capture
17 a wild animal. So you're ready to grab that animal, that
18 sort of thing.

19 And that's -- that's where -- one of the negative
20 things occurs with -- with cocaine, is that you've got this
21 outpouring of all these chemicals, and people don't like it
22 that are using it. And they'll -- often they'll drink
23 alcohol to kind of diminish that negative
24 agitation/restlessness/irritability/aggressiveness that you
25 see with -- with cocaine, or they use opioids.

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1 Q To summarize there, this article of cocaine and
2 psychiatric symptoms that you published in the "Journal of
3 Clinical Psychiatry" in August of 1999, that was a peer-
4 reviewed publication.

5 A Yes, sir.

6 Q And that was a summary of research being done across
7 the country on this topic.

8 A It was -- it was on the topic that -- research being
9 done. There's so much being researched. But it was around
10 symptoms that you might see in patients that you might be
11 working with that are using cocaine.

12 So there's -- there would be research in other areas
13 that I wouldn't have even touched, such as maybe effects on
14 the baby; effects on -- on reproduction; effects on --
15 cardiovascular effects; effects on heart attacks; effects
16 on seizures.

17 I might just -- I wouldn't have addressed that,
18 because I was looking at primarily psychiatric symptoms:
19 what do you see that people -- that would -- people would
20 have typically seen in an area that's affecting their
21 thoughts, their behavior, or their feeling that might be
22 labeled a psychiatric symptom.

23 Q Now, I notice that you have a -- a list here of trials
24 that you've testified in, relative to the effects of drugs,
25 particularly cocaine sometimes that -- on behavior.

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1 A Yes, sir.

2 Q Okay. Were you qualified as an expert witness to do
3 that?

4 A Yes. I was qualified, I believe, 72 times.

5 MR. BLAKE: It's marked as Defendant's Exhibit 4.

6 MR. DANIEL: No objection.

7 MR. BLAKE: Entered into evidence.

8 (Defendant's Exhibit 4, list document, entered into
9 evidence.)

10 DIRECT EXAMINATION BY MR. BLAKE (CONTINUES):

11 Q I don't want to spend a long time on that, we've
12 qualified you as an expert. But this has happened a number
13 of times where science itself has been recognized. You've
14 been qualified to testify as an expert; is that correct?

15 A Yes, sir, it has. It's -- I -- I don't know that it's
16 come up as a issue. The -- the main issue that seems to
17 come up, if it's not presented at trial, then it needs to
18 be presented eight or ten years later.

19 So a lot of the times that -- in the past, drug use
20 used to be hidden; it was not accepted as a -- a valid
21 issue, as a -- a -- and so no one talked about it. And
22 then you get down the road, and -- and we -- we have
23 learned that it has -- it's important to discuss and for
24 people to know -- and this is important.

25 So here I'm -- here I'm being asked to present

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1 information that occurred in 1989, and it's -- and it's
2 2005. But it wasn't -- it wasn't presented in 1989.

3 Q Now, you've had an opportunity to review material --
4 the files related to this particular case?

5 A Yes.

6 Q You've had an opportunity to speak directly with Mr.
7 Hogan?

8 A Yes. I met with Mr. Hogan for a considerable amount
9 of time, about 2 1/2 hours.

10 Q Okay. And you have reviewed the videotape of his
11 statement about this crime?

12 A Yes, I have.

13 Q So you're familiar with the facts surrounding this
14 situation.

15 A I've just recently gotten a -- some of that
16 information. It's -- it's not as many pages of information
17 as I'm used to reviewing. But I expect there'll be more as
18 -- as we get closer to trial. But I've read -- I've read
19 some.

20 And I've -- I've not talked with any of his family.
21 I've not talked with any of the witnesses. I've not talked
22 with any people that know Mr. Hogan.

23 Q And in your opinion, did his crack cocaine use have
24 any effect on his behavior?

25 A Absolutely. It would have had effect on his behavior

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1 during this week of his use, which was rather a recent
2 onset. He relapsed with cocaine. He had -- he had not
3 used for approximately 2 1/2 years and then relapsed using.

4 Q So it had effect on his behavior and conduct. How
5 about his thinking processes, his cognitive function, his
6 ability to make decisions?

7 A Cocaine definitely affects people's ability to reason
8 and use logic. We're -- we're -- we're using, in this
9 courtroom, very high level of executive-functioning
10 thinking. We're -- we're -- we're making decisions; we're
11 listening to each other. We're making clear thinking here.

12 This does not occur when people are using cocaine.
13 They can't access that part of their brain. There's good
14 evidence now to show that -- that that part of the brain,
15 on brain scans, it does not get activated.

16 And that's important for me to know because I'm
17 involved in their treatment. And if I know that if I give
18 them some instructions and they look like they understand
19 them but they don't understand them, they're not going to
20 be able to participate in a treatment program.

21 So you have to know that -- that people that have been
22 using cocaine are impaired in their thinking, even up to
23 months after they're stopped.

24 Q Up to months after.

25 A It -- it stays -- it gets a little bit better, but

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1 their thinking still can be impaired. While you're using,
2 not only is there impaired ability to use the frontal parts
3 of your brain, the brain that -- parts that all humans have
4 to make decisions, but it also would be affected by various
5 psychiatric symptoms that he described, such as
6 suspiciousness, such as agitation, restlessness. That
7 would impair your ability to think clearly if you're
8 boiling along with a cauldron of chemicals in your brain.

9 Q And you're aware that there are various aspects of
10 proof in this case related to both Mr. Hogan's crack
11 cocaine use as well as the victim's crack cocaine use.

12 A Yes. I'm aware that the victim, Ms. Brown, had a
13 laboratory test that showed that she had cocaine metabolite
14 in her blood, cocaine metabolite of alcohol and cocaine,
15 and that she had another drug, hydroxyzine, in her blood,
16 which ---

17 THE COURT REPORTER: (To the witness) I'm sorry.
18 That drug?

19 THE WITNESS: Hydroxyzine, h-y-d-r-o-x-y-z-i-n-e.

20 A --- which may or may not have been abusable drug. But
21 it could've been used for some other condition. But she
22 certainly had -- there's evidence there that she has -- she
23 has had cocaine recently in her blood -- or in her body.
24 It was -- it was discovered in her body tissue.

25 Q If you could go to -- it's -- I've got it as Slide 2-

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1 F. It's the one on dopamine. I believe you said that was
2 one of the main neurotransmitters when you're using
3 cocaine. And if you could describe some of the effects
4 that dopamine has on -- on the brain and on the body.

5 A Well, dopamine primarily works in several areas of the
6 brain. It affects movement. If you lose all your
7 dopamine, you might develop Parkinson's disease. It
8 affects reward so that people do things regularly. It's
9 been associated with the neurotransmitter of love. When
10 you fall in love with someone and that's the only person
11 you can think of constantly, it's related to -- you -- we
12 can see that being related to a tremendous amount of -- of
13 -- of dopamine.

14 People basically fall in love with drugs at times or
15 other things, other behaviors. That's all they think about
16 constantly, and it's related to large amounts of dopamine
17 being released.

18 The brain is not designed for massive amounts of brain
19 chemicals to be released all at once. And sometimes you
20 see problems. Certainly, there's a condition called
21 "schizophrenia." And we know for sure that at certain
22 areas of the brain, too much dopamine is the main cause of
23 people having some symptoms with schizophrenia. It's not
24 that simple. There are other brain chemicals too.

25 But when we use a medicine that blocks dopamine, they

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1 get better. They do get -- they don't get well, they get
2 better. So they have less delusions, less hallucinations.
3 They can start working. People with schizophrenia, a
4 lifelong disease, too much dopamine -- you see similar
5 symptoms with someone taking cocaine that releases too much
6 dopamine: hallucinations, abnormal thinking, aggression.

7 You can see this in animals, where -- where too much
8 dopamine is either released or given directly, they will
9 fight with each other. Loss of impulse control is seen
10 with too much dopamine.

11 Q What does that mean, "loss of impulse control"?

12 A Not being able to think about your behavior and the
13 consequences. Should I hit this person? No, I shouldn't.
14 I should -- I should just settle down, count to ten, and
15 then avoid him; and then maybe talk about it later.

16 So -- so rather than not even having that thought, you
17 just suddenly hit the person without any level of thinking
18 because you're just acting very spontaneously, based on a
19 thought, a -- a feeling, maybe a feeling of paranoia, maybe
20 a feeling of rage, maybe a feeling of excessive --
21 excitation.

22 I would not want my airplane pilot to be landing a
23 airplane while they were agitated on cocaine. I would want
24 them to think clearly and slowly get it down. It would be
25 dangerous for that to happen.

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1 Q Is there anything else you want to tell us in terms of
2 your understanding of the effects of cocaine on both
3 conduct and thought, and how it relates to this specific
4 case, in terms of Mr. Hogan.

5 A The -- the same thing that I would -- I would talk to
6 my students about. I would say that here, that their
7 behavior is illogical. It does not make sense to me; it
8 does not make sense to people. And to try to make sense of
9 it is futile.

10 And I hear this constantly: "Why did she do that?"
11 "They did it because they were using cocaine." "Well, why
12 did they do that?" "I don't know. It's not logical, is
13 it?"

14 They have illogical thinking. It's important to know
15 that if you'll work with people that have recently used
16 drugs, their behavior is not logical. It -- they didn't
17 use a part of their brain in thinking through and planning
18 what they did. And I think that's -- I'm -- I'm seeing
19 evidence of that with Mr. Hogan.

20 Q You see any loss of impulse control there with Mr.
21 Hogan?

22 A From what I heard from him, both on the interview --

23 Q You mean the videotaped interview?

24 A -- videotaped interview, talking with him, trying to
25 make some sense. I spent a couple of hours with him,

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1 because I collected information in several different ways.
2 I'm -- I'm aware that he could tell his story
3 overreporting, underreporting, accurately reporting. I'm
4 aware of that. And I take that into consideration.

5 And I teach about that. I teach about what do you
6 rely upon. And so I try to cross-reference what I hear
7 from him several times. I try to cross-reference to what
8 he said before. I try to cross-reference it to what
9 investigators maybe found to come to what was probably
10 there. I was not there. No one was there except Mr.
11 Hogan.

12 So I'm aware of that, and I'm relying on that. How
13 does it fit with what's in the literature? How does it fit
14 with other people that I've seen in the hospital? How does
15 it fit with other people that I know have committed crimes?
16 Is this -- is this a pattern? Is it a possibility? What
17 is the possibility that he responded that way? Is it high
18 or is it low? Is it remote? Is it absolutely 0.001
19 percent or is it 80 percent likely?

20 So I -- I'm -- I'm trying to make assessments in that
21 area. What's the likelihood that he was acting paranoid
22 and he was aggressive and irritable and uncomfortable on
23 that night? Pretty high. Pretty high likelihood, based on
24 the amount that -- of -- of cocaine that -- that he and
25 Mrs. Brown used over that day, sharing it.

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1 Q Anything else you'd like to add in terms of cocaine
2 effect in this particular case?

3 A Well, the sense of sensitization is important. Just
4 as -- just as if I got burned a lot in the sun as a child,
5 I'm more likelihood [sic] to develop malignant melanoma as
6 an adult. I -- my skin has been sensitized. And just as
7 with cocaine, it sensitizes parts of the brain the around
8 negative thoughts.

9 So if you were a little paranoid ten years ago and you
10 quit, you're going -- soon as you start using now, you're
11 going to be equally paranoid if not more, because it's
12 developed that pathway. It sensitized that pathway in the
13 brain, that thought, that feeling, maybe that behavior,
14 that it's easier to occur and set off.

15 So you see that in people that have been using
16 stimulant drugs, that their behavior worsens. It doesn't
17 necessarily plateau out or get better while they're using.
18 It can plateau out and decrease if they quit using,
19 certainly. I -- I work in this area because people get
20 better if they're treated.

21 And I find it a very gratifying area to work in,
22 because people do get better if you treat them. If you
23 treat them, they will get better. If they quit using
24 drugs, they will get better. It's not necessarily an easy
25 thing to do, but it's very predictable. I find drug abuse

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1 to be predictable: what happens if you use, what happens
2 if you don't use.

3 MR. BLAKE: Thank you.

4 THE COURT: Mr. Daniel?

5 MR. DANIEL: Your Honor, at this time we don't have
6 any questions of Mr. Morton. Our -- we actually don't even
7 any objection to all the science that's he's just said.
8 That's not our point. Our argument -- and we will, of
9 course, make that at the appropriate time as to the
10 admissibility under the current case law.

11 THE COURT: All right. Doctor, I have some questions
12 regarding your testimony that I've got to satisfy myself
13 about.

14 THE WITNESS: Yes, sir.

15 DIRECT EXAMINATION BY THE COURT:

16 Q Looking at your slides and your things about crack
17 cocaine's initial effects and -- and then the psychiatric
18 effects of cocaine, first of all, the question that I have
19 is: How do you know what the effects of crack cocaine are?

20 Unlike, say, alcohol's effect on the liver -- an
21 autopsy reveals what that is -- that's -- that's an
22 objective standard, an objective finding. How -- the --
23 these are subjective. How do you -- how do you determine --
24 - unless you have used crack cocaine, how do you determine
25 what the subjective effect is on the brain?

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1 A The -- that's a good question. And there's several
2 ways you could do it. One is you could ask them to report
3 what they've had -- experience. You could ask them what is
4 it like.

5 Q I -- I understand that. And that ---

6 A Right.

7 Q That's still all subjective, is it not? There is no
8 objective way to determine what the effect of -- of crack
9 cocaine is on the brain?

10 A You can put them in a MRI scanner or a PET scanner and
11 say -- and describe to them, "What's it like to use
12 cocaine?" And you can see certain areas of the brain light
13 up. You can see -- you can see the brain change.

14 And that's different to someone that has not used
15 cocaine. And you say, "What do you think cocaine would
16 feel like?" And it doesn't light up as much. So that's
17 being looked at now, how the brain is stimulated and how it
18 changes it. So that's more objective.

19 We can't, until someone dies, do a postmortem of their
20 brain. But we can find microstrokes in the brain, where
21 people had little strokes from their cocaine use. We can
22 say that -- maybe that contributed to their behavior.

23 We can find -- we can find -- with other disorders,
24 sometimes people that have had trauma in -- in -- in the
25 war, they come back and use cocaine. We can see that their

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1 brain might get smaller. We can measure areas of the
2 frontal lobe, where we -- where we do our thinking, and we
3 can see that there's smaller areas. In that area it
4 doesn't light up.

5 You can do neuropsychological tests, where you have
6 them pick certain things or -- or where you have them do
7 pencil-and-paper tests and you can see changes in that,
8 both ---

9 Q Is -- is ---

10 A --- people ---

11 Q --- there -- is there a difference between an injury
12 to the brain and a -- and damage to the brain as a result
13 of drug use?

14 A There would be differences and similarities. There's
15 close-head injuries and there's open-head injuries. And --
16 and then, there's drug use. And that is not in my area of
17 expertise to testify. It's -- it's in my area of knowledge
18 ---

19 Q All right. How ---

20 A --- that I ---

21 Q --- how ---

22 A --- I would ---

23 Q --- do you ---

24 A --- refer ---

25 Q --- distinguish ---

DIRECT EXAMINATION BY THE COURT - WILLIAM ALEXANDER MORTON 56

1 A I'm sorry.

2 Q --- between the two, the -- of damage to the brain as
3 a result of an injury, as opposed to damage to the brain as
4 a result of drug use?

5 A It would be hard to do. But it would -- it would --
6 it -- depending on what area of the brain, where the injury
7 is, what you would expect to see from a injury, such as a
8 fall or a hammer. You might see -- if it was a hammer blow
9 to the back of the head, you might find it -- you might
10 find deficits there. But it would -- it would be hard to
11 do.

12 It'd be what you would expect to see on other scans
13 and -- that have -- that have been collected. For
14 instance, alcohol neuropathy and encephalopathy and damage
15 there, there's a -- a -- a -- a small atrophy of the whole
16 brain. And we -- we -- we realize that that can be related
17 to thiamine deficiency, a vitamin, that makes the brain get
18 smaller. And that's pretty predictable with alcohol. So
19 we can say more than likely, it's alcohol-related and not
20 Alzheimer-related. That can be done.

21 But -- or it's hard -- it -- it's hard to say that --
22 that cocaine didn't do that -- didn't make the brain
23 smaller.

24 Q Well, is it your testimony that -- that cocaine use or
25 prolonged drug use, whatever it is, whether it's alcohol or

DIRECT EXAMINATION BY THE COURT - WILLIAM ALEXANDER MORTON 57

1 -- or -- or cocaine or whatever it is, basically cause --
2 it can cause a permanent injury to the brain?

3 A Yes, sir. It can -- it can cause permanent, as far as
4 we've studied it sometimes ---

5 Q Just like a physical injury could do?

6 A Yes. That's possible too. Yes, sir.

7 Q So what we're really talking about here -- well, let
8 me see if I -- I -- get my thoughts together here a little
9 bit.

10 I guess my question is: When does this physical
11 injury to the brain, be it from a -- to -- when does this
12 injury to -- this injury to the brain, whether it be a
13 physical injury or a -- a result of prolonged drug use, not
14 become a psychiatric condition that makes a person
15 incapable of knowing the difference between right and wrong
16 and the ability to distinguish between -- in other words,
17 why is it -- what you're proposing here is the effect of
18 this use of drug on this defendant here in this case, why
19 isn't that a psychiatric condition that makes him not
20 criminally responsible?

21 A Because he used it voluntarily.

22 Q Voluntary intoxication is not a defense from -- from a
23 criminal standpoint.

24 A Right. I mean, that's -- he -- he used it -- started
25 off using it voluntarily. But he has symptoms that are

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1 consistent with what you see with other people. And these
2 symptoms last for days to weeks, typically: that -- that
3 the paranoia that you see with cocaine use would last for
4 easily days, if not months, but it would diminish. The
5 agitation and restlessness would last -- it -- easily for a
6 day from -- from using cocaine, if not -- if not six to
7 eight hours for sure. The ability to think clear and make
8 rational decisions -- it may take as long as 18 months to
9 start seeing some ability to make good, clear decisions.

10 Q All right. In -- in -- in determining whether this is
11 admissible for the jury, that's what I have to look at. It
12 seems like to me what we're talking about here is an area
13 between normal brain function and psychotic or psychiatric
14 brain function that makes a person incapable of knowing the
15 difference between right and wrong, and the inability --
16 and the ability to conform their conduct. Seems like to me
17 you're talking about some -- this being normal -- this
18 being the brain function down here that makes a person
19 psychotic. You're talking about something in between,
20 where they don't have that criminal responsibility.

21 A Well ---

22 Q Aren't we creating a whole new level of criminal
23 responsibility or lack of criminal responsibility ---

24 A I ---

25 Q --- between ---

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1 A --- I don't -- I don't know. I do know that -- that
2 you can have one symptom that can -- it -- not -- it might
3 not make you psychotic. You may know, "I shouldn't do
4 this," but you don't even think about it; you just respond.
5 You don't ---

6 Q You're talking about -- in that situation, are you not
7 talking about an irresistible impulse?

8 A Well, using cocaine is a irresistible impulse.

9 Q No. I'm talking about the actions, not the -- the use
10 of cocaine. I'm talking about the actions of committing
11 the crime.

12 A Well, the use leads to these side effects of actions,
13 which is impulsivity, aggressiveness, hallucinations, maybe
14 hearing or seeing ---

15 Q Does not the law make a distinction between a -- a
16 crime that is committed on irresistible impulse, as opposed
17 to the -- this criminal responsibility is still there, but
18 it's the difference between malice, say, in a murder case
19 and a lack of malice in a murder case, in which it becomes
20 voluntary manslaughter situation.

21 A I don't know that people get to the point of thinking
22 that, "Okay. I'm going to do this to this person." They
23 just spontaneously would hit someone or do something, and
24 then not think -- not think about it. And -- because that
25 is the nature of what cocaine and methamphetamine and any

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1 stimulant does, is it -- it just causes this impulsivity in
2 the way you perceive things and do things. And it's just
3 well documented that that's what you see with these drugs.

4 Q Is it your opinion that this impulsive behavior, as a
5 result of use of crack cocaine, relieves this defendant of
6 criminal responsibility?

7 A Not of criminal responsibility. No. I think he is --
8 I think he is responsible for what he did. And I think he
9 is justly -- he should be punished. And -- and -- but he
10 didn't think about doing it. He didn't plan it; he didn't
11 -- he didn't necessarily ---

12 Q Well, what is, I guess, the purpose of your testimony,
13 then? If you don't think it relieves him of criminal
14 responsibility, then what is the fact that you think that
15 the jury should consider, based on your testimony?

16 A That this -- here's a drug that causes incredible
17 changes in a person's perceptions, behavior, and how they -
18 - how they feel. And it -- it's well known and this should
19 -- this would help someone understand how this murder came
20 about.

21 It doesn't relieve him of the responsibility of doing
22 it, because he took the cocaine and these changes occurred.
23 But -- but he didn't plan it, per se. He didn't ---

24 Q So -- so that's what the different -- the law makes a
25 difference between malice and voluntary manslaughter.

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1 That's exactly what the law does.

2 This makes a difference between malice, because he
3 didn't plan it -- or he didn't have the -- the requisite --
4 -

5 A --- capacity?

6 Q --- capacity ---

7 A I'm sorry.

8 Q --- or -- well, he -- apparently, he had requisite
9 capacity, because if he didn't have the requisite capacity
10 to know the difference between right and wrong, then he
11 wouldn't be on trial.

12 So you don't think it -- you think he had -- he knew
13 the difference between right and wrong. He knew that his
14 conduct did not conform to the standards of society.

15 So I guess what I'm having trouble with is -- is the
16 difference between a normal brain function and a person
17 that reaches that stage of brain function where they don't
18 have capacity.

19 A I -- I think he -- somewhere in his brain he knew the
20 difference between right and wrong, but it was not checked.
21 It was not assessed. It didn't -- didn't say I'm going to
22 go to the right or wrong page and see if this is right or
23 wrong.

24 I think if you ask him now, he knows it's wrong; it
25 was absolutely wrong. There's no question when I talk to

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1 him, there's a tremendous amount of remorse and sadness
2 about what he did and he knows it's wrong.

3 At the moment I don't think -- at the time that it
4 occurred, he didn't ever say to himself, "Is this right or
5 wrong? Okay. It's wrong, but I'm going to do it anyway."

6 I don't think he did that. I think -- because using
7 cocaine doesn't put you in that perspective to think about
8 the consequences and should it be right or wrong. It's
9 just you do things. It -- it's like you're unleashed --
10 you've got this rage; you've got this pent-up, boiling
11 chemicals that are too much for your brain; and you're just
12 responding sporadically, erratically, illogically. I -- I
13 see that before and after. He -- he's ---

14 Q Okay. I ---

15 A --- he continues to make bad decisions after the
16 murder.

17 Q All right. I understand. Just a couple ---

18 A I -- I ---

19 Q --- more questions. Just a ---

20 A Okay.

21 Q --- couple more questions ---

22 A Yes, sir.

23 Q --- Doctor. Have you ever been asked or qualified to
24 testify on this specific issue in any other court or in --
25 or -- I -- I see your list of -- of 72 qualifications

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1 dealing with various effects of -- of drugs on the brain.

2 But have you ever been qualified as an expert to
3 testify on this specific issue before?

4 A I've testified in the guilt/innocent phase, as well as
5 the mitigation phases of different trials.

6 Q And how many of these qualifications were mitigation
7 phase?

8 A I would say -- I -- I would say probably two-thirds.

9 Q Two-thirds? So about a third of them would have been
10 in the guilt or innocent phase.

11 A Yes, sir.

12 Q And some of them you would've actually -- I believe
13 one of them, I noticed on there, was actually a post-
14 conviction relief thing, as opposed to ---

15 A Yes, sir.

16 Q Okay. Now, the other thing I would say is -- and I
17 would ask you this: Have you ever not been qualified in --
18 when brought before a court for qualification as an expert?

19 A No, sir, I have not. I've been involved in one formal
20 *Daubert* case, which lasted -- before my testimony. It was
21 a hearing -- a *Daubert* hearing that lasted for about a day
22 and a half, as far as does a benzodiazepine cause people to
23 become intoxicated.

24 Q Uh-huh.

25 A And it -- I thought it was well known and it's well

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1 documented. But we went through the *Daubert* procedures in
2 a federal court. And I did something similar just recently
3 ---

4 Q You went through it in federal court. What happened
5 as a result of that?

6 A I was allowed to testify. And that -- that -- that a
7 benzodiazepine does cause intoxication and there is
8 withdrawal from it. That was -- it was ---

9 Q And, I guess, the final question to that, in -- in
10 this hearing is: Why is this not a psychiatric issue,
11 rather than a pharmaceutical issue?

12 A Well, there's overlap. There's overlap. The -- the -
13 - the pharmacological issue caused the psychiatric symptom.

14 Q Well, if he had the psychiatric symptom -- symptoms,
15 they either rise to the level of not responsible or are
16 responsible.

17 A Well, at the time -- at the time now, he's certainly
18 responsible. In -- there's no question, in my mind. I'm
19 not a expert in -- in -- in determining if he -- but I -- I
20 think he's reliable now and he understands what's going on
21 now.

22 At the time I think he did not understand some of his
23 behavior. In retrospect he tries to make sense of it.

24 Q Well, there -- there are two standards under the law.
25 One is competency to stand trial and that's now. And the

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1 other is criminal responsibility at the time the act was
2 committed, and that's the ability to -- to know the
3 difference between right and wrong and the ability to
4 conform his conduct to the standards of society.

5 And if, from a psychiatric standpoint, he does not
6 meet that first -- the -- the latter one, with the
7 competencies of -- the competency, we all agree on at this
8 point -- but the criminal responsibility and the ability to
9 conform his conduct to the standards of society, then he
10 wouldn't be on trial from a psychiatric standpoint.

11 So there must be a level -- what you're saying is
12 between the -- not competent under a psychiatric standpoint
13 and a normal person under a objective standpoint.

14 A I -- I think -- if -- if he -- yes. I -- I -- my
15 opinion is that if -- if -- if he was addressed, "Did you
16 do the wrong thing?" a day after, he would've said, "Yes, I
17 did do the wrong thing. I knew I was doing the wrong
18 thing, but it just got out of hand and -- and it occurred."

19 But I don't think -- I don't think he was planning
20 this and wanting to hurt her specifically. He was just
21 using cocaine -- and in his own little world, which doesn't
22 necessarily make sense -- and his behavior was an
23 overreaction to one of Ms. Brown's behavior.

24 Q Based upon your reading and -- and having seen the
25 statements and things of that nature, you probably know

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1 more about the facts of this case than I do. So I haven't
2 heard any of the facts yet.

3 A Yes, sir.

4 Q But my question, I guess, at this point -- and then
5 I'm going to stop and we'll -- we'll let you stand down --
6 I'm -- I'm going to study what you've said. Is it your
7 understanding that he was using cocaine or under the
8 influence of crack cocaine at the time of the crime, or did
9 he cease doing it and it was sometime in the past?

10 A He was under the influence of it before, during, and
11 after the crime. And ---

12 Q Okay.

13 A --- and he used it fairly soon before and fairly soon
14 during and after the crime.

15 And people use cocaine until it's gone, basically, and
16 that's what he did. And even if he wasn't actually smoking
17 it while he was -- while he was doing the crime --

18 Q It's still in his system,

19 A -- he would still have it in his system.

20 Q All right.

21 A Yes, sir.

22 Q All right. That's what I -- I don't know the facts of
23 the case, and so I ---

24 A Yes, sir.

25 Q --- was wondering.

1 THE COURT: All right, Doctor. Thank you very much.

2 THE WITNESS: Yes, sir. Thank you ---

3 THE COURT: You may ---

4 THE WITNESS: --- Your Honor.

5 THE COURT: --- step down.

6 (Whereupon, the witness exits the witness stand.)

7 THE COURT: Would you like to have this witness
8 excused, Mr. Blake? I think he's got a long ride ahead of
9 him.

10 MR. BLAKE: Yes, Your Honor. That's would be fine
11 with the State as well as yourself.

12 THE COURT: Sorry for the delay, Mr. -- Dr. Morton.
13 And -- but maybe you'll get back to Brevard before too
14 late.

15 THE WITNESS: Thank you, sir. Appreciate ---

16 THE COURT: All right.

17 THE WITNESS: --- it.

18 THE COURT: You're excused. Thank you for coming.

19 (Whereupon, the witness exits the courtroom.)

20 THE COURT: All right. Counsel, that -- I'll hear
21 from you in the way of arguments in a few minutes. But
22 let's look at a couple matters just to see if we can
23 clarify some matters before we start.

24 It was brought to my attention after the order from
25 the last hearing that maybe there were -- a -- an amendment

1 to the order was necessary regarding the admissibility of
2 certain matters under 609. And I may have -- my notes may
3 have not accurately reflected what I thought everybody
4 agreed on. What do you think is admissible under 609, Mr.
5 -- Mr. Daniel or Ms. Johnson-Lee? And let's see if we can
6 get those matters clarified so that that order can be
7 amended to take care of that.

8 MR. DANIEL: Certainly, Your Honor. May it please the
9 Court. Your Honor, the prior convictions that the State
10 believes would be admissible are actually both the assault
11 with a deadly weapon from 1999 -- but the sentencing did
12 not happen until '03, and that was six months' confinement
13 in 2003 -- in addition to the burglary, which occurred in
14 2002 -- disposition was 2003, and that was 12 months. The
15 State believes both of those go to credibility.

16 And I understand, of course, the defense -- typical
17 argument of it being too prejudicial. But ---

18 THE COURT: All right. But -- so the two things that
19 you think that are impeachable offenses for which he could
20 be impeached if he were to take the stand are an assault
21 and battery -- or assault with a deadly weapon in 1999, but
22 did not go to trial, you say, until 2003?

23 MR. DANIEL: There was no disposition until 2003.

24 MR. BLAKE: Well, that's not actually ---

25 THE COURT: What -- wait a minute. What was that

1 disposition?

2 MR. DANIEL: We actually talked to the clerk's office
3 in Texas this morning. And on September the 10th, 2003,
4 the sentence was two years with six months' confinement and
5 240 hours community service. And then, there was a
6 probation violation on that in September.

7 The burglary was 12 months in September of '03. It --
8 it appears as though -- and this is coming from the clerk
9 in Texas, because these rap sheets are very difficult to
10 read from out of state.

11 It appears as though perhaps the burglary sentence was
12 handed down at the same time as the assault with a deadly
13 weapon. It seems like quite a long time after ---

14 THE COURT: Which would've been when?

15 MR. DANIEL: '03.

16 THE COURT: All right. Now, what's your position, Mr.
17 Blake?

18 MR. BLAKE: Well, Judge, I can't speak exactly to what
19 Mr. Daniels has addressed, since -- since I don't have
20 those records in front of me. All I have is the NCIC.

21 I'm not really so concerned about the time issue on
22 that. What I am concerned -- are the five factors that are
23 normally discussed relative to -- to whether or not the
24 probative value outweighs the prejudicial effect.

25 I think the case law's very clear on that in a number

1 ---

2 THE COURT: Well ---

3 MR. BLAKE: --- of cases, *Colf* ---

4 THE COURT: Let's talk about 609 for just a minute and
5 see which part of it under 609 is -- you -- you have a
6 problem with.

7 MR. BLAKE: Well, we can ---

8 THE COURT: All right.

9 MR. BLAKE: If I had more information, I could discuss
10 about how old it actually was.

11 THE COURT: All right. So ---

12 MR. BLAKE: The actual ---

13 THE COURT: So you're ---

14 MR. BLAKE: --- crime itself.

15 THE COURT: --- not -- you're not concerned so much
16 with 609(b), the timing, then?

17 MR. BLAKE: No. I think that that could be an issue.
18 But I understand that ---

19 THE COURT: Well, is it an issue?

20 MR. BLAKE: Well, Judge, he just said he talked with
21 the clerk this morning. This is the first I have heard of
22 what he said. Looking at the NCIC, the conviction happened
23 in 1999.

24 THE COURT: Well, the statute says -- I mean, the rule
25 says (as read): ". . . has elapsed since the date -- ten

1 years has elapsed since the date of the conviction or of
2 the release of the witness from confinement imposed for
3 that conviction, whichever is the latter date" Then,
4 it goes on to talk about the interest of justice.

5 But I'm talking about right now just the time itself.

6 All right. Mr. -- well, I'm going to rule on this in
7 January. But what I'm going to have to have, Mr. -- for
8 you to get it in, Mr. Daniel, is something certified from
9 the authorities in Texas, and give it to Mr. Blake, to show
10 the date of the conviction, the length -- the -- the things
11 that would meet the requirements of Rule 609 -- when he was
12 sentenced; if he was sentenced, in fact, on September the
13 10th of 2003; because it's -- it's evidence of a conviction
14 under the rule, not the date of the offense, the evidence
15 of a conviction since the date of the conviction.

16 So if the -- there's a certified statement from the
17 authorities in Texas that the date of the conviction was
18 September the 10th, 2003, it meets the requirements of the
19 rule.

20 MR. DANIEL: Certainly, Your Honor. And I would just
21 say for the record that Mr. Blake does have the rap sheet,
22 which very clearly says (as read): "Convicted, assault and
23 battery" -- or "assault with a deadly weapon; disposition
24 date, 2/21/03; sentence date, 2/21/03."

25 THE COURT: Why isn't that conclusive, Mr. Blake?

1 MR. BLAKE: Judge, there's a number -- as Mr. Daniel
2 said originally, there was a number of different dates on
3 there. This particular incident is listed a number of
4 different times.

5 I show a plea as being June 19th of 2001 off of the
6 NCIC. I understand he was revoked with, again, some time.

7 THE COURT: Wait a minute. Go ahead, Mr. Blake.

8 MR. BLAKE: So our -- I just -- I would like to see it
9 certified, simply because it is confusing in the Texas
10 record. That's all.

11 THE COURT: Well, even if you -- your date is correct,
12 ten years elapsed from the date of the conviction or the
13 release of the witness from the confinement imposed for
14 that conviction, that'd be another year.

15 MR. BLAKE: I understood he got probation originally
16 and then it was revoked. I just would like to -- if we
17 have a certified record, we might understand exactly what
18 did happen.

19 THE COURT: Well, I'll let y'all -- I'll give you til
20 -- y'all can do it any way -- way you want to and I'll --
21 I'm not going to rule on it today. But it seems like to me
22 this is something that ought to be pretty easy to
23 establish. I don't see where ---

24 MR. BLAKE: Because that's -- that is certainly one --
25 we're talking about 609(b). My main concern comes in with

1 609(a).

2 THE COURT REPORTER: (To Mr. Blake) "A"?

3 MR. BLAKE: A.

4 (Brief pause.)

5 THE COURT: All right. Not under the 1 -- not under
6 the -- the punishment portion of the -- of 609(a), but
7 under the prejudicial effect outweighed -- outweighs the
8 probative value; is that correct?

9 MR. BLAKE: Yes, Judge. 609(a)(1).

10 THE COURT: Well, (a)(1) is still also imprisonment in
11 excess of one year. You don't deny that it -- the
12 imprisonment was in excess of more than one year.

13 MR. BLAKE: No. It was punishable by imprisonment of
14 more than one year ---

15 THE COURT: Both of them -- on both of them.

16 MR. BLAKE: That's correct.

17 THE COURT: So what -- what you're objecting to is the
18 last part of that, that it should not be admitted because
19 the prejudicial effect outweighs the probative value; is
20 that right?

21 MR. BLAKE: Yes, Judge.

22 THE COURT: All right. Is that with regard to assault
23 with a deadly weapon and the burglary, or just one or the
24 other?

25 MR. BLAKE: Both. I think that both the -- the *Colf*

1 or *Dunlap* factors need to be applied to both, and I think -
2 --

3 THE COURT: The what factors?

4 MR. BLAKE: *State v. Colf*, 337 S.C. 622.

5 THE COURT: You want to hand it up?

6 MR. BLAKE: That was the beginning of a series of
7 cases -- I don't know that I have that particular one here,
8 Judge. I can certainly provide that to you.

9 I mean, it's -- these are factors that have been
10 discussed in many cases relative to this prong of ---

11 THE COURT: Just give me law that you're relying on.

12 MR. BLAKE: *State v. Colf*, 337 S.C. 622; that's our
13 Supreme Court in the year 2000.

14 THE COURT REPORTER: (To Mr. Blake) Is it C-o-u-g-h,
15 Cough?

16 MR. BLAKE: C-o-l-f.

17 THE COURT: *Colf*, 337 S.C. 622?

18 MR. BLAKE: Yes, Judge.

19 THE COURT: And what -- it's a Supreme Court case of
20 what year?

21 MR. BLAKE: 2000.

22 THE COURT: Okay.

23 MR. BLAKE: Judge, I'd be happy to brief this for you
24 if it would be helpful. That way I can present the cases
25 and -- but certain cases are relevant to certain -- there

1 are five prongs in this test. Certain cases focus on some
2 of those prongs; some on others.

3 THE COURT: All right. I'll take the matter under
4 advisement. I will have briefs from both sides by the
5 hearing in my term in Marlboro.

6 MR. BLAKE: Okay. On both the aggravated assault with
7 a deadly weapon and the burglary?

8 THE COURT: Yes. I'll -- I'll make this determination
9 in my term in Marlboro. And that portion of the order
10 which deals with -- with that will be withdrawn, that's
11 paragraph -- on the second page of the order that deals
12 with that.

13 What I want is memorandums from both of you when I
14 come over for the term of court in -- in January with
15 regard to the admissibility for impeachment purposes of the
16 assault with a deadly weapon and the burglary.

17 And be prepared, Mr. Daniel, to convince me that it
18 falls within the statutory time limit, even though I think
19 it does right now, but the -- looks like the primary issue
20 that the -- issues of prejudicial effect versus probative
21 value.

22 MR. DANIEL: Yes, sir.

23 THE COURT: Okay.

24 MR. BLAKE: Judge, the specific date you would like
25 those memorandum?

1 THE COURT: Monday of opening day of court.

2 MR. BLAKE: Okay.

3 THE COURT: All right. Question that apparently was
4 raised that hadn't been addressed -- let's skip over Dr.
5 Morton's testimony for just now. What about the letter
6 from Mr. Hogan to the victims? Is that -- do you object to
7 -- do you plan to use that, Mr. Daniel? Or if so, what --
8 what's that about?

9 MR. DANIEL: Your Honor, I'm sorry. We're talking the
10 letter that the defendant wrote ---

11 THE COURT: I'm just going by what Mr. Blake wrote me
12 by e-mail yesterday telling me what he thought the issues
13 were for today. And one of ---

14 MR. DANIEL: Right.

15 THE COURT: --- them is the admissibility of a letter
16 from John Hogan to the victims. I don't ---

17 MR. DANIEL: He ---

18 THE COURT: --- know what that is.

19 MR. DANIEL: Yes, Your Honor. There is a four-page
20 letter, written by Mr. Hogan, that's dated -- I -- he
21 himself dated it September the 7th, 2011.

22 This is four pages of apologizing to the victim's
23 family and a pretty in-depth description of his addiction.

24 At this time, Your Honor, I don't know if we're going
25 to put this in or not. But I certainly would -- would

1 admit that if we want any of it in, it should all come in
2 as -- as a matter of completeness. But at this time, I'm
3 not prepared to say and I'm not going to say ---

4 THE COURT: Are you ---

5 MR. DANIEL: --- whether ---

6 THE COURT: --- objecting to the -- to it coming in at
7 all?

8 MR. BLAKE: Judge, I haven't looked very much in
9 detail in terms of any possible redaction to it. In
10 general, no, I do not object to it being admitted. It was
11 brought out at the list -- last hearing that they were
12 thinking of using it. I simply brought up the Rule 106 as
13 to Rule of Completeness.

14 MR. DANIEL: Certainly. If -- if we move to introduce
15 it, we will move to introduce the whole thing.

16 THE COURT: All right. That makes sense. All right.
17 If they -- but they don't have to put it in.

18 You're not -- you're not offering the letter; is that
19 right, Mr. Blake?

20 MR. BLAKE: Judge, I'd like to address -- you know,
21 deal with that at the time. I'm not sure if I do or not.
22 I may be -- I -- I may.

23 THE COURT: Okay. Well, that -- that may be something
24 you'll have to deal with at the time if Mr. Daniel decides
25 not to introduce it and you wish to introduce it. Then I

1 may have to rule on it at that time whether self -- or
2 whatever the question might be. But we'll deal with that
3 at the time. I don't think that's something you can
4 anticipate.

5 All right. What about photographs?

6 MR. DANIEL: Your Honor, there are 15 photographs that
7 I have premarked that Mr. Blake has no objection to.

8 THE COURT: All right. Then, those I don't need to
9 worry about.

10 MR. DANIEL: Right.

11 THE COURT: All right.

12 MR. DANIEL: There are -- let's see -- 16 through 31
13 that Mr. Blake does object to. But they have been marked
14 for identification for convenience of the Court and the
15 court reporter.

16 THE COURT: All right. Let me look at those.

17 (Off the record from 2:43 p.m. until 2:45 p.m.)

18 THE COURT: All right. We're back on the record with
19 regard to the photographs. Mr. Blake, Photograph 16 for
20 identification appears to be some kind of a drum. What's
21 your objection to that?

22 MR. BLAKE: Judge, I believe that's cumulative. We
23 already have several pictures that are -- have been --
24 we've agreed to that are -- have the drum.

25 THE COURT: So 16 is just because of replications?

1 MR. BLAKE: I'm sorry. I couldn't -- I didn't ---

2 THE COURT: Sixteen is just because it's repetitive?

3 MR. BLAKE: Yes.

4 THE COURT: Mr. Blake -- Mr. Daniel?

5 MR. DANIEL: Your Honor, there is only one other
6 photograph that has been agreed to that has the drum at the
7 scene where it was found. And the reason that we want both
8 of those in is to show very accurately -- give the jury a
9 picture of the size of the drum, given the fact that there
10 was actually a person put in the drum. They are not -- I
11 mean, we're talking about two. We're not talking about
12 ten.

13 THE COURT: I understand. Okay. Seventeen, what's
14 that a photograph of, Mr. Daniel?

15 MR. DANIEL: Your Honor, first of all, I would ask --
16 we've got some family members of the victim in the
17 courtroom. I just would ask the Court to be aware of that
18 as you're ---

19 THE COURT: Okay. What is -- what is 17, then?

20 MR. DANIEL: Your Honor, those -- that is a photo of
21 the duct tape that was used to tie the hands of the victim.
22 We've got some potential testimony of SLED agents, maybe --
23 maybe -- and we -- we don't know this for sure yet -- but
24 connecting some duct tape from a roll that was found in the
25 truck of the defendant.

1 THE COURT: All right. I understand.

2 What's the objection to that, Mr. Blake? I mean, I'm
3 assuming it's going to be tied to it as being relevant,
4 unless -- unless the objection is relevance. But if the --
5 what -- what's the objection to it?

6 MR. BLAKE: Well, Judge, there is an objection to -- I
7 mean, he admits to using duct tape. My objection is
8 relevance. I'm just -- I'm concerned ---

9 THE COURT: Why -- why -- what -- what's the relevance
10 objection?

11 MR. BLAKE: Well, certainly, the duct tape itself is
12 relevant, but ---

13 THE COURT: Okay.

14 MR. BLAKE: --- it was, of course, found on the body,
15 inside the barrel. I'm concerned about its prejudicial
16 effect there.

17 THE COURT: So your objection is not that it's not
18 relevant; that is, 403 prejudicial effect outweighs
19 probative value.

20 MR. BLAKE: Yes.

21 THE COURT: Number 18, Mr. Daniel? What is that a
22 photograph of?

23 MR. DANIEL: Can I see it?

24 (Mr. Daniel views photo.)

25 MR. DANIEL: Your Honor, that is a photo of the top

1 worn by the victim in this case.

2 THE COURT: Okay. And what is it -- what's the
3 purpose of offering it, Mr. Daniel?

4 MR. DANIEL: Yes, Your Honor. That photograph
5 actually shows a -- a couple of holes where we will have
6 testimony that those holes are consistent with where the
7 stab wounds inflicted the victim.

8 THE COURT: All right. What's the objection, Mr.
9 Blake?

10 MR. BLAKE: Your Honor, I believe the testimony will
11 also state it's inclusive, but mainly 403, Judge.

12 THE COURT: Testimony will say what?

13 MR. BLAKE: That it was inconclusive; it was not --
14 wasn't necessarily consistent; it wasn't inconsistent.

15 THE COURT: Well, that doesn't -- so what's the legal
16 objection?

17 MR. BLAKE: 403.

18 THE COURT: 403?

19 MR. BLAKE: Yes, Judge.

20 THE COURT: Prejudicial effect?

21 MR. BLAKE: Yes.

22 THE COURT: Nineteen appears to be a photograph of the
23 room?

24 MR. DANIEL: Yes, sir. And there are are several --

25 THE COURT: Nineteen, 20, 21, 22 all appear to be

1 photographs of the wall or damage to a wall.

2 MR. DANIEL: Yes, sir. There are -- there will be
3 testimony that there was an altercation between the victim
4 and the defendant at -- at -- around that part of the house
5 -- or the trailer. And there is also potentially going to
6 be testimony that some blood was spattered on those places.

7 Now, SLED is in the process of -- of -- of analyzing
8 those swabs. But certainly, if there's blood, we would be
9 allowed to give -- should be ---

10 THE COURT: All right.

11 MR. DANIEL: --- allowed to give ---

12 THE COURT: What's the objection to these photographs,
13 Mr. Blake?

14 MR. BLAKE: Judge ---

15 THE COURT: Relevance or 403?

16 MR. BLAKE: Well, some of it's repetitive. I guess I
17 think it'd be appropriate to enter these into evidence so
18 that you have them to look at in making your determinations
19 here.

20 Some of them are repetitive. I don't know -- they're
21 just different pictures. I'd have to look at them
22 specifically to -- to tell you.

23 THE COURT: Well, then, we're wasting time ---

24 MR. BLAKE: I'm not ---

25 THE COURT: --- on that.

1 MR. BLAKE: I'm not trying to waste time, Judge. I
2 just -- you said they were photographs of different aspects
3 of the room. There are already ---

4 THE COURT: Well, I'm going to ---

5 MR. BLAKE: --- photographs ---

6 THE COURT: --- skip over those. I can rule on those
7 very easily at the time that they are offered in context
8 with the testimony that has been offered and what has been
9 introduced. And I'll just rule on those at the time.

10 At the time of trial, there'd be continued as -- 16
11 through 26 will continued as ID, Mr. Daniel. And you just
12 offer those at the time, and I'll rule on those at the
13 time. That's 16 through 22. Now ---

14 THE COURT REPORTER: (To the Court) Through 22, Your
15 Honor?

16 THE COURT: --- I think I ---

17 THE COURT REPORTER: Through 22?

18 THE COURT: Sixteen through ---

19 MR. DANIEL: --- 26.

20 THE COURT: --- 26. I'm sorry. Sixteen through 26.

21 I'm making no ruling with regard to 16 through 26.
22 They're marked for ID. They'll remain marked for ID, and
23 I'll rule on them when they're offered into evidence.

24 Now, I'm assuming the -- 27, 28, and 29 are
25 photographs that -- involving the injury and the victim's

1 body that you objected to, Mr. Blake, on the grounds, I
2 would think, they're -- well, I'll let you tell me; I won't
3 put words in your mouth.

4 MR. BLAKE: Rule 403, Judge.

5 THE COURT: Sir?

6 MR. BLAKE: Rule 403.

7 THE COURT: All right. 403?

8 MR. BLAKE: Uh-huh.

9 THE COURT: All right. Again, I think we'll discuss
10 these at chambers in pretrial conference, Counsel, before
11 we go forward. At the present time they'll be admitted for
12 ID. That's the same thing that's true with 30, which is
13 back into the photograph of the room. I don't think it --
14 I think we can deal with that at the time.

15 Finally, 31, apparently, is the dental records, Mr.
16 Daniel. And the -- what -- what would be your position on
17 those? What -- what -- what do they illustrate, as far as
18 the testimony is concerned?

19 MR. DANIEL: Your Honor, I -- I -- I would -- I want
20 to first comment about the other ones that you just said
21 are for ID only. I want to tell you that there are a
22 couple of those that are very graphic.

23 THE COURT: Yes.

24 MR. DANIEL: And it is not the State's intention to
25 put that entire photograph in.

1 THE COURT: Oh ---

2 MR. DANIEL: It -- it ---

3 THE COURT: --- okay.

4 MR. DANIEL: --- it would be cut out to -- to just
5 what the State believes to be the stab wound. And that
6 would be the only part of that ---

7 THE COURT: Well, I think we can handle that at the
8 pretrial conference at ---

9 MR. DANIEL: Certainly.

10 THE COURT: --- the time or either in January. I
11 don't think that's something you can deal with today. I
12 think the main reason I wanted to have this hearing today
13 was to get to Mr. -- to Dr. Morton's testimony.

14 But I'm going to -- again, am going to give these back
15 and let -- and -- and we'll deal with all the photographs
16 at the -- at the appropriate time.

17 MR. DANIEL: And -- and, Your Honor, the -- the dental
18 record -- you -- I think you asked about that one in
19 particular. That one I have -- we have discussed. I -- I
20 believe that Mr. Blake is going to stipulate that the
21 remains are, in fact, the victim that we believe -- or who
22 was involved in this case.

23 However, it is, as the Court knows, a -- a tried and
24 true defense tactic to put law enforcement on trial. And
25 in this case we would like to be able to show the jury what

1 kind of lengths law enforcement went to, to make sure that
2 they had crossed their "i's" and dotted their -- whatever -
3 --

4 THE COURT: Well, I'm ---

5 MR. DANIEL: --- dotted their "i's" ---

6 THE COURT: --- not going to be able to do that until
7 I hear the testimony, so ---

8 MR. DANIEL: Right.

9 THE COURT: --- we'll just have to see.

10 All right. Let's go back to Dr. Morton's testimony.
11 I want to hear from you, Counsel. That's the main reason
12 we were over here today, was to determine the admissibility
13 of the expert testimony.

14 And now that we have heard from him and I have
15 inquired questions that I had, I do need to go ahead and
16 put on the record to make this determination. I'm not sure
17 whether I'm going to rule today, but I'll hear arguments
18 from you.

19 But what the -- the laws state, of course, is under
20 the State -- case of *the State v. Council*, that: "When
21 admitting scientific evidence under Rule 20 -- 702, the --
22 of the South Carolina Rules of Evidence, the trial judge
23 must find the evidence will assist the trier of fact" --
24 that would be the jury -- "that the expert witness is
25 qualified and the underlying science is reliable. The

1 trial court should apply the Jones factors to determine
2 reliability. And if the evidence is admissible under 702
3 of the South Carolina Rules of Evidence, the trial judge
4 should determine if its probative value is outweighed by
5 its prejudicial effect under Rule 403 of the South Carolina
6 Rules of Evidence. Once the evidence is admitted under the
7 standards, the jury may give it such weight as it deems
8 appropriate."

9 Now, based upon the notes that I have made, it appears
10 that the State does not challenge the witness's
11 qualification as a pharmacist -- pharmaceutical -- let me --
12 -- I wrote exactly what -- psychopharmacology. He's offered
13 as an expert in the field of addiction and
14 psychopharmacology, and the State indicated that they do
15 not object to that.

16 But with regard to the other matters, let me hear from
17 Mr. Daniel as to why you think the testimony is not
18 admissible; then I will allow Mr. Blake to reply.

19 MR. DANIEL: Thank you, Your Honor. If it please the
20 Court. Your Honor, this is a situation that the State
21 believes never gets to *Council*. The Court shouldn't even --
22 -- shouldn't even bother itself with that analysis because
23 of the well-settled law in South Carolina that voluntary
24 intoxication or being under -- or under the influence of
25 drugs is not a defense to a criminal act.

1 In -- in conversations with Mr. Blake, I understand
2 that he's saying we're not putting this forward as a
3 defense. But that's exactly what the defense is doing,
4 because it's saying that he's not guilty of murder because
5 he's under the influence; he's -- therefore he's guilty of
6 voluntary manslaughter and not murder. And that's his
7 whole point.

8 Well, that, by definition, is a defense to murder.
9 And so it is well settled with the *Davis* case that I have
10 for the Court, as well as the *Vaughn* case. If the -- the -
11 - the Court in those cases said it better than I can. And
12 that is (as read): "Voluntary intoxication does not impair
13 a person's ability to act" ---

14 THE COURT REPORTER: Mr. Daniel, when you read, you
15 need ---

16 THE COURT: Slow down.

17 THE COURT REPORTER: --- to read a little bit slower.

18 MR. DANIEL: Sorry. (As read) "Voluntary intoxication
19 does not impair a person's ability to act with malice
20 aforethought so as to reduce murder to voluntary
21 manslaughter."

22 Your Honor, it doesn't get any more cut and dried than
23 that. That is the *Davis* case.

24 The *Vaughn* case echoes essentially the same thought.
25 And that is (as read): "Voluntary intoxication is never an

1 excuse for or a defense to a crime, regardless of whether
2 the intent involved be general or specific."

3 Your Honor, again, what Mr. Blake wants to do here is
4 have the jury hear all this stuff about what cocaine does
5 to you, to negate the intent required. That is a defense.

6 And as the Court said when discussing the matter with
7 the -- with Mr. Morton, they are not allowed to assert that
8 as a defense, because it was voluntary. I -- I have heard
9 no evidence that Mr. Hogan was force-fed cocaine or was
10 forced to smoke crack.

11 So, Your Honor, I've got 300 or so defendants in
12 Dillon who are praying that you rule for the defense in
13 this case. Because what a Pandora's box it opens for a
14 defense to be able to say, "Well, yeah. I may have
15 committed this crime, but I'm not as -- as culpable because
16 I was high; because I was drunk; because I was whatever."

17 There's no *McNaughton* test here. There's been no
18 issue -- no -- no psychologist or psychiatrist has -- has
19 evaluated Mr. Hogan. That is not an issue.

20 So, Your Honor, you heard the doctor say that -- that
21 this -- these drugs were used voluntarily; that they do not
22 relieve this defendant of criminal responsibility; and that
23 he knew the difference between right and wrong. I don't
24 think that this doctor -- or this person is -- this witness
25 was qualified to -- to say all those things. But this ---

1 THE COURT: Well, my purpose in that was trying to
2 draw the distinction between whether he's -- could be on
3 trial or not be on trial.

4 MR. DANIEL: Certainly. Certainly. And -- and all
5 I'm saying is from -- from an official standpoint of him
6 passing judgment on that, I don't think that he was
7 qualified ---

8 THE COURT: Well, he ---

9 MR. DANIEL: --- or -- or would be. But certainly, I
10 -- I understand why the Court was asking the question.

11 But ultimately, Judge, this is why we didn't have any
12 objection to Mr. Morton's testimony to -- or at -- at this
13 point, and to his -- to the science of what he had to say,
14 because we don't object to any of that.

15 But we don't think we ever get to the *Council* argument
16 because of the very clear case law in this state that this
17 is not allowed to be asserted as a defense when that is, in
18 fact, precisely what Mr. Blake's trying to do.

19 THE COURT: All right. So what your argument is, is
20 that the testimony of Mr. Morton is not relevant and will
21 not assist the trier of fact to determine any relevant
22 issue, because the issue of voluntary intoxication, whether
23 or not it is drugs or alcohol, is not a defense.

24 MR. DANIEL: That is absolutely what we're saying.
25 And, Your Honor, if -- if the defense would like to use

1 this in mitigation, then have at it.

2 And -- and I -- I would add that this -- these 71
3 cases, I believe, on this list that is a Court -- Court's -
4 - or Defense Exhibit 4, the list of cases that Mr. Morton
5 has testified in, I believe, all the South Carolina cases
6 are capital cases except for one. And of -- of course,
7 this is -- this is admissible in -- in -- in the penalty
8 phase of a -- of a capital trial.

9 THE COURT: Well, I asked him about that. And he
10 admitted it was two-thirds of those cases on that list he
11 testified to were in mitigation, not in -- not in -- in
12 direct testimony.

13 MR. DANIEL: Right. But I -- I would say that if --
14 if you look at the cases where he was qualified in South
15 Carolina, there is one that I see that was not a capital
16 case or a federal case.

17 And so again, we could -- we could go over that
18 another time. But again, it's still -- it's still
19 irrelevant here. The jury should never hear from this --
20 Mr. Morton, should never hear anything about cocaine.

21 And additionally, if the Court even, for some reason,
22 would see it fit to allow his testimony, the State would,
23 in the alternative, argue 403 analysis -- or make a 403
24 argument as well.

25 THE COURT: Okay.

1 MR. DANIEL: Given the adverse effects that even the
2 mention of crack cocaine and somebody being high might use
3 -- or the defense might use it in the way of jury
4 nullification.

5 THE COURT: I understand. All right, Mr. Blake. The
6 -- the State's position is twofold then. Under -- he said
7 we don't even get to *Council*. But basically, we do get to
8 *Council* because he's being offered as an expert. And
9 what's he's saying -- what Mr. Daniel is saying, that the
10 evidence is not something that would help a trier of fact
11 to determine the fact at issue, because voluntary
12 intoxication is not a defense. And then, second, the 403
13 analysis.

14 So he is basically conceding that the witness is
15 qualified and that the underlying science that he testified
16 to is reliable.

17 I'll hear from you with regard to why ---

18 MR. BLAKE: Judge, I ---

19 THE COURT: --- why you think ---

20 MR. BLAKE: --- I had not been seeing this case to
21 talking about *State v. Davis*. But first of all, he says
22 that he does not even think that cocaine use should come
23 into this trial at all. And I would say under the basic
24 idea of *res gestae*, that it is inextricably intertwined
25 with what happened.

1 THE COURT: There is no *res gestae* in our law anymore.
2 That's been replaced by 803 Subparagraph 3 for excited
3 utterances, but the -- the *res gestae* section has been
4 eliminated.

5 MR. BLAKE: I don't mean the hearsay exception, Judge.
6 I mean this -- basically quoting from *State v. Adams*, a
7 1996 case. I'm talking about just the entire events.
8 They're trying to keep out what is essentially a important
9 and a necessary aspect of this case, which is that both of
10 these people were using crack cocaine.

11 Quoting from that case (as read): "One of the
12 accepted bases for the admissibility of evidence of other
13 crimes arises when such evidence furnishes part of the
14 context of the crime or is necessary to a full presentation
15 of the case"

16 THE COURT: What's the citation for *Adams*?

17 MR. BLAKE: *Adams* is 470 S.E.2d 366, South Carolina
18 Supreme Court 1996.

19 But first of all, I think that the cocaine or crack
20 usage is, as I said, inextricably intertwined as the quote
21 in that case and several others with the actual crime
22 itself. And to take that out is simply not to speak of the
23 actual events.

24 Second, we're talking about voluntary manslaughter,
25 which obviously, an important part here is heat of passion.

1 There are facts in the case, my client being stabbed in the
2 side, which would certainly lead to that heat of passion.
3 And then, of course, there is the aspect ---

4 THE COURT: Well, that may be. But that -- that
5 doesn't have anything to do with Dr. Morton's testimony.

6 MR. BLAKE: Well, I was going to say that we're also
7 talking about whether or not the heat of passion remain. I
8 don't know that there is an issue with time or not. There
9 are two videotapes -- or there was two statements or
10 confessions. One was done at the Marlboro County Sheriff's
11 Office some 2 1/2 hours after the original ---

12 THE COURT: I -- I recall the statements. I heard the
13 testimony on that over in Marlboro County. And I recall
14 those and I've already ruled on those. Didn't I hear the
15 statements?

16 MR. BLAKE: Yes, Judge. What I'm saying is that I'm
17 not sure what's going to -- I know what my client will
18 testify to as to what was said in the Sumter interview,
19 which we do not have a tape of. I'm not sure what law
20 enforcement will be testifying to as to what my client said
21 in that interview.

22 If it's an issue of whether or not he had actually
23 cooled off, that may -- is where the effects of the cocaine
24 come in. Has to do with his cooling off period. Not --
25 not what caused him to do it in the first place there, just

1 whether or not he had actually cooled off.

2 Voluntary manslaughter, of course, is sufficient legal
3 provocation, heat of passion, and whether or not he had
4 essentially returned to reason, whether he had cooled off.

5 THE COURT: But I -- I fail to see what Dr. Morton's
6 testimony has to do with that.

7 MR. BLAKE: With the cooling-off period?

8 THE COURT: Yeah.

9 MR. BLAKE: Well, cooling off has -- well, either two
10 things: whether or not he had actually cooled off, which
11 Dr. Morton's testify -- testimony would deal with; or
12 whether sufficient time had relapsed -- had happened so
13 that he should've cooled off. So whether he actually
14 cooled off or whether he should've cooled off.

15 I think it is relevant to that aspect, because it's
16 talking about his mental state. Looking at *South Carolina*
17 *Requests to Charge* by Judge Ralph King Anderson, basically
18 says (as read): "In determining whether the act which
19 caused death was impelled by heat of passion, all
20 surrounding circumstances and conditions are to be taken
21 into consideration . . ." And it goes on. And then
22 talking about ---

23 THE COURT: That has to do with all surrounding
24 circumstances at the time of the crime. It doesn't go back
25 to whether or not he voluntarily became intoxicated either

1 by drugs or alcohol, that would mitigate his crime. So
2 voluntary intoxication is not a defense.

3 MR. BLAKE: No. I'm not saying it is a defense,
4 Judge. It goes to his mental state in determining whether
5 or not he had actually cooled off. And one of the factors
6 there is whether he actually cooled off or whether he
7 should ---

8 THE COURT: Well, if it goes to ---

9 MR. BLAKE: --- have cooled off ---

10 THE COURT: --- if it went to his mental state as to
11 whether or not he actually cooled off, then it goes to his
12 mental state as to whether or not he was able to conform
13 his conduct to the standards of society. And if a
14 psychiatrist said that he was not able to conform his
15 conduct to the standards of society, then we wouldn't be
16 here today.

17 MR. BLAKE: Well, Judge, I'm not bringing in any
18 *McNaughton* issues here. I'm saying that ---

19 THE COURT: What's the difference though? It seems
20 like you are. You're trying to do to the back door what
21 you can't do to the front -- or what you could do to the
22 front door but you don't want to.

23 In other words, isn't that right? If -- if -- if he
24 was unable to conform his conduct to the standards of
25 society, then he is not responsible for this crime. And

1 psychiatric testimony to that effect would mean that he
2 would be in the South Carolina Department of Mental Health,
3 not in the criminal justice system.

4 MR. BLAKE: I don't think it rises to that level.

5 THE COURT: So that's exactly what I asked the doctor.
6 What you're doing is interjecting another level between
7 full responsibility and no responsibility.

8 MR. BLAKE: Judge Anderson basically -- the jury
9 instruction there says (as read): "In determining whether
10 a reasonable time for cooling off had elapsed, you should
11 consider all the circumstances surrounding the event, the
12 nature of the provocation, the defendant's physical and
13 mental constitution, the defendant's condition in life, the
14 defendant's education, habits, conduct, manner, and
15 conversation throughout the entire incident, and the
16 circumstances of the relationship between the parties."

17 THE COURT REPORTER: I'm sorry. The circumstances of
18 the relationship between ...?

19 MR. BLAKE: --- "and the circumstances and
20 relationships between the parties."

21 THE COURT: Okay. I understand your argument. My
22 intention, Counsel, would be to do a little research on my
23 own on these issues and to make a ruling on it at the
24 January term of court. Now that I have the testimony and I
25 know what he's saying, I'll make a ruling at that time.

1 And that'll give everybody -- or either I'll have a written
2 ruling -- but that will give everybody ample opportunity,
3 give them a month between the time of the Court's ruling
4 and the time of trial so everybody knows where we stand.

5 Yes, sir, Mr. Daniel?

6 MR. DANIEL: Your Honor, I just want to add that just
7 a -- a matter of clarification: If I said this, I didn't
8 mean to say that crack shouldn't be mentioned at trial.
9 Mr. Blake started his argument by saying that I was saying
10 that I don't want crack mentioned.

11 Certainly that is a -- a major part of this case, and
12 that's not what the State's position is at all.

13 And secondly, I -- Mr. Blake just handed me what he
14 was reading from. And he was reading from the voluntary
15 manslaughter charge. So naturally, what he said is going
16 to be included in a voluntary manslaughter charge. And
17 obviously, the State would -- would -- would -- would admit
18 that if -- if there's evidence that comes out at trial that
19 would support a voluntary manslaughter charge, then it
20 should be charged.

21 THE COURT: Right.

22 MR. DANIEL: But Mr. Morton is still irrelevant.

23 THE COURT: I understand. Okay. I think I -- I
24 understand everybody's position on this. This is what I
25 wanted to do, is find out exactly what Mr. Morton would be

1 testifying to and to get the proffer of his testimony and
2 decide -- determine what the various positions of the State
3 were as it affects the admissibility of expert testimony
4 under *State v. Council*. And I do now understand the
5 State's position and the testimony of the witness.

6 And I understand also what Mr. Blake is -- is
7 offering. And that is that he is not responsible for
8 murder, because he was unable to form the requisite mental
9 capacity, is what he wants to get from Mr. Morton that
10 would make him liable for murder.

11 I think Mr. Morton did say he didn't think it excused
12 him from criminal responsibility. But it did -- basically,
13 what we're talking about here is the mitigation between --
14 between murder and voluntary manslaughter.

15 MR. BLAKE: And, Judge, if I could for a minute, very
16 often heat of passion is described as irresistible impulse.
17 That's what mitigates it from murder to voluntary
18 manslaughter.

19 THE COURT: No question about that.

20 All right. Thank you, Counsel. And I appreciate your
21 patience today, but I'm glad we got this done so that I can
22 make a ruling on it when I come over the second week in
23 January to -- to Bennettsville.

24 MR. DANIEL: Judge, and I have a quick question, a
25 housekeeping matter: Does the -- should we keep those

1 exhibits that were marked? Do you want us to keep them?

2 You have to ---

3 THE COURT REPORTER: That was going to be the next
4 thing I said, is: Gentlemen, I need those exhibits,
5 please.

6 THE COURT: And what she'll do is send them to the
7 clerk ---

8 THE COURT REPORTER: Uh-huh.

9 THE COURT: --- or get the clerk -- the clerk here is
10 -- will need to transmit them to the clerk in ---

11 MR. DANIEL: Okay.

12 THE COURT: --- in Bennettsville, and they'll be on
13 file in -- in the clerk's office in Bennettsville.

14 MR. DANIEL: Okay. Thank you, Judge.

15 MR. BLAKE: Thank you, Judge.

16 (Whereupon, the proceeding was concluded at 3:13 p.m.)

17 --- END OF TRANSCRIPT OF RECORD ---

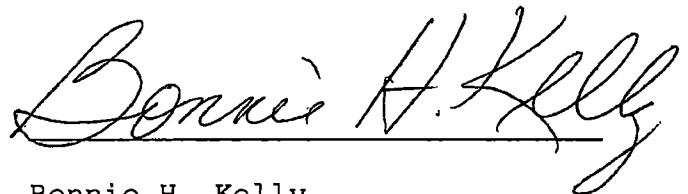
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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Marlboro County, South Carolina, on the 9th day of December, 2011.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

A handwritten signature in cursive script that reads "Bonnie H. Kelly". The signature is written in dark ink and is positioned above the printed name.

Bonnie H. Kelly

Court Reporter

Columbia, South Carolina

July 14, 2012

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 John Lee Hogan, Jr.,)
)
 Defendant.)
)
)

B E F O R E:

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

Daniel L. Blake, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>

No Exhibits Introduced.

1 THE COURT: All right, counsel, it will be, the first
2 matter that we have today is in connection with the matter
3 of *State vs. Hogan*, indictment number 10-GS-34-696. The
4 defendant, Mr. Hogan, is present in the courtroom with his
5 counsel, Mr. Dan Blake. The state is present and
6 represented by Mr. Shipp Daniel and Ms. Mary Thomas
7 Johnson-Lee.

8 Counsel, there are two matters that I have that have
9 been filed that I need to consider at some time or another.
10 And first is the motion for reconsideration filed by Mr.
11 Blake on behalf of Mr. Hogan and my ruling December the 22,
12 2011, concerning the expert testimony of William Morton as
13 an expert witness. And the other is a memorandum and a
14 filing with regard to the admissibility of prior
15 convictions under South Carolina Rules of evidence 609.

16 I'll tell you right now, counsel, that I have decided
17 that with regard to the admissibility of the prior
18 convictions, I am not going to rule on that today; I'm not
19 going to consider that today. I think that in order for me
20 to weigh the *Colf* factors, the five factors under *State vs.*
21 *Colf*, I will need to know what the testimony is prior to
22 that in order to determine whether the prejudicial effect
23 outweighs the probative value. And I can't do that until
24 I've heard the testimony. So, and that only will become a
25 factor after the state's case and when the defendant

1 testifies.

2 So, I will hear the state's case and then hear
3 arguments and make a decision during the course of the
4 trial on the admissibility of those prior convictions
5 because I think I've got to make findings on those five
6 factors in *Colf*, if I pronounce that case right, *C-o-l-f*,
7 vs. State, 337 S.C. 622, 525 S.C. 2nd 246 and the other
8 cases that have interpreted that. I've got to make
9 findings on those five factors. And I can't make those
10 until I've heard the testimony in the case and know what
11 the actual facts are that are going to be before the jury.
12 So, that will be withheld until the time of trial.

13 And now on the motion for reconsideration, I will go
14 ahead and hear arguments on that today, counselor. I will
15 tell you I'm not going to spend a lot of time on this. I
16 do have Mr. Blake's memorandum and, counsel, you each will
17 have about ten minutes. Mr. Blake, if you want to respond
18 to what the state says, reserve some of your time for that.
19 But in the meantime, I'll be glad to hear from you.

20 MR. BLAKE: You want me to start off, Judge?

21 THE COURT: Yes, sir.

22 MR. BLAKE: Judge, I tried to as clearly as possible
23 outline arguments there in that motion for reconsideration.
24 I was responding directly to your order. I can kind of
25 hit those points, but I certainly would like this not to be

1 my sole presentation. You obviously have the motion, as
2 does ---

3 THE COURT: I have your motion, and I have read it.

4 MR. BLAKE: The main point I started out by making was
5 that Rule 702 and also *State vs. Counsel* [verbatim] states
6 that basically:

7 Any scientific, technical, or other specialized
8 knowledge which will assist the trier of fact to
9 understand the evidence, or to determine a fact
10 in issue, is an important part of that first
11 prong.

12 And in your order, you of course had focused on the
13 fact in issue aspect, and I do think that there is a
14 distinction there.

15 In Rule 702, of course it doesn't say will assist the
16 trier to understand that evidence and to determine the fact
17 in issue. But it really gives those two alternatives.
18 That was the first point.

19 The second I felt that I wanted to clarify for the
20 court, what the purpose of Dr. Morton's testimony was. It
21 was not going specifically to intent. I was not concerned
22 about trying to create a sort of less than malice. Really
23 what I was speaking about, and I understand that part of
24 the problem perhaps in our hearing was we did not have a
25 full testimony or knowing what was going to actually happen

1 in trial, what facts would be brought out.

2 Of course, we're not going to know that until trial,
3 and that was one reason at the conclusion I requested that
4 we don't reach a decision today. That the court consider
5 withholding its final decision until the actual trial.
6 That's...

7 THE COURT: What part of your -- what is it you think
8 that Dr. Morton can testify to that would assist the trier
9 of fact to determine the facts in issue?

10 MR. BLAKE: Well, I do think it's, it's part and
11 parcel of the case that, in fact, there was the crack
12 cocaine use. And Dr. Morton would be testifying as to how
13 that would affect the behavior in this case. It's actually
14 the behavior of the defendant as well as the victim.

15 THE COURT: How does that impact on determining a fact
16 in issue, though? That's my question. The facts in issue
17 are whether or not -- until -- I know what you're trying to
18 establish, of course, is voluntary manslaughter as opposed
19 to murder. And voluntary manslaughter, of course, is
20 defined as the killing of another during this -- during the
21 heat of passion without adequate legal provocation.

22 Now, what are those facts that Dr. Morton can testify
23 to? What can Dr. Morton testify that will help the jury
24 decide those questions?

25 MR. BLAKE: Well, Judge, of course, if we have both

1 heat of passion and adequate provocation, as I tried to
2 point out in the memo, to me the issue in this case is
3 whether the heat of passion was continuing at the time of
4 the actual killing.

5 THE COURT: But that's a fact question, isn't it? And
6 that's a question that that -- that is based upon what's
7 happened. They have not -- based upon whether sufficient
8 time has elapsed for that heat of passion to have cooled.
9 And that's a fact issue, not something that will be -- with
10 regard to this particular defendant. It's regard to any
11 defendant whether sufficient time has elapsed. I just, I
12 just don't see where ---

13 MR. BLAKE: Well, it's not just sufficient time,
14 Judge. It's really whether heat of passion has actually
15 cooled or should have cooled, in essence.

16 THE COURT: Yeah.

17 MR. BLAKE: And I'm saying here that it can assist the
18 trier of fact in understanding how both Mr. Hogan were
19 acting, as well as the victim were acting in this case.

20 THE COURT: Okay, and did he testify to that during
21 your proffer?

22 MR. BLAKE: Did Dr. Morton testify to that?

23 THE COURT: Yes, during the proffer. That was the
24 purpose of the proffer: so I'd know what he was going to be
25 testifying to. And I don't recall him testifying to

1 anything like that.

2 MR. BLAKE: Well, the article, Judge, that was
3 presented was -- I mean, we spent a great deal of time on
4 that. That was an exhibit in the hearing itself. And that
5 had to do with a lot of research that's gone into the
6 effects, immediate effects, not long-term effects but
7 immediate effects of cocaine on human behavior.

8 THE COURT: Well, I understand on human behavior, but
9 the issues, wouldn't it be the effect on this defendant's
10 behavior?

11 MR. BLAKE: Well, I believe he testified he had --
12 also having met, having read the facts that were available,
13 and having met with my client at the jail for about two
14 hours, I believe.

15 THE COURT: And what, in summary, would you say that
16 his testimony was as it affects this defendant's behavior?
17 Refresh my memory as to what he said about that. ,

18 MR. BLAKE: Okay, and I'm, I'm going to try to do my
19 best there, too. Basically, he did talk about the crack
20 cocaine use increasing impulsivity, and particularly
21 impulse increasing aggressiveness, increasing paranoia.

22 THE COURT: Okay.

23 MR. BLAKE: That sort of thing.

24 THE COURT: All right, but that would be the same,
25 true -- any kind of voluntary intoxication, be it from

1 drugs or alcohol, which under the law of our state is not a
2 defense.

3 MR. BLAKE: That's correct, Judge, it's not a defense,
4 and we're not asserting it as a defense. We're asserting
5 it as something that will assist the trier of fact in
6 determining whether or not Mr. Hogan's heat of passion had
7 cooled or should have cooled, given the facts of the case
8 as they come out at trial.

9 THE COURT: All right. Okay. Thank you.

10 Mr. Daniel.

11 MR. DANIEL: Thank you, Your Honor. May it please the
12 court? Your Honor, in light of the fact that the college
13 season ended last night, I'd like to make a college
14 football analogy.

15 The 2011 NCAA Auburn Tigers used a pretty complex
16 offense with Cam Newton, and they had hundreds of different
17 formations for one or two running plays, and all that was
18 was window dressing to disguise and confuse the defense in
19 that situation.

20 Your Honor, I, with all due respect to Mr. Blake and
21 his creativity, and I think that this is window dressing
22 used to disguise the fact that he would like to use
23 voluntary intoxication as a defense in this case. It
24 doesn't matter what he calls it. What this is is a defense
25 to murder because what he's saying is we can't meet our

1 burden, we can't match every element because of sort of --
2 because he smoked crack before he killed this victim.

3 And, Your Honor, you just said it. You said it in
4 your order, and we argued it last time. It's clear that
5 the law in this state is that voluntary intoxication is not
6 used as a defense.

7 Now, Mr. Blake points out in his motion *State vs.*
8 *Crocker*, which I have a copy of if the court needs, which
9 clearly states:

10 Diminished control or capacity because of
11 voluntary drug intoxication is not sufficient to
12 reduce a murder charge to voluntary manslaughter.

13 Now, should the court allow this testimony, I think
14 that the court would be traveling down quite a slippery
15 slope. If voluntary intoxication affects the cooling off
16 period in such a way that it brings murder down to
17 voluntary manslaughter, then why not take it a step further
18 and do away with intent, which is what the court actually
19 got into a little bit at our last hearing. And if this
20 defense is allowed, then people who intend on committing
21 murder should just smoke crack periodically throughout the
22 events, and then be able to come into court and use that as
23 a mitigating factor. What sort of, what sort of precedent
24 does that set? Our rules are in place in this state for a
25 reason. We are responsible for our actions, period.

1 Now, with regard to the cooling off period in this
2 case, factually the defendant has said that he left the
3 victim tied in a bathtub. That he then walked into a
4 bedroom, sat on the bed, took a couple hits of crack,
5 walked into the kitchen, got a knife, and then went back in
6 the bathroom and proceeded to kill the victim. Now, that's
7 textbook cooling off period, but that's a jury question.
8 And obviously that's what we'll be dealing with when we're
9 here in a month for this case.

10 The state would argue, of course, and will argue that
11 that is the legally sufficient cooling off period. The
12 defense can't use the fact that Mr. Hogan smoked some crack
13 during the commission of this crime as a shield at this
14 point.

15 Now as to the expert, I don't remember any testimony
16 about how crack affects this cooling off period. In fact,
17 when I first read Mr. Blake's motion for reconsideration, I
18 thought that he had actually kind of changed his argument
19 based on what he argued before, which I don't think there's
20 any rule against that. I mean, just saying this to me was
21 new because I don't even remember hearing the words cooling
22 off period at our hearing before, and it appears that that
23 is the basis of his argument today.

24 No one has testified -- well, I don't remember the
25 expert testifying that crack affects this cooling off

1 period. That, that maybe for some reason the fact that the
2 defendant was under the influence of -- voluntarily under
3 the influence of crack had anything to do with the joining
4 of the time together of the physical altercation and the
5 murder, thus negating the in-between time when he sat on
6 the bed and decided to smoke some more crack.

7 Mr. Blake in my opinion, Your Honor, is trying to back
8 door this voluntary intoxication as a defense, and it's not
9 proper. Everybody knows that once -- judgement is affected
10 when you use crack. We don't need a, we don't need some
11 expert to tell us that in the same way that everyone knows
12 that rainwater gets you wet, but we don't bring a
13 climatologist in here to testify to that.

14 Your Honor, I believe that it would be unfair for the
15 jury to get the impression that a man who brutally beats a
16 woman, ties her up with duct tape, puts her in a bathtub,
17 goes and sits down and voluntarily smokes some crack, then
18 gets up and goes to the kitchen and gets a knife, and then
19 goes back to the tub and kills the woman is somehow not
20 guilty of murder because some scientific guy says that
21 crack causes your brain to do things that you otherwise
22 wouldn't do.

23 Again, this defense is, or this testimony would not at
24 all assist the trier of fact in understanding any of the
25 evidence. Nor would it assist the trier of fact to -- in

1 determining any fact at issue. And, Your Honor, again the
2 defense is using this as a shield, and it's not proper.

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

4 Mr. Blake.

5 MR. BLAKE: Your Honor, I would first start off with
6 responding to opposing counsel's characterization of the
7 evidence. We, of course, hadn't had any testimony of
8 trial. We do not know the actual size of the trailer we're
9 talking about. It is not a great length of time or a great
10 distance between the bedroom. In fact, this tub, which is
11 more perhaps like a hot tub than a bathtub, is right in the
12 bedroom. It's a couple of -- or several feet from where
13 the bed is and where Mr. Hogan was smoking that crack
14 cocaine. That's really again a fact issue that will come
15 out at trial.

16 And while the general public, some people --
17 especially those perhaps that have children who have been
18 involved with crack cocaine -- may have some idea of some
19 of the characteristics, Dr. Morton is providing information
20 to the jury that would not be available otherwise in terms
21 of specific characteristics that occur as a result of
22 cocaine use, and I'm talking about immediate
23 characteristics. I'm not talking about long-term use.

24 Mr. Daniel says that it would not assist the trier of
25 fact to understand the evidence. And, in fact, part of the

1 evidence is their crack cocaine use. And what I'm try to
2 do is help the jury to understand how it affects behavior.
3 I'm not trying to do an end run, end run around the
4 doctrine of defense of ---

5 THE COURT: Well, let me ask you ---

6 MR. BLAKE: --- voluntary intoxication.

7 THE COURT: Let you ask you a hypothetical, Mr. Blake.
8 Let's assume that the facts are as they say they are, but
9 let's take crack cocaine out of it for just a minute and
10 say that the victim in this case was in the tub or the hot
11 tub or whatever it was. The defendant was in the bedroom
12 and rather than smoke a couple crack, hits of crack, he
13 decided to have five or six alcoholic drinks. And then
14 after he had those alcoholic drinks, he decides to -- he --
15 we all know alcohol, of course, affects somebody's
16 judgment. And as a result of have these alcoholic drinks,
17 he goes to the kitchen and gets a knife, and he goes and
18 kills her. Are you saying that his voluntary ingestion of
19 that alcohol is enough to reduce the malice necessary or
20 the heat of passion from an argument that they previously
21 had, or whatever it might be, that would reduce that crime
22 from murder to voluntary manslaughter?

23 MR. BLAKE: Judge, I think that -- of course, the
24 statutory definition of voluntary manslaughter is without
25 malice. But when you read the case law, they clarify what

1 that actually means without malice which, as we've
2 discussed, is voluntary passion, voluntary -- heat of
3 passion, and legal provocation.

4 I'm not saying that the crack cocaine created his
5 decision to kill her. It simply did affect his judgment,
6 and that would be the same -- I mean, my expert's
7 testifying about cocaine use because that's what was going
8 here. He's not testifying particularly about alcohol,
9 although ---

10 THE COURT: What's the difference?

11 MR. BLAKE: --- I think there was actually alcohol use
12 earlier in the day.

13 THE COURT: What's the difference? I mean, it doesn't
14 matter whether it's drugs or alcohol. The point of the
15 matter is that it is a substance that affects a person's
16 judgment. And under our law, intoxication -- and I don't
17 see there's any distinction between intoxication by alcohol
18 and intoxication by drugs.

19 MR. BLAKE: No, there's no difference there.

20 THE COURT: Okay.

21 MR. BLAKE: And that's, that's very clear I think,
22 Judge. We fully expect and will ask for a jury instruction
23 on voluntary intoxication.

24 THE COURT: And you very well may be entitled to it;
25 you very well may be entitled to it. I'm just -- I don't

1 -- you know, I haven't heard the evidence there. So, based
2 upon what I've heard from the statements of counsel,
3 though, it sounds like that it does become a jury question,
4 and -- but that, that's the issue here as to whether or not
5 the testimony of the -- the proffered testimony, the
6 testimony as proffered of the expert is admissible and will
7 assist the jury to determine that question. And that's
8 what I've got to decide.

9 MR. BLAKE: Well, of course it is -- again, help them
10 to understand the evidence. The evidence does -- will
11 include the crack cocaine use and the jury -- of course,
12 it's a jury question. They will be able to weigh the
13 weight of the evidence. They will be able to take the
14 expert's testimony and use it or discard it as they choose.

15 THE COURT: If it's appropriate expert testimony.
16 That's the -- we've got to get beyond that thing first.
17 And I, of course, know how to instruct them on how to use
18 expert testimony if we get to that stage. But the issue
19 here is whether or not it will assist the trier of fact to
20 determine any fact in issue.

21 And I will tell you very frankly that while -- when
22 reviewing the cases, and I reviewed -- and the case you
23 referred to is referred to in my brief, the *Crocker* case,
24 and it was cited in *State vs. Davis*. And also that was the
25 case that held that voluntary intoxication does not impair

1 a person's ability to act with malice aforethought so as to
2 reduce murder to manslaughter. And then of course the
3 Vaughn case that was reaffirmed in *State vs. Hatfield* does
4 not destroy the ability to distinguish right from wrong.

5 And I'll tell you very frankly that when I was looking
6 at these and studying the cases, that your argument does
7 have some appeal. And Justice Rhodes, I believe it was, in
8 the, in the Vaughn case cited that the majority rule, as
9 set forth in CJS, that a majority of American jurisdictions
10 do permit voluntary intoxication as a defense to specific
11 intent and, consequently, the other elements of voluntary
12 manslaughter as well, such as heat of passion or -- I just
13 don't think it goes to the time to cool, though, because I
14 think that is a fact question for the jury to determine.

15 And while your argument has some appeal, to me that's
16 just not the law of this state as it stands right now. And
17 if the Supreme Court wishes to change that law, that's
18 their prerogative, but I don't have the authority to change
19 that law. I think I've got to follow the law as it is
20 written.

21 I thought that the purpose of the hearing over in
22 Bishopville was to allow Mr. Morton to -- or you to proffer
23 Mr. Morton's testimony in advance so that the decision
24 could be made as to whether it is appropriate for the jury
25 to determine to go before -- his testimony would be

1 appropriate to be admitted for the jury to hear so that we
2 would know how to proceed on this case when it's called for
3 trial. I thought that was the whole purpose of it, and
4 that's what I allowed you to do. Take as much time as you
5 wanted to proffer whatever you wanted to proffer with Dr.
6 Morton so that we wouldn't have to do that during the
7 course of the trial.

8 I agree with Mr. Daniel to some degree. It appears to
9 be a little bit of a shift in positions from what we had
10 over in Bishopville because I thought that what we were
11 talking about there was specific intent, and no issue is
12 taken that that was not what the proffer was. But now to
13 go a different step, and that is whether time has elapsed
14 in order to allow the heat of passion to have cooled.

15 MR. BLAKE: Judge.

16 THE COURT: I don't think -- no, I've heard all I need
17 to hear.

18 RULING OF THE COURT:

19 THE COURT: I don't think that that is a proper subject
20 for expert testimony, and I'm going to deny the motion for
21 reconsideration. I thought the purpose of Dr. Morton's
22 testimony and the proffer, doing it in advance, was to take
23 care of that issue before trial. And I'm, based upon what
24 he testified at the time, and based upon the facts that are
25 before the court, while I don't disagree with the logic of

1 the majority rule, I just don't think that that's the law
2 of this state. And so I'm going to deny the motion for
3 reconsideration.

4 MR. DANIEL: Thank you, Judge.

5 MR. BLAKE: Thank you.

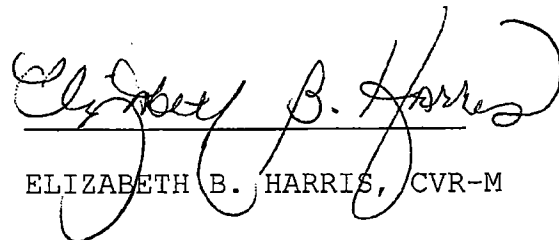
6 MS. JOHNSON-LEE: Thank you, Your Honor.

7 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR MARLBORO COUNTY, SOUTH CAROLINA, ON
THE 10TH DAY OF JANUARY, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

MAY 27TH, 2012

State of South Carolina) In the Court of General Sessions
) Fourth Judicial Circuit
County Of Marlboro) 2010-GS-34-0696

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 John Lee Hogan, Jr.,)
)
 Defendant.)
)
)

February 6, 7, 8, 2012
Bennetttsville, South Carolina

B E F O R E:

The Honorable Howard P. King, Judge, and a jury.

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

Mary Thomas Johnson-Lee, Esquire, Assistant Solicitor
W. Shipp Daniel, III, Esquire, Assistant Solicitor
Attorneys for the State

Daniel L. Blake, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

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E X H I B I T S

NOTE: At a pretrial hearing on 11/1/11 with Hattie O. Gordon as court reporter, State's Exhibits 1, 2, 3, 4, 5, 7, 8 were introduced into evidence. State's Exhibit 6 was introduced for identification only.

At a pretrial hearing on 12/9/2011 with Bonnie Kelly as court reporter, State's Exhibits 1-15 were introduced into evidence. State's Exhibits 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 introduced for identification only. At that same pretrial hearing, Defendant's Exhibits 1-4 introduced for identification.

The only exhibits from previous hearings indexed in this trial transcript are those that were moved into evidence or removed from consideration during trial.

No.	Description	ID.	Ev.

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1 MONDAY, FEBRUARY 6, 2012

2 THE COURT: All right, Mr. Solicitor.

3 MS. JOHNSON-LEE: Yes, Your Honor. Your Honor, the
4 state calls the case of the *State vs. John Lee Hogan, Jr.*,
5 docket number 2010-GS-34-0696. The indictment is for
6 murder, true billed September 30, 2010. Representing the
7 state are myself, Mary Johnson-Lee, and also Assistant
8 Solicitor Shipp Daniel.

9 THE COURT: All right. All right, ladies and
10 gentlemen of the jury panel, if you would give me your
11 attention? You have heard the state announce that they
12 have called the case of the *State vs. John Lee Hogan, Jr.*
13 What I'm going to tell you now are the allegations of the
14 indictment, and I will tell you that these are allegations
15 only, and they are contained in the indictment and is
16 simply the document by which the matter is brought to
17 trial. The indictment is not evidence of anything; it is
18 simply the document, the charging document brought by the
19 state to bring this matter to court.

20 But the state does charge in this indictment that John
21 Lee Hogan, Jr., did in Marlboro County on or about June the
22 5th of 2010 willfully, feloniously, and intentionally kill
23 the victim, Monesha S. Brown, with malice aforethought,
24 either expressed or implied, by means of beating the victim
25 several times, cutting her throat with a kitchen knife, and

1 the victim did die as a proximate result of the injuries on
2 or about June the 5th, 2010, and the indictment is one for
3 murder. As I said, that is just the charges against the
4 defendant; it is not evidence of anything.

5 The defendant in this case, Mr. John Lee Hogan, Jr.,
6 is represented by Mr. Dan Blake.

7 Mr. Blake, would you stand, face the jury, and
8 introduce yourself to the jury, and have your client stand
9 and face the jury, please.

10 MR. BLAKE: My name is Dan Blake. I'm an attorney
11 here in Bennettsville. I have an office right across from
12 the courthouse. This is John Hogan.

13 THE COURT: Thank you. You may be seated.

14 As you heard Ms. Johnson-Lee announce, the State of
15 South Carolina is represented by Assistant Solicitor Mary
16 Thomas Johnson-Lee, and if she'd stand and face the jury,
17 and is assisted by Assistant Solicitor Shipp Daniel. Thank
18 you. You may be seated.

19 *JURY VOIR DIRE*

20 Before we select a jury, I need to ask a number of
21 questions to determine your qualifications to serve on the
22 jury this week. Please give your attention to these
23 questions, and if any of them apply to you, then respond
24 according.

25 Is any member of the jury panel related by blood or

1 connected by marriage to the defendant, John Lee Hogan,
2 Jr.? If so, please stand.

3 (NO ONE STANDS.)

4 THE COURT: Thank you. The following individuals may
5 appear as witnesses in this case, and the witness lists are
6 quite extensive. And I would ask if the witnesses are
7 present, if they will stand when their name is called. You
8 can be seated after your name is called. You do not need
9 to stand during the entire reading of the witness list, but
10 if you would, stand if you are present.

11 And these witnesses may or may not be called as
12 witnesses. These individuals may or may not be called as
13 witnesses in this case: Agent Paul LaRosa of SLED; Larry
14 Turner of Bennettsville Police Department; Shawn Feldner of
15 Marlboro County Sheriff's Office; Catherine Liesy of State
16 Law Enforcement Division; Queen Brown; Dr. Erin Presnell of
17 the Medical University of South Carolina; Agent Scott
18 Hardee of the State Law Enforcement Division; Deborah Goff
19 of State Law Enforcement, commonly referred to as SLED, and
20 I'll just use that acronym from here on out; Betty Butler,
21 SLED; Lieutenant Jennifer Stoner, SLED; Lori Giles of SLED;
22 Catherine Liesy -- I believe I've already mentioned her
23 name -- of SLED; Billy Cheek of the Marlboro County
24 Sheriff's Office; Sandra Wilkes of Marlboro County
25 Sheriff's Office; Sandra Burns; Casey McCall; Tammy Parker;

1 Brad Drayton; Larry Bowman; Randy McQueen of the Sumter
2 County Sheriff's Office; Brittany Randal English of the
3 Marlboro County Sheriff's Office; Susan Alderman of
4 Marlboro County Sheriff's Office; Steve Akers, Marlboro
5 County Sheriff's Office; James Campbell, Marlboro County
6 Sheriff's Office; Jamie Seales with the Marlboro County
7 Sheriff's Office; Walter Covington, Bennettsville Police
8 Department; Shawn Lucas of the Bennettsville Police
9 Department; Ken Hall of the Bennettsville Police
10 Department; Ira Dease of the Bennettsville Police
11 Department; Rufus Jackson of the Bennettsville Police
12 Department; Matt Hill, Bennettsville Police Department;
13 Sammy Crosland of Bennettsville Police Department; Coroner
14 Tim Brown; Timothy -- I'm sorry, Tiffany Covington Smith;
15 Lee Curtis Stanton; Steve Frazier; Garret Thomas; Reese
16 Wimberly; Britt Stamper; Amber Stamper; Larry Gootch
17 [phonetic]; Jim Gardner; John Moore; Jessica Hebbard,
18 H-e-b-b-a-r-d; Casey McCall. I think I gave you Dr. Erin
19 Presnell's name. James Gibbs, Summer Hogan, Sherry Tiller,
20 John Gordon, Charles McPherson, John James, James Hogan,
21 Zane Arp, Jim Wilson, John Gordon, Alphonso Brown, Paul
22 Donaldson, Jeff Smith, Chris Brown, and Lee Wallace.

23 Is any member of the jury panel related by blood or
24 connected by marriage to any of the proposed witnesses? If
25 so, please stand. All right, let's start at the back.

1 Your name, please.

2 JUROR: Jennifer Williams.

3 THE COURT: Williams? All right, juror number 217.

4 All right, Ms. Williams, who are you related to or know?

5 JUROR: Brittany English. He's an investigator with
6 the sheriff's office. He's my first cousin.

7 THE COURT: Your first cousin, all right. Would the
8 fact that that individual is going -- may or may not be
9 called as a witness in this case prevent you from giving to
10 the state and the defendant a fair and impartial trial? It
11 would prevent you from giving a ---

12 JUROR: No, no, it would not. I'm sorry.

13 THE COURT: It would not prevent you from ---

14 JUROR: It would not.

15 THE COURT: Okay. Would you be able to put that aside
16 and decide this case based upon the evidence you hear in
17 this courtroom?

18 JUROR: Yes, sir.

19 THE COURT: And would you do that?

20 JUROR: Yes, sir.

21 THE COURT: All right. Thank you.

22 Yes, ma'am over, over to my right.

23 JUROR: Crystal Cheek.

24 THE COURT: I'm sorry?

25 JUROR: Crystal Cheek.

1 THE COURT: I didn't, I didn't hear her.

2 CLERK OF COURT: Cheek, 35.

3 THE COURT: 35, Ms. Cheek. All right, going to have
4 to speak up, Ms. Cheek. I can't hear you.

5 JUROR: Billy Cheek, that's my cousin.

6 THE COURT: Your cousin?

7 JUROR: Uh-huh.

8 THE COURT: What, what cousin is it? First, second,
9 third? Do you know?

10 JUROR: Third.

11 THE COURT: Third, all right. Would the fact that
12 that individual may be a witness in this case prevent you
13 from giving to both the state and the defendant a fair and
14 impartial trial based on the evidence?

15 JUROR: Yes, sir.

16 THE COURT: It would prevent you or ---

17 JUROR: No, no.

18 THE COURT: --- not prevent you? Okay. Would you be
19 able to put that aside and decide this case based on the
20 evidence you hear in this courtroom?

21 JUROR: Yes, sir.

22 THE COURT: And would you do that?

23 JUROR: Yes, sir.

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

25 As I have previously told you, the lawyers in this

1 case are for the state Mr. Shipp Daniel and Ms. Mary Thomas
2 Johnson-Lee, both of the Fourth Circuit Solicitor's Office.
3 Is any member of the jury panel represented now or been
4 represented in the last ten years by anybody in the Fourth
5 Circuit Solicitor's Office? Not necessarily Mr. Daniel or
6 Ms. Johnson-Lee, but any member of the jury panel or a
7 member of your immediate family been represented now or in
8 the last ten years by a member of the Fourth Circuit
9 Solicitor's Office? If so, please stand.

10 All right, your name, please?

11 JUROR: LaPatrick Ray.

12 THE COURT: Do you recall your number?

13 JUROR: 176.

14 THE COURT: 117?

15 JUROR: 176.

16 (A PAUSE.)

17 THE COURT: All right, Mr. Ray, come up, Mr. Ray.

18 (THE FOLLOWING CONFERENCE IS HELD AT THE BENCH WITH
19 ALL COUNSEL PRESENT.)

20 THE COURT: All right, was it you or somebody in your
21 family?

22 JUROR: Somebody in my family, my family.

23 THE COURT: Was represented by the solicitor's office?

24 JUROR: It was Dan Blake.

25 THE COURT: All right, he's not in the solicitor's

1 office. He may have been ---

2 MR. BLAKE: We were certainly involved.

3 THE COURT: Okay. When was that and what was it
4 about? Who, who was it, first of all?

5 JUROR: Russell Williams.

6 THE COURT: And that's -- what's the kin to you?

7 JUROR: First cousin.

8 THE COURT: All right, and was he a victim in a case,
9 or what was his, what was his situation?

10 JUROR: He was the victim.

11 THE COURT: All right, and he was represented by the
12 solicitor's office, specifically Mr. Blake at that time?
13 Is that right?

14 JUROR: Yes, sir.

15 THE COURT: Okay. Was that matter handled to the
16 satisfaction of everyone? Is it over now?

17 JUROR: Yeah. It's over with.

18 THE COURT: Okay. Was that handled to everybody's
19 satisfaction, or were there bad results or bad feelings as
20 a result?

21 JUROR: Yeah, because it was, it was brother against
22 brother. It was pretty bad.

23 THE COURT: I'm talking about as far as the
24 representation that you got from the solicitor's office.
25 Is there any hard feelings as far as Mr. Blake or any

1 prejudice against Mr. Blake or the solicitor's office?

2 Not, not the family situation. I understand that, but I'm
3 talking about do you as a result of that, do you have any
4 reason against Mr. Blake or the solicitor's office that
5 would prevent you from giving a fair and impartial trial in
6 this case?

7 JUROR: No, but I don't want to do stuff like that,
8 judging nobody, nothing like that.

9 THE COURT: You don't what?

10 JUROR: I said I don't want to be no kind of -- part
11 of not no judging, no stuff like that, nobody. That's how
12 I feel.

13 THE COURT: Well, I guess my question is would you be
14 able to put that aside and decide the case based on
15 the law and the evidence that I give to you?

16 JUROR: Really and honestly, no, sir.

17 THE COURT: Okay. All right. Thank you.

18 (THE JUROR RETURNS TO THE JURY PANEL.)

19 THE COURT: What was his number?

20 CLERK OF COURT: 176.

21 THE COURT: 176. That's why I brought him up. All
22 right, we'll talk about it in a little bit, counselors.
23 Let's go ahead and get whatever else we got.

24 (END OF CONFERENCE AT THE BENCH.)

25 THE COURT: Other than what has already been disclosed

1 to me, is any member of the jury panel represented now or
2 been represented by Mr. Dan Blake either through the
3 solicitor's office or as a public defender, or represented
4 in any kind of matter where Mr. Blake's private practice
5 would be involved? Anybody on the panel represented now,
6 been represented in the last ten years by Mr. Blake? If
7 so, please stand.

8 (NO ONE STANDS.)

9 THE COURT: Thank you.

10 Is any member of the jury panel close, personal
11 friends of any of the parties, their lawyers, or any of he
12 witnesses whom I have read off to you? If so, please
13 stand. Other than what has already been disclosed to me,
14 any member of the jury panel a close, personal friend of
15 any of the lawyers, parties, or any of the witnesses whom
16 I've read off to you? If, so please stand.

17 (NO ONE STANDS.)

18 THE COURT: All right. Thank you. Has any member of
19 the jury panel or member of your immediate family -- and I
20 define immediate family as spouse, parent, brother, sister,
21 or child -- any member of the jury panel or a member of
22 your immediate family ever been the victim of a violent
23 crime? That is an assault or homicide or something on
24 their person. If so, please stand.

25 All right, thank you. I understand what your

1 situation is, Mr. ---

2 CLERK OF COURT: Ray.

3 THE COURT: --- Williams. Thank you. I understand
4 what your situation is, Mr. Ray. You may be seated.

5 JUROR: No. That was on that one. I got another one,
6 though.

7 THE COURT: Well, I, I don't need to know that.

8 JUROR: Okay.

9 THE COURT: Thank you, sir.

10 All right, your name and number.

11 JUROR: Latasha Moses, 145.

12 THE COURT: 145. All right, Ms. Moses, was it you or
13 a member of your family?

14 JUROR: My family.

15 THE COURT: Your family. What was the relationship?

16 JUROR: Husband. Husband..

17 THE COURT: Husband. All right, come on up then.
18 Let's talk about it.

19 (THE FOLLOWING CONFERENCE IS HELD AT THE BENCH IN THE
20 PRESENCE OF COUNSEL.)

21 THE COURT: All right, this is juror number 145, Ms.
22 Moses. Tell us about it, Ms. Moses.

23 JUROR: It was aggravated assault, if I'm not
24 mistaken.

25 THE COURT: He has an aggravated assault?

1 JUROR: Yes.

2 THE COURT: Was he, was he the victim, or was he
3 prosecuted for it?

4 JUROR: He was prosecuted for it.

5 THE COURT: Okay. He was the defendant in a criminal
6 case?

7 JUROR: Yes.

8 THE COURT: Okay. Was he convicted of that?

9 JUROR: Yes.

10 THE COURT: Okay. How long ago was that?

11 JUROR: That was 2002.

12 THE COURT: Okay. Would that fact prevent you from
13 giving to both the state and the defendant in this case a
14 fair and impartial trial?

15 JUROR: No.

16 THE COURT: Would you be able to put that aside and
17 decide this case based upon the facts you hear in this
18 courtroom?

19 JUROR: Yes.

20 THE COURT: Would you do that?

21 JUROR: Yes.

22 THE COURT: Okay.

23 JUROR: I wanted to ask you, too. I wasn't sure if
24 you called out Deborah Young's name as a witness.

25 THE COURT: I don't either, but I'll look. Why? Who

1 is Deborah Young to you?

2 JUROR: Because she's my cousin.

3 THE COURT: Okay.

4 JUROR: And I wasn't sure if you called out her name.

5 THE COURT: Okay. I don't know whether I did not, but
6 I will look and see. But if she might be a witness in this
7 case, would that prevent you from giving both sides a fair
8 and impartial trial?

9 JUROR: No, sir.

10 THE COURT: And would you put that aside and decide
11 the case based upon the evidence ---

12 JUROR: Yes.

13 THE COURT: --- you hear in this courtroom? Okay.
14 Thank you, ma'am.

15 (THE JUROR RETURNS TO THE JURY PANEL.)

16 MR. BLAKE: Judge, when Mr. Ray came up, he was
17 mentioning the solicitor's office. I was in the public
18 defender's office when that had happened.

19 THE COURT: I'm going to excuse him.

20 MR. BLAKE: Just so you know.

21 MR. DANIEL: And I know you're not done with
22 questions, but when you talk about us representing
23 somebody, did you ask them about prosecution because I
24 didn't hear it if you did.

25 THE COURT: Yes, I guess, Mr. Solicitor. I thought I

1 did, but I'll ask them again.

2 MR. DANIEL: Thank you, sir.

3 (END OF CONFERENCE AT THE BENCH.)

4 THE COURT: All right, thank you. Let me go back to
5 the question I had asked about any member of the jury panel
6 represented now or been represented in the last ten years
7 by any member of the solicitor's office. Let me ask you.
8 Has any member of the jury or member of your immediate
9 family as I have defined that term been prosecuted by any
10 of the lawyers in the Fourth Circuit Solicitor's Office?
11 If so, please stand.

12 (NO ONE STANDS.)

13 THE COURT: All right. Thank you.

14 All right, has any member of the jury panel, other
15 than what has already been disclosed to me, has any member
16 the jury panel or member of your immediate family as I have
17 defined that term ever been convicted of a violent crime?
18 That is, a crime on your person or on the person of that
19 family member. Any member of the jury panel or member of
20 their immediate family been convicted of a violent crime?
21 If so, please stand.

22 All right, come forward, please, sir.

23 (THE FOLLOWING CONFERENCE IS HELD AT THE BENCH WITH
24 ALL COUNSEL PRESENT.)

25 THE COURT: Name.

1 JUROR: William Davis.

2 THE COURT: William.

3 JUROR: Number 51, William Davis.

4 THE COURT: All right, Mr. Davis what's your
5 situation?

6 JUROR: My wife's daughter, my stepdaughter, my
7 son-in-law is in, is in federal prison.

8 THE COURT: Okay.

9 JUROR: Judge Talbert, Justin Talbert, hijacking a car
10 and burning it.

11 THE COURT: Okay, and where was that?

12 JUROR: Marlboro County.

13 THE COURT: Marlboro County, and was that prosecuted
14 in this courtroom, or you know?

15 JUROR: No. I, I think it -- I don't know if it came
16 in this courtroom or went straight, straight to federal.

17 THE COURT: All right. Would that fact prevent you
18 from giving both the state and the defendant a fair and
19 impartial to trial in this case?

20 JUROR: No, not a murder case.

21 THE COURT: Okay. You'd be able to put that aside and
22 decide ---

23 JUROR: Yes, sir.

24 THE COURT: --- this case based on evidence you hear
25 in the courtroom?

1 JUROR: Yes, sir.

2 THE COURT: And would you do that?

3 JUROR: Yes, sir.

4 THE COURT: Thank you, sir.

5 (END OF CONFERENCE AT THE BENCH.)

6 THE COURT: Another than what has been disclosed to
7 me, is there any member of the jury panel who has religious
8 or moral reasons that would prevent that individual from
9 following the instructions of the court in making a
10 decision in this case based on the evidence? If so, please
11 stand. All right, come up, please.

12 (THE FOLLOWING CONFERENCE IS HELD AT THE BENCH WITH
13 ALL COUNSEL PRESENT.)

14 THE COURT: Your name?

15 JUROR: Clyburn, number 39.

16 THE COURT: Okay. All right. Yes, sir. What is your
17 situation?

18 JUROR: Well, I don't feel like I could -- I don't see
19 base a decision on evidence presented because of man.

20 THE COURT: Because of what?

21 JUROR: Man, because man is not honorable as a whole.
22 Now, I could make a decision based on prayer. I'd pray,
23 but I couldn't base it just on ---

24 THE COURT: So, you have a religious belief that would
25 prevent you from deciding it based upon what you hear ---

1 JUROR: Just on what I hear in court.

2 THE COURT: Okay. All right. Thank you, sir.

3 JUROR: But I could based on prayer.

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

5 (END OF CONFERENCE AT THE BENCH.)

6 THE COURT: All right, again, other than what has
7 already been disclosed to me, I would tell you that you
8 know from the indictment that I read to you that this is a
9 homicide case, and I will tell you that the body of the
10 victim was hidden and not found for several weeks. Would
11 this fact or other facts of a gruesome nature prevent you
12 from giving both the defendant and the state a fair and
13 impartial trial based on the evidence? If so, please
14 stand.

15 (NO ONE STANDS.)

16 THE COURT: The victim in this case was
17 African-American, an African-American female. The
18 defendant in this case is a Caucasian white male. Does any
19 member of the jury panel have such strong feelings
20 regarding members of the other race it would prevent you
21 from giving to both the state and the defendant a fair and
22 impartial trial based on the evidence? If so, please
23 stand.

24 (NO ONE STANDS.)

25 THE COURT: Is there any member of the jury panel,

1 other than again what has already been disclosed to me, who
2 would not be able to follow the instructions on the law
3 which I give you, even if you think that the law is
4 different or ought to be different? In other words, is
5 there any member of the jury panel who would not be able to
6 follow the law as instructed to you by the court other than
7 what has already been disclosed to me? If so, please
8 stand.

9 (NO ONE STANDS.)

10 THE COURT: All right, this case has over the last
11 several months, or since the alleged incident happened, has
12 received some publicity. Has any member of the jury panel
13 heard anything locally, or read any news stories, or heard
14 any broadcast media reports that would prevent you from
15 giving to both the state and the defendant a fair and
16 impartial trial? If so, please stand.

17 (NO ONE STANDS.)

18 THE COURT: Does any member of the jury panel know
19 anything about the facts of this case as I have briefly
20 recited them to you? If so, please stand.

21 (NO ONE STANDS.)

22 THE COURT: Does any member of the jury panel, or has
23 any member of the jury panel formed or expressed an opinion
24 as to the guilt or innocence of the defendant, John Lee
25 Hogan? If so, please stand.

1 (NO ONE STANDS.)

2 THE COURT: Other than what has been disclosed to me,
3 is any member of the jury panel aware of any interest, any
4 bias, or any prejudice for or against the defendant, John
5 Lee Hogan? If so, please stand.

6 (NO ONE STANDS.)

7 THE COURT: Again, other than what has been disclosed
8 to me, can each member of the jury panel give to the state
9 and the defendant, John Lee Hogan, a fair and impartial
10 trial? If not, please stand.

11 (NO ONE STANDS.)

12 THE COURT: Again, other than what has already been
13 disclosed to me, does any member the jury panel know of any
14 reason whatsoever why he or she should not serve as a juror
15 in this case other than what has already been disclosed?
16 If so, please stand.

17 (NO ONE STANDS.)

18 THE COURT: Are there additional questions on behalf
19 of the state?

20 MR. DANIEL: None from the state, Your Honor.

21 THE COURT: On behalf of defense?

22 MR. BLAKE: No, Your Honor.

23 THE COURT: Come up, please, counsel.

24 (OFF-THE-RECORD BENCH CONFERENCE.)

25 THE COURT: All right, for the record I'm going to

1 excuse for cause number 77, number 39 -- I'm sorry, excuse
2 for cause 176, 39, and 77.

3 And then of course, Mr. Funderburk, the two that I
4 dismissed for the week with medical appointments, they need
5 to be out as well. But as far as everybody else for this
6 case, take out 176, 39, and 77.

7 (A PAUSE.)

8 THE COURT: Counsel, come back up.

9 (OFF-THE-RECORD BENCH CONFERENCE.)

10 THE COURT: All right, I find that the jury has been
11 qualified, and the exceptions have been made known to the
12 clerk. I'm going to ask the clerk to give us a jury,
13 please.

14 Ladies and gentlemen, what the clerk will now do would
15 be to put the names of all of qualified jurors into the
16 computer. The computer will randomly select the jurors.
17 When your name is called by the clerk, please come to the
18 center aisle. Come up here to the front. Turn around with
19 your back toward me, and face the back of the courtroom.

20 If you are acceptable to the state, the state will
21 indicate by stating present the juror. If you're
22 acceptable to the defense, the defense will state seat or
23 swear the juror, and you would have a seat in the jury box
24 to my right. If either side excuses you, you would have a
25 seat back out with the remainder of the jury panel.

1 All right, whenever you are ready, Madame Clerk.

2 (A PAUSE.)

3 MR. BLAKE: Judge, can we approach?

4 THE COURT: Yes.

5 (OFF-THE-RECORD BENCH CONFERENCE.)

6 THE COURT: Ladies and gentlemen, I've got one
7 question that I need to ask you.

8 (A PAUSE.)

9 THE COURT: One other question that I need to ask you,
10 is there any member of the jury panel who is related by
11 blood or marriage, or any member of the jury panel, any
12 member of the jury panel or member of your immediate family
13 who is related to the victim in this case, the victim in
14 this case being Monesha S. Brown? Any member of the jury
15 panel or member of your immediate family related to Monesha
16 S. Brown? If so, please stand.

17 All right, come up, please.

18 (THE FOLLOWING CONFERENCE IS HELD AT THE BENCH WITH
19 ALL COUNSEL PRESENT.)

20 THE COURT: This is 135, Mr. McRae. All right, Mr.
21 McRae, tell me about yourself.

22 JUROR: The kid's, kid's father, I'm related to him,
23 Travis Platt.

24 THE COURT: Whose kid's father?

25 JUROR: The lady, the victim.

1 THE COURT: You're related to the father of her
2 children?

3 JUROR: That's right.

4 THE COURT: And what's your relationship?

5 JUROR: Cousin, second cousin.

6 THE COURT: All right. Would that fact prevent you
7 from being able to give the state and defendant both ---

8 JUROR: No, sir.

9 THE COURT: --- a fair trial based on the evidence?

10 JUROR: No, sir. I'm a minister; I'm a man of God.

11 THE COURT: Would you put that aside?

12 JUROR: Yes, sir.

13 THE COURT: Based on the evidence that you hear?
14 Could you do that?

15 JUROR: Yes, sir.

16 THE COURT: All right. Thank you.

17 JUROR: Yes, sir.

18 (END OF CONFERENCE AT THE BENCH.)

19 THE COURT: All right. Go ahead. Proceed.

20 (A PAUSE.)

21 THE COURT: All right, Mr. Clerk, whenever you're
22 ready.

23 JURY SELECTION

24 CLERK OF COURT: Okay, when I call your name, watch
25 your step.

1 (A PAUSE.)

2 THE COURT: Proceed.

3 CLERK OF COURT: Okay, when I call your name, come
4 forward. Pamela H. McCormick, Number 1 -- I'm sorry, I'm
5 sorry, 121.

6 (WHITE FEMALE COMES FORWARD.)

7 CLERK OF COURT: What says the state?

8 MR. DANIEL: Please present Ms. McCormick.

9 CLERK OF COURT: What says the defendant?

10 MR. BLAKE: Please seat the juror.

11 CLERK OF COURT: Have a seat in the jury box to my
12 right.

13 Number 45, Kathy Crosby.

14 (WHITE FEMALE COMES FORWARD)

15 CLERK OF COURT: What says the state?

16 MR. DANIEL: Please present Ms. Crosby.

17 CLERK OF COURT: What says the defendant?

18 MR. BLAKE: Please seat the juror.

19 CLERK OF COURT: Have a seat in the jury box, please,
20 ma'am.

21 Number 46, James Aubrey Crosland.

22 (WHITE MALE COMES FORWARD.)

23 CLERK OF COURT: What says the state?

24 MR. DANIEL: Please present Mr. Crosland.

25 CLERK OF COURT: What says the defendant?

1 MR. BLAKE: Please seat the juror.

2 CLERK OF COURT: Have a seat in the jury box, please,
3 sir.

4 Number 26, Brenda L. Campbell.

5 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)

6 CLERK OF COURT: What says the state?

7 MR. DANIEL: Please present Ms. Campbell.

8 CLERK OF COURT: What says the defendant?

9 MR. BLAKE: Please excuse the juror.

10 CLERK OF COURT: Return to your seat, please, ma'am.

11 202, Linda G. Thompson.

12 (WHITE FEMALE COMES FORWARD.)

13 CLERK OF COURT: What says the state?

14 MR. DANIEL: Please excuse Ms. Thompson from service
15 in this case.

16 CLERK OF COURT: Return to your seat, please, ma'am.

17 178, Carl D. Robertson.

18 (WHITE MALE COMES FORWARD.)

19 CLERK OF COURT: What says the state?

20 MR. DANIEL: Please excuse Mr. Robertson from service
21 in this case.

22 CLERK OF COURT: Return to your seat, please.

23 Number 104, Richard Lanthier.

24 (WHITE MALE COMES FORWARD.)

25 CLERK OF COURT: What says the state?

1 MR. DANIEL: Please present Mr. Lanthier.

2 CLERK OF COURT: Was says the defendant?

3 MR. BLAKE: Please seat the juror.

4 CLERK OF COURT: Have a seat in the jury box, please,
5 sir.

6 102, John D. Kinard.

7 (WHITE MALE COMES FORWARD)

8 CLERK OF COURT: What says the state?

9 MR. DANIEL: Please present Mr. Kinard.

10 CLERK OF COURT: What says the defendant?

11 MR. BLAKE: Please seat the juror.

12 CLERK OF COURT: Have a seat in the jury box, please.

13 197, Patricia Spivey.

14 (WHITE FEMALE COMES FORWARD.)

15 CLERK OF COURT: What says the state? What says the
16 state?

17 MR. DANIEL: Please present Ms. Spivey.

18 CLERK OF COURT: What says the defendant?

19 MR. BLAKE: Please seat the juror.

20 CLERK OF COURT: Have a seat in the jury box, please.

21 Number 75, Robert K. Goins.

22 (WHITE MALE COMES FORWARD.)

23 CLERK OF COURT: What says the state?

24 MR. DANIEL: Please present Mr. Goins.

25 CLERK OF COURT: What says the defendant?

1 MR. BLAKE: Please seat the juror.

2 CLERK OF COURT: Have a seat in the jury box, please.

3 160, William Peele.

4 (WHITE MALE COMES FORWARD.)

5 CLERK OF COURT: What says the state?

6 MR. DANIEL: Please present Mr. Peele.

7 CLERK OF COURT: What says the defendant?

8 MR. BLAKE: Please seat the juror.

9 CLERK OF COURT: Have a seat in the jury box, please.

10 151, Richard Allen O'Neil.

11 (AFRICAN-AMERICAN MALE COMES FORWARD.)

12 CLERK OF COURT: What says the state?

13 MR. DANIEL: Please present Mr. O'Neil.

14 CLERK OF COURT: What says the defendant?

15 MR. BLAKE: Please seat the juror.

16 CLERK OF COURT: Have a seat in the jury box please.

17 Number 194, George W. Smith.

18 (WHITE MALE COMES FORWARD.)

19 CLERK OF COURT: What says the state?

20 MR. DANIEL: Please present Mr. Smith.

21 CLERK OF COURT: What says the defendant?

22 MR. BLAKE: Please seat the juror.

23 CLERK OF COURT: Have a seat in the jury box, please,

24 sir.

25 Number 18, Kenneth E. Brown.

1 (AFRICAN-AMERICAN MALE COMES FORWARD.)

2 CLERK OF COURT: What says the state?

3 MR. DANIEL: Please present Mr. Brown.

4 CLERK OF COURT: What says the defendant?

5 MR. BLAKE: Please excuse the juror.

6 CLERK OF COURT: Return to your seat, please, sir.

7 Number 84, Ervin A. Hamer.

8 (WHITE MALE COMES FORWARD.)

9 CLERK OF COURT: What says the state?

10 MR. DANIEL: Please present Mr. Hamer.

11 CLERK OF COURT: What says the defendant?

12 MR. BLAKE: Please seat the juror.

13 CLERK OF COURT: Have a seat in the jury box, please.

14 Number 124, Shenitha Megirt.

15 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)

16 CLERK OF COURT: What says the state?

17 MR. DANIEL: Please present Ms. Megirt.

18 CLERK OF COURT: What says the defendant?

19 MR. BLAKE: Please seat the juror.

20 CLERK OF COURT: Have a seat in the jury box.

21 THE COURT: Two alternates for each, counselor. One,
22 two on each one.

23 CLERK OF COURT: 108, Miranda B. Liles.

24 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)

25 CLERK OF COURT: What says the state?

1 MR. DANIEL: Please present Ms. Liles.

2 CLERK OF COURT: What says the defendant?

3 MR. BLAKE: Please excuse the juror.

4 CLERK OF COURT: Return to your seat, please, ma'am.
5 Number 138, Boyd E. Meggs.

6 (WHITE MALE COMES FORWARD.)

7 CLERK OF COURT: What says the state?

8 MR. DANIEL: Please present Mr. Meggs.

9 CLERK OF COURT: What says the defendant?

10 MR. BLAKE: Please seat the juror.

11 CLERK OF COURT: Have a seat in the jury box please.

12 THE COURT: Alternate number two.

13 CLERK OF COURT: 171, Glendora F. Quick.

14 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)

15 CLERK OF COURT: What says the state?

16 MR. DANIEL: Please present Ms. Quick.

17 CLERK OF COURT: What says the defendant?

18 MR. BLAKE: Please excuse the juror.

19 CLERK OF COURT: Return to your seat, please, ma'am.
20 41, David T. Cottingham.

21 (WHITE MALE COMES FORWARD.)

22 CLERK OF COURT: What says the state?

23 MR. DANIEL: Please excuse Mr. Cottingham from service
24 in this case.

25 CLERK OF COURT: Return to your seat, please, sir.

1 Number 12, Rebecca J. Boatwright.

2 (WHITE FEMALE COMES FORWARD.)

3 CLERK OF COURT: What says the state? Any cause for
4 challenge for the state?

5 MR. DANIEL: No cause.

6 CLERK OF COURT: What says the defendant?

7 MR. BLAKE: Please seat the juror.

8 CLERK OF COURT: Have a seat in the jury box, please,
9 ma'am.

10 That completes it, Your Honor.

11 THE COURT: All right. Anything with regard to
12 striking the jury on behalf of the state, Mr. Daniel?

13 MR. DANIEL: Beg the court's indulgence.

14 (A PAUSE.)

15 MR. DANIEL: No issues from the state, Your Honor.

16 THE COURT: Anything for the defense, Mr. Blake?

17 MR. BLAKE: No, Your Honor.

18 THE COURT: All right. All right, ladies and
19 gentlemen selected in the trial of this case, we have some
20 matters that we need to attend to before we can go forward
21 with the trial of this case.

22 So, I'm going to excuse you now and allow you to go
23 with the bailiffs, and let them show you where your jury
24 room is and ask that you be back in your jury room, please,
25 at 2:30. We'll take care of the administrative matters and

1 things that we need to take care of, and let you get your
2 lunch and come back, and be in your jury room at 2:30.

3 There are several things I want to tell you before I
4 excuse you. First of all, do not discuss this case with
5 anyone while you're away from the courthouse. Now, I know
6 you don't know anything about the case except basically
7 what I told the charges of the indictments are. But it
8 would be improper for you to discuss this case with anyone
9 while you're away from the courthouse.

10 The reasons for that are pretty apparent. You've got
11 to decide the case based upon what you hear in this
12 courtroom and the evidence presented in this courtroom, and
13 not on the basis of what anyone else might say. So, if you
14 see your family or your friends, you can tell them that
15 you're serving on the jury, but you can't discuss the case
16 with them.

17 Do not allow anyone to discuss the case with you. If
18 anyone should approach you or try to talk with you about
19 this matter in any manner whatsoever over this recess or
20 any recess during the course of this case, report that
21 matter to the bailiff. They will report it to me, and I
22 will deal with them.

23 And do not discuss the case among yourselves when you
24 are assembling in the jury room. And again, this will
25 continue not only today when you're coming back after

1 lunch, but any time during the course of this case. Do not
2 discuss the case among yourselves until you have heard all
3 the evidence, the arguments of counsel, and the
4 instructions on the law by the court, and have been told by
5 me or the bailiff to begin your deliberations. Any
6 deliberations prior to that time would be premature. So,
7 when you're assembling there in the jury room, you can talk
8 about anything you want to talk about -- sports, weather,
9 children, grandchild, anything at all -- but don't talk
10 about this case until I tell you it is appropriate for you
11 to do so.

12 So, with those admonitions, we're going to excuse you
13 now, allow you to go and get your lunch, and ask you please
14 be back in your jury room, not in the courtroom, but in
15 your jury room at 2:30 this afternoon. Thank you. Have a
16 pleasant lunch, and I'll see you this afternoon. Go with
17 your bailiff.

18 (THE JURY EXITS AT 12:26 P.M.)

19 THE COURT: Counsel, come on. Let's talk about
20 scheduling just a minute.

21 (OFF-THE-RECORD BENCH CONFERENCE.)

22 THE COURT: All right, ladies and gentlemen of the
23 jury panel not selected on the trial of this case, it's
24 often very difficult for us to estimate exactly how long a
25 trial is going to take. So, I'm going to excuse you now

1 for the rest of the day, and not only the rest of the day
2 but for tomorrow as well.

3 What I'm going to ask that you do is call that number
4 that you have after 6:00 tomorrow night. That is an
5 answering machine here in the clerk's office very much like
6 the one that you've got at home, and your reporting
7 instructions for Wednesday will be on that machine. It may
8 be that we will be finished with this matter, and that you
9 -- we will need you back on Wednesday morning. It may be
10 that we are still involved in this matter and we will not
11 need you back that soon on Wednesday morning.

12 And this is a system that just about all of the
13 courthouses have gone to that alleviates the necessity of
14 us having to run the jurors back and forth to the
15 courthouse more than is actually necessary. So, I am going
16 to excuse you tonight -- now for the rest of the day and
17 tomorrow. But please call that number after 6:00. You can
18 call it all night long any time at all after 6:00 tomorrow
19 night. Get your reporting instructions for Wednesday. If
20 you don't have the number, get it from the bailiff on your
21 way out, all right? Thank you. You are excused.

22 (THE JURY PANEL EXITS.)

23 THE COURT: Now, there was one individual that had a
24 doctor's appointment tomorrow. Be sure that she doesn't --
25 we're clear on that anyhow. We're not coming -- they're

1 not coming in tomorrow anyhow. So, she'll be all right.

2 All right, counsel, I think we've about taken care of
3 all the pretrial matters that we can take care of. Let's
4 be back about 2:15 just to address anything you need to
5 address, but y'all are excused. We're going to handle a
6 couple of matters before we break for lunch. You're
7 excused on this case let's say until 2:15, and please be
8 back at 2:15.

9 MR. BLAKE: Thank you, Judge.

10 THE COURT: I know that this is a case that has gotten
11 some pretrial publicity, and it's an important case to
12 everyone. I am going to have to require that everyone be
13 on their good behavior and maintain the order and decorum
14 in the courtroom, and not only in the courtroom but away
15 from the court as well. If I hear of any incidences of
16 anything, of course we'll deal with them accordingly.
17 Thank you.

18 (OFF THE RECORD.)

19 THE COURT: All right, Mr. Daniel, is there anything,
20 and I don't think -- we probably haven't gotten all the
21 jurors yet, but if you'll let me know when they all get
22 here. We're not quite ready. It's not quite time for
23 them. We'll try to attend to any matters that we need to
24 attend to beforehand.

25 MR. DANIEL: Yes, Your Honor. If it pleases the

1 court? Mr. Blake and I just had a chance to talk briefly
2 about some stipulations, and it's my understanding Mr.
3 Blake is stipulating that the remains found in the barrel
4 were, in fact, those of the victim, Monesha Brown. Of
5 course, we have a lot of testimony we can put up about how
6 those remains were identified as being hers and all that.
7 But it's my understanding Mr. Blake is going to stipulate
8 to that.

9 Secondly, and we only had a moment to talk about this,
10 but as to the DNA, half of these boxes up here deal with
11 DNA cuttings and things and all from the, from the
12 defendant's home. And it's my understanding that Mr. Blake
13 is also going to stipulate that the DNA in the house, all
14 this blood that was found, is the blood of the victim,
15 Monesha Brown. So, if that is the case, that would prevent
16 us from calling -- or that would keep us from having to
17 call, if we choose not to, and I don't think we will have
18 to call the DNA experts from SLED and all that. But those,
19 I think, at this time are the only stipulations that we
20 discussed.

21 THE COURT: All right.

22 MR. BLAKE: Judge, I have not had a chance to discuss
23 that with my client.

24 THE COURT: All right. Well, discuss it with him
25 because here's my suggestion, and y'all go ahead and we'll

1 do this right now.

2 The rule actually requires, so that there will not be
3 any question about it, that stipulations be put in writing
4 and signed by both parties, and then published by the
5 court. That way, I can take care of that. But in order
6 that there not be any question as to what the stipulation
7 was, I think you need to write them out so if you're both
8 -- and it doesn't have to be anything formal. You can just
9 write that on a yellow pad and both of you sign it as to
10 what the stipulations are. That way, there's no question
11 about the exact wording that everybody agrees to.

12 (A PAUSE.)

13 MR. DANIEL: Judge, this is the stipulation that Dan
14 has signed, and I've signed it also. Number one, the
15 remains found in the barrel in question are those of the
16 victim, Monesha Brown. And, number two, the DNA evidence
17 collected from the home of John Hogan matches the victim,
18 Monesha Brown.

19 Of course, the state would preserve its right to call
20 any witnesses that go to that in the event we feel like we
21 need to. But we would like for those to be noted as
22 stipulations how, however the court would like to inform
23 the jury of such stipulations.

24 THE COURT: I'll publish them to the jury after the
25 opening statements as a part of the evidence in this case.

1 MR. DANIEL: Okay. Now, Judge, since we have a couple
2 more minutes, I just, I think it's important or necessary
3 for Dan, Mr. Blake, and I and Ms. Johnson-Lee to go through
4 and make sure we're clear. Apparently this is the third
5 court reporter in this case, and we just want to make sure
6 we're clear as to what's in evidence.

7 THE COURT: Yeah. I want to make sure of that, too.
8 I understand that. I'd like to get as many exhibits
9 resolved as we could.

10 I believe what my notes reflect is that originally 1
11 through 16 photographs were admitted or agreed to without
12 objection and are in evidence.

13 MR. DANIEL: 1 through 15.

14 THE COURT: 15?

15 MR. DANIEL: 1 through 15 are in evidence.

16 MS. JOHNSON-LEE: Yes. The court reporter actually
17 from the prior hearing showed 16 being ID only.

18 THE COURT: 1 through 15 are admitted without
19 objection.

20 MR. BLAKE: Well, I'm sorry because I haven't kept
21 track of the number. You said the court reporter said ID
22 only?

23 MS. JOHNSON-LEE: Right here, this was ---

24 MR. DANIEL: No, no, no.

25 MS. JOHNSON-LEE: No.

1 MR. DANIEL: She says starting at 16.

2 MS. JOHNSON-LEE: 1 through 15, according to the court
3 reporter's notes from that hearing, shows 1 through 15 in
4 evidence.

5 MR. BLAKE: Okay.

6 MS. JOHNSON-LEE: And then starting with 16 ID only.

7 MR. DANIEL: Right.

8 MR. BLAKE: Okay. I gotcha.

9 MS. JOHNSON-LEE: 16 through 31 is ID only.

10 (COUNSELORS REVIEW EVIDENCE FROM TWO PRIOR HEARINGS.)

11 (STIPULATION MARKED INTO EVIDENCE AS COURT'S EXHIBIT
12 NUMBER 1.)

13 (SKETCH MARKED AS STATE'S EXHIBIT NUMBER 32 FOR
14 IDENTIFICATION.)

15 (COPY OF DRIVER'S LICENSE MARKED AS STATE'S EXHIBIT
16 NUMBER 33 FOR IDENTIFICATION.)

17 (PATHOLOGY REPORT MARKED AS STATE'S EXHIBIT NUMBER 34
18 FOR IDENTIFICATION.)

19 (AUTOPSY REPORT MARKED AS STATE'S EXHIBIT NUMBER 35
20 FOR IDENTIFICATION.)

21 COURT REPORTER: Judge, I've marked State's 32 through
22 35 for ID.

23 THE COURT: All right, so 1 through 15 are in
24 evidence. 16 through 31 are ID only, and then what are the
25 other numbers?

1 COURT REPORTER: 32 through 35.

2 THE COURT: Also for ID?

3 COURT REPORTER: For ID only.

4 THE COURT: Okay. All right. All right, anything
5 else on the record, Mr. Daniel?

6 MR. DANIEL: Judge, we've just stipulated just to, or
7 we've agreed upon two other items to come into evidence
8 right now before we start, and we're just going to get
9 those out, and then we're ready to go. We know ---

10 MR. BLAKE: I do have ---

11 MR. DANIEL: --- what they are.

12 MR. BLAKE: I do have a couple of things that ---

13 THE COURT: Wait, wait just a minute now. Okay, y'all
14 go ahead and get those out. Go ahead, Mr. Daniel.

15 Mr. Blake, you got to keep in mind the court reporter
16 can't write and do her stuff on the record at the same
17 time, but go ahead, Mr. Blake. What you got?

18 MR. BLAKE: Yes, Judge, I have a motion to sequester
19 witnesses.

20 THE COURT: Take care of that in just a moment. All
21 right, what else?

22 MR. BLAKE: I would like to request, I guess it's a
23 motion to request that I receive a copy of the NCICs for
24 all non-law enforcement, non-SLED witnesses. In other
25 words, I, I don't have any control of that. I can't get

1 those myself, and I don't have any.

2 And then the one final thing is Mr. Daniel brought up
3 earlier about the crack cocaine effect on behavior. Judge,
4 the warrant itself says brutal beating. That is not in the
5 indictment itself. I believe it's not in the indictment
6 because, in fact, there are no facts to support that. And
7 I would ask that the solicitor refrain from doing that.
8 I'll just say if he does, I will object.

9 THE COURT: I disagree with that. It doesn't have to
10 be in the indictment for him to prove it. He need to prove
11 -- I don't think that -- the indictment is just, evidently
12 all the indictment is designed to do is to advise you and
13 give you notice of the charge against your client, or give
14 your client notice of the charges against him. So, I don't
15 think the fact that it's not in the indictment requires --
16 whatever you say to the jury, you're going to be stuck with
17 as far as proving it, and if you can't prove it, then
18 that's, that's another question. If he says it to the jury
19 and he can't prove it, why so be it. But the fact that
20 it's not in the indictment does not preclude him from doing
21 that.

22 MR. DANIEL: And I'm going to go ahead and say in my
23 opening, I'm going to say the words brutal killing, brutal
24 murder.

25 THE COURT: Yeah.

1 MR. DANIEL: I understand.

2 THE COURT: I think you can do that. All right, have
3 you found those other two exhibits? You get those?

4 (A PAUSE.)

5 (DUCT TAPE MARKED AS STATE'S EXHIBIT NUMBER 36 FOR
6 IDENTIFICATION.)

7 (BLOCK OF KNIVES MARKED INTO EVIDENCE AS STATE'S
8 EXHIBIT NUMBER 37.)

9 THE COURT: All right, counselor, we've got -- I'm
10 ready to go now.

11 MR. DANIEL: Yes, sir, and, Judge, I just wanted to
12 tell you that we would have done this at lunch, but we
13 needed to obviously get together with Mr. Blake.

14 As to the stipulations, you said you were going to
15 read that to them after openings, and then ---

16 THE COURT: I'll get to that. Y'all just tell me if
17 y'all are finished.

18 MR. DANIEL: Yeah, we're done.

19 THE COURT: Okay. What do we have, Madame Reporter?

20 COURT REPORTER: We added State's 36 for ID, and
21 State's 37 is in by agreement.

22 THE COURT: All right, and what are those?

23 COURT REPORTER: 36, duct tape for ID.

24 THE COURT: Okay.

25 COURT REPORTER: And 37, knives.

1 THE COURT: All right. Now, motion to sequester by
2 the defense, by the defense, Mr. Daniel, anything you want
3 to say?

4 MR. DANIEL: Your Honor, we don't have any objection
5 to that. We'd like our first witness to obviously be able
6 to remain in the courtroom, and also ---

7 THE COURT: All right, here's, here's what I'll do as
8 far as sequestration is concerned. It's got to be mutual.
9 That means both sides. Any defense witnesses also have to
10 be sequestered. The witnesses that are sequestered will be
11 allowed to remain in the courtroom after they testify
12 unless it is anticipated they will be called in reply, in
13 which case they will not be allowed to remain in the
14 courtroom. The state may keep its primary officer; it may
15 keep a representative on the victim's family. And of
16 course the first witness can stay in the courtroom as well.
17 The rest will have to be sequestered.

18 MR. DANIEL: Certainly, and the state has no objection
19 to that. We have two investigators, and they're going to
20 testify back to back. Do you have a problem with them,
21 both of them?

22 MR. BLAKE: Judge, I do. It's the sheriff's case. I
23 know that Lieutenant Turner with the police department did
24 a lot of the initial investigation, but that's one of the
25 reasons for sequestering.

1 THE COURT: So, what are you saying?

2 MR. BLAKE: I believe the primary in this case would
3 be Shawn Feldner with the sheriff's office, and ---

4 THE COURT: Well, I'll leave it up to him to designate
5 who's the primary.

6 MR. DANIEL: Okay, but you're only going to let me
7 keep one in?

8 THE COURT: Keep one, yeah.

9 MR. DANIEL: Okay.

10 THE COURT: Primary.

11 All right, what I'll do is after opening statements, I
12 will publish the stipulation.

13 And now let's go back to a couple of pretrial matters
14 that we did in the last hearing, Mr. Blake, on the matter
15 of the search warrants, and those have already been ruled
16 on, and I don't think there's anything further that needs
17 to be put on the record with regard to those, or anything
18 that needs to come before the jury with regard to the
19 search warrant. Do you have anything on that?

20 MR. BLAKE: No, Judge.

21 THE COURT: All right, statements, how many different
22 statements do y'all intend? Is there a written statement
23 and some verbal statements?

24 MS. JOHNSON-LEE: Two verbal audiotapes -- excuse me,
25 videotapes, Your Honor.

1 THE COURT: Okay, and I've already ruled on those.

2 MS. JOHNSON-LEE: Yeah.

3 THE COURT: Do you want the limiting instruction to go
4 to the jury that they need to also find -- the court has
5 already ruled them admissible, as being voluntary for the
6 purposes of admissibility. But of course the jury has the
7 right to consider whether or not they were custodial
8 statements and made. Do you need a charge on that at the
9 time of their publication, Mr. Blake?

10 MR. BLAKE: Yes, Judge.

11 THE COURT: Okay. All right, I will charge, then, at
12 the time of admission about the fact that the statements
13 need to be -- the jury needs to consider them as far as
14 voluntariness is concerned.

15 MS. JOHNSON-LEE: And for the record, and there was
16 one verbal statement that was not on video that also came
17 in at the *Jackson vs. Denno*.

18 THE COURT: That's what I thought, yeah. I'll tell
19 them that; I'll note that with regard to all the
20 statements. I'll make the instructions to the jury on
21 that. All right, anything else the jury needs to be
22 published about?

23 MR. DANIEL: Judge, we talked about this before, but
24 I'm assuming that the July 23rd videotape, there will be
25 some redaction in the beginning.

1 MR. DANIEL: Yes. In fact, I just was checking on
2 that at lunch. The first minute and a half, and there are
3 two sentences in the first minute of a half of that video
4 that talk about the polygraph, but of course I will start
5 that tape at about the minute 38 second mark so as to avoid
6 any of that conversation.

7 THE COURT: All right.

8 MR. DANIEL: And we have, by the way for the record,
9 talked to both of our investigators who will be testifying
10 as to what happened on that day with the polygraph, to not
11 mention anything about the polygraph at all.

12 THE COURT: All right. All right, take care of the
13 sequestration, and let's go.

14 MR. BLAKE: Judge, the last thing about the motion for
15 the NCICs for the non-law enforcement witnesses for the
16 state.

17 MS. JOHNSON-LEE: The victim's mother is going to be
18 our first witness, and I believe Ms. White has gone to have
19 them run that right now.

20 THE COURT: Okay.

21 MR. BLAKE: If I could have those as soon as possible,
22 then I have a chance to review before they ---

23 THE COURT: I will get those to you. The criminal
24 records of the witnesses will be made available to the
25 defense as soon as they can -- you can get those.

1 MS. JOHNSON-LEE: Yes, sir.

2 MR. BLAKE: And I'm certainly assuming a SLED or a
3 police officer, pathologist, I don't need those because,
4 you know, they...

5 THE COURT: I understand.

6 MR. DANIEL: And again, and I don't want to belabor
7 the point, but this is the last thing I'll say and that is
8 -- and we talked about this in chambers, but the court has
9 ruled on the issue of voluntary intoxication being a
10 defense. I certainly don't know what Mr. Blake is going to
11 say during his opening or at any point during his case, but
12 certainly ---

13 THE COURT: Well, I can tell you what I'm going to
14 tell the jury. That is that it is not a defense, and if it
15 is argued that it is a defense, then of course I would have
16 to interrupt and tell them that that is not the law.

17 MR. DANIEL: Thank you.

18 THE COURT: Okay. All right, bring the jury in,
19 please.

20 (THE JURY ENTERS AT 2:45 P.M.)

21 THE COURT: All right. Good afternoon, ladies and
22 gentlemen, and thank you for your promptness in being back
23 here. I apologize for keeping you waiting in the jury room
24 for a few minutes, but we were tending to some housekeeping
25 matters that will save us some time in the long run and

1 expedite the trial of this case. We've got those out of
2 the way now, and we are ready to go forward.

3 Mr. Funderburk, you may swear the jury.

4 CLERK OF COURT: Okay, if you'll stand and raise your
5 right hand, please.

6 (WHEREUPON, THE JURY IS SWORN.)

7 THE COURT: All right, ladies and gentlemen, before we
8 actually begin the trial of this case, I thought it might
9 be helpful if I explain to you basically how a trial
10 proceeds. I know all of you have seen trials on
11 television, but I think you're going to find it's a great
12 deal different in real life.

13 First of all, the state will make an opening
14 statement. An opening statement is not evidence. It is
15 simple an outline to help you understand what the state
16 expects the evidence will show. The defendant may, if he
17 wishes to, present an opening statement, but he doesn't
18 have to for reasons that I will explain later.

19 Following the opening statements, you will hear the
20 testimony and evidence in this case. This will consist of
21 testimony from the state's witnesses, as well as any
22 physical exhibits which may be introduced into evidence.

23 And I will tell you now that I know there are going to
24 be some physical exhibits introduced into evidence, and it
25 may be that during the course of trial, the lawyers will

1 ask for permission to publish those exhibits to you. That
2 simply is a legalistic term meaning show to you the
3 physical exhibits and ask for permission to pass them
4 around to you while you're sitting there in your jury box.
5 I will most likely grant that permission.

6 Do not be concerned if you do not have as long to look
7 at the exhibits while you're sitting there in the jury box
8 as you would like to because anything that is introduced
9 into evidence will go with you to your jury room when you
10 retire to deliberate your verdict, and you will have ample
11 opportunity to examine that exhibit for as long as you
12 would like to.

13 Following the completion of the testimony, the
14 attorneys will again have an opportunity to make what is
15 called a closing statement or summation to you. This is an
16 opportunity for the attorneys to summarize the case from
17 their respective points of view. Again, these arguments
18 are not evidence.

19 Following the closing statements by the attorneys, I
20 will instruct you on the law of South Carolina as it
21 pertains to the issues that have arisen in this case. When
22 I have completed my instructions to you, you will be
23 allowed to begin your deliberations in order to reach a
24 verdict.

25 Now, ladies and gentlemen, you're now the jury in this

1 case, and I want to take a few minutes to tell you
2 something about your duty as jurors and to give you some
3 preliminary instructions. At the end of this trial, I will
4 give you more detailed instructions, and those instructions
5 will control your deliberations.

6 It will be your duty to decide from the evidence what
7 the facts are. You and you alone are the judges of the
8 facts. You will hear the evidence, decide what the facts
9 are, and then apply those facts to the law which I will
10 give to you. That is how you reach a verdict. In doing
11 so, you must follow the law, whether you agree with it or
12 not.

13 The evidence will consist of the testimony of
14 witnesses, documents, and other things received into
15 evidence as exhibits, and any facts on which the lawyers
16 agree which I instruct you to accept.

17 Now, you should not take anything that I may say or do
18 during this trial as indicating what I think of the
19 evidence, or what your verdict should be. The law does not
20 permit me to have an opinion about the facts and the
21 evidence. The same law that makes you the judge of the
22 facts makes me the judge of the law.

23 You must take the law as I give it to you, regardless
24 of what you think the law is or what the law ought to be.
25 If I'm wrong on the law, there's another time and place for

1 that error to be corrected. But for this case, you must
2 accept the law as I charge it to you.

3 Now, this is a criminal case brought by the State of
4 South Carolina. The state charges the defendant with the
5 crime of murder. The charge against the defendant is
6 contained in the indictment. The indictment is not
7 evidence of anything; it is simply the description of the
8 charge made by the state against the defendant. The
9 defendant has pled not guilty to the charge and is presumed
10 innocent unless and until proven guilty beyond a reasonable
11 doubt.

12 A reasonable doubt is the kind of doubt that would
13 cause a reasonable person to hesitate to act. A defendant
14 has the right not to testify, and never has to prove
15 innocence or present any evidence. The burden of proof is
16 always on the State of South Carolina.

17 Now, there are certain things that are not evidence,
18 and you must not consider them as evidence in deciding the
19 facts of this case. Statements and arguments of the
20 attorneys are not evidence. Questions and objections of
21 the attorneys are not evidence, and testimony that I
22 instruct you to disregard is not evidence.

23 Evidence may be direct or circumstantial. Direct
24 evidence is testimony by a witness about what that witness
25 personally saw or heard or did. Circumstantial evidence is

1 indirect evidence. The law permits you to give equal
2 weight to both, but it is up to you to decide how much
3 weight to give to any of the evidence.

4 There are certain rules of evidence which control what
5 can be received into court. When a lawyer asks a question
6 or offers an exhibit into evidence, and a lawyer on the
7 other side thinks that it's not permitted by the rules,
8 that lawyer may object. If I overrule the objection, the
9 question may be answered, or the exhibit may be received.
10 If I sustain the objection, the question cannot be
11 answered, or the exhibit cannot be received.

12 Whenever I sustain an objection to a question or deny
13 a motion to admit an exhibit into evidence, you must ignore
14 the question or the existence of the exhibit, and you must
15 not guess what the answer would have been or what the
16 exhibit would have shown.

17 Sometimes it may be necessary for me to request that
18 you leave the courtroom while I discuss with the attorneys
19 legal questions that come up during the course of the
20 trial. If this occurs, you should not speculate about our
21 discussions or the reasons that you were asked to leave the
22 room. This is simply a procedure that the law requires
23 when certain legal issues arise.

24 There also may be occasions when I ask the attorneys
25 to approach the bench so that I can discuss a legal issue

1 with them in private. I will do this as often as possible
2 so that you will not be required to leave the courtroom
3 more than is absolutely necessary.

4 Again, if I ask the attorneys to step up to the bench,
5 or if I ask you to leave the courtroom, please don't think
6 anybody is trying to hide anything from you or keep any
7 evidence from you. This is simply a procedure used by all
8 lawyers and by all courts to determine and decide legal
9 questions.

10 In deciding the facts of this case, you may have to
11 decide which witnesses to believe and which witnesses not
12 to believe. This is called credibility. You may believe
13 everything a witness says, or only part of it, or none of
14 it. In deciding what to believe, you may consider a number
15 of factors, including the witness's ability to see or hear
16 or know the things the witness testified to; the quality of
17 the witness's memory; the witness's manner or demeanor
18 while testifying; whether the witness has an interest in
19 the outcome of the case or any motive, bias, or prejudice;
20 whether the witness was contradicted by anything the
21 witness said or wrote before the trial, or by any of the
22 other evidence; and how reasonable was the witness's
23 testimony when considered in the light of other evidence
24 which you do believe.

25 Now just a few words to you about your conduct as

1 jurors, some of which I have already mentioned, but they
2 are important enough that they bear repeating. First of
3 all, do not talk to each other about this case until the
4 end of the case when you go to your jury room to decide on
5 your verdict, and you have been instructed by the bailiff
6 or me to begin your deliberation. Any discussion of the
7 case among yourselves prior to that time would be
8 premature.

9 Do not talk with anyone else about the case until the
10 trial has ended following your verdict and you have been
11 discharged as jurors. This means do not discuss the case
12 with members of your family or your parents or with anyone
13 else. You may tell them that you are a juror, but don't
14 tell them anything about the case until you have been
15 discharged by me.

16 And as I told you before lunch, the reason for that is
17 pretty apparent. You've got to decide this case based upon
18 the evidence which you hear in this courtroom and not on
19 the basis of what anyone else might say.

20 Do not let anyone talk to you about the case. If
21 anyone should approach you and try to talk to you about the
22 case, get their name or their description, report it to the
23 bailiff, who will report it to me, and I will deal with
24 them.

25 Do not read any news stories or articles or listen to

1 any radio or television reports about the case. With due
2 deference to y'all, my friends of the news media, the
3 things that they report in the paper are not always
4 accurate as to what went on in court. And so it is
5 important that you not read any news stories or articles.
6 You've got to decide this case based upon what you hear in
7 this court.

8 Also, do not do any research such as consulting
9 dictionaries or other reference materials, and do not do
10 any research on the Internet. You are not to consider as
11 evidence anything that you may see or hear when the court
12 is, when court is not in session.

13 And finally, and probably most important, do not make
14 up your mind about what your verdict should be until you
15 have all of the evidence in this case, and the arguments of
16 counsel, and the instructions on the law by the court. You
17 will be instructed when to begin your deliberations by
18 either me or the bailiff.

19 Now, one of the things that I did not tell you, and
20 I'm going to ask the -- I tell you to do it now is I'm
21 going to let, allow you to select your own foreperson in
22 this jury. So, when we take the first recess later on this
23 afternoon, and I want the twelve members of the principal
24 jury to select one of the members of the jury to be the
25 foreperson that you're -- of this jury.

1 That foreperson will just sit in the first seat on the
2 front row. The two alternates should sit on the last seats
3 on the end, one on the first row and one on the second row.
4 Those are the only seats in the jury box that are reserved.
5 The rest of the seats are not reserved, and it does not
6 matter what order you come and go from the courtroom. I
7 would simply ask that it be a situation going all the way
8 down so that you wouldn't crawl over one another, reserving
9 the last two seats on the end of the box for the
10 alternates, one the first row and one on the second row,
11 and the first row on the -- the first seat on the front row
12 once the foreperson is selected.

13 Are there any objections to my initial remarks on
14 behalf of the state, Mr. Daniel?

15 MR. DANIEL: No, Your Honor.

16 THE COURT: On behalf of the defense, Mr. Blake?

17 MR. DANIEL: No, Your Honor.

18 THE COURT: All right. All right, the first order of
19 business, ladies and gentlemen, is the matter of opening
20 statements, and for that purpose, the state, I will
21 recognize the assistant solicitor, Mr. Daniel.

22 MR. DANIEL: Thank you, Your Honor. May it please the
23 court?

24 THE COURT: Yes, sir.

25 MR. DANIEL: Mr. Blake. Ladies and gentlemen of the

1 jury, good afternoon.

2 This is a case about nothing less than a brutal
3 murder. My name is Shipp Daniel. This is Mary Thomas
4 Johnson-Lee. As prosecutors, it is our burden, it is our
5 duty to prove to you beyond a reasonable doubt that John
6 Hogan is guilty of murder. That's a burden that we
7 welcome.

8 Now, throughout this case you're going to hear a lot
9 of evidence. One of the most important pieces of evidence
10 that you're going to hear is the confession of Mr. Hogan.
11 This is a videotaped confession, and you're going to see
12 it; you're going to watch it.

13 In that confession, Mr. Hogan tells a story about how
14 he and Monesha Brown smoked crack together, went back to
15 his house, got in the bathtub together. You're going to
16 hear from his own words how an altercation happened.

17 They got in a fight. She was beaten badly. Mr. Hogan
18 then, you'll hear him say, took a roll of duct tape, duct
19 taped her hands behind her. He walked her back to the
20 bathtub, put her back there. You're going to hear him say
21 that as she sat in the bathtub duct taped, begging for her
22 life, he went, sat on the end of the bed, hit the crack
23 pipe a couple more times. Got a message from the devil.
24 Walked into the kitchen, took a knife from a block of
25 knives, went back in the bathroom, and slit her throat,

1 killing Monesha Brown.

2 You're going to hear him say that then he took Ms.
3 Brown's body, and he put it in a 55 gallon barrel. You're
4 going to hear him say that he then took that barrel and put
5 it in the woods.

6 Ladies and gentlemen, this is not a case about who
7 committed murder. Mr. Hogan's already told us that. He
8 even took law enforcement to the body. This is not even a
9 case about how the murder occurred. He's told us all the
10 details about how it went down. This is a case primarily
11 about whether the appropriate charge here is murder or
12 manslaughter.

13 And I want to tell you, ladies and gentlemen, Mr.
14 Hogan has told us the answer to that question, too. And
15 you're going to hear about those details, the details that
16 make this case nothing less than a brutal murder. Thank
17 you for your attention.

18 THE COURT: Mr. Blake, does the defendant care to make
19 an opening statement?

20 MR. BLAKE: Yes, sir.

21 THE COURT: All right, sir.

22 MR. BLAKE: Again, what I say is not evidence. I'm
23 simply going to explain to you how some of this trial is
24 going to go to kind of give you an idea what evidence will
25 be presented. There are a couple of things that are left

1 out by the solicitor. I think they need to be -- pay
2 attention to.

3 Yes, this happened back at my client's trailer.
4 That's out by -- off of Marlboro Road on the way there to
5 Oak River, Mohawk, and it's a very small trailer. So, when
6 they're talking about going from the kitchen to the
7 bedroom, we're talking about a matter of feet, a very few
8 feet at that.

9 Just to set the scene a little bit -- and this will
10 come out later -- they both got out of the bath. My client
11 went to -- a few feet away. Went to another room and it
12 was taking a long time, so he went back into where the tub
13 was, and right near there is where he had put his wallet,
14 and he noticed that the victim was in his wallet. That his
15 wallet was actually open. She was getting ready to -- or
16 taking out some money.

17 He did at that point slap her. She proceeded to grab
18 a kitchen knife. She stuck him in the side. He did use
19 that net -- that knife to stab her. They did struggle over
20 that knife, and in the end he did slice her throat.

21 He was staying out at that trailer working for a
22 company, and he had been here about four months from Texas.

23 He does have a crack cocaine addiction. He had not
24 been using crack for two years. Within the previous year,
25 he's gotten married to a woman. She was out on vacation in

1 California, and he slipped. He drank pretty -- very
2 heavily. He went on a crack binge.

3 And so that night he went down -- that was June 5,
4 2010 -- he went from his trailer out there by Oak River.
5 He drove into town. He went to a known drug area on
6 Jennings Street. He stopped his vehicle. Immediately, two
7 individuals jumped in his truck. He had never known these
8 individuals before. He had never met them before, and they
9 were essentially facilitators for him getting crack
10 cocaine.

11 So, they got the crack. All three of them smoked the
12 crack together. At one point, the gentleman who was with
13 them, who was with Ms. Brown, Monesha Brown, Jason McCall,
14 he got out of the truck. And then he, John Hogan and
15 Monesha Brown, went back to John Hogan's trailer, and of
16 course that's where all of this occurred.

17 Initially, it was a missing person's report on Ms.
18 Brown. It took them a number of weeks to kind of put it
19 together. My client didn't run back to Texas or anything
20 like that. He was interviewed on July 23, 2010. Yes, he
21 does confess to it.

22 But what I would like to point out to you is there was
23 -- there were two interviews on that day. This is July 23,
24 2010. There was an earlier interview that had not been
25 videotaped where he did confess. And at that time -- which

1 you are not going to see it because it was not videotaped
2 -- it shows tremendous -- a great deal of remorse. He then
3 proceeded to show them where the barrel was. Of course,
4 where Ms. Brown was.

5 The interview that you will see is two and a half
6 hours later after he has initially confessed and pretty
7 much cried his guts out. Showed them where the body was,
8 and then they came back and did a second video statement
9 because the first one had not been videotaped.

10 This is absolutely an unfortunate incident. My client
11 is not here saying that he didn't do it. He's said he did
12 it. I think those facts that I laid out to you -- goes
13 down to a known crack neighborhood. Two people jump in the
14 truck. They get crack; they all three smoke it. One
15 gentleman leaves. Ms. Brown and my client go to his
16 trailer. She fumbles around in his wallet. He slaps her
17 once.

18 She had the opportunity to leave the trailer at that
19 point. She was right near the exit door, but she chose not
20 to. She went in the kitchen. She grabbed a kitchen knife;
21 she stabbed him in the side. We will have a witness to
22 tell you about those wounds, and then a struggle ensued.

23 This will be a little bit longer than a lot of trials
24 here in Marlboro county. I appreciate your attention. One
25 of the reasons that we've got twelve jurors, you got twelve

1 people listening and looking, and it's pretty hard for
2 anybody to catch everything that goes on in a trial. I
3 know when I'm taking notes, I'm struggling just to keep up.
4 So, as the judge said, you're not supposed to talk about
5 the case itself until he gives it to you to deliberate, and
6 I appreciate your attention.

7 THE COURT: Ladies and gentlemen, before I allow the
8 state to call the first witness, I want to publish to you
9 two stipulations which both the state and the defense have
10 agreed to. What stipulations are, are they are simply
11 facts that the parties have agreed, and you are to accept
12 these facts as facts in this case and to use them in your
13 deliberations.

14 The first stipulation is that, number, one, the
15 remains found in the barrel in question are those of the
16 victim, Monesha Brown. And the second stimulation --
17 stipulation is that the DNA evidence collected from the
18 home of John Hogan matches the victim, Monesha Brown.
19 Those are two stipulated facts that the parties have agreed
20 on.

21 All right, Mr. Daniel, you may call your first
22 witness.

23 MS. JOHNSON-LEE: Your Honor, the state calls Queen
24 Brown.

25 THE COURT: All right, Ms. Johnson-Lee. Come around,

Q. BROWN - DIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 please.

2 QUEEN BROWN, BEING DULY SWORN,

3 TESTIFIES AS FOLLOWS:

4 CLERK OF COURT: I need you to sit down right there,
5 and state your full name for me.

6 WITNESS: Queen Brown.

7 DIRECT EXAMINATION BY MS. JOHNSON-LEE:

8 Q. Please state your name for the record.

9 A. Queen Brown.

10 Q. Where do you live at, Ms. Brown?

11 A. I live here in Bennettsville.

12 Q. Are you related in any way to the victim in this case,
13 Monesha Brown?

14 A. Yeah. That's my daughter.

15 Q. Where were you living in June and July of 2010?

16 A. I was living at [REDACTED] Jennings Street.

17 Q. Here in Bennettsville?

18 A. Yes.

19 Q. Who all lived with you at that time?

20 A. Me and her four boys.

21 Q. And who are her four boys?

22 A. She have a son named Devaris [phonetic], which is
23 fifteen; Travion [phonetic] is twelve; Allen is eleven; and
24 DJ is ten.

25 Q. Are those their ages now?

Q. BROWN - DIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 A. Yes.

2 Q. Are you still raising her four sons?

3 A. I have three of them. The oldest one live with his
4 father.

5 Q. Did you work anywhere in June 2010?

6 A. I do private duty.

7 Q. What does that mean?

8 A. I do home health.

9 Q. Now, did you know who John Hogan was in June and July
10 2010?

11 A. No, I do not.

12 Q. When did you first hear the name of John Hogan?

13 A. When I was trying to find my daughter.

14 Q. Okay. When you say you were trying to find your
15 daughter, tell us what was going on in early June of 2010.

16 A. Well, the Wednesday before, I had went to -- which was
17 the 2nd -- I had went to her house to take her dinner
18 because I always cook dinner on Wednesday for the whole
19 family and I -- and for the pastor and some of the other
20 people at the church. And I went to her house to take her
21 dinner, and she wasn't there.

22 Q. How often did you normally see your daughter?

23 A. I see her two, three times a week.

24 Q. Did you usually take her food?

25 A. I take her food, or either she'll come by the house.

1 Q. When was the last time you actually saw Monesha?

2 A. The last time I see Monesha was that Thursday.

3 Q. Approximately what date was that?

4 A. That was on the 3rd.

5 Q. Do you remember what she was wearing on that day?

6 A. She was wearing blue jeans and a shirt and some flip
7 flops. It was raining, and I stopped to pick her up. She
8 was going to the store, and she told me that she would
9 walk.

10 Q. Do you remember what kind of shirt it was?

11 A. I can't remember.

12 Q. Do you remember what color it was?

13 A. No.

14 Q. When did you -- did you ever go talk to the police
15 about Monesha?

16 A. Yes, I did.

17 Q. When did you do that?

18 A. I think it was the next week.

19 Q. Okay. Why did you go to the police about Monesha?

20 A. Because the following week, I went back to the house
21 again to take her some more dinner, and she wasn't there.
22 And then I had asked a friend of mine -- it's a place on
23 Jennings Street where she always hang out -- had she seen
24 her, and she told me that she hadn't seen her.

25 Q. Did you go talk to different people trying to track

Q. BROWN - DIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 your daughter down?

2 A. Yes, I did, and nobody know where she was.

3 Q. And you also made a police report?

4 A. Yes, I did.

5 Q. Did the police also search for her?

6 A. Yes.

7 Q. What kind of efforts did you and your family do to try
8 to find Monesha in addition to talking to people in the
9 area?

10 A. We went on the television. We put posters up. We
11 talked to different people. We had churches, going to
12 different churches talking to people. We went ---

13 Q. What kind of -- I'm sorry.

14 A. We went for walks in the woods. We went somewhere,
15 every place trying to find her.

16 Q. How long did those searches go on?

17 A. Until we found her.

18 Q. Which was the end of July?

19 A. Which was in July.

20 Q. Is that approximately forty-five days more or less?

21 A. Yes.

22 Q. What kind of posters did y'all put up?

23 A. We put up flyers with her pictures on it.

24 Q. How did you finally find out your daughter was
25 deceased?

Q. BROWN - CROSS-EXAMINATION BY MR. BLAKE

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1 A. They came over to my brother house, and I was working
2 next door, and the coroner, the sheriff, and the chief, all
3 of them was there. And they tell me then that my daughter
4 was dead.

5 MS. JOHNSON-LEE: Thank you, Ms. Brown. Ms. Brown,
6 would you answer any questions Mr. Blake has for you?

7 THE COURT: Cross-examination, Mr. Blake.

8 MR. BLAKE: Thank you, Judge.

9 CROSS-EXAMINATION BY MR. BLAKE:

10 Q. Hey, Ms. Brown. I was little confused; I wanted to
11 just clear something up. You said you lived at [REDACTED]
12 Jennings Street?

13 A. Yes, I do.

14 Q. And you had the four boys there with you at the time?

15 A. Yes, I do.

16 Q. Back then in June of 2010, you had them there with
17 you?

18 A. Yes.

19 Q. Okay, and where did Monesha live?

20 A. She live in Grace Apartments.

21 Q. Grace Apartments?

22 A. Yes.

23 Q. And where is that exactly?

24 A. It's off the bypass.

25 Q. Off the bypass, and how long had she been living

Q. BROWN - CROSS-EXAMINATION BY MR. BLAKE

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1 there?

2 A. Guess about a year.

3 Q. And you said that you saw her a few days before back
4 in June, and that she was going to the store?

5 A. Yes.

6 Q. What store was that?

7 A. At the -- it's right there by Kentucky Fried Chicken.

8 Q. Out on the bypass?

9 A. Yes.

10 Q. And you said it was raining at that time?

11 A. It wasn't raining hard. It was kind of drizzling.

12 Q. Drizzling, and you offered to give her a ride?

13 A. Yes.

14 Q. And she declined that?

15 A. Yes.

16 Q. She said no. Would you say that your daughter had a
17 crack addition -- addiction?

18 A. I guess.

19 MR. BLAKE: No further questions.

20 THE COURT: Redirect, Ms. Johnson-Lee?

21 MS. JOHNSON-LEE: No, Your Honor.

22 THE COURT: All right, thank you, ma'am. Ms. Brown,
23 you may step down.

24 (THE WITNESS EXITS THE STAND.)

25 THE COURT: All right, you may call your next witness.

L. TURNER - DIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 MS. JOHNSON-LEE: Larry Turner. Somebody get him;
2 he's sequestered.

3 (A PAUSE.)

4 LARRY TURNER, BEING DULY SWORN,
5 TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Please be seated, and state your full
7 name for me.

8 WITNESS: Larry Turner, T-u-r-n-e-r.

9 DIRECT EXAMINATION BY MS. JOHNSON-LEE:

10 Q. Where are you employed?

11 A. The Bennettsville Police Department.

12 Q. What is your job there?

13 A. Lieutenant over the Investigative Division.

14 Q. How long have you been at the Bennettsville Police
15 Department?

16 A. Since 1996.

17 Q. And what type of training and background do you have
18 in law enforcement?

19 A. I've had training in criminal investigations as far as
20 murders, assaults, narcotics training, how to conduct
21 criminal investigation in narcotics. I've also had
22 training in tactical operations as far as our SWAT team.

23 Q. And any other law enforcement experience in addition
24 to all of that?

25 A. Just the numerous classes.

L. TURNER - DIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 Q. Now, what was your job description in June and July of
2 2010?

3 A. Lieutenant over investigations.

4 Q. Now, how did you come to be involved in the Monesha
5 Brown matter?

6 A. I assign the cases to the investigators that are on
7 call throughout the week as the cases come in.

8 Q. What type of case came in on Monesha?

9 A. A missing person case.

10 Q. Do you remember about when that came in?

11 A. June 2nd, I think it was, of 2010.

12 Q. What did you do when you got the report for a missing
13 person?

14 A. I actually took the case and assigned it to myself.

15 Q. What did you do once you assigned that case to
16 yourself?

17 A. I spoke to some of the family members about, about Ms.
18 Brown.

19 Q. What other things did you do besides speaking to
20 family?

21 A. We -- myself, along with other investigators --
22 interviewed several people in the area which she was known
23 to frequent, trying to get information where she may be.
24 Followed up on leads that family members gave us on a
25 possible individual that could be involved in Ms. Brown's

1 being missing.

2 Q. Now, referencing that date, now was that the 2nd when
3 you actually got the report, or was that some time later?

4 A. No. The initial -- the report was filed on the 16th.
5 She actually, the last time she was seen was on the 2nd.

6 Q. Was that June 16, 2010?

7 A. Correct.

8 Q. Okay. So, a period of about two weeks?

9 A. Yes, ma'am.

10 Q. Did you determine who the last people were to see her
11 alive?

12 A. Yes, ma'am, we did.

13 Q. Did you speak to those individuals?

14 A. Yes, ma'am.

15 Q. Based on your investigation, was a composite sketch of
16 the, one of the last people to have seen her, was it
17 developed?

18 A. Yes, ma'am, it was.

19 Q. And who actually drew the composite sketch?

20 A. A forensic sketch artist from SLED.

21 Q. I'm going to show you what marked for identification
22 now State's Exhibit Number 32. Do you recognize that item?

23 A. Yes, ma'am, I do.

24 Q. And what is that?

25 A. It's a sketch of the defendant, John Hogan.

L. TURNER - DIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 Q. Okay. Now, once you got that composite drawing, did
2 you show it to anybody?

3 A. Yes, ma'am. I received some information from family
4 members that the suspect in question, this picture of Mr.
5 Hogan, may be living over at a trailer park out in the
6 county. I knew who actually was the overseer on the mobile
7 home park. I went and met with him and talked with him and
8 talked to him and showed him this picture.

9 Q. Okay. Now, and as a result of your investigation, did
10 you learn that that person in that sketch was John Hogan?

11 A. Yes, ma'am. That's correct.

12 MS. JOHNSON-LEE: Okay, at this time, I would move to
13 have that marked as evidence.

14 THE COURT: Any objection?

15 MR. BLAKE: Without objection.

16 THE COURT: All right, it will be marked into evidence
17 without objection. Let the court reporter take the ID off
18 of it.

19 (SKETCH MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
20 32.)

21 COURT REPORTER: State's 32.

22 BY MS. JOHNSON-LEE:

23 Q. Now, did you obtain any additional photographic
24 information regarding John Lee Hogan?

25 A. Yes, ma'am, I did through SLED and Richmond County

L. TURNER - DIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 Sheriff's Office.

2 Q. Okay, I'm going to show you what's marked for
3 identification State's 33. Do you recognize that item?

4 A. Yes, ma'am. This is a photograph obtained through
5 SLED.

6 Q. Okay, and what type of photograph is that?

7 A. That's his driver's license photo from his driver's
8 license in Texas metaphor.

9 MS. JOHNSON-LEE: I'd like to have that marked as
10 evidence.

11 MR. BLAKE: I'd like to see it first.

12 THE COURT: All right.

13 (A PAUSE.)

14 MR. BLAKE: No objection.

15 THE COURT: Admitted into evidence as State's Number
16 33 without objection.

17 (COPY OF DRIVER'S LICENSE MARKED INTO EVIDENCE AS
18 STATE'S EXHIBIT NUMBER 33.)

19 BY MS. JOHNSON-LEE:

20 Q. After you obtained that driver's license photo, did
21 you further determine as part of your investigation that
22 John Lee Hogan was the person last seen with Monesha Brown?

23 A. Yes, ma'am, I did.

24 Q. And you said he lived on Mark Circle?

25 A. [REDACTED] Mark Circle, which is located in the county.

L. TURNER - DIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 Q. Okay. So, that's outside the Bennettsville city
2 limits?

3 A. Yes, ma'am, correct.

4 Q. Since you determined that he was the last person to be
5 seen with her, did you interview him?

6 A. Yes, ma'am, I did.

7 Q. Where did that interview take place at?

8 A. At the Bennettsville Police Department.

9 Q. Was that on July 21st?

10 A. Yes, ma'am.

11 Q. 2010?

12 A. Yes, ma'am.

13 Q. Who was present at the interview?

14 A. Myself, along with Investigator Ira Dease.

15 Q. Now, prior to interviewing John Lee Hogan, did you
16 give him Miranda warnings?

17 A. Yes, ma'am.

18 Q. Okay. What are the Miranda warnings?

19 A. I would have to read it off of the paper to ---

20 Q. Do you ---

21 A. --- make sure it was correct.

22 Q. You would read it off the paper?

23 A. Yes, ma'am. I read it directly from the paper.

24 Q. I believe this is already in in a prior hearing; it's
25 State's Exhibit 3. Okay, do you recognize that document?

1 A. Yes, ma'am.

2 Q. And is that a Miranda warning that you read to John
3 Hogan?

4 A. Yes, ma'am, it is.

5 Q. Okay, and please read the warnings as you read them to
6 John Hogan on July 21, 2010.

7 THE COURT: All right, before you do that, let me
8 instruct the jury a little bit, please.

9 Ladies and gentlemen of the jury, there has been
10 admitted into the record of this case a statement or
11 statements alleged to have been made by the defendant.

12 Before you may consider the statement or statements as
13 evidence for any purpose, you must determine four
14 questions. First, did the defendant make the statement?
15 Second, was the defendant warned of his constitutional
16 rights? Third, did the defendant knowingly and
17 intelligently waive his constitutional rights? And fourth,
18 was the statement given voluntarily?

19 The fact that the court has admitted a statement or
20 statements into evidence should not be considered by you as
21 any evidence whatsoever that the defendant made a
22 statement, or that the required constitutional safeguards
23 were, in fact, provided and waived by the defendant, or
24 that the statement was voluntarily given because these
25 issues are for you, the jury, to determine.

L. TURNER - DIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 The state must prove beyond a reasonable doubt each of
2 the four requirements that I have just stated to you before
3 you may consider the statement as evidence for any purpose
4 whatsoever.

5 Now as to the first requirement, did the defendant
6 make the statement? If you conclude the defendant did not
7 make the statement, you must then completely and totally
8 disregard the statement. If you conclude that the
9 defendant did not make the statement, you cannot and you
10 must not consider the statement as evidence in any manner
11 whatsoever, and you should completely disregard the
12 statement in its entirety and every part of it.

13 If you find the defendant did make the statement, you
14 would then next consider the second requirement. Was the
15 defendant warned of his constitutional rights? When an
16 individual is taken into custody or otherwise deprived of
17 his freedom of action in any significant way by a police or
18 law enforcement officer, he must be warned of his
19 constitutional rights prior to and before any custodial
20 interrogation can take place.

21 These rights are that he has the right to remain
22 silent. That any statement that he can -- that he does
23 make can and will be used against him in a court of law.
24 That he has the right to select a lawyer of his choice.
25 But if he does not have the money or resources to employ a

1 lawyer, the court will appoint and provide a lawyer to
2 represent him without cost or expense to him if he so
3 desires. That he has the right to consult a lawyer before
4 answering any question or making any statement. And that
5 he has the right to have the lawyer present with him at all
6 times during all interviews and all interrogations.

7 If you determine these constitutional warnings were
8 not given by the defendant prior to the interrogation in
9 the taking of any statement, or that the defendant was not
10 afforded the opportunity to exercise these rights, you must
11 completely regard any statements [verbatim]. And in that
12 event, you cannot consider the statements as evidence in
13 any manner whatsoever.

14 You would next consider did the defendant knowingly
15 and intelligently waive his constitutional rights. Well,
16 before you can consider the statement as evidence in this
17 case, the state must prove beyond a reasonable doubt that
18 the defendant, after being given his constitutional
19 warnings, knowingly and intelligently waived his
20 constitutional rights and agreed to answer questions and
21 make a statement.

22 You would then go to the fourth requirement. Was the
23 statement given voluntarily? The word voluntarily means
24 the statement was the expression of the defendant's own
25 free will and was not induced by any pressure, force, or

L. TURNER - DIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 fear; or the influence or hope of promise of some benefit
2 or reward; or extracted by threats, coercion, or
3 intimidation.

4 A statement is not voluntary and may not be used
5 against the defendant unless it is the product of an
6 essentially free and the unconstrained choice by its maker.
7 The statement is voluntary if the statement -- has will to
8 make the statement. It may be used against him.

9 So, the ultimate question to be resolved by you with,
10 with regard to any alleged statements of the defendant --
11 in addition to the questions of whether the defendant, in
12 fact, made the statement; and whether or not his
13 constitutional rights were observed and knowingly and
14 intelligently waived -- the ultimate question is was the
15 statement or the expression of the defendant's own free
16 will made without compulsion or inducement, but
17 representing an essentially free and unconstrained choice
18 by the defendant? Or was it the product of the overborne
19 will of the defendant?

20 With regard to the alleged statements of the
21 defendant, the state must prove by evidence each and every
22 requirement which I have instructed you about beyond a
23 reasonable doubt before you may consider the alleged
24 statement as evidence in this case.

25 All right, Ms. Johnson-Lee, you may proceed.

1 MS. JOHNSON-LEE: Thank you, Your Honor.

2 BY MS. JOHNSON-LEE:

3 Q. Lieutenant Turner, please read the Miranda rights as
4 you read, you read them to John Hogan on July 21, 2010.

5 A. I advised Mr. Hogan this was a Miranda warning by the
6 Bennettsville Police Department:

7 Number one, you have the right to remain silent.
8 Number two, anything you say can and will be used
9 against you in a court of law. Number three, you
10 have the right to talk a lawyer and have him
11 present with you while you are being questioned.
12 If you cannot afford to hire a lawyer, one will
13 be appointed to represent you before any
14 questioning if you wish. And number five, if you
15 desire to make a statement or answer questions,
16 you have the right to stop at any time.

17 After I read the Miranda warnings to him, I had him
18 also read each line and initial beside it. Then I asked
19 him was he willing to talk to us, and he said yes, and he
20 just signed it as where the defendant's name is.

21 MS. JOHNSON-LEE: And I believe that's already in
22 evidence from the prior hearing, Your Honor.

23 THE COURT: All right, in evidence already as State's
24 Number?

25 MS. JOHNSON-LEE: 3.

L. TURNER - DIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 THE COURT: 3.

2 BY MS. JOHNSON-LEE:

3 Q. And the information on the bottom with his name and
4 address, who filled out that section?

5 A. I did.

6 Q. And did you receive that information from Mr. Hogan?

7 A. Yes, ma'am.

8 Q. And is that your signature on there as well as the
9 witnesses to the Miranda?

10 A. Yes, ma'am. That's correct.

11 Q. Now, was the interview videotaped?

12 A. Yes, ma'am. It was.

13 Q. Who was present for the interview?

14 A. Myself, along with Investigator Dease.

15 Q. Now, which one of you initiated and stopped the video
16 recording?

17 A. I did.

18 Q. Let me show you what was marked in a prior hearing as
19 State's Exhibit Number 1 labeled John Lee Hogan Interview,
20 721/10. Do you recognize that?

21 A. Yes, ma'am. This is a CD that actually was a taping
22 of the interview.

23 Q. Have you reviewed that video since it was made?

24 A. Yes, ma'am. I have.

25 Q. And was it altered in any way?

L. TURNER - DIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 A. No, ma'am.

2 Q. Now, it was made on July 21, 2010. Did it accurately
3 depict the questioning of John Hogan on that day?

4 A. Yes, ma'am. It did.

5 MS. JOHNSON-LEE: And I believe that's already in
6 evidence, Your Honor.

7 THE COURT: All right.

8 BY MS. JOHNSON-LEE:

9 Q. Now, during that interview, did Mr. Hogan tell you
10 anything about Monesha Brown?

11 A. He let us know that he did know Ms. Brown, and he had
12 seen her before, and he had been around her the last time
13 that she was seen.

14 Q. How long did that interview take place?

15 A. It was a little over an hour.

16 Q. And during that hour interview, what was his statement
17 to you as to where she was on July 21, 2010?

18 A. He was able to describe a location that was near,
19 would have been near KFC, which is located off of
20 Cottingham Boulevard, where he said he had dropped her off.

21 Q. When did he say he had dropped her off there?

22 A. Some time during the night. He wasn't, he wasn't
23 specific about the actual time. He could not recall,
24 recollect the actual time.

25 Q. Okay, let's be clear on the time frame. This

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1 interview is taking place in July.

2 A. Correct.

3 Q. Of 2010. When did he indicate was the last time he
4 had seen her?

5 A. Weeks prior.

6 Q. Weeks as in July or June?

7 A. June.

8 Q. Okay. Did he ever admit during that interview to
9 having any involvement in her being missing or in her
10 death?

11 A. No, ma'am. He did not.

12 Q. Did you participate in any other interviews with John
13 Hogan?

14 A. Yes, ma'am, I did.

15 Q. Where?

16 A. Sumter County.

17 Q. What was the result of the Sumter County interview?

18 A. He confessed.

19 Q. He confessed ---

20 A. To ---

21 Q. --- to what?

22 A. Confessed to killing Ms. Brown.

23 Q. And did he state where that killing took place at?

24 A. Yes, ma'am. He did. At ■■■ Mark Circle, which is in
25 the county of Bennettsville.

1 Q. Okay.

2 A. Or Marlboro rather.

3 Q. And who was present at that Sumter interview?

4 A. Myself, along with Investigator Shawn Feldner in the
5 Marlboro County Sheriff's Office.

6 Q. And why was Officer Feldner there at that time?

7 A. Once it was determined that the actual murder took
8 place at [REDACTED] Mark Circle, that falls under the jurisdiction
9 of the sheriff's office, and Investigator Feldner is the
10 lead investigator.

11 Q. Well, let's back up just a minute, okay? Now, on July
12 21st, 22nd, the first part of 23rd, at that time did you
13 know she was murdered?

14 A. No, ma'am. We did not.

15 Q. Okay, but Officer Feldner was brought in prior to your
16 know -- being notified she was murdered?

17 A. Yes, ma'am. He was.

18 Q. Okay. John Hogan lived in the county of Marlboro?

19 A. Yes, ma'am.

20 Q. Okay.

21 A. I contacted Investigator Feldner with the sheriff's
22 office once I was able to identify Mr. Hogan as being the
23 last person with Ms. Brown.

24 Q. Now, after John Hogan confessed to killing Ms. Brown
25 in Marlboro County while at the Sumter County Sheriff's

L. TURNER - DIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 Office, where did you guys go from there?

2 A. He -- we brought him back to, into Marlboro County,
3 and he actually took the -- took us to where he disposed
4 the body.

5 A. Okay. Did he take you to the actual barrel?

6 A. Yes, ma'am. He did.

7 Q. Okay. Now, who was in the vehicle?

8 A. Myself, along with Investigator Filner -- Feldner and
9 Mr. Hogan.

10 Q. Now, in the vehicle, I believe you did another Miranda
11 warning in the vehicle on July 23rd?

12 A. Yes, ma'am. That's correct.

13 Q. I'm going to show you what's already in evidence as
14 State's Exhibit 4 from a prior hearing. What is that
15 document?

16 A. A Miranda warning.

17 Q. Where did you give that Miranda warning to Mr. Hogan
18 at?

19 A. Inside the vehicle of -- Mr. Feldner's vehicle.

20 Q. Okay, and did you read the rights from that Miranda
21 warning?

22 A. Yes, ma'am. I did.

23 Q. Okay, and what were the rights was read to him at that
24 time?

25 A. Number one was:

1 You have the right to remain silent. Number two,
2 anything you say can and will be used against you
3 in court. Number three, you have the right to
4 talk to a lawyer for advice before you are --
5 before you -- you have their advice before we ask
6 you any questions, and to have him present with
7 you during the questioning. Number four, if you
8 cannot afford to hire a lawyer, the court will
9 appoint one for you before any questions if you
10 wish. Number five, if you decide to answer
11 questions now without a lawyer present, you will
12 still have the right to stop answering at any
13 time to talk to a lawyer.

14 Q. Did he sign that Miranda warning?

15 A. Yes, ma'am. He did.

16 Q. Did he also initial next to each individual warning?

17 A. No, ma'am. On this one, I did not.

18 Q. Okay. Why did he not on that particular one?

19 A. Because I had advised him his rights before, and we
20 were driving down the road. So, I just had him sign it.

21 Q. And had -- he'd been Mirandized earlier that day also?

22 A. Yes, ma'am.

23 Q. Okay. Did he sign this particular Miranda warning on
24 the way to the body?

25 A. Yes, ma'am. He did.

L. TURNER - DIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 Q. Okay.

2 MS. JOHNSON-LEE: And again, Your Honor, that
3 particular document is already in evidence.

4 THE COURT: All right, it's admitted into evidence.
5 BY MS. JOHNSON-LEE:

6 Q. Now, after taking you to the body, did you and Officer
7 Feldner interview him yet another time?

8 A. Yes, ma'am, at the Marlboro County Sheriff's Office.

9 Q. And who was present at that interview?

10 A. Myself, along with Investigator Feldner and Mr. Hogan.

11 Q. And did he confess again at that interview?

12 A. Yes, ma'am. He did.

13 Q. Was Mr. Hogan ever promised anything to get him to
14 talk?

15 A. No, ma'am.

16 Q. Was he ever denied basic human rights such as food or
17 water or going to the bathroom?

18 A. No, ma'am.

19 Q. Now, once he confessed to murdering Ms. Brown, who
20 became responsible at that point for the actual murder
21 investigation?

22 A. Marlboro County Sheriff's Office, which would have
23 been Investigator Shawn Feldner.

24 Q. All right, and just going back to one prior issue. At
25 the time of your initial interview with him July 21st when

1 he denied any involvement in her death, did you seize his
2 vehicle at that time?

3 A. Yes, ma'am. We did.

4 Q. And did you obtain a search warrant for his vehicle?

5 A. Yes, ma'am. We did.

6 Q. I'm going to show you what's already marked as State's
7 Exhibit 5 from a prior hearing. Is that the search warrant
8 for the vehicle?

9 A. Yes, ma'am. It is.

10 Q. And who actually executed that search warrant?

11 A. Investigator Ira Dease.

12 Q. And who actually -- when I say executed the search
13 warrant, not obtained it. Who actually went to that truck
14 and searched that truck and...

15 A. Investigator Dease executed the search warrant. The
16 State Law Enforcement Division processed the crime scene
17 part of it.

18 Q. Okay, and was Paul LaRosa and Scott Hardee with State
19 Law Enforcement Division?

20 A. Yes, ma'am. That's correct.

21 Q. Okay, and the actual processing took place the
22 following day?

23 A. Yes, ma'am. That's correct.

24 Q. Now, as far as serving that search warrant on John
25 Hogan, what date was that done on?

L. TURNER - CROSS-EXAMINATION BY MR. BLAKE

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1 A. It was served on him the 21st.

2 Q. Was that at the time of the interview?

3 A. Yes, ma'am.

4 MS. JOHNSON-LEE: And again, that document is already
5 in evidence, Your Honor.

6 THE COURT: All right.

7 MS. JOHNSON-LEE: Please answer any questions Mr.
8 Blake has for you.

9 THE COURT: Cross-examination, Mr. Blake.

10 CROSS-EXAMINATION BY MR. BLAKE:

11 Q. Handing you State's Exhibit 32. That's the composite
12 drawing.

13 A. Correct.

14 Q. You said that was done by someone from SLED?

15 A. Yes, sir, correct.

16 Q. Who was that?

17 A. Deborah Goff. Deborah Goff.

18 Q. Goff, and who did she get the information from that
19 led her to do the drawing?

20 A. Casey McCall.

21 Q. You talked about two interviews on July 23rd where my
22 client confessed.

23 A. Yes, sir.

24 Q. Did you have a signed Miranda warning from the first
25 interview?

1 A. No, sir.

2 Q. And why?

3 A. We actually thought -- we were in Sumter County. We
4 thought that the actual interview was being videotaped and
5 audiotaped, and Investigator Feldner actually Mirandized
6 him verbally while we were at Sumter County.

7 Q. So, that first interview you thought was being
8 videotaped?

9 A. Yes, sir, correct.

10 Q. But, in fact, it was not?

11 A. No, sir. It was not.

12 Q. And it was in that first interview that my client
13 confessed to the crime?

14 A. Yes, sir, correct.

15 Q. How was my client's affect and mood during that time?

16 MS. JOHNSON-LEE: Your Honor, we have a matter of law.
17 May we approach?

18 THE COURT: Yes.

19 (OFF-THE-RECORD BENCH CONFERENCE.)

20 THE COURT: Let's get this stipulation on the record.

21 (A PAUSE.)

22 THE COURT: All right, ladies and gentlemen of the
23 jury, again the parties have agreed to another stipulation
24 that I want to publish for you at this time. This is an
25 agreed fact between the state and the defense, and you may

L. TURNER - CROSS-EXAMINATION BY MR. BLAKE

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1 consider it as a part of the evidence this case.

2 That stipulation is that John Hogan was properly
3 Mirandized at the Sumter County Sheriff's Office before
4 giving any statement on July 23, 2010. The parties have
5 agreed to that. That will be marked as Court's Exhibit
6 Number 2.

7 (STIPULATION MARKED INTO EVIDENCE AS COURT'S EXHIBIT
8 NUMBER 2.)

9 THE COURT: All right, you may continue with your
10 cross-examination, Mr. Blake.

11 BY MR. BLAKE:

12 Q. I think the question I'd asked you, Lieutenant Turner,
13 what was the mood or affect of my client during that first
14 interview?

15 A. And I -- make sure I understand it. You want my
16 opinion of how I thought he felt?

17 Q. Yeah, and any response that you might have had.

18 A. To a -- my opinion of his confession was of a man who
19 had brutally murdered someone.

20 Q. Okay. Did you say anything to him during that first
21 interview?

22 A. At Sumter County?

23 Q. Yeah.

24 A. Yes, sir. We talked during interview.

25 Q. All right. At any point, did you actually reach out

1 and grab his hand?

2 A. Yes, sir. I did.

3 Q. Did you tell him it was going to be okay?

4 A. Yes, sir. I did.

5 Q. After that interview, did you say something to the
6 effect that he was -- that you had been in law enforcement
7 some fifteen years or so, and he was more remorseful than
8 anybody you'd ever seen?

9 A. I don't recall.

10 Q. You don't recall?

11 A. No, sir.

12 Q. You do not recall, okay. Let's talk a bit about Casey
13 McCall. You know Casey McCall?

14 A. Yes, sir. I do.

15 Q. Okay. He is the man who gave you this composite
16 drawing, correct?

17 A. Yes, sir. That's correct.

18 Q. Okay, and the date on this here says July 16, 2010.
19 So, I assume that that's when the SLED artist did the
20 drawing.

21 A. Yes, sir.

22 Q. Okay. Do you recall when you first began speaking to
23 Casey McCall about this incident?

24 A. I don't remember the exact date of when I actually
25 started talking to him without going back and looking at

L. TURNER - CROSS-EXAMINATION BY MR. BLAKE

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1 the notes.

2 Q. Well, do you have your notes?

3 A. No, sir. The solicitor has them in the Rule 5.

4 Q. Well, we can certainly make those available to you if
5 you need to refer to them.

6 MS. JOHNSON-LEE: Your Honor, I have a file with all
7 the incident reports and notes from both the sheriff's
8 office and police department I can hand up to the witness.

9 THE COURT: All right, you can hand it to the -- you
10 can hand the file.

11 MS. JOHNSON-LEE: And for the record, Mr. Blake has
12 copies of everything in that file, Your Honor.

13 THE COURT: Okay.

14 (A PAUSE.)

15 BY MR. BLAKE:

16 A. That would have been June the 19th, 2010.

17 Q. So, approximately one month before?

18 A. Correct.

19 Q. How many times did you talk to Mr. Casey McCall prior
20 to the drawing on July 16, 2010?

21 A. Several different times.

22 Q. Several?

23 A. Yes, sir.

24 Q. Would that be more than three or four?

25 A. Maybe three.

1 Q. So, he essentially was a person of interest in this
2 case?

3 A. Yes.

4 Q. You placed him in time frame somewhere close to -- you
5 didn't know when she disappeared exactly, but in that time
6 frame?

7 A. Yes, sir.

8 Q. All right. Well, obviously on July 16th, he was being
9 cooperative. You said you -- several times. Did you say
10 three or four, or what did you say? How many times did you
11 say?

12 A. I'd say three.

13 Q. Okay. On June 19, did he tell you what he knew about
14 this situation?

15 A. Yes, sir. He did.

16 Q. What did he tell you?

17 A. He told me that he knew Mr. Hogan. That him and Mr.
18 Hogan, along with Ms. Brown, had smoked crack cocaine.
19 That he had actually purchased cracked for Mr. Hogan
20 before, and that they had rode around during the month of
21 June actually smoking crack in the vehicle.

22 Q. So, that was the first time, June 19th?

23 A. Yes, sir.

24 Q. Okay, and on your other times talking to Mr. McCall,
25 how did that go?

L. TURNER - CROSS-EXAMINATION BY MR. BLAKE

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1 A. Pretty much the same thing. His story never really
2 changed.

3 Q. But it wasn't until July 16th that you actually did
4 the composite drawing?

5 A. Correct.

6 Q. How well do you know Casey McCall?

7 A. Very well.

8 Q. When you say very well ---

9 A. He's been arrested.

10 Q. --- is that because he's done work for you?

11 A. Yes. He's also been arrested by the Bennettsville
12 Police Department.

13 Q. Arrested and convicted, correct?

14 A. Yes, sir.

15 Q. Been to prison?

16 A. I'm not sure about that, but I do, I do know arrested
17 and convicted.

18 Q. So, he worked -- well, before you were lieutenant over
19 investigations, you were sergeant over narcotics?

20 A. Yes, sir. That's correct.

21 Q. And you did that for how many years?

22 A. Eleven years probably, somewhere around eleven years.

23 Q. And did a good job at it?

24 A. I would -- I assume so. I'd say yes.

25 Q. You'd say yes. Did Casey McCall ever work for you as

L. TURNER - CROSS-EXAMINATION BY MR. BLAKE

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1 a confidential informant in doing drug buys?

2 A. Yes, sir.

3 Q. That means you would pay him to buy drugs?

4 A. Sometimes yes. Sometimes no.

5 Q. Okay. Sometimes he just did it for free?

6 A. You can say that.

7 Q. Meaning he's working off charges?

8 A. Correct.

9 Q. Okay. People that you send in to do drug buys, I
10 assume they have to be crack users for the sellers to want
11 to sell to them?

12 A. Not necessarily.

13 Q. Not necessarily. So, you wouldn't say that Casey
14 McCall used crack?

15 A. Yeah. He admitted to using crack.

16 Q. I mean, you knew that, didn't you?

17 A. Yes, sir.

18 Q. Do you know how long that you employed him for in
19 terms of doing buys for you from people who were selling
20 crack?

21 A. I'd say probably over a eight-year period. I meant,
22 off and on. Casey was not a regular as far as, you know,
23 us using him as a CI to purchase crack. I meant, you know,
24 we may use him once, twice a year.

25 Q. You say that was over an eight-year period?

L. TURNER - CROSS-EXAMINATION BY MR. BLAKE

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1 A. Yes, sir.

2 Q. All right, that's -- you pretty sure about that?

3 A. That's a guesstimation.

4 Q. That's a guess?

5 A. Yes, sir.

6 Q. All right, but you only used him once or twice a year.

7 Is that right?

8 A. Yeah. Some -- I mean, it -- some years it may have
9 been more. Without me actually going through my logbook, I
10 couldn't tell you a definite, exact number.

11 Q. All right. So, according to your guesstimation there,
12 the maximum times you would have used him was sixteen?

13 A. I'd say that would be fair to say. There's times it
14 would just be -- it didn't necessarily have to be buys. It
15 could have been just him supplying information.

16 Q. How often did he do that?

17 A. Casey's supplied information numerous times to us
18 where he hadn't actually do the buys. It was just
19 information.

20 Q. So, when you say supplying information, I understand
21 that's part of how you catch these people. He would be
22 somewhere, he would see crack cocaine, and he would tell
23 you about it. Is that what you're talking about?

24 A. It didn't necessarily have to be drugs. It may be
25 burglaries, stolen property.

1 Q. So, he would give you information on various crimes
2 within Bennettsville Police Department jurisdiction?

3 A. Yes, sir, correct.

4 Q. Within the City of Bennettsville?

5 A. Yes, sir.

6 Q. Do you know if he also did that for the sheriff's
7 office?

8 A. I'm not sure of it.

9 Q. Okay, and were these in exchange for favors from the
10 police department?

11 A. Sometimes yes and as -- you say favors, but it could
12 have been working off charges. It could have been just him
13 supplying information, or it could have been him getting
14 paid for it.

15 Q. You talked about after the first interview, my client
16 took you to where the barrel was.

17 A. Yes, sir.

18 Q. Did you go straight to that, or did it take some time
19 for him to kind of figure out where it was?

20 A. It took some time; we actually had to drive around for
21 him to remember exactly where at.

22 Q. And from that point on, he was completely cooperative?
23 He told you where the body burial was?

24 A. Yes, sir.

25 MR. BLAKE: One moment, please, Your Honor?

L. TURNER - REDIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 THE COURT: Yes, sir.

2 (A PAUSE.)

3 MR. BLAKE: Judge, I have no further questions.

4 THE COURT: Redirect, Ms. Johnson-Lee?

5 MS. JOHNSON-LEE: Yes, Your Honor.

6 REDIRECT EXAMINATION BY MS. JOHNSON-LEE:

7 Q. Casey McCall is the one who provided the information
8 for this sketch right here?

9 A. Yes, ma'am.

10 Q. Which led you to obtain this driver's license photo
11 right here?

12 A. Yes, ma'am.

13 Q. Does the fact that Mr. McCall was a crack user change
14 how he led you to John Hogan?

15 A. No, ma'am.

16 Q. Did the info that Casey McCall provided actually turn
17 out to be true?

18 A. It did.

19 Q. Did Casey McCall ever admit to slitting Monesha
20 Brown's throat?

21 A. No, ma'am. He did not.

22 Q. Did John Hogan ever say that Casey McCall helped him
23 duct tape Monesha's hands and slit her throat?

24 A. No, ma'am. He did not.

25 Q. In fact, did Mr. Hogan ever say he had any help

L. TURNER - RECROSS-EXAMINATION BY MR. BLAKE

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1 murdering Monesha?

2 A. No, ma'am. He did not.

3 Q. And Casey McCall never knew the name John Lee Hogan
4 when he provided that sketch, did he?

5 A. That's correct.

6 MS. JOHNSON-LEE: Thank you.

7 THE COURT: Recross?

8 RECROSS-EXAMINATION BY MR. BLAKE:

9 Q. And Casey wasn't just a drug user. You talked about
10 him being convicted of different crimes, correct?

11 A. Yes, sir.

12 Q. And he gave you information on things that just ended
13 up going away?

14 A. Repeat that?

15 Q. Crimes that were done away with due to his
16 cooperation.

17 A. If he had a shoplifting charge, there may have been
18 times that yeah, we would help him out.

19 Q. Shoplifting?

20 A. Yes, sir.

21 MR. BLAKE: Okay. Thank you.

22 THE COURT: All right, thank you, sir. You may step
23 down.

24 WITNESS: Thank you.

25 (THE WITNESS EXITS THE STAND.)

1 THE COURT: All right, ladies and gentlemen, you've
2 been in the courtroom now for...

3 MR. DANIEL: May we approach on scheduling? It might
4 help you out.

5 THE COURT: Yes, sir.

6 (OFF-THE-RECORD BENCH CONFERENCE.)

7 THE COURT: All right, ladies and gentlemen, I was
8 going to take a brief recess at this time and then go
9 forward, but the lawyers have told me the next witness is
10 going to be lengthy, and it will run us into the evening.
11 And I think that the better thing to do -- they've advised
12 me we can move along with this case without any difficulty.
13 So, I'm going to go ahead and recess for the afternoon and
14 allow you to come back tomorrow morning into your jury room
15 at 9:30. We'll have everything accomplished by that time
16 and be ready to go forward. So, I am going to allow you to
17 go about your business for the rest of the day.

18 Do not discuss the case among yourselves when you are
19 reassembling in the jury room tomorrow. Do not discuss the
20 case with anyone while you're away from the courthouse this
21 afternoon, and do not allow anyone to discuss the case with
22 you. Just simply forget about this matter over the evening
23 recess, and be back in your jury room tomorrow morning
24 let's say at 9:25 so we can be ready to start promptly at
25 9:30.

1 And what I would ask you to do, maybe if you could be
2 here about 9:20, and I'd like to ask that from the twelve
3 members of the principal jury, if you'll select a
4 foreperson from among yourselves and advise the bailiff of
5 who that foreperson is so that we'll have a foreperson
6 tomorrow. So, if you'll be here about 9:20, and the twelve
7 principal jurors will select a foreperson. And then we'll
8 be ready to start forward, go forward with the testimony at
9 9:30.

10 Again, do not listen to any news broadcasts or read
11 anything in the printed media about this matter, and do not
12 do any research about the case on your own. Forget about
13 it over the evening recess. Come in the morning and elect
14 your foreperson, and I'll see you at 9:30. Thank you and
15 have a pleasant evening. I'll see you tomorrow.

16 (THE JURY EXITS AT 4:03 P.M.)

17 THE COURT: This is a good time, Mr. Blake, while
18 we've got a little bit of time, I'll go ahead and do this
19 at this time so it will be on the record. I won't require
20 a decision from Mr. Hogan at this time. Let me talk with
21 him about his Fifth Amendment rights so that we will have
22 that accomplished. And of course you can talk to him
23 before he makes a decision on that.

24 Mr. Hogan, if you would stand. You may be called as a
25 witness to testify on your own behalf. I now advise you

1 that you have the right to invoke the protections given you
2 by the Fifth Amendment to the constitution of the United
3 States and the similar counterpart provision of the
4 constitution of the State of South Carolina.

5 The Fifth Amendment to the Constitution of the United
6 States provides in part that no person shall be compelled
7 in any criminal case to be a witness against himself. This
8 provision of constitutional law means that you cannot be
9 compelled or required to testify in this case. This is a
10 right and a privilege which the law extends to you. It is
11 a personal privilege, and no one can waive this right
12 except you.

13 You have the right not to testify, but you also have
14 the right to testify. The court will grant you the right
15 to consult with your lawyer before you make a decision.

16 If you elect not testify, your failure to testify
17 cannot be used by the state as an inference of guilt, and
18 your failure to testify cannot be considered by the jury in
19 its deliberation, and I would so instruct them.

20 If you elect to testify and waive the privilege
21 extended to you by the constitution, I advise you that you
22 would then assume the role of a witness in this case, and
23 you would give up your constitutional privilege and
24 protection against self-incrimination. This means that if
25 you voluntarily take the witness stand and testify, you

1 would then subject yourself to the same rules that govern
2 other witnesses in this case. And you may be examined and
3 cross-examined on any relevant issue in this case, and you
4 may be impeached to the same extent as any other witness,
5 all of which is subject, of course, to the rules of law and
6 the rules of evidence.

7 I would further advise you that if you elect to take
8 the witness stand and testify, that this decision on your
9 part must be made freely, voluntarily, intelligently, and
10 with knowledge of the protections given to you by the
11 constitution, and with knowledge of the consequences of
12 your election to testify.

13 Do you understand what I have explained to you about
14 the Fifth Amendment?

15 DEFENDANT: Yes, sir.

16 THE COURT: All right. I will, of course, give you
17 the opportunity to consult with your lawyer, and will not
18 require that you make a decision until after the state has
19 finished presenting their case. But I would recommend to
20 you that you thoroughly discuss it with your lawyer and be
21 prepared to advise the court at the appropriate time as to
22 whether you wish to exercise the privilege against
23 self-incrimination, or if you wish to waive that right and
24 testify in this matter. But we will get to that matter
25 later on. Thank you, sir. You may be seated.

1 All right, anything further on behalf of the state at
2 this time, Mr. Daniel?

3 MR. DANIEL: Nothing, Your Honor. We will be prepared
4 with our audio visual equipment and all on time, Your
5 Honor.

6 THE COURT: Yeah, let's have it all set up and ready
7 to go in the morning, and be prepared to go forward at 9:30
8 promptly when the jury gets -- I mean, with the jury
9 promptly at 9:30. I want them to come back and select
10 their foreperson. We'll be ready to go at that time.

11 All right, counsel, thank you. We will be in recess
12 until 9:30 tomorrow morning. Thank you.

13 (WHEREUPON, THE CASE IS AT EASE.)

14 TUESDAY, FEBRUARY 7, 2012

15 (COURT RESUMES AT 9:46 A.M.)

16 (BOLO ALERT MARKED AS DEFENDANT'S EXHIBIT NUMBER 5 FOR
17 IDENTIFICATION.)

18 MR. DANIEL: Before we get started, Mr. Blake
19 presented something to us this morning which he has marked
20 for identification, and at the time -- because I think he's
21 going to try to introduce this document with our next
22 witness, and maybe to save time and not have to send the
23 jury back out, which we'd have to do for this -- this might
24 be something we could deal with now.

25 THE COURT: All right, what is the exhibit? What is

1 it, Mr. Blake?

2 MR. BLAKE: Judge, it's a BOLO that was put out in the
3 missing person's part of this case.

4 THE COURT: All right. What has been handed to the
5 court is Defendant's Exhibit 5 for ID, and it appears to be
6 a SCIX bulletin.

7 (A PAUSE.)

8 THE COURT: All right, tell me exactly what this is
9 now, Mr. Blake.

10 MR. BLAKE: Your Honor, that's a BOLO bulletin, be on
11 the lookout for.

12 THE COURT: I know what a BO ---

13 MR. BLAKE: And it ---

14 THE COURT: I know what BOLO stands for but, I mean,
15 who's it come from, and where did it go to, and where did
16 you get it?

17 MR. BLAKE: It was given to me in discovery, Judge.

18 THE COURT: All right, and who puts it out?

19 MR. BLAKE: Put out by the sheriff's department. They
20 can speak much better than I can as to exactly how that
21 works.

22 And, Judge, I think this is a little premature, this
23 motion, because these facts are going to be coming out in
24 the confession here. So, it's more corroborative than ---

25 THE COURT: What's the objection, Mr. Daniel?

1 MR. DANIEL: Your Honor, first of all, my objection
2 would be relevance. Mr. Blake has already stipulated to
3 the remains of the victim. We know who she is. Under Rule
4 404(A) and (D) particularly, I don't think that -- well,
5 first of all, let's all be honest. The reason Mr. Blake
6 wants that in there, wants that in evidence is because it
7 says that the victim, Monesha Brown, is a crack addict and
8 a prostitute. And the reason he wants that in there is
9 obviously to inflame the jury, for them to believe that my
10 victim is a prostitute and crack addict, which is
11 completely and wholly irrelevant to the fact that her
12 throat was slit. And so the state would, of course, argue
13 that (a) relevance, (b) ---

14 THE COURT: Well, first of all, I think that the issue
15 of the crack cocaine user has already come out. I think
16 that's already in evidence. If I recall ---

17 MR. DANIEL: Certainly.

18 THE COURT: --- one of the witnesses testified, I
19 think it was the officer testified that she was using crack
20 as well, according to the information they developed.

21 MR. DANIEL: That's correct.

22 THE COURT: Sometimes it's hard for me to remember
23 what was done in front of the jury and what wasn't done in
24 front of the jury, but I believe that did come out
25 yesterday.

1 MR. DANIEL: And that's going to come out some more.

2 THE COURT: Right. Okay.

3 MR. DANIEL: So, therefore, maybe even that's
4 cumulative as to that fact. Nobody questions the fact that
5 she smoked crack.

6 THE COURT: Okay.

7 MR. DANIEL: I think that the idea that that sheet of
8 paper says she's a prostitute, and I understand why Mr.
9 Blake wants that in. Of course he wants people to think my
10 victim is a prostitute, but I certainly ---

11 THE COURT: Well, y'all put it out, though.

12 MR. DANIEL: I certainly ---

13 THE COURT: That's not -- it came from law
14 enforcement.

15 MR. DANIEL: It went on SCIX, which is a law
16 enforcement only. That's not some BOLO that was put out to
17 the public, to the news media. That was a SCIX program
18 which is, which is accessible only to law enforcement. But
19 everything that's discoverable isn't obviously admissible.
20 I'm not telling the court anything the court doesn't
21 already know.

22 THE COURT: So, the only objection in that is the fact
23 that it refers to her as a prostitute?

24 MR. DANIEL: Yes, sir, under 404 particularly. I
25 think, I think it's highly prejudicial to my, to my victim.

1 MR. BLAKE: Judge, I -- he's bringing this up. I
2 think it's my motion to bring when I'm ready to do it. I'm
3 not ready. It's premature. I'm not going to inflame the
4 jury. It's part of my case.

5 THE COURT: All right, I will not rule on this yet,
6 and I'll rule on it in the context of what the testimony
7 is. Before you offer it, you let me know.

8 MR. BLAKE: Thank you.

9 THE COURT: I'll send the jury out if necessary, okay?

10 All right, counsel, the other thing that I wanted to
11 inform you, everyone, is that I've been advised by the jury
12 that James Aubrey Crosland has been elected by the jury as
13 the foreman.

14 All right, the other thing is that in chambers this
15 morning, it was brought to my attention by the clerk that
16 juror number 45, Ms. Crosby, had brought to his attention
17 the fact that yesterday during the testimony of the second
18 witness, Queen Brown, Ms. Brown gave the name of her four
19 grandchildren and the four children of the victim.

20 At that time, Ms. Crosby, who is a physical education
21 teacher, recognized the names of the four children, having
22 taught two of the -- the two older ones in the past, and
23 having the two younger ones and teaching them now in
24 physical education in school.

25 She did not realize this when the name of Queen Brown

1 was read as a witness, but recognized the names of the
2 children when the witness testified to them and immediately
3 brought that to the attention of the clerk.

4 This was shared with counsel. Ms. Crosby was brought
5 in and interviewed in presence of counsel and asked
6 questions concerning how that would affect her and her
7 continued service on this jury. And after discussing it
8 with her, and with the consent of the counsel, of both
9 counsel, both the solicitor for the state and defense
10 counsel, it was determined that Ms. Crosby should be
11 excused from this case because of that.

12 This is exactly what she is supposed to do is to bring
13 that sort of thing to our attention and to excuse her and
14 substitute one of the alternates, and this is the purpose
15 for which we draw alternates.

16 So, having agree that that is the way to resolve this
17 problem, I have instructed the clerk to put the names of
18 the two alternates, juror number 138, Mr. Meggs, and juror
19 number 12, Ms. Boatwright, into capsules. The statute
20 provides that the alternate is substituted on -- if an
21 alternate is substituted on the jury and there is more than
22 one alternate, the alternate will be selected randomly
23 rather than in the order in which they were selected.

24 And I believe, Mr. Funderburk, y'all have that ready
25 to do. Is that correct?

1 CLERK OF COURT: Yes, sir. Yes, sir.

2 THE COURT: All right, if you'll mix them up and draw
3 one of the two names, and that person will become the
4 substitute juror for Ms. Crosby.

5 CLERK OF COURT: That would be number 12, Rebecca
6 Boatwright.

7 THE COURT: All right, Ms. Boatwright will substitute
8 Ms. Crosby, and Mr. Meggs will remain the alternate.

9 All right, Mr. Daniel, on behalf of the state, have I
10 correctly summarized the procedure with regard to the
11 substitution of the alternate, and is there any objection
12 on behalf of the state?

13 MR. DANIEL: No, Your Honor.

14 THE COURT: All right.

15 MR. BLAKE: No, Your Honor.

16 THE COURT: Okay. Fine. No, there's no objection,
17 and yes, I have correctly summarized what we did?

18 MR. DANIEL: That's correct.

19 THE COURT: Okay. All right. Thank you.

20 All right, bring the jury in, please. First of all,
21 let me ask you to bring Ms. Crosby and let me take care of
22 her, and then I'll take care of the rest of them.

23 (AS PAUSE AS JUROR ENTERS THE COURTROOM.)

24 THE COURT: Ms. Crosby, based upon the information
25 that you brought to our attention, and we do appreciate

1 your doing that, we think, with the consent of counsel,
2 it's the better procedure is to excuse you from any further
3 service on this case. And so I am going to do that at this
4 time and allow you to go about your business. I do
5 appreciate your bringing that to our attention. That's
6 exactly what you were supposed to have done, and I am going
7 to excuse you.

8 I would tell you that once you've been excused as a
9 juror in this case, there is nothing illegal about your
10 talking with your -- to anyone about your service on this
11 case. There's nothing illegal about anybody talking to you
12 about your service on this case. It is a practice of which
13 I strongly disapprove and I strongly discourage, but it's
14 not illegal. You can talk with anyone or not with anyone,
15 but it's your call. But if anyone continues to harass and
16 bother you after you've told them you don't want to talk
17 about it, you let us know, and we will deal with them, or
18 let the court personnel know.

19 I would ask that you not talk with anybody about this
20 case until after it's over, and you won't know when that's
21 going to be. So, I would, I guess -- until at least, say,
22 Thursday. We ought to be through, finished with this case
23 by Thursday and, and it'll be up to you as to whether you
24 want to talk with anybody.

25 The other thing that I'm going to ask you to do,

1 please, is to call that number that you have after 6:00
2 tonight and find out about your reporting instructions for
3 the rest of the week. There will be a message on the
4 answering machine at that time, and you can find out about
5 the rest of the week. But for this case, you are excused,
6 and thank you very much for your service.

7 JUROR: Thank you.

8 THE COURT: Okay, thank you.

9 (JUROR EXITS THE COURTROOM.)

10 THE COURT: All right, now bring the jury in, please.

11 (THE JURY ENTERS AT 9:57 A.M.)

12 THE COURT: All right, good morning, ladies and
13 gentlemen, and thank you for your promptness in being back
14 here. Again I apologize for keeping you waiting a little
15 bit. We had a little matter that we had to resolve, and
16 you're going to be aware of that in just a minute or
17 already are aware of it, and we had to get that taken care
18 of.

19 But before I get into that, let me ask you a couple of
20 questions. If anyone has read any news stories or read or
21 seen anything in the -- on broadcast media, television or
22 radio about this case over the evening recess, I would need
23 to know about it now.

24 Negative response, and that's good.

25 If anyone has approached you or tried to talk with you

1 about this case in any manner whatsoever over the evening
2 recess, I would also need to know about that now.

3 Again, negative response and that's good.

4 All right, I've been advised by the bailiff, Mr.
5 Crosland, that you have been selected by your fellow jurors
6 as the foreman of this jury. So, if you would, continue to
7 sit where you are seated. That is the foreman's seat.

8 The other thing, it came to the attention of one of
9 your members, juror number 45, Ms. Crosby, of some
10 knowledge through her teaching experience with some of the
11 folks that are involved with this case. She had no way of
12 knowing that until a witness testified yesterday, and she
13 immediately brought that to the attention of the court,
14 which we appreciate. She did exactly what she was supposed
15 to have done.

16 After discussing it with her and discussing it with
17 counsel, the court has decided that Ms. Crosby should be
18 substituted by one of the alternates, and she should be
19 excused from any further service in this case. And she has
20 been excused and will not serve any further.

21 The law also provides as far as the alternates are
22 concerned, we selected two alternates, and this is the
23 reason we select alternates. And we selected two
24 alternates, but the law provides you do not substitute the
25 alternate in the order that they were selected, but the

1 alternates are substituted randomly, and so we have already
2 taken care of that.

3 And, Ms. Boatwright, which one is Ms. Boatwright?
4 Okay, Ms. Boatwright, you are now a member of the principal
5 jury here and will serve as a member the principal jury
6 here.

7 And, Mr. Meggs, you will remain as the one alternate
8 in this case, and always sit where you are seated.

9 The rest of the seats in the jury box are not reserved
10 except for the seat for the alternate on this end and the
11 seat for the foreman on this end.

12 All right, that takes care of all the housekeeping
13 matters that we need to do at this time. And the only
14 other thing that I would mention to you is the fact that
15 you can see that we have a group of young people in the
16 courtroom today. They are a class from Marlboro County
17 High School, Ms. Margaret Littles's class from Marlboro
18 County High School, and will be here observing today.

19 All right, Mr. Daniel, you may proceed with the
20 state's case.

21 MR. DANIEL: Thank you, Your Honor. May it please the
22 court?

23 THE COURT: Yes, sir.

24 MR. DANIEL: State calls Shawn Felder -- Feldner.

25 SHAWN FELDNER, BEING DULY SWORN,

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1 TESTIFIES AS FOLLOWS:

2 CLERK OF COURT: If you'll be seated back there and
3 state your full name, please.

4 WITNESS: First name is Shawn, S-H-A-W-N. Last name
5 Feldner, F as in Frank, E-L-D-N-E-R.

6 MR. DANIEL: May it please the court?

7 THE COURT: Yes, sir.

8 MR. DANIEL: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MR. DANIEL:

10 Q. Investigator Feldner, by whom are you employed?

11 A. Marlboro County Sheriff's Office.

12 Q. And what are, what are your responsibilities with the
13 Marlboro County Sheriff's Department?

14 A. Investigations, all times.

15 Q. All types. How long have you worked for the
16 department?

17 A. Several years. I actually started my career in 1992.

18 Q. And all those years have been with the sheriff's
19 department?

20 A. Or the police department.

21 Q. Let's, let's go ahead and cut right to the chase.

22 How, how did you become involved in the case involving John
23 Hogan?

24 A. I was involved July 22nd when Lieutenant Turner with
25 the Bennettsville Police Department came to us with a

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1 search warrant to go out to ■ Marks Circle. And that is
2 actually, if you're going towards Society Hill and you pass
3 Sandy Ocean Bar-B-Que, instead of making the right to go to
4 Willamette, if you turn left like you're going to Oak River
5 Mills, it's about a half a mile on the right.

6 Q. Now, were you aware of any situation involving John
7 Hogan prior to the 22nd?

8 A. I was aware of a missing person, Ms. Monesha Brown,
9 and that was the reason that Lieutenant Turner had come to
10 us.

11 Q. Okay. Was your department or you personally, were,
12 were y'all involved at all in the search for Ms. Brown?

13 A. No, sir. I wasn't.

14 Q. Okay. So, you said you get a call from Mr. Turner?

15 A. Lieutenant Turner.

16 Q. Okay, and what are you going to go search?

17 A. We're actually going to the residence of John Hogan
18 and his wife.

19 Q. And that date again was?

20 A. July 22nd, if I'm not mistaken.

21 Q. Okay. I'm showing you what's been marked State's 8,
22 which is my understanding is already in evidence but if
23 not, we'll get it into evidence.

24 A. Yes, sir.

25 THE COURT: It is in evidence.

1 MR. DANIEL: Okay.

2 A. This is ---

3 Q. Tell the jury what that is.

4 A. This is a consent to search form, standard form used
5 by the Marlboro County Sheriff's Office. This is in lieu
6 of a search warrant where we actually speak with the person
7 at the residence and ask them for consent to search their
8 residence, and we specifically tell them why we're there,
9 what we're searching for. We explain to them they do not
10 have to sign this if they do not want to. That it's all
11 voluntary, and that's all this is. It was a consent to
12 search that Summer Hogan, which is the wife of John, John
13 Hogan, signed that day for us to search the residence.

14 Q. So, she said it's okay. Come in, look, look what you
15 want to look at?

16 A. Yes, sir.

17 Q. Okay. Who conducted that search?

18 A. SLED was here doing a prior search, to my
19 understanding, on Mr. Hogan's vehicle, which was a pickup
20 truck. We attended the search with him but didn't
21 participate in the search with SLED. And I think the lead
22 officer with SLED was Paul LaRosa.

23 Q. Paul LaRosa, who is a SLED agent?

24 A. Yes.

25 Q. I'm now handing you State's 7 which is also already in

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1 evidence. Can you tell the jury what that is?

2 A. Yes, sir. This is a search warrant dated for July
3 23rd of 2010, which is the following day. Lieutenant Jamie
4 Seales obtained the search warrant through our local
5 magistrate's office to conduct another search of the
6 residence.

7 Q. Okay. Before we get into searches and all that, you
8 said you were called by Investigator Turner. What was the
9 first thing you did in your investigation in this case?

10 A. Actually interviewing his wife.

11 Q. Okay, and by his wife, you mean?

12 A. John Hogan's wife.

13 Q. Okay, and as a result of that interview, what did you
14 do?

15 A. As a result of the interview, we learned some very
16 interesting, interesting facts from her. And after the
17 interview, myself and Lieutenant Turner talked again, and
18 we arranged another meeting with Mr. John Hogan due to the
19 interview with the wife and my, my speaking with Larry
20 Turner.

21 Q. Okay, and obviously you can't testify as to what
22 anyone else told you.

23 A. Correct.

24 Q. Other than the defendant.

25 A. Correct.

1 Q. So, moving on from that, what was the next involvement
2 that you had in this case?

3 A. Would have been the morning of July 23rd where myself
4 and Lieutenant Turner met Mr. Hogan in Sumter at the Sumter
5 County Sheriff's Office.

6 Q. Okay, and did you interview Mr. Hogan at the Sumter
7 County Sheriff's Office?

8 A. Yes, we did. Sumter County supplied a interview room
9 with us -- or for us. Myself and Lieutenant Turner, along
10 with Mr. Hogan, were in the room. I advised him of his
11 rights and reminded him of the rights that were already
12 previously given to him, and we went straight into the
13 interview.

14 Q. Okay. Now, Investigator Feldner, I want you to tell
15 the ladies and gentlemen of this jury what Mr. Hogan told
16 you during that interview.

17 A. One of the first techniques that we do in an interview
18 is we always allow the suspect, the defendant, a person of
19 interest or whatever, to tell his story. The particular
20 story that we were interested in that morning was -- and
21 also knowing that Lieutenant Turner had told me that he had
22 already admitted being with Monesha Brown. And so we asked
23 him to go back to that day and walk us through that day in
24 as much detail as possible.

25 Q. Let me stop you right there, and I'm sorry to do this,

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1 but this was what day again?

2 A. July 23rd.

3 Q. Okay, and you were aware that Mr. Hogan had been
4 interviewed on the 21st?

5 A. Yes, sir.

6 Q. And what, what did he say on the hour and a half of
7 this video?

8 A. He admits to being with Monesha Brown, but he drops
9 off on the roadway close to the bypass somewhere. Best we
10 could tell was around Jennings Street, the Kentucky Fried
11 Chicken, in that area.

12 Q. That's what he told you on the 21st?

13 A. Yes.

14 Q. Okay. So, now you're on the 23rd?

15 A. That's correct.

16 Q. And what does he say on the 23rd?

17 A. He walked us through the day. Advises us that he was
18 indeed with Monesha Brown, and that there was another
19 individual in the vehicle with them. That they drove
20 around and scored some crack cocaine and -- which they
21 drove around town locally here in Bennettsville and smoked.

22 At one point, he says, after they finished smoking,
23 one of the individuals gets out and later Monesha Brown
24 gets out, and he advises us where she gets out. We asked
25 him, you know, did they ever go back to the residence or

1 anything like that. No. And basically what we do is we
2 allow them to talk.

3 Once he told us his story, which was almost identical
4 to what he had given on the 21st, it's at that point where
5 I turn around and start asking the questions due to what I
6 already know in the case and what the other people I've
7 interviewed have told me.

8 Q. So, so far, he has on the 23rd -- he's still denying
9 any involvement in ---

10 A. He's still denying any involvement in the missing
11 person case of Monesha Brown.

12 Q. Okay.

13 A. We paused for a brief second, and I looked at Mr.
14 Hogan and advised him. I said Mr. Hogan, you and I both
15 know that this is not what happened to Monesha Brown. You
16 owe it to the family to bring closure to her and to the
17 kids, and you need to man up, and you need to tell us the
18 truth and what really happened to Monesha Brown.

19 There was a pause and a silence, and he dropped his
20 head and just paused. And then he raised his head, and he
21 looked at me and Lieutenant Turner and said she's not
22 alive. And he said that maybe a couple more times.

23 And myself and Larry Turner kind of regrouped, and I
24 said okay. Can you explain to me why you're telling me
25 that she's not alive? And he basically tells us that up to

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1 the point that he tells me and Lieutenant Turner that she
2 gets out of the car, up to that point is correct. They did
3 ride around Bennettsville smoking crack cocaine. There was
4 another individual, male individual, in the vehicle.

5 Some time on the Saturday, and I believe it was June
6 5th is what we pin pointed, that he let the male individual
7 out of the vehicle somewhere around Jennings, Amelia Street
8 area, and that he and Monesha Brown went back to his
9 residence at [REDACTED] Marks Circle.

10 He said that his intentions were to sleep with Monesha
11 Brown, and that she smelled. So, he drew a bath in the
12 bathtub, which is a garden type tub in the master bedroom.
13 Both of them got into the bathtub unclothed, and for
14 whatever reason, she wanted to get out of the bathtub. So,
15 they got out of the bathtub, and Monesha stayed in the
16 bedroom, and he walked into the kitchen to get a beer.
17 When he came back in, he saw her going through his wallet
18 and became infuriated and started fighting, beating on her
19 and fighting with her.

20 They made it from the master bedroom into the living
21 room -- and the living room and kitchen is kind of one room
22 -- where they fought some more. She was thrown into a wall
23 where there was a big hole in the wall that we visibly saw
24 with one of the searches.

25 At one point, she grabs a knife from the knife holder

1 and stabs Mr. Hogan in his side, kind of right around his
2 belt line. They fight some more, and he grabs the knife
3 and then stabs her in the neck.

4 At this point, he says that she's bleeding pretty bad,
5 and he takes a roll of duct tape and duct tapes her hands
6 behind her back and takes her back to the garden tub where
7 the water's still in it. And she's begging him for his
8 life -- for her life. Please don't kill me. If you let me
9 go, I, I won't tell anybody who you are, what your name is
10 or anything.

11 And he places her in the garden tub, and he says at
12 that point he still has some crack cocaine left, and he
13 goes and smokes more crack cocaine crack. In the
14 interview, he tells us that the knife that he stabbed her
15 with -- in the neck broke. So, after he smokes more crack
16 cocaine, he looks at me and Larry and says the Devil told
17 me I needed to finish her off. We knew that she was still
18 living because she was begging for her life when she was
19 getting in the tub.

20 He goes into the kitchen and retrieves another knife,
21 in which he goes back into the tub and slices her neck on
22 both sides. And I asked him was she still alive at this
23 time, and he says she wasn't speaking, but she was
24 breathing.

25 So, we go through the interview, and he says that

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1 after he slices her neck, he smokes more crack cocaine, and
2 he thinks about what he's going to do with the body. And
3 this has gone on into June 6th, which is a Saturday
4 morning. Hours later, he decides to place the body in the
5 barrel and go and dispose of it. And I asked him that --
6 could you take us back to where the body is, and he said I
7 -- yes, I probably can.

8 We stopped the interview at that time because in
9 Bennettsville at his residence, we had started a massive
10 search by helicopter, by horseback, by four-wheeler, so we
11 knew -- and it was really hot. So, we knew we needed to
12 get the search stopped. So, Larry Turner and I stopped the
13 interview and advised Mr. Hogan that we would be right
14 back.

15 We went out of the interview room, and there were
16 several county officers from Sumter there. I immediately
17 got on the phone with Sheriff Knight and advised him that
18 Mr. Hogan had confessed to the murder of Monesha Brown and
19 that they could stop the search. And I advised Sheriff
20 Knight to -- that he had agreed to take us to where the
21 body was, and that I would get back with him in just a
22 minute, and that we are fixing to leave Sumter County
23 Sheriff's Office to come back to Marlboro County.

24 I looked at one of the investigators with Sumter
25 County and asked him to print the recording off of -- the

1 interview off, and he advised us that it was not being
2 recorded. That they did not have a video recorder in the
3 room.

4 So, Larry Turner and I went back into the room. At
5 that point, he was placed under arrest and handcuffed, and
6 we got in our vehicle and started back to Marlboro County.

7 Q. So, the whole time that interview was taking place,
8 you thought it was being recorded?

9 A. Yes, sir. It's a common practice nowadays, even in
10 our interview room and Larry's interview room. That's the
11 first interview room that I've been in probably ten years
12 that it's not automatically recorded, both audio and video.

13 Q. So, you went and asked for a copy of the tape, and
14 they said we don't have it?

15 A. That's correct.

16 Q. Okay. So, Mr. Hogan was placed under arrest after he
17 confessed to the murder of Monesha Brown. And where do you
18 go next?

19 A. Larry Turner and I get in my vehicle, along with Mr.
20 Hogan, and we start back to Marlboro County. And I make
21 several phone calls, another one to the sheriff and another
22 one to Paul LaRosa, the SLED agent.

23 Q. And why did you call Paul LaRosa?

24 A. I called Paul to have him en route from Columbia to
25 Marlboro County because we knew now that the murder indeed

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1 had been inside the residence of John Hogan. So, we asked
2 Paul to come back and redo the crime scene. There were
3 certain things that we found out that we knew that had to
4 be searched for evidence.

5 Q. And again, Mr. Hogan's house, is that in Marlboro
6 County?

7 A. Yes, it is.

8 Q. Now, you leave the Sumter County Sheriff's Office and
9 you're driving back towards Marlboro County. Who's in the
10 car with you?

11 A. Myself, Larry Turner, and John Hogan.

12 Q. All right, and where do you go?

13 A. We come into Marlboro County, and I asked the sheriff
14 and them to pull down the road, on Marlboro Road away from
15 the residence because there was media. They had caught
16 wind of us doing the search, so the media was in the area.

17 For the, for the privacy of the investigation and the
18 family, the sheriff went down the road secretively, and
19 then as I rode by, he followed in behind us. And in the
20 air, we had -- Sheriff Sam Parker was in the air in a
21 helicopter, and we proceed on the route that John Hogan
22 took us to locate the body.

23 Q. And Sam Parker is the sheriff of what county?

24 A. Chesterfield County.

25 Q. Okay, and so at this point, does Mr. Hogan, in fact,

1 take you to the body?

2 A. He takes us out to the body, and by his memory, it
3 takes us a little while to get to where the body is, but we
4 eventually get there. Walk up and we see the barrel that
5 he described to us that he had placed the body in. And
6 Larry Turner and I returned to the sheriff's office here in
7 Marlboro County.

8 Q. Okay. When you get to the sheriff's office here --
9 well, first of all, in the woods where you found the
10 barrel, what did you see exactly when you got there?

11 A. Basically, the barrel was located off of 38 South. If
12 you're traveling to the beach on 38 and there's an old
13 country store down in Brownsville on the right, and right
14 after that store, a lot of you probably know if you turn
15 right, it takes you to Highway 34. Back up just in front
16 of that store to the right, there's a paved road that
17 actually goes down to Scorpion [phonetic].

18 We traveled down that road, and maybe a quarter mile
19 on the right was a gravel road with a orange-reddish gate
20 which was open. Walked up the road and looked. Looked
21 into the woods maybe 20 yards, and there was small ravine.
22 And down in the bottom of the ravine was the barrel that
23 Mr. Hogan had described to us, along with some old, rusted
24 trash and other things.

25 Q. I'm going to show you what's been marked State's 15.

S. FELDNER - DIRECT EXAMINATION BY MR. DANIEL

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1 THE COURT: That's ID.

2 MR. DANIEL: 15 is in evidence I believe, Judge.

3 THE COURT: 15 is in? Okay.

4 BY MR. DANIEL:

5 A. This is the barrel that we found the victim, the
6 location, and the other trash around it.

7 Q. Okay. So, this is what you saw when you got to the
8 woods?

9 A. Yes.

10 Q. Okay, and I'm now handing you State's 1, 2, and 3.
11 Can you tell me what those are?

12 A. Exhibit 2 is how we packaged -- or not we, the
13 coroner's office and SLED packaged the barrel for
14 transportation to MUSC in Charleston, South Carolina, for
15 the autopsy.

16 Q. Okay, but you were there when all this happened?

17 A. This being?

18 Q. When you packaged the barrel at the scene.

19 A. Actually, Larry Turner and I had left to do something
20 else. When we came back, it was already wrapped like this
21 and fixing to be transported.

22 Q. Okay. Were you a part of the conversation when it was
23 determined that the barrel ---

24 A. Yes.

25 Q. --- would be wrapped?

1 A. Yes.

2 Q. Okay. Did, did anyone at the scene open the barrel to
3 determine what exactly was inside?

4 A. No, sir.

5 Q. Okay, and why not?

6 A. For evidence-wise. We knew that there was fluids.
7 Contamination-wise, bodily fluids, for our safety, and to
8 make sure that the -- all evidence were -- or was kept
9 intact.

10 Q. Did Mr. Hogan point out that barrel as being the one
11 that he put Monesha in?

12 A. I don't, I don't recall that.

13 Q. So, did he say this is the area, and y'all just ---

14 A. Walked up and we found the barrel.

15 Q. Okay. The other two images, what are those?

16 A. These are both images that were taken at MUSC once the
17 blue tarp and duct tape was taken off on the examination
18 table.

19 Q. Okay. Were you present at MUSC when the barrel was
20 opened?

21 A. I was.

22 Q. And can you tell the jury just briefly? What did you
23 find, and we'll get into, of course, with the pathologist,
24 but what did you find since you were there? What was
25 inside?

S. FELDNER - DIRECT EXAMINATION BY MR. DANIEL

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1 A. Inside was what appeared to be human remains.

2 Q. That's good enough. Okay, at that time, you said that
3 you and Mr. Turner went to where? You left the woods, and
4 you went where?

5 A. Right. Once, once other units arrived where the
6 barrel was found and it was left secured with them,
7 Lieutenant Turner and I, along with Mr. Hogan, returned to
8 the Marlboro County Sheriff's Office where he was put in my
9 interview room. And we went back over the same interview
10 that we did in Sumter and had it recorded, both audio and
11 video.

12 Q. Okay. So, you did a second interview with Mr. Hogan?

13 A. Yes, sir.

14 Q. And you said that was recorded?

15 A. Yes, it was.

16 Q. Now, this morning, did you see what was in that
17 envelope?

18 A. I did.

19 Q. Okay, and what was in this envelope this morning?

20 A. That was the interview that Larry Turner and I
21 conducted on July 23rd at the Marlboro County Sheriff's
22 Office.

23 Q. Did you see what I ---

24 A. Which Mr. Hogan ---

25 Q. --- did with it?

S. FELDNER - DIRECT EXAMINATION BY MR. DANIEL

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1 A. Yes. You placed it in there, and that's where it is
2 now.

3 Q. Does this appear to be the beginning of that
4 interview?

5 A. Yes, it is.

6 Q. Okay.

7 MR. DANIEL: Your Honor, at this time, I would ask
8 that this interview be published. And I will tell the
9 court for its information that this is about twenty minutes
10 long.

11 THE COURT: All right, it's State's what number?

12 MR. DANIEL: Beg the court's indulgence. The
13 sticker's on the...

14 COURT REPORTER: It's 2.

15 MR. DANIEL: 2? Thank you, State's 2.

16 THE COURT: State's Number 2, all right.

17 Ladies and gentlemen of the jury, the solicitor has
18 asked for permission to publish the interview which has
19 been recorded, and that simply means to show it to you, and
20 I have granted them that permission. That taped interview
21 is in evidence as State's Number 2. You will have a chance
22 to view it now. You will also have an opportunity, if you
23 wish, to view it as long as you would like to or as much as
24 you would like to once you retire to the jury room to
25 deliberate your verdict.

S. FELDNER - DIRECT EXAMINATION BY MR. DANIEL

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1 All right, Mr. Daniel, you may proceed.

2 (WHEREUPON, STATE'S EXHIBIT NUMBER 2 IS PLAYED FOR THE
3 COURT. AUDIO NOT TRANSCRIBED.)

4 BY MR. DANIEL:

5 Q. Mr. Feldner, this has already been stipulated to, but
6 was Mr. Hogan properly Mirandized before he gave this
7 statement?

8 A. Yes, sir. He was.

9 Q. Did he appear to understand his rights?

10 A. Yes.

11 Q. Was he at any time denied any basic human functions or
12 needs like water or bathroom, anything like that?

13 A. No, sir.

14 Q. You even asked him that in the end, I think?

15 A. That's correct.

16 Q. Mr. Hogan said he was stabbed. Are you aware whether
17 he received any medical attention for his injuries?

18 A. To my knowledge, he did not. They basically took care
19 of the wound themselves between him and his wife.

20 Q. And he didn't say anything about going to the
21 hospital, going to see a doctor, or anything like that?

22 A. No.

23 Q. Okay. Some of that was kind of difficult to hear, so
24 we're going to go through some of that to be clear, but
25 before we do, you said something about Hogan's wife. He

1 was married?

2 A. Yes.

3 Q. Where was his wife? Do you know through your
4 investigation? Did you find out where she was during all
5 this?

6 A. It was determined that she was in California visiting
7 family the weekend of the homicide.

8 Q. Are you aware that Mr. Hogan has any kids?

9 A. I'm not aware. They do have a child, but I don't
10 think it's his child, but it's -- he told me that he
11 considered that his child. I think it's his stepchild.

12 Q. At any point during any of these interviews, did Mr.
13 Hogan ever say anyone else was home when this happened?

14 A. No.

15 Q. All right. Towards the beginning of the confession
16 ---

17 MR. BLAKE: Judge, may we approach?

18 THE COURT: Yes, sir.

19 (OFF-THE-RECORD BENCH CONFERENCE.)

20 BY MR. DANIEL:

21 Q. Mr. Feldner, at the beginning of the interview that we
22 just saw, Mr. Hogan said he was -- what is the reason that
23 he gave for getting in the bathtub?

24 A. Because she smelled.

25 Q. And why was that a concern to him?

S. FELDNER - DIRECT EXAMINATION BY MR. DANIEL

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1 A. His intentions were to have sex with her.

2 Q. Later on in the interview, he gives a reason for duct
3 taping her hands behind her back.

4 A. She was still struggling.

5 Q. Let's go over very briefly what Mr. Hogan said Monesha
6 was saying when she was in the bathtub duct taped.

7 A. Please let me go. I won't tell anything. I won't
8 tell anyone your name.

9 Q. And then Mr. Hogan gets a message from the Devil.

10 A. Yes.

11 Q. And what was that?

12 A. To go ahead and finish her.

13 Q. And so at that point with Monesha in the bathtub
14 helpless, what does Mr. Hogan do?

15 A. He goes back into the kitchen and retrieves a knife
16 out of the knife set, and goes back and slashes her throat.

17 Q. Now, at any point from the time Monesha was duct taped
18 in the bathtub until the time he slit her throat, did he
19 smoke any crack?

20 A. Yes.

21 Q. Okay. Let's walk back through. That's very
22 important. Let's, let's walk back through exactly what
23 happens. She's in the bathtub duct taped?

24 A. Yes.

25 Q. What happens next?

1 A. He goes and smokes some crack cocaine, and then he
2 retrieved the knife.

3 Q. All right, and the knife he retrieved was where?

4 A. In the kitchen.

5 Q. Okay. He described actually how he cut the throat.
6 What did he say?

7 A. That he slashed her throat.

8 Q. And then again in this part, I thought, just thought
9 it was a little hard to hear. Did Mr. Hogan then say that
10 after the murder, that he then smoked more crack?

11 A. That he had a little bit left over, and he went and
12 smoked it.

13 Q. What did he say about how he cleaned up?

14 A. That it was really bad. It was a lot of blood. He
15 took towels and cleaned up the best that he could with
16 towels. That everything that he used in the cleanup
17 portion of the crime, he disposed of in a dumpster. And
18 the way he described it, it was like a local dumpster for
19 the trailer park.

20 Q. And then he took the barrel inside the home?

21 A. Yes. He retrieved the barrel from -- there was a shed
22 out back, and he retrieved the barrel from the shed that
23 they had brought from Texas. It had some items in it that
24 he emptied out. Left it the shed. Then he brought the
25 barrel into the residence.

S. FELDNER - CROSS-EXAMINATION BY MR. BLAKE

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1 Q. And, Investigator Feldner, how many murder cases have
2 you worked approximately in your many years?

3 A. Approximately 100, 150.

4 Q. You know the difference between murder and
5 manslaughter?

6 A. Yes, I do.

7 Q. Do -- are you the one who signs the warrant, who
8 decides what the charge should be?

9 A. On this case, I would consult with the local
10 solicitor, and we together decide on the charge.

11 Q. And in this case, did you sign a warrant for
12 manslaughter, or did you sign a warrant for murder?

13 A. Murder.

14 Q. And that's what you think it is?

15 A. Yes, sir.

16 MR. DANIEL: Your Honor, I have no further questions
17 of the witness.

18 THE COURT: Cross-examination, Mr. Blake.

19 CROSS-EXAMINATION BY MR. BLAKE:

20 Q. You say you've done what, 100, 150 murder cases?

21 A. I've been directly involved with, either lead
22 investigator or assistant investigator, 100, 150 homicides,
23 yes, sir.

24 Q. And those are essentially not natural deaths?

25 A. It could be anything from a suicide to homicide.

1 Q. Okay, and did ---

2 A. Every death scene I go on is treated as a homicide
3 until I can prove or show that -- if it's something other.

4 Q. Even people dying in their sleep?

5 A. No, sir. I don't go to those, sir.

6 Q. You're talking about unnatural deaths?

7 A. Yes.

8 Q. And how many out of those, how many did you -- were
9 you involved with warrants being written?

10 A. In my career? You're asking a twenty year old
11 question. In my career, directly signed warrants ---

12 Q. What are the ---

13 A. --- probably estimation, twenty to thirty.

14 Q. How about indirectly, just cases you were involved
15 with then became part of the court process so the warrants
16 were...

17 A. That actually went to court?

18 Q. No. In other words, you signed you said what?

19 A. Twenty to thirty.

20 Q. Twenty to thirty. So, in the other cases, just how
21 many were, were -- warrants were created that you were
22 involved with? Not necessarily that you ---

23 A. Homicides, homicides where we sign warrants for
24 manslaughter or anything of that extent, probably
25 seventy-five, somewhere in that estimation.

S. FELDNER - CROSS-EXAMINATION BY MR. BLAKE

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1 Q. And you have for an unnatural death there, you have
2 three possibilities for a warrant, correct?

3 A. In a death?

4 Q. An unnatural death.

5 A. Yes.

6 Q. And that would be murder, voluntary manslaughter, and
7 involuntary manslaughter?

8 A. Involuntary.

9 Q. Okay. So, taking that as you're saying seventy-five
10 total warrants for these unnatural deaths, how many of
11 those are where the warrant was murder?

12 A. Murder? Probably around thirty.

13 Q. Okay, and how many were involuntary manslaughter?

14 A. I've never done any involuntary manslaughter.

15 Q. Are you telling this court that you did -- or you were
16 involved with these death cases, and that forty-five of
17 them were deemed voluntary manslaughter as the warrant
18 itself?

19 A. It could have been anything from a suicide to
20 self-defense. Like I said, every, every case, death I'm
21 going to start, death case that I go on is unnatural. Is
22 treated as a homicide.

23 Q. But you don't create a warrant for a suicide. You
24 don't create a warrant ---

25 A. No, sir.

- 1 Q. --- for self-defense.
- 2 A. No, sir.
- 3 Q. You charge them with murder.
- 4 A. Either I charge them or someone else charges them,
- 5 yes, sir.
- 6 Q. As murder.
- 7 A. Yes, sir.
- 8 Q. That's what's done almost all the time. Is that not
- 9 true?
- 10 A. Most of the time, yes, sir.
- 11 Q. Almost all the time, and it's rare that you would ever
- 12 do a voluntary. Do you remember doing a voluntary
- 13 manslaughter ---
- 14 A. No, I don't.
- 15 Q. --- warrant on a case?
- 16 A. No, sir.
- 17 Q. You do not?
- 18 A. No, sir.
- 19 Q. You charge them with murder?
- 20 A. Yes, sir.
- 21 Q. Thank you. We just watched the second interview, and
- 22 you talked about the first interview which was not
- 23 videotaped. You thought it was, but it wasn't?
- 24 A. That's correct.
- 25 Q. It appeared in this interview that we just saw that

S. FELDNER - CROSS-EXAMINATION BY MR. BLAKE

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1 Mr. Hogan appeared to be upset. He was sniffing. In that
2 first interview, was he crying?

3 A. He was visibly upset.

4 Q. You didn't answer my question. Was he crying in that
5 first interview?

6 A. Yes, sir.

7 Q. Was he just lightly crying, or was he heavily crying?

8 A. About the same that you just saw on the video. He was
9 crying. I don't know there was a lightly or a heavy
10 crying. He was, he was upset crying.

11 Q. You're telling me that the affect in the recorded
12 interview is the same as in the first interview?

13 A. Yes, sir. He was crying towards the end.

14 Q. Was he so upset at some point that Lieutenant Turner
15 reached out his hand and put his hand on my client's hand?

16 A. He reached out and touched his hand. Now, whether or
17 not that's because your client was so upset, I don't
18 remember him being that upset. I remember him crying and
19 showing remorse if that's what you're trying to ask me.

20 MR. BLAKE: No further questions.

21 THE COURT: Redirect?

22 MR. DANIEL: Beg the court's indulgence.

23 (A PAUSE.)

24 MR. DANIEL: Briefly.

25 REDIRECT EXAMINATION BY MR. DANIEL:

1 Q. Investigator Feldner, whether Mr. Hogan was weeping,
2 whether he was not crying at all, whether he was the most
3 emotional person you had ever seen, did it change his
4 confession at all?

5 A. No, sir. It did not.

6 MR. DANIEL: No further questions.

7 THE COURT: Recross?

8 MR. BLAKE: No, Your Honor.

9 THE COURT: All right. All right, thank you, sir.
10 You may step down.

11 WITNESS: Thank you, Your Honor.

12 (THE WITNESS EXITS THE STAND.)

13 THE COURT: All right, Mr. Daniel, you may call your
14 next witness.

15 MR. DANIEL: Your Honor, we just need a minute to see
16 if she's here, or to get her in here. She's our
17 pathologist from Charleston.

18 THE COURT: Okay.

19 (A PAUSE.)

20 THE COURT: All right. Let's go ahead, while we're
21 doing that, let's go ahead and take the morning break at
22 this time before we start her testimony because it will
23 probably run into the break time anyhow.

24 All right, ladies and gentlemen, I'm going to allow
25 you to go to your jury room for a few minutes and take a

1 break. Do not discuss the case among yourselves; it's
2 still premature for you to begin any discussion of the case
3 among yourselves. We'll send for you very shortly, but
4 just relax and we'll send for you in about ten minutes.
5 Thank you. You may go with the bailiff.

6 (THE JURY EXITS AT 10:59 A.M.)

7 THE COURT: All right, Ms. Littles, we are going to
8 take a break at this time. If any of your students have
9 got any questions, I'll be glad to try to answer any of
10 them.

11 (OFF THE RECORD.)

12 (SLED REPORT MARKED AS STATE'S EXHIBIT NUMBER 38 FOR
13 IDENTIFICATION.)

14 (PATHOLOGY DIAGRAM MARKED AS STATE'S EXHIBIT NUMBER 39
15 FOR IDENTIFICATION.)

16 THE COURT: All right, had the witness arrived, Mr.
17 Daniel?

18 MR. DANIEL: Yes, sir. She's here.

19 THE COURT: All right. Bring the jury in, please.

20 (THE JURY ENTERS AT 11:24 A.M.)

21 THE COURT: All right. Thank you, ladies and
22 gentlemen. Now we are now ready to proceed.

23 Mr. Daniel, you may call your next witness.

24 MS. JOHNSON-LEE: Your Honor, the state calls Dr. Erin
25 Presnell.

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1 THE COURT: All right, Ms. Johnson-Lee, excuse me.

2 SUSAN ERIN PRESNELL, BEING DULY

3 SWORN, TESTIFIES AS FOLLOWS:

4 CLERK OF COURT: Please be seated, and state your full
5 name for me.

6 THE COURT: Hey. My name is Susan Erin Presnell,
7 P-R-E-S-N-E-L-L.

8 VOIR DIRE EXAMINATION BY MS. JOHNSON-LEE:

9 Q. Where are you employed, Dr. Presnell?

10 A. I work as a forensic pathologist at the Medical
11 University of South Carolina, MUSC, down in Charleston.

12 Q. What is your occupation there?

13 A. I'm a forensic pathologist.

14 Q. Are you also a duly licensed physician and surgeon?

15 A. Well, I'm, I have a medical license to practice,
16 medical license, although I do not do surgery.

17 Q. And how long have you been licensed to practice as a
18 forensic pathologist?

19 A. I was board certified in forensic pathology in '99,
20 and that's when I had finished up all my training and
21 started as faculty at MUSC.

22 Q. Where did you receive that training?

23 A. At MUSC.

24 Q. What are the duties of a pathologist in South
25 Carolina?

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1 A. Well, everybody's kind of getting familiar with
2 forensic pathology with all the TV shows and all, but if I
3 can just back up a moment? Pathology is the study of
4 disease, and most pathologists -- actually, anatomic
5 pathologists that look at tissues or body fluids to
6 diagnosis disease.

7 So, if you go to your doctor, your family doctor and
8 they do like, say, a skin biopsy or a woman needs a breast
9 biopsy, or you go to surgery and something is, is removed,
10 that tissue is sent to the pathologist. They look at it
11 grossly and also under a microscope, and they diagnose
12 what's going on. Is it cancer or not cancer? Is it
13 infection or not infection?

14 So, I'm trained in general pathology, but then I also
15 did subspecialty training in forensic pathology. And in
16 forensic pathology, we're not just looking at a piece of
17 tissue. Of course, we're looking at a whole, entire
18 individual who has, who has passed on, and we're looking
19 for a cause and manner of death ultimately through the
20 process of autopsy.

21 We also are looking for disease because a lot of
22 times, that may be what is the cause of death. But we're
23 also evaluating for trauma and how trauma might have had an
24 effect on the cause of death through the -- and like I
25 referred to that examination, it's called the autopsy.

S. PRESNELL - VOIR DIRE EXAMINATION BY MS. JOHNSON-LEE 150

1 And after we're done, we generate the autopsy report
2 with our opinion on the, the cause and manner of death.

3 Q. Dr. Presnell, are -- have you been granted the
4 certification of diploma in the American Board of
5 Pathology?

6 A. I'm, I'm board certified in anatomic and clinical
7 pathologies. That's the general pathology, and also in
8 forensic pathology.

9 Q. How many autopsies have you performed?

10 A. It would be an estimate of around 2000.

11 Q. And percentage-wise, how many of those have been done
12 where the cause of death was deemed a homicide?

13 A. Well, that would, that would be a manner of death is
14 homicide, and, oh gosh, ten, fifteen percent perhaps.

15 MS. JOHNSON-LEE: Your Honor, the state moves at this
16 time that Dr. Presnell be declared an expert in the field
17 of forensic pathology.

18 THE COURT: *Voir dire* with regard to qualifications,
19 Mr. Blake?

20 MR. BLAKE: No, Your Honor.

21 THE COURT: All right, the court will qualify Dr.
22 Presnell as an expert in the field of forensic pathology.
23 Ladies and gentlemen of the jury, let me tell you what that
24 means.

25 Ordinarily, a witness who is not testifying as an

S. PRESNELL - DIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 expert, that witness's testimony is limited to those things
2 that are within the perception of the witness -- that is,
3 one of the five senses -- and do not require special
4 knowledge, skill, experience, or training.

5 However, if scientific, technical, or other
6 specialized knowledge will assist the trier of fact, and
7 that's you in this case, to understand the evidence or to
8 determine that fact in issue, then a witness qualified by
9 education, training, skill, or experience may testify in
10 the form of an opinion.

11 So, basically the difference between an expert witness
12 and a non-expert witness is that an expert witness is
13 allowed to give an opinion, and I have qualified Dr.
14 Presnell as an expert in the field of forensic pathology.

15 All right.

16 MS. JOHNSON-LEE: Thank you, Your Honor.

17 DIRECT EXAMINATION BY MS. JOHNSON-LEE:

18 Q. Dr. Presnell, did you perform an autopsy on Monesha
19 Brown?

20 A. Yes. The coroner of Marlboro County referred Ms.
21 Brown to us, and we did the autopsy on July 24, 2010.

22 Q. I'm going to show you what's already been marked as an
23 exhibit in the case. First of all, State's Exhibit 2, do
24 you recognize that?

25 A. Yes. This is a photograph of the barrel that's

1 wrapped up in a blue tarp that Ms. Brown was inside. This
2 is actually at autopsy, at the time of autopsy in the
3 autopsy room.

4 Q. Is that how that barrel came to you?

5 A. Yes.

6 Q. So, that tarp wasn't taken off until it came to the
7 autopsy room?

8 A. Well, I imagine it was put on at some place, and then
9 when, and then when it got to the autopsy room, this is how
10 it was. I don't know prior to that, but we did take it off
11 in the autopsy room.

12 Q. I'm also going to show you what's marked State's
13 Exhibits 1 and 3. Do you recognize those items?

14 A. Yes. These are photographs of the barrel at the time
15 of autopsy after we had removed the tarps.

16 Q. And what is the difference between the two?

17 A. Just two different sides, and one has got some more
18 breakdown from, like, the bodily fluids and all.

19 Q. And when you reference bodily fluids, would that be in
20 Exhibit Number 1?

21 A. Yes, ma'am.

22 Q. What would cause the bodily fluids to be more on one
23 side than the other?

24 A. Just the positioning of the barrel, gravity.

25 Q. Was the autopsy the first time you saw the remains of

S. PRESNELL - DIRECT EXAMINATION BY MS. JOHNSON-LEE

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1 Monesha Brown?

2 A. Yes.

3 Q. And how long did this autopsy on Monesha last?

4 A. We don't usually write down, like, when we finish
5 because it doesn't just stop when we're done with the
6 examination, which the gross examination part of the
7 autopsy is all the external exam and all the internal exam.
8 But we also wait for all the rest of the studies that we've
9 done like, say, toxicology to come back.

10 We started the autopsy at 9 and, you know, we did
11 X-rays, a number of other things. So, I, I'm not sure.
12 I'm sure it was several hours, three, four hours.

13 Q. Describe what you found when the barrel was opened.

14 A. Well, we received Ms. Brown, like I said, inside the
15 barrel. We removed the top of the barrel and, and her
16 positioning was -- and if you can kind of bear with me
17 trying to describe it.

18 The -- it -- her head was down towards the bottom of
19 the barrel. And so if you can imagine sliding somebody in,
20 the head's down to the -- towards the bottom. The height
21 of the barrel obviously isn't going to hold a whole, entire
22 person outright. So, the buttocks are up towards the top
23 of the barrel, and then the knees are bent so that the
24 knees are towards the chest. And the lower extremities,
25 the feet, are also towards the top of the barrel near the

1 buttocks.

2 Q. Now, describe what you did during the autopsy itself.

3 A. I, I guess I should continue. We -- so, at that
4 point, you know, we photographed and documented everything,
5 and then we, we pulled her out, and of course there's a
6 fair amount of decomposition, breakdown of some of the soft
7 tissues. And also at that time, we recorded that her arms
8 were secured or tied behind her with duct tape.

9 Q. And before I go on to the photographs, based on your,
10 your autopsy within the bounds of medical certainty, did
11 you form any kind of expert opinion concerning Monesha's
12 cause of death?

13 A. Well, I'll finish up with what we found at autopsy.
14 Besides the decomposition, which affected mostly the soft
15 tissues, like there was -- you could see the bones in one
16 of the, the legs and both arms, but all the internal organs
17 are there. We also had soft tissue breakdown around the
18 neck, but what was significant is that we found multiple
19 defects in the, in the neck area.

20 We had three defects. What I mean is, like, kind of
21 holes through the skin, which again the skin was real thin
22 in that area just secondary to decomposition. But three
23 over the left collarbone, one defect over the right
24 collarbone, one defect in the side of the right neck, and
25 then one gaping defect that went across the front of the

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1 neck.

2 Now, all these defects communicated. Like, you know,
3 you could, you could -- if you put a probe in through one,
4 it would come out the other. However, and the, and the,
5 and the question, of course, is how much soft tissue
6 breakdown could possibly cause some of the defects.

7 Well, the large gaping defect in the front of the neck
8 is -- you really, you wouldn't just get defects right
9 across the -- a breakdown right across the front of the
10 neck. We feel that that was real, and what supported our
11 finding of that was the trachea, which the trachea has --
12 and the windpipe has cartilage in it. So, it resists
13 decomposition a lot better than some of the soft tissues.

14 The trachea actually was cut in half. A sharp-force
15 injury cut it in half, and there was also another sharp-
16 force injury, another cut basically a little bit below
17 where it was cut in half as well. So, we had evidence of
18 two cuts to the trachea.

19 Like I referred to before, the soft tissue had broken
20 down. So, as far as the body weight, had they gotten --
21 you know, had the carotid arteries or jugular veins been
22 injured, we couldn't tell at that time. But with the
23 circumstances, expected decomposition, the finding of the,
24 the neck wounds, the neck defects, and the cutting of the
25 trachea, we surmised that her cause of death was the cut,

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1 or what we call an incise wound, to the neck, and that the
2 manner of death was homicide.

3 Q. Did you document the defects that you found on any
4 diagrams or charts?

5 A. Yes. We -- I drew them on diagrams, and of course we
6 photographed everything.

7 Q. Okay, I'm going to show you what's marked for
8 identification at this time as State's Exhibit 39. Do you
9 recognize that two-page document?

10 A. Yes. These are copies of the diagram that I did at
11 the time of autopsy.

12 MS. JOHNSON-LEE: At this time, I'd move to put that
13 into evidence.

14 THE COURT: Any objection?

15 MR. BLAKE: Judge, I'd like to see it.

16 (COUNSELORS CONFER.)

17 MR. BLAKE: Judge, I do have an objection relative
18 just to the -- there's writing in here which is not very,
19 not very clear. Obviously, she's drawn where she has seen
20 things.

21 THE COURT: Well, the witness, as I understand it,
22 prepared this exhibit; she can testify as to what's on it.
23 So, I would overrule the objection. Be admitted into
24 evidence, subject to the objection of the defendant.

25 (PATHOLOGY DIAGRAM MARKED INTO EVIDENCE AS STATE'S

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1 EXHIBIT NUMBER 39.)

2 BY MS. JOHNSON-LEE:

3 Q. Okay, Dr. Presnell, would you go through page 1 and
4 just read to us what you have written, beginning at the
5 top with all the information on that first page of
6 diagrams?

7 A. Well, these are diagrams, like I said, that are --
8 they're working diagrams. But we jot down notes and
9 abbreviations and whatnot that we use to prepare our, our
10 report that's in complete sentences and fully spelled out
11 words.

12 So, I've recorded the weight of the -- when she came
13 into autopsy and the barrel and the cart. And there's
14 things like we evaluate temperature, if she's rigor mortis,
15 livor mortis, which she's not. Their hair, if she has
16 eyes, ears, nose, teeth, neck, abdomen. It's just a list
17 that we kind of checkmark to make sure that we, we don't
18 get so concentrated on one area that we overlook another.

19 And then I have some pretext that describes in my
20 abbreviated notes the extent of decomposition: where
21 there's missing tissues, where there's what we call adipose
22 formation, which is the conversion of the issues to this
23 waxy type of material. Again, just from decomposition.

24 And I also diagram -- excuse me -- diagram two scars
25 that she had over the belly and the pubis area. And I made

1 a notation that breasts were present, and that the trachea
2 was severed.

3 That's on the diagram of the whole, entire body and
4 then we have the diagram that's just the head and neck
5 area. Again diagram, diagramming the defects that I have
6 described, and that also includes some measurements that I
7 took of the defects and trying to localize it. Like how
8 far it is from the top of the head, et cetera.

9 Q. And on page 2?

10 A. That's what I just described was the head and neck
11 area. And the -- again, just diagrammed the defects and
12 some of the measurements and all.

13 Q. My question is at the bottom, you've got gaping
14 defects, and then you've got an L and a figure, and a W and
15 a figure. Please describe for the jury what those mean.

16 A. Those are the measurements of the defect across the
17 front of the neck. The length of it was 5 inches, and the
18 width is 3 inches.

19 Q. Thank you. I'm going to show you next what's marked
20 for identification as State's Exhibit 17. What is depicted
21 in that item?

22 A. This is the duct tape that ---

23 THE COURT: Wait just a minute. Just ask her if she
24 knows if she can identify it. Right now, it's just
25 identification. She can't testify as what's depicted ---

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1 MS. JOHNSON-LEE: Yes, Your Honor.

2 THE COURT: --- until it's in evidence.

3 BY MS. JOHNSON-LEE:

4 Q. Do you know what's depicted in that?

5 A. Yes.

6 Q. Do you recognize that?

7 A. Yes.

8 Q. Who took that photograph?

9 A. I took this photograph.

10 Q. And does it accurately depict the item at the time the
11 photograph was taken?

12 A. Yes, it does.

13 THE COURT: Being offered into evidence?

14 MS. JOHNSON-LEE: Yes, Your Honor.

15 THE COURT: All right, any objection?

16 MR. BLAKE: Yes, there is, Judge.

17 THE COURT: What's the objection?

18 MR. BLAKE: I think that I have several issues with
19 the photograph.

20 THE COURT: What's the objection?

21 MR. BLAKE: Judge, I think that it's -- I don't see
22 how it's important to the case. I think it has a danger of
23 unfair prejudice and needless ---

24 THE COURT: So, the objection, the objection is what?
25 And legal, just the legal grounds. I don't need an

1 argument.

2 MR. BLAKE: Inappropriate.

3 THE COURT: Inappropriate? Is that the same as
4 relevance?

5 MR. BLAKE: Rule 403, Judge, in terms of ---

6 THE COURT: All right, Rule 403, relevance.

7 All right, based on the -- not -- you don't pretend
8 it's not relevant. You contend that the unfair prejudice
9 outweighs the probative value. Is that correct?

10 MR. BLAKE: That's correct, Judge.

11 THE COURT: All right, Ms. Johnson-Lee, let me see the
12 exhibit.

13 MS. JOHNSON-LEE: Judge, Mr. Hogan, the videotape that
14 was played earlier, he stated in that videotape how he duct
15 taped your hands behind her back, and that's ---

16 THE COURT: Okay.

17 MS. JOHNSON-LEE: --- the photograph of that duct
18 tape.

19 MR. BLAKE: Judge, that's ---

20 THE COURT: It's illustrative of matter and testimony,
21 corroborates testimony, and then I find that the -- it is
22 relevant under 401, and that the probative value is not
23 substantially outweighed by the danger of unfair prejudice.
24 The exhibit will be admitted over the objection of the
25 defendant.

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1 MR. BLAKE: And I'd like to note my objection more
2 specifically.

3 THE COURT: You don't have to do that, Mr. Blake.
4 You've already objected, and I've overruled you. It's
5 admitted.

6 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
7 NUMBER 17.)

8 THE COURT: All right, she may testify as to the
9 exhibit now, Ms. Johnson-Lee.

10 MS. JOHNSON-LEE: Thank you, Your Honor.

11 BY MS. JOHNSON-LEE:

12 Q. Please describe what is depicted in the photograph.

13 A. This is the photograph of the duct tape that we
14 removed from around the wrists. We removed it. We were
15 able to maintain the configuration of it. So, it's on a,
16 it's on a -- we put it on a tarp, and then I've labeled the
17 tarp R and L for right and left so you could tell which one
18 came from the right wrist and which one came from the left
19 wrist.

20 Q. And were the hands duct taped in front or behind the
21 body?

22 A. Behind the body.

23 Q. I'm going to show you need what's marked for
24 identification State's Exhibit Number 18. Do you recognize
25 that photograph?

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1 A. Yes.

2 Q. Who took that photograph?

3 A. I took this photograph.

4 Q. Does it accurately depict the object as it appeared on
5 the day you took the picture?

6 A. Yes.

7 Q. And what is depicted in that photograph?

8 A. This is a picture of the camisole shirt type, tank-top
9 shirt that she had on her -- which is actually -- which is
10 around her kind of chest, abdomen area. It was the back
11 side of it.

12 MS. JOHNSON-LEE: State would have -- make motion to
13 move that into evidence, Your Honor.

14 THE COURT: All right, any objection?

15 MR. BLAKE: If I could see it?

16 THE COURT: All right, sir.

17 (COUNSELORS CONFER.)

18 MR. BLAKE: Same continuing objection, Judge.

19 THE COURT: Sir?

20 MR. BLAKE: Same continuing objection.

21 THE COURT: Well, it's not a continuing objection. Do
22 you object?

23 MR. BLAKE: Rule 403, Judge.

24 THE COURT: All right, you object to this matter under
25 Rule 403. Court will find that the testimony is relevant

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1 under Rule 401, and that it is corroborative of previous
2 testimony. Therefore, it is admissible. I find that the
3 probative value is not substantially outweighed by the
4 danger of unfair prejudice because it is corroborative of
5 earlier testimony. It's not gruesome or prejudicial. It
6 would be admitted subject to the objection of the
7 defendant.

8 MS. JOHNSON-LEE: Thank you, Your Honor.

9 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
10 NUMBER 18.)

11 BY MS. JOHNSON-LEE:

12 Q. Okay, you state that the photograph depicted, Exhibit
13 18, shows the camisole that was removed from the victim's
14 body?

15 A. Yes. It's the back side of the camisole, and it
16 demonstrates several defects in the, in the, in the cloth.

17 Q. Do you have any opinion as to what would have caused
18 that defect in the shirt?

19 A. No, I, I can't. It doesn't necessarily correspond to
20 any injuries on -- it's on the back side where we didn't
21 find any obvious injuries. So, I wouldn't be able to say
22 what caused those defects.

23 Q. Next I'm going to show you what marked for
24 identification State's Exhibit 27. Do you recognize that
25 item?

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1 A. Excuse me?

2 Q. Do you recognize that item?

3 A. Yes.

4 Q. Who took that photograph.

5 Q. I took this photograph.

6 Q. Was that taken during the autopsy of Monesha Brown?

7 A. Yes, it was.

8 Q. What does that photograph ---

9 THE COURT: No, no. Show it to Mr. ---

10 MS. JOHNSON-LEE: Yes, Your Honor.

11 (COUNSELORS CONFER.)

12 MR. BLAKE: Judge, you just used the word gruesome. I
13 think this is to inflame ---

14 THE COURT: All right. Well, we'll ---

15 MR. BLAKE: --- the prejudice of the jury.

16 THE COURT: Well, let me take this up.

17 Ladies and gentlemen, I need to take up a matter of
18 law outside the presence, outside of your presence. I'm
19 going to ask you to go to your jury room for just a few
20 minutes while the state -- while we consider this matter,
21 evidentiary matter.

22 (THE JURY EXITS AT 11:46 A.M.)

23 THE COURT: All right, Ms. Johnson-Lee, you may make
24 your proffer, and then I will let Mr. Blake make his
25 objections.

1 MS. JOHNSON-LEE: Your Honor, Exhibit Number 27
2 demonstrates the trachea, and it shows the two gaping
3 defects to the trachea where it had been slashed. And 29
4 shows the other defects, which I believe the pathologist is
5 going to testify are in the right clavicle area close to
6 the trachea.

7 And out of all the photographs that we have that are
8 truly gruesome, we picked the ones that did not show the
9 body, the entire body. These are up-close photographs just
10 of the trach and the gaping defects. We picked the least
11 offensive of all the photographs from the autopsy. But
12 these show malice, which is a necessary ingredient to get a
13 murder conviction, and so that is the reason they're being
14 introduced.

15 THE COURT: All right. I'll hear from you, Mr. Blake.

16 MR. BLAKE: Your Honor, it's my position and my
17 client's position these are being introduced to basically
18 inflame or elicit sympathy or prejudice from the jury. I
19 do think they are gruesome. We have had, of course,
20 testimony as to the decomposition and the inability to see
21 certain things there. So, it's obviously under Rule 403
22 that I am objecting.

23 MS. JOHNSON-LEE: Your Honor, the state contends that
24 any prejudicialness is outweighed by the probative value of
25 these photographs. Again, they do show malice.

1 THE COURT: I understand.

2 MS. JOHNSON-LEE: Which we have got to prove.

3 THE COURT: I understand what the purpose of it is.

4 How many photographs were made of the autopsy, Ms.
5 Johnson-Lee, or maybe this witness can tell me.

6 MS. JOHNSON-LEE: Dr. Presnell, the number of
7 photographs.

8 WITNESS: Let's see, nine times...

9 THE COURT: Do you have all the photographs, Ms.
10 Johnson-Lee?

11 MS. JOHNSON-LEE: We didn't ever count through them,
12 but ---

13 WITNESS: Probably about sixty-five.

14 THE COURT: About sixty-five, okay, and you don't plan
15 to offer any others other than these two. Is that right,
16 Ms. Johnson-Lee?

17 MS. JOHNSON-LEE: Correct, Your Honor.

18 THE COURT: All right.

19 MR. BLAKE: That includes the two others that have
20 already come in?

21 MS. JOHNSON-LEE: Other than, yeah, what's already in.
22 These will be the final two through Dr. Presnell.

23 THE COURT: Well, I'm talking about the -- these two
24 are the only two you plan to offer of the autopsy. Is that
25 correct?

1 MS. JOHNSON-LEE: Correct, Your Honor.

2 THE COURT: Okay, and, and there were approximately
3 sixty-five taken of the autopsy?

4 WITNESS: Right, which includes everything, including
5 the duct tape, et cetera.

6 THE COURT: Okay. All right, where ---

7 MR. BLAKE: So, the barrel, all ---

8 THE COURT: Just a minute, Mr. Blake.

9 All right, I'd like to see, do you have those
10 summarized or what they look like? I want to see what
11 you're leaving out and what you're putting it so I'll know
12 whether I can make a determination.

13 MS. JOHNSON-LEE: Judge, if I can hand these up?
14 These are all the ones that are being left out.

15 THE COURT: All right.

16 (A PAUSE.)

17 MS. JOHNSON-LEE: Judge, that's about forty or so.
18 That's all we printed out.

19 THE COURT: Okay.

20 (A PAUSE.)

21 MS. JOHNSON-LEE: Your Honor, there was another
22 photograph that was marked for identification State's 28
23 which was of a more gruesome nature which depicted the same
24 thing. But we are not going to introduce that because it
25 is highly inflammatory. But the purpose for asking to

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1 introduce that was also to show the, the cuts to the trach
2 and even cuts around that area around the clavicle.

3 THE COURT: All right.

4 MS. JOHNSON-LEE: But we instead picked out the
5 closeups that ---

6 THE COURT: I understand. Just let me, let me review
7 them.

8 (A PAUSE.)

9 THE COURT: All right, by way of proffer, Ms.
10 Johnson-Lee, these two, 27 and 28, ask the witness whatever
11 you want to ask her about that for my benefit in
12 determining whether or not they are necessary for the
13 corroboration or explanation of her testimony.

14 MS. JOHNSON-LEE: Your Honor, does she have the
15 photographs?

16 WITNESS: I know what they are.

17 *IN-CAMERA HEARING*

18 PROFFERED EXAMINATION BY MS. JOHNSON-LEE:

19 Q. All right, the photograph with the -- that we
20 indicated was the trach, please describe what is in that
21 photograph.

22 THE COURT: You -- just show them to her.

23 Q. I believe the -- here they are.

24 THE COURT: Use them by number.

25 Q. 27.

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1 A. Trying -- 27 is a closeup of the trachea. It shows
2 where it was severed in half, as well as another incision
3 below it.

4 Q. And are -- how many cuts, total cuts through the trach
5 are there in that photograph?

6 A. There are two cuts.

7 Q. And was the trach totally severed?

8 A. Yes.

9 Q. Twice, okay, and ---

10 A. Not severed twice. It was severed once.

11 Q. Severed once.

12 A. And an additional cut below that.

13 Q. Additional cut below that, okay, and number 28.

14 A. 29.

15 Q. 29, sorry.

16 A. Shows some of the de -- shows the three defects on the
17 left collarbone that I described earlier.

18 Q. Okay. Now, would those defects be consistent with
19 other cuts with a knife?

20 A. Yes. They could be.

21 Q. Would they be consistent with other things also?

22 A. Well, again, her state of decomposition, there is a
23 lot of tissue breakdown as well as skin breakdown, so I
24 could not completely exclude that this wasn't from a
25 decomposition ---

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1 Q. Okay.

2 A. --- process.

3 Q. But the location of those particular defects would you
4 say are or could be consistent with also being cut? Where
5 are they in location to the trach?

6 A. Understand, too, her body is distorted somewhat
7 because of the decomposition. But they are along the
8 trachea -- excuse me, along the collarbone leading up to
9 the trachea.

10 Q. So, the same area where the other cuts were?

11 A. The other cut was, the main cut was across the front
12 of the neck. These other three smaller cuts are, are
13 defects, are along the collarbone. So, they are in close
14 proximity to each other.

15 MS. JOHNSON-LEE: That would be the proffer.

16 THE COURT: Okay. All right, of course the test for
17 photographs initially falls under Rule 401 for relevance,
18 and then under 403 as to whether the probative value is
19 substantially outweighed by the danger of their prejudice.

20 Under *State vs. Nance* and the similar line of cases,
21 photographs are admissible, even though they are gruesome,
22 if they are illustrative of or corroborate the testimony of
23 a witness. As long as they do not go beyond that line of
24 the probative value being substantially outweighed by the
25 danger of unfair prejudice, *State vs. Nance* and the similar

1 cases hold that.

2 Let the record reflect that I have reviewed actually
3 sixty-five or about sixty-four or sixty-five photographs
4 that the state handed up that they do not intend to offer.
5 These include several photographs of the barrel in the blue
6 wrapping, one of which has been admitted into evidence.
7 Several photographs of the barrel that -- after it was
8 unwrapped in the lab. I have admitted, I think, one or two
9 of those photographs as well.

10 Then there are a number of photographs showing the
11 human remains still in the barrel. Have not been offered,
12 and I do not believe that I would admit those into evidence
13 even if they were offered. I would exclude those. There
14 appear, appear to be eight, ten of those, eight to ten,
15 somewhere in that neighborhood. And then there are a
16 number of photographs of the human remains of the body on
17 the table in various positions during the performance of
18 the autopsy.

19 There are also a number of photographs of the duct
20 tape, one of which I have already admitted but have -- I
21 would not admit any more than the one. And there are a
22 number of photographs of the shirt, one of which I have
23 admitted over the objection, but would allow the admission
24 of any of the others.

25 I would also let the record reflect that there are a

1 number of photographs of the body on the table that I'm
2 sure are illustrative of other things that took place
3 during the autopsy, and show the condition of the remains
4 at the time that it was taken to Dr. Presnell.

5 The state has also had marked State's Exhibit Number
6 28 which shows the body on the autopsy table, and probably
7 is illustrative of some of the testimony. But I believe
8 that it has not been offered, but I would rule right now
9 that the danger of unfair prejudice substantially outweighs
10 the probative value on that photograph and would not admit
11 Exhibit 28 even though it was marked for identification.

12 With the regard to the others, I feel that the two
13 photographs that have been offered -- that is Exhibits
14 Numbers 27 and 28 -- are illustrative of and corroborate
15 the testimony of the witness. That other photographs and
16 many other photographs that have been offered -- or not
17 offered, have been reviewed by the court and would not be
18 admissible. But I think that the...

19 MS. JOHNSON-LEE: Your Honor, if I may? Was that 27
20 and 29? Your Honor said 27 and 28.

21 THE COURT: 27 and 29.

22 MS. JOHNSON-LEE: Thank you, Your Honor.

23 THE COURT: Yes, 27 and 29. I would find that 27 and
24 29 are illustrative of the testimony of Dr. Presnell. That
25 they, while somewhat gruesome, are relevant to the

1 testimony, and that the probative value is not
2 substantially outweighed by the danger of unfair prejudice.

3 I would not allow more than just these two photographs
4 in. I don't think it, it does cause any confusion of the
5 issues or misleading of the jury, or by considerations of
6 undue delay, waste of time, or needless presentation of
7 cumulative evidence. And I do think that the probative
8 value is there and corroborates the testimony of the
9 witness. And so subject to the objection and over the
10 objection of the defendant, the court will admit Exhibits
11 Number 27 and 29 into evidence.

12 MS. JOHNSON-LEE: Thank you, Your Honor.

13 *END OF IN-CAMERA HEARING*

14 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
15 NUMBER 27.)

16 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
17 NUMBER 29.)

18 THE COURT: All right, ready to proceed?

19 MS. JOHNSON-LEE: Ready, Your Honor.

20 THE COURT: All right. Bring the jury in, please.

21 (THE JURY ENTERS AT 12:01 P.M.)

22 THE COURT: All right, thank you very much, ladies and
23 gentlemen. We are now ready to proceed, and we have
24 resolved that issue.

25 You may proceed, Ms. Johnson-Lee.

1 MS. JOHNSON-LEE: Thank you, Your Honor.

2 BY MS. JOHNSON-LEE:

3 Q. Dr. Presnell, I'm going to rehand you what's now
4 marked as State's Exhibits 27 and 29 which are now into
5 evidence. Would you please describe what is depicted in
6 Number 27?

7 A. Exhibit 27 is a photograph of the trachea which shows
8 where it's transacted or severed, and also an additional
9 cut below that second of severing as well.

10 Q. Now, when you say severed, does that mean a cut
11 completely through the trach?

12 A. Yes.

13 Q. And the other cut is directly below the complete
14 severing?

15 A. Correct.

16 Q. So, that's the two cuts to the trach itself?

17 A. Yes.

18 Q. And Exhibit Number 29, please tell the jury what's
19 depicted in that photograph.

20 A. 29 shows some of the defects along the left
21 collarbone, the skin defects that I was describing before.

22 Q. How many defects are in that photograph?

23 A. Well, it's kind of pieced together. I described three
24 distinct defects. You still have some of the, like, blood
25 vessel type tissue and whatnot. But there's kind of three

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1 and a half, three, three ones that are clearly identified,
2 and one that's kind of just some wispy tissue.

3 Q. Now, could those defects be consistent with having
4 been cut with a knife?

5 A. Again, that's interpreting, and in light of the
6 decomposition, they certainly could have been created by a
7 knife. They could also be from some of the, the tissue
8 breakdown.

9 Q. So, it could be natural, or it could be consistent
10 with another cut of the knife?

11 A. Correct.

12 Q. Now, the location of that by the -- I believe you said
13 the clavicle?

14 A. Right.

15 Q. What was the distance between that and the actual cut
16 or severing of the trachea?

17 A. All right, I don't have a distance. The collarbone,
18 you know, again, that's -- you can feel it on yourself.
19 It's right here, and your trachea is midline. So, it's
20 relative -- it's close proximity.

21 Q. In close proximity?

22 A. Yes.

23 Q. Okay. Now, I believe you described earlier with the
24 diagram of a defect on the side of the neck also. Do you
25 recall which side that was on?

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1 A. Yes. She has a defect on the right side of the neck,
2 and of course the larger defect across the front of the
3 neck.

4 Q. Now, the defect on the right side of the neck, what
5 size is that, would you say?

6 A. Again, a lot of the measurements are going to be
7 distorted by the decomposition and the softening of the
8 tissue, but we measured that at 2 and a half times 1 inch.

9 Q. And could that also be consistent with a knife wound?

10 A. Yes, it could.

11 Q. The tank top and the duct tape that were removed from
12 the body, what did you do with those?

13 A. Well, we took them off, and then we photographed them,
14 and then we transferred them as evidence, and I will tell
15 you to who in a moment. I -- we transferred them to
16 Special Agent Paul LaRosa with SLED.

17 Q. And on what date did you transfer that to Paul LaRosa
18 at SLED?

19 A. July 29, 2010.

20 Q. Now, did you also prepare a written report regarding
21 the autopsy and your findings?

22 A. Yes.

23 Q. I'm going to show you what's for identification
24 State's Number 35. Do you recognize that?

25 A. Yes. This a copy of the autopsy report that we

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1 prepared, or I prepared.

2 MS. JOHNSON-LEE: I'd move to have the autopsy report
3 into evidence.

4 THE COURT: I believe it is in evidence, isn't it?
5 It's not?

6 MS. JOHNSON-LEE: It's marked for identification only,
7 Your Honor, at this time.

8 THE COURT: All right, show it to Mr. Blake.

9 MS. JOHNSON-LEE: Yes, Your Honor.

10 (COUNSELORS CONFER.)

11 MR. BLAKE: Without objection.

12 THE COURT: All right, State's Exhibit Number 35
13 admitted into evidence without objection.

14 (AUTOPSY REPORT MARKED INTO EVIDENCE AS STATE'S
15 EXHIBIT NUMBER OF 35.)

16 BY MS. JOHNSON-LEE:

17 Q. Is your signature on this report, Dr. Presnell?

18 A. My electronic signature is.

19 Q. And is that defined as the same as physically signing
20 with a pen?

21 A. Yes. It's a, it's a computer system, so you have to,
22 quote, verify or finalize the report. You have to type in
23 your password and be logged in under your name for it to,
24 to work, and that's what I did with this case.

25 Q. Thank you. Now, how were these remains identified as

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1 Monesha Brown's?

2 A. Well, we identify them actually at autopsy or the
3 process of a autopsy through dental records. In addition
4 to that, I believe the coroner sent, coroner and SLED or
5 coroner and the sheriff's office sent -- we provided them
6 with bone with DNA to be analyzed. And she was matched
7 positively through DNA as well.

8 Again, that was -- we provided the sample, but that's
9 the extent that we were involved in the DNA matching,
10 although we did, like I said, identify, scientifically
11 identify her through dental records as well.

12 MS. JOHNSON-LEE: Thank you, Dr. Presnell. Answer any
13 questions that Mr. Blake might have.

14 THE COURT: Cross-examination, Mr. Blake.

15 (TOXICOLOGY REPORT MARKED AS DEFENDANT'S EXHIBIT
16 NUMBER 6 FOR IDENTIFICATION.)

17 COURT REPORTER: Defendant's 6 for identification.

18 CROSS-EXAMINATION BY MR. BLAKE:

19 Q. So, it's not too unusual to get decomposition cases
20 here in South Carolina?

21 A. No, that is not unusual.

22 Q. You've done a number of autopsies with decomposition?

23 A. Yes.

24 Q. I think you said when we spoke briefly that you
25 recently had a barrel case?

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1 A. It's been a couple years. We don't have that many,
2 but this was my second one.

3 Q. And you used the word defects a number of times. I
4 think you clarified that by saying that in this situation,
5 because of the decomposition, you really couldn't say with
6 exactitude what caused those defects?

7 A. Right. I, I cannot definitively say the etiology of
8 the defects in the skin.

9 Q. And there was a fair amount of decomposition in the
10 neck area?

11 A. Correct. Yes.

12 Q. And you said that you sent some samples off for DNA.
13 You also sent some stuff off to a lab, is that correct, NMS
14 Labs?

15 A. Right. We perform toxicol -- toxicology studies on
16 our, our forensic cases. And in this case, we sent samples
17 of liver because there was no body -- the blood loss. We
18 sent samples of liver to the NMS Labs, which is a forensic
19 lab, for toxicologic testing. And she showed
20 benzolyecgonine, and I'll go back and explain what each of
21 these are in just a moment, cocaethylene, caffeine,
22 nicotine, a nicotine metabolite, hydroxyzine, which is a
23 antihistamine.

24 So, first of all benzolyecgonine, that is a cocaine
25 breakdown product.

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1 MS. JOHNSON-LEE: Your Honor, if I may, we don't have
2 any objection to this coming into evidence, but I don't
3 think it's in yet, and I ---

4 THE COURT: That's the report?

5 MS. JOHNSON-LEE: Yes. That's the tox, I believe.

6 THE COURT: That's what?

7 MS. JOHNSON-LEE: I believe it's the tox screen.

8 MR. BLAKE: Toxicology report, Judge.

9 THE COURT: Oh. All right. Well, she can't testify
10 to the contents of the toxicology unless it's into
11 evidence. You ---

12 MR. BLAKE: Move it into evidence.

13 THE COURT: All right.

14 WITNESS: And it's in my autopsy report.

15 THE COURT: All right, wait just a moment.

16 MR. BLAKE: It's part of your autopsy report?

17 WITNESS: Yes.

18 MS. JOHNSON-LEE: I don't think it was attached to the
19 one that was marked.

20 THE COURT: All right, it was not. Will be marked in
21 evidence as Defense Number 6. In evidence is the
22 toxicology screen.

23 All right, now it may be ---

24 MR. DANIEL: Can we see it?

25 THE COURT: --- may be used as testimony.

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1 MR. DANIEL: Can we look at it?

2 THE COURT: Yeah.

3 MR. BLAKE: You have it. Well, actually ---

4 THE COURT: Wait just a minute. Let him see it.

5 (A PAUSE.)

6 MR. DANIEL: Your Honor, we don't need any objections
7 other than ---

8 THE COURT: Now, wait just a minute. You sit down,
9 Mr. Daniel. This is Ms. Johnson-Lee. She's the one who's
10 already said that she had no objection to it coming into
11 evidence.

12 MS. JOHNSON-LEE: No objection to the court, Your
13 Honor, but this particular copy, somebody had written on
14 here and marked it out, and that's not on the original.
15 We'd just ask that that be substituted.

16 THE COURT: Before that goes to the jury, that will be
17 redacted, all right? Now, you give the witness the
18 exhibit, and let her testify from the exhibit.

19 MR. BLAKE: Could I ask a question of her first,
20 Judge, to compare what we have gotten with her original to
21 see that hers is -- that what we have is actually the ---

22 THE COURT: That's what you offered. That's what
23 she's going to testify to; she's not going to testify to
24 anything else. Give her that one and let her testify to
25 it. That's the one that you offered, and that's the one

1 that's been admitted into evidence.

2 (TOXICOLOGY REPORT MARKED INTO EVIDENCE AS DEFENDANT'S
3 EXHIBIT NUMBER 6.)

4 BY MR. BLAKE:

5 Q. So, this was attached as actually a part of your
6 original autopsy report, correct?

7 A. This is additional -- this isn't actually -- when we
8 print out the autopsy report, you don't typically print off
9 the other reports received from elsewhere. And what I was
10 originally referring to was in my case summary and my
11 autopsy report. It has a listing of toxicologic findings.
12 I'm also certainly happy to go back to the original source,
13 which is the laboratory report from NMS Laboratories.

14 Q. Go ahead. You were beginning to talk about some of
15 the metabolites you found.

16 A. Okay.

17 Q. Or that were found.

18 A. Right. So, findings in Ms. Brown's blood were
19 caffeine, nicotine. One of the nicotine breakdown products
20 -- when the body metabolizes, it breaks down drugs that --
21 nicotine breakdown product is called cotinine.
22 Benzoylecgonine, which is a breakdown product of cocaine.
23 Hydroxyzine is antihistamine. And also cocaethylene.

24 Now, cocaethylene is a product that is formed when the
25 body's exposed to cocaine and alcohol at the same time.

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1 They form a cocaine-alcoholic compound. So, that was there
2 as well.

3 Now, liver alcohol itself was negative. So, basically
4 what we have is Ms. Brown was under the effects of
5 caffeine, nicotine, potentially cocaethylene, and then
6 benzoylecgonine, which is, again, it's the breakdown
7 product of cocaine. It's not actually an active product.

8 Q. Could I see the exhibit? You mentioned one was an
9 antihistamine?

10 A. Right. The hydroxyzine is an antihistamine.

11 Q. And that's often combined with cocaine?

12 A. Occasionally you can see it cut with cocaine, and
13 so it will show up in somebody that's using illicit
14 cocaine.

15 Q. And I notice that your results have -- some say
16 positive. Some have numbers.

17 A. The tox goes back to the toxicolo -- yeah, toxicologic
18 analysis. What they'll do is a screen and see what's
19 screening positive, and then they'll actually quantitate
20 certain of those drugs that are found.

21 So, nicotine, its metabolite cotinine and caffeine are
22 not quantitated. They don't actually measure the levels,
23 but they did actually quantitate the levels of
24 benzoylecgonine, cocaethylene, and the hydroxyzine.

25 Q. How much did the decomposition and/or the passage of

1 time affect those results?

2 A. Well, decomposition can cause breakdown of a
3 substance. So, in fact, there could have been active
4 cocaine at the time of death, and it just broke down over
5 time during the postmortem period.

6 Q. The State's Exhibit 29 in particular shows this, you
7 call it, I think, communication between the defects?

8 A. Correct. So, if you put a probe through one of the
9 defects, you could, you would connect to the next defect to
10 the next defect, et cetera.

11 Q. Well, does that mean anything to you? Is it part of
12 decomposition?

13 A. It, it's -- what it means to me is it could be a part
14 of decomposition, or it could be that if it was a sharp-
15 force injury and knife injury, that the direction was
16 similar and that it communicated with the same cavity that
17 the knife created.

18 Q. So, it's really possible it's a combination of perhaps
19 a knife and decomposition? It's hard to sort out exact
20 causes?

21 A. Correct. Yes.

22 MR. BLAKE: No further questions.

23 THE COURT: Redirect?

24 MS. JOHNSON-LEE: No, Your Honor.

25 THE COURT: All right, make sure all the exhibits get

1 back to the court reporter and, Doctor, you may step down.

2 Would you like to have the witness excused?

3 MS. JOHNSON-LEE: Yes, Your Honor.

4 THE COURT: Any objection, Mr. Blake?

5 MR. BLAKE: No, Your Honor.

6 WITNESS: Thank you.

7 THE COURT: All right, you are excused. Thank you for
8 coming, Doctor.

9 WITNESS: Thank you.

10 (THE WITNESS EXITS THE STAND.)

11 THE COURT: Counsel, come up for just a moment and
12 talk about scheduling.

13 (OFF-THE-RECORD BENCH CONFERENCE.)

14 THE COURT: All right, ladies and gentlemen, again we
15 had one witness coming from out of town. I think he's here
16 or close by. We ought to be ready to start back in about
17 ten minutes.

18 I'm going to ask you to go to your jury room. Please
19 do not discuss the case among yourselves at this time.
20 We'd like to go ahead and get this witness taken care of
21 before lunch if we can. So, if you would go to your jury
22 room and relax for a few minutes, and I'll send for you
23 very shortly. Thank you.

24 (THE JURY EXITS AT 12:19 P.M.)

25 THE COURT: All right, I understand the witness is

1 present. We'll take just a very short ---

2 MR. DANIEL: He's five minutes out.

3 THE COURT: Oh, five minutes out?

4 MR. DANIEL: Five minutes.

5 THE COURT: Okay. So, ten minutes ought to take care
6 of it. All right, thank you.

7 (OFF THE RECORD.)

8 THE COURT: Thank you. Be seated. All right, back on
9 the record with regard to the *State vs. Horton* [sic]. Mr.
10 Horton is present with his counsel. The state is present
11 and represented by the solicitor's office.

12 Let me just go on the record for one minute with
13 regards to the ruling on the photographs. The relevance
14 and materiality and admissibility of photographs as
15 evidence are matters left to the sound discretion of the
16 trial court. The law of the state is if the offered
17 photograph serves to corroborate testimony, it is not an
18 abuse of discretion to admit it. That's the ruling of
19 *State vs. Nance*, 466 SE 2d, 349 and the cases that have
20 followed that.

21 The court in this case reviewed those two photographs
22 that were -- that I did admit after reviewing those two, as
23 well as another that had been marked as an exhibit and
24 about sixty-five photographs that the state was not
25 offering. After viewing the photographs in question, the

1 court found that the probative value of the evidence of
2 those two photographs outweighed the prejudicial effect and
3 admitted the photographs.

4 Now, I understand the witness is present, Mr. Daniel.

5 MR. DANIEL: He is.

6 THE COURT: All right. Bring the jury in, please.

7 (THE JURY ENTERS AT 12:33 P.M.)

8 THE COURT: All right, thank you, ladies and
9 gentlemen, and we have resolved the legal issues that we
10 had to deal with, and also the witness who is coming in
11 from out of town. And we are now ready to proceed.

12 Mr. Daniel.

13 MR. DANIEL: Thank you, Your Honor. If it pleases the
14 court? State calls Paul LaRosa.

15 PAUL C. LAROSA, III, BEING DULY SWORN,
16 TESTIFIES AS FOLLOWS:

17 CLERK OF COURT: Please be seated, and state your full
18 name.

19 WITNESS: My name is Paul Charles LaRosa, III. The
20 last name is spelled L-A capital R O-S-A.

21 MR. DANIEL: May it please the court?

22 THE COURT: Yes, sir.

23 MR. DANIEL: Thank you, Your Honor.

24 VOIR DIRE EXAMINATION BY MR. DANIEL:

25 Q. Mr. LaRosa, by whom are you employed?

1 A. I'm employed with the State Law Enforcement Division,
2 better known as SLED.

3 Q. And in what capacity are you so employed?

4 A. I am assigned to the Behavioral Science Unit, better
5 known as criminal profiling.

6 Q. So, that means you do what?

7 A. On a day-to-day basis, we analyze violent crime. We
8 analyze threatening communication, equivocal death
9 investigation. We do all manner of what, what typically is
10 seen in the television shows *Criminal Minds* and stuff.
11 Analyze violent crime.

12 Q. Interesting that you mention TV shows. How often is
13 real life like the TV shows you mentioned?

14 A. I've never seen it where it is exactly like TV. You
15 know, that's for entertainment. It's solved within forty
16 minutes minus the commercials, and it's never as glamorous
17 as what they a show on TV.

18 Q. How long have you been employed with SLED?

19 A. I've been a special agent with SLED for seventeen
20 years.

21 Q. And what did you do before that?

22 A. I started my career as a crime scene agent assigned to
23 the forensic laboratory, and I did that for six years.
24 Then I did the bloodhound SWAT team for five years, and
25 then did a stint in general investigations. And then due

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1 to a budget crunch, I got reassigned to crime scene to help
2 train up some of the new agents that we had just hired, and
3 that's where I was employed when this incident occurred.

4 And then since that time, they, they transferred me to the
5 Behavioral Science Unit where I've been employed for
6 approximately a year and a half, two years.

7 Q. So, in the summer of 2010, you were employed as a
8 crime scene investigator with SLED?

9 A. Yes, sir. That is correct.

10 Q. And what does a crime scene investigator with SLED do?

11 A. The Crime Scene Unit is the major crime scene response
12 for the State of South Carolina. South Carolina is a very
13 rural state. You get outside Richland County, Charleston,
14 Greenville, maybe Spartanburg, the counties within the
15 state lack the resources and the employees to respond to
16 violent crime.

17 And so SLED, in agreement that the counties, will
18 offer our services to respond to death investigations
19 throughout the state to work along side the local agency,
20 the investigators and detectives and working together to,
21 to complete the crime scene. Collect evidence, bring it
22 back to the laboratory, submit it to the different units.
23 The real forensic science, the hard science like DNA,
24 toxicology, and so forth.

25 Q. Now, as a crime scene investigator specifically, what

1 sort of training do you have?

2 A. When I started my career at SLED, I was trained in all
3 areas of the impression evidence, from latent prints to
4 footwear, tire tread, blood spatter, crime scene
5 reconstruction, crime scene analysis, and photography. And
6 the training program lasted approximately two years. And I
7 was sent throughout the southeast, and even all the way up
8 to Boston to attend seminars and training courses offered
9 by respected experts to get the knowledge that they had in
10 the areas -- blood spatter, crime scene, and so forth --
11 and come back and apply it to, to real-world situations,
12 which we responded to approximately -- I average about
13 forty to fifty death investigations a year. And that could
14 be suicide, homicide, or an accident.

15 And you go and assist the local agency. And, and
16 during my time in crime scene, I approximately worked about
17 200 to 250 death investigations where I was the crime scene
18 agent on the ground.

19 Q. Have you ever been declared an expert in criminal
20 courts in South Carolina before in crime scene
21 investigation?

22 A. Yes, sir. I have.

23 Q. Have you been declared an expert in criminal courts
24 before in blood spatter?

25 A. Yes, sir. I have.

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1 MR. DANIEL: Your Honor, at this time, I would offer
2 Paul LaRosa as an expert both in crime scene investigations
3 and in blood spatter.

4 THE COURT: Voir dire with regard to qualifications,
5 Mr. Blake?

6 MR. BLAKE: Thank you, Your Honor.

7 VOIR DIRE EXAMINATION BY MR. BLAKE:

8 Q. You said you'd done 200 to 250 death investigations?

9 A. Yes.

10 Q. And then ---

11 A. Yes, sir, physically on the ground, that's correct.

12 Q. Yes, and how many times have you been qualified as an
13 expert in blood spatter analysis?

14 A. Approximately ten times. Just about every time that
15 I've testified specifically for crime scene, it always
16 involves some manner of blood spatter, blood spatter
17 reconstruction. But where I've testified to the actual
18 blood spatter or blood stain analysis at a crime scene,
19 it's been approximately ten.

20 Q. And where did you get your training for that?

21 A. I trained within the Metro-Dade Police Academy in
22 Miami, Florida.

23 Q. How long was that?

24 A. It was a one-week course. And then during the
25 two-year process that I was within the crime scene as a

1 understudy or a trainee, I trained underneath other SLED
2 agents who were court qualified and had to take -- passing
3 board tests that were through the association, the
4 International Association for Identification.

5 And also SLED's lab is an accredited laboratory which
6 is accredited by the National Board of Forensic Science.
7 And we would have to take yearly tests on our expertise
8 within that area.

9 Q. Within blood spatter analysis?

10 A. Specifically blood, yes, sir.

11 Q. And I believe you, you kind of made a distinction
12 between blood spatter analysis and something else which I
13 really didn't catch.

14 A. Oh. Blood spatter, there's two different
15 terminologies that mean the same thing. It's blood spatter
16 analysis. That's, that's what we -- the common term for it
17 is blood spatter, but the technical name could also be
18 blood stain analysis. It's the same thing; it's just two
19 different terms for the same science.

20 MR. BLAKE: No objections, Your Honor.

21 THE COURT: All right, the witness will be qualified
22 as an expert in the field of criminal -- crime scene
23 investigations and blood spatter analysis.

24 Again, ladies and gentlemen, you will recall I told
25 you that under our rules of evidence, a witness who is not

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1 qualified as an expert, and his testimony is generally
2 limited to the matters within that witness's perception and
3 do not require special skill, experience, or training,
4 cannot testify in the form of an opinion.

5 However, a witness who is qualified by experience,
6 training, education, or otherwise, and whose testimony will
7 assist the trier of fact to determine a fact in issue --
8 and as I say, you are the trier of fact -- then that
9 witness may testify in the form of an opinion. So, I have
10 I qualified Mr. LaRosa as an expert in the field of crime
11 scene investigation or crime scene analysis and blood
12 spatter evidence.

13 All right, Mr. Daniel.

14 MR. DANIEL: Thank you, Your Honor.

15 DIRECT EXAMINATION BY MR. DANIEL:

16 Q. What's your title?

17 A. I'm a -- excuse me -- I'm a senior special agent.

18 Q. I want to call you the right name; you worked hard for
19 that title. Senior Special Agent LaRosa, how did you
20 become involved in the John Hogan case here in Marlboro
21 County?

22 A. The, the way that calls come in to SLED, the local
23 agencies call our headquarters, and they will make a
24 request. And the on-call crime scene agent will then be
25 patched through to the requesting agency. And on this

1 case, I received a phone call from Lieutenant Larry Turner.

2 Q. And what is the first thing you did in relation to
3 this case?

4 A. Well, the, the very first thing that -- when
5 Lieutenant Turner was explaining to me what the, the
6 background of the case was, a decision was made to go ahead
7 and secure the vehicle. He requested that crime scene come
8 down and look at a vehicle that was, that was possibly
9 involved in a missing person.

10 And due to the time of the day that we received the
11 call, the decision was made by me that why don't we secure
12 that vehicle. By the time -- I live in Columbia, so it
13 would have taken me two hours to get there. Why don't we
14 wait till the early morning when I can respond and get
15 there and have a full day of natural light to look at the
16 vehicle. So, the decision was made by Lieutenant Turner
17 that he was going to secure the car at the fire department.

18 Q. I'm going to show you what's been marked State's 14,
19 and this is already in evidence. Can you tell the jury
20 what that photo depicts?

21 A. Yes, sir. This was the, the F-150 Ford truck that was
22 secured at the fire department when we, when we arrived at
23 the fire department.

24 Q. Who owns that truck?

25 A. I believe the defendant does.

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1 Q. And this is the truck that you searched?

2 A. Yes, sir.

3 Q. Did you find anything in it, anything of note when it
4 comes to this crime?

5 A. When we got the call, we really weren't sure what we
6 were looking for. When, when we got a phone call that we
7 have a missing person, it could have been any number of
8 reasons why the individual was missing. We, we go into it
9 looking for, of course, a worse-case scenario: violent
10 crime death occurred in the car.

11 So, we went there and looked, looked it over, and we
12 found some duct tape, some other things that on the surface
13 may have absolutely nothing to do with anything. We
14 weren't sure, but to be on the safe side, we went ahead and
15 secured some -- the duct tape, and it had a pink fiber on
16 it, and collected that.

17 Q. Speaking of the duct tape found in the truck and the
18 piece of pink fiber found on it, were you ever able to
19 determine at any point what that pink fiber was?

20 A. Not to my knowledge. That's an area that isn't my
21 area of expertise, trace analysis. But I would have
22 submitted it to our Forensic Trace Department. They would
23 have done any physical composition, and they would have
24 done the, you know, physical composition: what it is, what
25 it was made of.

1 Q. Okay. So, you searched the truck?

2 A. Yes, sir.

3 Q. What's the next thing you do?

4 A. After we, we left the truck, there was no indication
5 -- we -- there was nothing there that we could, could help
6 assist their investigators do. We advised them to call us
7 if anything else developed. And actually, while we were
8 there, a decision was made that after processing the truck,
9 SLED Crime Scene Unit responded to the suspect's residence.

10 MR. DANIEL: Beg the court's indulgence.

11 THE COURT: Yes, sir.

12 (COUNSELORS CONFER.)

13 MR. DANIEL: Judge, by agreement of parties, exhibits,
14 State's Exhibits 12 and 13 are photos that are duplicative.
15 They are just of the truck, and we at this time wish to
16 remove those. They don't add anything.

17 THE COURT: All right. So, you want to withdraw
18 State's 12 and 13?

19 MR. DANIEL: Right.

20 THE COURT: All right. Any objection, Mr. Blake?

21 MR. BLAKE: No, Your Honor.

22 THE COURT: All right.

23 MR. DANIEL: Okay. Thank you.

24 THE COURT: Motion granted.

25 MR. DANIEL: I'm sorry. That's something,

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1 housekeeping we had to take care of with Senior Special
2 Agent LaRosa.

3 BY MR. DANIEL:

4 Q. Now, can you tell us? When you went to the house,
5 that's whose home?

6 A. That, that was the defendant's home at [REDACTED] Monks -- or
7 Marks Circle, Bennettsville, South Carolina.

8 Q. All right. I'm showing what's already in evidence as
9 State's 4. Can you tell the jury what that is?

10 A. Yes, sir. This is the trailer that we would have
11 searched on the 22nd.

12 Q. Okay, and that is the home of Mr. Hogan?

13 A. Yes, sir.

14 Q. Okay. Now, was there a search warrant?

15 A. Yes. Yes, sir. The search warrant was obtained for
16 the residence.

17 Q. Okay, and when you first walked into the residence,
18 what is it that you're looking for? What is that you're
19 doing?

20 A. Once again, this is one, this is one of those
21 situations where we really don't know what we're looking
22 for because all we have at this point is a missing person.
23 So, it could have been any manner of death that, that we're
24 looking at. The worst case scenario is what, in my mind,
25 I'm looking for because we want to find every bit of

1 forensic evidence that is possible.

2 When we walked in, we were looking for obvious signs
3 of blood or obvious signs of foul play. Broken furniture,
4 you know, anything that would resemble female clothing that
5 was, was not the, the suspect's wife's in this case.

6 Q. Okay, and when you, in fact, went inside the house and
7 were looking for things, what's the first thing you
8 noticed?

9 A. Well, one of the things that we noticed, the -- after
10 we documented the scene with a photographer, because we
11 wanted to make sure it was all photographed and documented
12 as we found it, we found two areas that were in the den
13 area that appeared to be blood. And so what we did was we
14 documented it and collected that.

15 Q. All right. I'm going to show you what's been marked
16 State's 9, and this is already in evidence. Do you recall
17 that photo?

18 A. Yes, sir.

19 Q. And tell the jury what that photo is. Is that the
20 area you were just talking about?

21 A. I believe it is, yes, sir. There were several areas
22 at a later search that were also identified as, as possible
23 blood.

24 Q. Okay, I'm going to go ahead and show you State's 5, 6,
25 7, 8, 10, and 11, and these all are already in evidence.

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1 Could you tell the jury what these are?

2 A. Yes, sir. These were, were photographs that we ---

3 Q. What's State's 5?

4 A. Okay. I'm sorry. State's 5 is a picture I believe
5 -- you might have flipped it over. State's 5 is a picture
6 of a, a garden tub, jacuzzi-style tub that was in the
7 master bedroom. The, the bedroom wasn't really cordoned
8 off. It was, it was just kind of part of the larger room,
9 and it was whirlpool tub/kitchen -- I mean, bathroom area.

10 Q. Okay. Next is State's 6.

11 A. Yes, sir. State's 6 was -- once again, we're not sure
12 what's, what the manner of death is, if there is even a
13 death. At this point, it's just a missing person. But
14 when you have a, based on my experience, when you've got a
15 block of knives and have one missing, it could be involved.
16 I mean, you know, most people keep up with all of their
17 knives, and when you have one missing, it led me to believe
18 that that could have been important. We weren't sure of
19 the importance, but it was important to the case. So, we
20 documented that.

21 Q. Okay, and State's 7.

22 A. State's 7 is a, a, a, more of a wide-angle photograph
23 of the tub area that was in the -- off of the master
24 bedroom.

25 Q. Okay, State's 8.

1 A. State's 8, 8 is one of things that -- on top of the
2 area that appeared to be blood on the floor when we first
3 walked in. This was an indentation in the plaster wall of
4 the inside of the trailer. And based on my experience,
5 when I looked at it, it looked like a head or elbow or
6 something had gone through that area.

7 Q. All right, State's 10.

8 A. State's 10 is a picture, more of a wide angle to show
9 the height of it, how it was to the floor, and that -- the
10 area that it would have covered. It would have been the
11 hole in the wall that when we first walked in, it was very
12 curious to us.

13 Q. And we'll get to that one in a little while. Now,
14 approximately how many photos did you take inside the home?
15 Any idea?

16 A. Oh, I, I couldn't tell you right off the -- the, the
17 total crime scene photographs would have been around 400.

18 Q. Okay, and ---

19 A. So, that -- in, with -- inside the trailer, I'm, I'm
20 -- this is complete guesstimation on my part. Probably
21 sixty.

22 Q. Okay, but my point is I didn't just show you
23 everything you did.

24 A. Oh, no, sir. No, sir. We would have documented every
25 bit of that trailer as if it, it held a treasure trove of

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1 forensic evidence when we walked in. We did not know what
2 was evidence and what wasn't because we didn't have the
3 victim to tell us what cause of death it was.

4 Q. Okay. When you are at the house this time and taking
5 all these pictures, at this point there was a missing
6 person?

7 A. Yes, sir.

8 Q. That's all you knew?

9 A. That is correct.

10 Q. Okay. Now, did you, did you draw any diagrams of
11 anything?

12 A. No, sir, because the diagram wouldn't have explained
13 to us in -- it wouldn't have been able to help document the
14 scene any better than what photography would have.

15 If the victim had been located inside the trailer, we
16 would have done a diagram to help draw some correlations
17 between where the bathroom -- where, say, the tub was where
18 the victim was laying. But the victim wasn't there. We
19 weren't even sure at that point if we even had a crime.

20 Q. Is it a common practice to photograph instead of draw
21 out the diagram?

22 A. It, it, it, it's usually at agent's discretion. And
23 based upon my experience, I felt that the photographs would
24 document it, document. The photography would always be
25 done, and a sketch would help supplement or help, you know,

1 reaffirm the diagram if the victim was found inside the
2 trailer.

3 Q. Okay. So, you complete your investigation of, of, of
4 this, which you don't even know if it's a crime scene or
5 not at this point?

6 A. That's correct.

7 Q. And then what do you do?

8 A. Then at that time, that's where we would have a
9 briefing with the sheriff's office and the city police
10 department and say call us back if anything else develops.

11 The evidence that we had didn't indicate anything to
12 us at the point -- at that point because we weren't sure --
13 I mean, there are holes in, in a lot of people's homes.
14 That's blood on carpet in a lot of people's homes. We
15 weren't sure of the significance of it, and that's where
16 the local agency would then have to take their
17 investigation and call us back when more evidence or more
18 information was developed.

19 Q. Did they call you back?

20 A. Yes, sir. They did.

21 Q. When did they call you back?

22 A. They called us back on the 23rd.

23 Q. And what did they tell you?

24 A. Received a call that the, the victim, Ms. Brown, had
25 been located.

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1 Q. Okay, and so what did you do as a result?

2 A. We responded to the location that was described to us,
3 which was -- the directions, this is a very rural area,
4 even rural for Marlboro County standards. And it was -- my
5 directions that I had was Highway 38 South, Arcadia Road a
6 third of a mile/cut dirt road. That was the closest way
7 for me to figure out where I was.

8 Q. And what did you find when you got there?

9 A. We found -- it, it, it's an area that has a low
10 ravine, and there were some beer cans and other items
11 there, and there was a large barrel at the bottom of the
12 hill. And the barrel was kind of cardboard appearance on
13 the outside, and upon further review, it was metal lined on
14 the inside.

15 Q. All right, I'm going to show you what been marked
16 State's 15 already in evidence. You recognize that?

17 A. Yes, sir. This is as a photograph of the barrel as it
18 laid at the bottom of the ravine.

19 Q. So, when you arrived there, that's what you found?

20 A. That's exactly what we found, yes, sir.

21 Q. Okay, and what did you do with that?

22 A. What we, we did, we treat this just the same way we
23 would treat a residence. We, we photographed the scene.
24 We want to work ourselves from the outside in. And so we
25 documented the surrounding area, what was -- you know, the,

1 the -- how the trees were and all of that stuff. Then we
2 worked our way in closer.

3 Q. Would you have taken a lot of photos of that area?

4 A. Yes, sir. There would have been -- you know, once
5 again, even though the area would have been very small to
6 photograph, and you probably could have documented the
7 scene in ten to twelve photographs, we took close to a
8 hundred.

9 Q. So, this one photograph is not all the work you did?

10 A. That, that is correct.

11 Q. Okay. Did you open the barrel at that time?

12 A. No, sir, and this was a decision that, that we had to
13 come to because this was somewhat unique in that the --
14 what led up to where the victim was. We believed, almost a
15 hundred percent sure, that that was going to be the victim
16 inside the barrel.

17 And doing this job for as long as I have, there are
18 certain things that, that just help clarify that there was
19 a, a body inside that, that barrel or something
20 decomposing. And I was, based upon the experience that was
21 there, and there was a lot of experience law
22 enforcement-wise there, it was -- a decision was made that
23 yes, that there is a body in the barrel.

24 We picked up the barrel. We moved it around. It felt
25 consistent with a, a decomposing body inside of the barrel.

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1 And we made telephone contact with, with the coroner, the
2 sheriff's office, the city police, and with SLED. We made
3 contact with MUSC and the pathologist's office, and a
4 decision was made not to open up the barrel at the scene
5 because the barrel was containing the victim.

6 And even though it was leaking in certain areas, the
7 decision was made to secure the barrel with the coroner's
8 assistance and just take the whole barrel to MUSC so that
9 when they opened it up, it was as true and real of a, of a
10 body as we could give to them because we knew that the body
11 was decomposing. It was decomposing fast, and we wanted
12 them to have the best chance to develop any forensic
13 evidence.

14 Q. And so how did you secure the barrel?

15 A. It, it went to the back, I believe, of the coroner's
16 van and was taken. I'm not sure if it was a body removal
17 company or the coroner, but I know it was under the
18 coroner's authority.

19 Q. I'm going to show you State's 2, 11, 1, and 3, and
20 they are all in evidence. Can you just identify those,
21 please?

22 A. Yes, sir. These are pictures of how the, the barrel
23 was, and it was, it was wrapped up at the scene as in
24 Number 2. And what we did was because it was leaking so
25 bad, we wanted to make sure that -- it was containing --

1 also, it's a biological, a bio hazard event, and we wanted
2 to make sure that everything was protected. And so that's
3 the way it was represented there and 1 -- 1, 3, and 11 also
4 represent the barrel.

5 Q. Okay. What did you do after the barrel was secured?

6 A. After the barrel was secured, we went back to the, to
7 the suspect residence and, and processed now that we knew
8 that we had the victim. And based on other information
9 that was shared with us by the sheriff's office, we knew
10 that the incident had occurred at the, at the trailer.

11 So, we had a better idea of what to look for, where it
12 would be located, and we went back in. Took some
13 additional photographs to the document some of the
14 evidence, and then worked the scene to collect the
15 evidence.

16 Q. Speaking of those additional photographs, I'm just
17 going to show you one that has been marked for ID but is
18 not in evidence.

19 (COUNSELORS CONFER.)

20 Q. Can you identify, please, this picture?

21 A. Yes, sir. This is ---

22 THE COURT: Wait, wait. Don't testify as to what it
23 is. He just asked if you can identify it.

24 WITNESS: Oh. Oh, yes, sir. I can identify it.

25 BY MR. DANIEL:

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1 Q. Okay, does this accurately depict the situation you
2 found at the house?

3 A. Yes, sir.

4 MR. DANIEL: Your Honor, at this time I would ask ---

5 THE COURT: State's number what?

6 MR. DANIEL: State's 25.

7 MR. BLAKE: No objection.

8 THE COURT: For ID?

9 MR. DANIEL: For evidence.

10 MR. BLAKE: Without objection.

11 THE COURT: Without objection, admitted without
12 objection.

13 MR. DANIEL: Thank you.

14 THE COURT: All right, let her take the ID marking off
15 of it.

16 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
17 NUMBER 25.)

18 BY MR. DANIEL:

19 Q. All right, can you please tell the jury, and this is
20 one of how many pictures you would have taken the second
21 time you were there?

22 A. Approximately a hundred.

23 Q. Okay. Can you tell the jury what this is a picture
24 of?

25 A. This, this photograph is the, the tub, the jacuzzi

1 garden-style tub. This is the window behind the tub.

2 Q. Now, I -- there are some blue markings on the blinds.
3 What exactly would that be?

4 A. This is taking their -- we have a chemical, the
5 acronym is LCV, but it's called Leuco Crystal Violet. It's
6 a technical name for a technical chemical that basically it
7 reacts with the hemoglobins that are found in blood.

8 And what we did, because this, this area that had
9 already been tested -- we have chemicals that can test for
10 the presumption of blood. That chemical can't tell us
11 whether it's animal blood, human blood, bird blood. It
12 just says yes, this is blood.

13 So, once we knew that, we sprayed this chemical, the
14 LCV, which reacts with the hemoglobins in blood, and it
15 turns it that very -- I call it like a, like a, almost a
16 royal blue. And that allows us then to see the blood more
17 clear. And that blood that was represented on that was
18 consistent with castoff spatter, which is most consistent
19 with a stabbing wound.

20 Q. We'll get into all that in a minute. But if I prick
21 my finger and I was bleeding, and I got a drop or two of
22 the blood on the rail here and then I wipe it up, and then
23 you came and you sprayed this LCV.

24 A. Yes, sir.

25 Q. Would it, would it turn blue?

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1 A. It most likely would, yes. The, the, the thing that
2 hurts blood is, is Clorox or, or Windex or any cleaning
3 material, but you can never get it all up. No matter how
4 hard you try, there's always going to be some remnants of
5 that blood left. And the human eye may not see it, but the
6 chemical does. It gets down into the nooks and crannies
7 and the cracks, and it brings it out and makes it that
8 blue.

9 Q. And this LCV spray, it's a spray, right?

10 A. Yeah, yeah. Yes, sir. It's a spray. It comes in a
11 little, little jar and you -- we put it in a sprayer which
12 you see at the hairdresser, and basically we spray it and
13 it turns it blue.

14 Q. Did you spray the whole house down?

15 A. We didn't spray the whole house down. Because we had
16 indications, we only sprayed areas that had tested positive
17 with the presumptive test.

18 Q. Okay. After you spray something, it turns this royal
19 blue color we see on these blinds. You then swab it?

20 A. We, we, we could either swab it or collect the whole
21 item. And because of the importance and the location in --
22 and what I believe happened, in my opinion, happened at
23 crime, I went ahead and collected the whole window blind so
24 that it could then be given to our DNA section for them to
25 do their, their testing.

1 Q. Do you recognize this box?

2 A. Yes, sir.

3 Q. And what, what's in here?

4 A. Could I?

5 Q. Sure.

6 (A PAUSE.)

7 A. It's got the, it's got the crime scene sticker on it,
8 and it says: One set of window blinds from near bathtub,
9 Suspect Hogan trailer. And it's got my initials.

10 Q. Okay. So, you collected this?

11 A. Yes, sir.

12 Q. And to save a lot of time, and because there could be
13 other blood and all that on this, do you know what all this
14 stuff is here?

15 A. That is the evidence that we would have collected from
16 the crime scene and brought back to our headquarters. And
17 then within our laboratory, there are numerous different
18 experts. There's hair and fibers. There's firearms.

19 There's -- so, my, part of my job and responsibility
20 at that time as crime scene agent is I bring this back and
21 basically just ship it, like a big UPS store. I secure it,
22 package it, and make sure it gets to the right units for
23 those experts to do their, their testing.

24 Q. So, are there several items in here that were tested
25 to determine whose blood that was?

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1 A. Yes, sir.

2 Q. All right, I'm going to show you what's been marked as
3 State's 38. This is for ID. Do you recognize that?

4 A. Yes, sir. This is a SLED lab DNA report, serology DNA
5 report.

6 Q. Okay.

7 MR. DANIEL: And of course, Your Honor, this has been
8 stipulated to that, of course, the, all the DNA found in
9 the home was that of the victim, Monesha Brown, but this is
10 the report.

11 (COUNSELORS CONFER.)

12 MR. BLAKE: Without objection.

13 THE COURT: All right, be admitted as State's Number
14 38 without objection.

15 (SLED REPORT MARKED INTO EVIDENCE AS STATE'S EXHIBIT
16 NUMBER 38.)

17 BY MR. DANIEL:

18 Q. Okay, now that we've determined that the blood inside
19 the home found on all these items was that of Monesha
20 Brown, what else did you do, if anything, inside the home?

21 A. Well, after we collected the evidence, we would do a,
22 a walk-through with the sheriff's office and the city and
23 the agencies requesting us and give us -- give our opinion
24 as the crime scene analyst as to what happened within the
25 residence.

1 Q. Okay, and what is your opinion as to what happened
2 within the residence?

3 A. When you take the totality of, of the suspect's
4 statement, the collection of evidence, the physical
5 evidence that was there is that a, a very brutal attack
6 occurred within the, the bathtub area that was there. That
7 is, the blood spatter that was located on the windowsill,
8 the window blind is most consistent with, with a, a
9 stabbing related death or a beating death.

10 The blood is, is very unique when it comes off of an
11 object and, and leaves indications to us, what we call
12 castoff, and it is casting off. Just plain, plain as it
13 says, casting off of a weapon. And that was consistent
14 with the window blinds with -- we, we felt that it very
15 consistent with a stabbing death.

16 And then we also found on the, the -- if this is the
17 bathtub that was raised up, there was carpet, carpet that
18 went down on the, the outside of the tub and into the
19 floor. There was a large volume of pooled blood that
20 wasn't visible to the eye. It was a blue carpet, which
21 it's hard to see blue when we sprayed our LCV on that. But
22 we could tell by doing the presumptive that it was large
23 area of blood. And it was most consistent with what we
24 call pooling blood or just the free-flowing blood that was
25 coming off not necessarily -- it was such a large volume

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1 that it wasn't coming off of an object. It was coming from
2 a person, almost like a bucket of blood.

3 Q. Okay. You said that in your opinion, this was a very
4 brutal attack.

5 A. Yes, sir.

6 Q. Let's talk about the blood spatter, what you found.
7 Obviously, there were -- you testified that there was blood
8 on the blinds.

9 A. Uh-huh.

10 Q. Which are up a wall.

11 A. Yes, sir.

12 Q. Let's -- tell the jury exactly how you come, you come
13 to the opinion that this is a very brutal attack when it
14 comes to blood spatter.

15 A. Well, you, you look at the volume of blood, and the,
16 the volume of castoff was, was in a moderate to high range.
17 And you can tell the volume by the number of strikes, or
18 the number of strikes tells you the volume.

19 If you have a large volume of castoff, it is most
20 consistent with -- one stab wound's going to leave a
21 certain amount of blood. Multiple stab wounds will leave
22 more blood because every time that the knife or the weapon
23 moves up, gravity pulls the blood off of the object and
24 then causes it to, to go. So, one hit, two, three. The
25 more blood you have, the more castoff, the more hits or

1 more stab wounds you typically see.

2 And then to see the volume of blood that we found, the
3 area that it covered on the outside, based upon my
4 experience as a crime scene guy, that there was -- the more
5 blood, the more violent the crime. And that is what I saw
6 here.

7 Q. Because there was a lot of blood?

8 A. There was a, a, a large area of blood for that, for
9 that small of an area.

10 Q. There was a lot of castoff?

11 A. Yes, sir.

12 Q. Okay. At the expense of this being a crude example,
13 if I'm standing against this wall, and I am stabbed and the
14 knife goes in my throat, and then it comes out and that's
15 it.

16 A. Yes.

17 Q. Is there going to be blood spatter everywhere?

18 A. You're going to see -- if you hit the jugular or hit
19 the vein, as long as you're in a standing position, that
20 blood will keep pumping out of you as long as your heart's
21 beating.

22 But I, I, I cannot recall in my career where someone
23 was stabbed one time in the jugular and just stood there in
24 the exact location and bled standing until the heart
25 stopped. Most people's reaction is to get down, get away,

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1 go to a lower area.

2 What I saw, based upon the blood spatter that was on
3 the blinds, is hit after hit or stab after stab that would
4 have caused that blood to go up against the window blind.

5 Q. So, if I were seated.

6 A. Yes, sir.

7 Q. And there would be just one stab or maybe even two
8 stabs, and all it is is a stab and out and stab and out.

9 A. Yes, sir.

10 Q. Is it going to create the kind of blood that you saw
11 in the house that day?

12 A. It, it may account for the pooling of the blood
13 because the blood has got to go somewhere. But the castoff
14 is the link in this story to say that it was a brutal
15 attack.

16 And I'm -- you know, based upon my career, I've seen a
17 lot of very violent death. This, if you consider low,
18 moderate, or high, this would be moderate to high.

19 MR. DANIEL: Beg the court's indulgence?

20 THE COURT: Yes, sir.

21 (A PAUSE.)

22 MR. DANIEL: Your Honor, I don't have any further
23 questions for the special agent.

24 THE COURT: Cross-examination, Mr. Blake?

25 MR. BLAKE: Yes.

1 CROSS-EXAMINATION BY MR. BLAKE:

2 Q. Do you have any there, or is that all?

3 A. This, this is all my, my case notes.

4 (A PAUSE.)

5 Q. State's Exhibit 9, was that identified as blood?

6 A. I believe it was. Yes, sir.

7 Q. Not sure?

8 A. I'm, I'm, I'm not quite sure because I would need the
9 photograph before that to tell exactly where the location
10 of that was.

11 Q. State's Exhibit 5, that's a picture of the tub area
12 with the blind there.

13 A. Yes, sir.

14 Q. Okay, and where did you see the pooling of the blood?

15 A. The pooling of the blood, if you see this, what
16 appears to be, like, a rust dirt color, this is what ended
17 up testing positive for, for blood, presumptive positive
18 for blood. And this is the window blind behind it. So, it
19 would have been this area where the pooling of the blood
20 would have been, and this would have been the area where
21 the blinds were.

22 Q. So, you have the pooling in front of the tub?

23 A. Yes, sir.

24 Q. You're talking about this castoff which is there, the
25 blind on the back?

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1 A. Yes, sir.

2 Q. Did you measure this tub? You know how big it is?

3 A. I did not take exact measurements. It was what I
4 would consider a standard garden tub.

5 Q. Garden tub. It was in the bedroom, was it not?

6 A. Yes, sir. It -- the master bathroom was, was, it was
7 one big, large room. It wasn't a separate area.

8 Q. Okay. How close was this tub, State's Exhibit 5, to
9 the actual bed?

10 A. Approximately 5 feet. I didn't take a measurement of
11 that.

12 Q. Pretty close, though?

13 A. Yes, sir.

14 Q. All in one area?

15 A. One, one, one large master bedroom, yes, sir.

16 Q. You said that the castoff on the blind -- looking now
17 at State's Exhibit 25 -- was, you said, moderate to heavy,
18 I think was your -- moderate to high?

19 A. Yes, sir. Moderate to high, yes, sir.

20 Q. And do you know where the actual slicing took place in
21 the tub?

22 A. Within the tub. I mean, I, I don't know if you mean
23 -- do you mean, like, the middle or the edge? I mean, the
24 tub was approximately 4 feet. It happened inside the tub.

25 Q. Okay.

1 A. I mean, I feel safe in giving that opinion, but to
2 tell whether she was in the front portion of the tub or the
3 back portion, I couldn't tell you. But it happened, it
4 occurred inside the tub.

5 Q. Okay, and you said there'd been some wiping up of
6 blood and things. How do you know? You said that you have
7 castoff and stuff. Do you know what's happened to that
8 before you got to look at it?

9 A. No, sir. The only, the only thing that gave me any
10 indication was when we first got there on the 22nd, as...

11 WITNESS: If I can beg the court's indulgence, sir?

12 (A PAUSE.)

13 A. When we got there, the detectives in the -- from the
14 city and the county were talking to the wife, who was
15 present, and stated that several items where out of place
16 when she returned from her trip, and she -- there was blood
17 on the comforter, and the wife gave us t-shirts. And the
18 wife stated that she completely cleaned the whole
19 residence, including bleach is the only statements.

20 So, I would assume that the, the area, it was, it was
21 not a fresh or a virgin area reference, the crime scene.
22 So, there had been some cleaning up that had, that had been
23 done. But like in most crime scenes, you can't see all of
24 the blood. So, she's only cleaning areas that she visually
25 saw.

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1 MR. BLAKE: One moment, please.

2 THE COURT: All right, sir.

3 (A PAUSE.)

4 MR. BLAKE: No further questions.

5 THE COURT: Redirect?

6 MR. DANIEL: Briefly.

7 REDIRECT EXAMINATION BY MR. DANIEL:

8 Q. Special Agent LaRosa, were you aware when you went to
9 the Hogan home the second time that Mr. Hogan had already
10 confessed to cleaning up and trying to hide his crime?

11 A. Yes, sir.

12 Q. Okay, and obviously blood that's on a blind or on a
13 bathtub, anywhere, it doesn't just disappear. If, if, if
14 it's not there, it's been cleaned.

15 A. Could you...

16 Q. Blood that was there, because we know from the
17 confession.

18 A. Yes.

19 Q. And then is no longer there, somebody had to clean it
20 up.

21 A. That, that would -- blood just doesn't disappear on
22 its own. It will stay there in a controlled environment
23 for as long it can until -- I mean, months and months, I
24 mean.

25 Q. Okay. Finally, Mr. Blake asked you about the fact

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1 there was some pooling of blood on one end of the tub, and
2 then the blinds were at the other side of the tub, and
3 there was spatter there. That fact that there was blood, a
4 pool of it on the front, and then all this spatter on the
5 -- splatter on the back, what does that indicate to you
6 about the nature of the crime?

7 A. That it was a vicious, violent attack that occurred
8 within the, the tub area. And at some point, I can say
9 that she was most likely laying across the tub, whether --
10 can't tell you why she was, whether he placed her there, or
11 her attempt to get away. But the blood from her wound
12 would have pooled out along the edge of the carpet. The
13 spatter was most consistent with numerous or multiple
14 stabbing, stab wounds or either getting hit with a blunt
15 object.

16 MR. DANIEL: Thank you. I have no further questions.

17 THE COURT: Recross?

18 CROSS-EXAMINATION BY MR. BLAKE:

19 Q. So, just to clarify. This is your analysis, correct?

20 A. That, that is correct. Yes, sir.

21 Q. And your opinion, correct?

22 A. That is, yes, sir.

23 Q. You were not there when it happened?

24 A. That is absolutely correct.

25 Q. You're taking certain variables and forming an

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1 opinion?

2 A. That is, that is correct, and I'm taking all the
3 peripheral confessions, statements, and from my experience
4 and knowledge of, of other crime scenes, and combining it
5 to make this opinion.

6 Q. And you're saying on the blinds themselves that that
7 is a moderate to heavy amount?

8 A. That's what I would consider in my opinion to be a
9 moderate to high amount.

10 Q. And that's detailed there in the photograph of the
11 blind?

12 A. Yes, sir.

13 MR. BLAKE: Thank you.

14 THE COURT: All right, thank you, sir. You may step
15 down.

16 Would you like to have this witness excused?

17 MR. DANIEL: Please.

18 THE COURT: All right, any objection?

19 MR. BLAKE: No.

20 THE COURT: All right, you are excused. Thank you for
21 coming.

22 WITNESS: Thank you.

23 (THE WITNESS EXITS THE STAND.)

24 THE COURT: All right, before we break for lunch, let
25 me see counsel to the side just for a moment and talk about

1 the schedule.

2 (OFF-THE-RECORD BENCH CONFERENCE.)

3 THE COURT: All right, ladies and gentlemen, I am
4 going to -- after conferring with counsel, and it is about
5 twenty-five minutes after one. I think it's appropriate
6 that we break for lunch at this time, and we have got some
7 things that we're going to have to do, the court is going
8 to have to do even after we come back.

9 So, what I'm going to do is break for lunch at this
10 time and ask you to be back in your jury room, please, at
11 2:45 instead of 2:30. That will give us a little time to
12 do the things that we need to do from an administrative
13 standpoint, and also from some rulings and things that we
14 have to address on the record. So, I'm going to allow you
15 to go to your lunch now, and ask you to be back in your
16 jury room, please, at 2:45.

17 Do not discuss the case among yourselves. Do not
18 allow anyone to discuss it with you. And do not discuss it
19 with anyone while you're away from the courthouse. But
20 have a pleasant lunch, and be back in your jury room,
21 please, at 2:45. I'll see you at that time.

22 (THE JURY EXITS AT 1:23 P.M.)

23 THE COURT: All right, counsel, let's wait just a
24 minute. Let me give a moment for the jury to clear the
25 area. And then what we're going to do is recess until

1 2:15. That will give us forty-five minutes or so to get
2 lunch, and then be back here at 2:15, at which time we'll
3 see where we stand.

4 We'll also discuss with the defense the matters that
5 they need to discuss, including, Mr. Blake, the Fifth
6 Amendment matters, and whether your client wishes to waive
7 those. And take care of all of those matter at -- between
8 2:15 and 2:45 at the time that the jury comes back, and any
9 other legal matters that we need to do.

10 I understand the state basically feels like they
11 called the last witness, but they want to make sure that
12 they've covered everything. They want to make sure they've
13 got the exhibits and actually will plan -- more than likely
14 rest at 2:15, and again in front of the jury.

15 But we'll take care of all those matters after we get
16 some lunch. So, let's take a lunch recess at this time.
17 Be back, please, at 2:15 to address the matters that we
18 need to address, and be prepared to go forward with the
19 jury at 2:45.

20 (OFF THE RECORD.)

21 THE COURT: All right, let's go back on the record.
22 Mr. Daniel, has the state -- and do you plan to call any
23 more witnesses, or do you plan to rest, or what's this
24 going to be?

25 MR. DANIEL: We plan to rest, Judge.

1 THE COURT: All right. So, the state does rest at
2 this time. I'll, of course, allow you to do that in front
3 of the jury.

4 All right, Mr. Blake, I understand from previous
5 conferences, pre-trial conferences, and of course
6 in-chambers conferences during the course of this trial,
7 that the defense does intend to offer evidence in this
8 case. But I think at this point, we ought to address the
9 matter of the defendant testifying.

10 And in connection with that, counsel, we need to -- I
11 think one of the things that always impacts whether the
12 defendant is testifying, Mr. Daniel and Ms. Johnson-Lee, is
13 the defendant's criminal record. What do you contend would
14 be impeachable offenses?

15 MR. DANIEL: Beg the court's indulgence.

16 (A PAUSE.)

17 MR. DANIEL: Judge, we have from the clerk of court in
18 Texas information concerning Mr. Hogan's prior record.
19 There is an aggravated assault: offense date April 4, 1999;
20 judgment date September 10, 2003. And then there's a
21 burglary: judgment date September 10, 2003; offense date
22 March 3, 2002.

23 THE COURT: All right, the aggravated assault, the
24 offense date was April 1999, and the judgment date was?

25 MR. DANIEL: September 10, 2003.

1 THE COURT: Okay. All right, Mr. Blake, what is the
2 defense position on -- those are the two things the state
3 contends are impeachable offenses. What's the defendant's
4 position?

5 MR. BLAKE: Judge, I filed with the court, and you
6 have a copy, back on January 9th a brief relating to this.
7 And the aggravated assault is incredibly similar to the
8 current charge, and I think it would be extremely
9 prejudicial to my client if the jury was to hear about
10 that. I don't know if you need me to go back over the
11 issues as I've cited in the brief.

12 THE COURT: Well, I've got your brief here. I'll look
13 at it, but.

14 MR. BLAKE: Well, Judge, there's a significant line of
15 cases that talk about the inherent danger in allowing a
16 similar conviction. That the jury would ---

17 THE COURT: Well, what the court's got to look at is
18 the, in this state, are the *Colf* factors under *State vs.*
19 *Colf*, C-O-L-F, 337 SC 622, 525 SC 2d 246. It's a 2000
20 case, and it's also cited in *State vs. Elmore* at 398 SC
21 230, a 2006 Court of Appeals case. And we'll look at those
22 in just a minute, and let me look at your -- I've got, I've
23 read brief in the past. Let me see.

24 (A PAUSE.)

25 MR. DANIEL: Judge, may I be heard briefly?

1 THE COURT: In a minute.

2 MR. DANIEL: I just might resolve it.

3 (A PAUSE.)

4 THE COURT: All right. So, Mr. -- as I understand
5 your argument, Mr. Burke [sic], you tell me if this is
6 correct. You object to the use of either the aggravated
7 assault in 1999 -- or actually it was decided in 2003 --
8 and the burglary in 2003. You object to both of those
9 being used for impeachment purposes.

10 You admit that the -- both of them fall within 609,
11 the ten-year period. But your objection is on the basis of
12 the probative value being substantially outweighed by the
13 prejudicial effect. Is that correct? Now, that's what I
14 got out of your memorandum.

15 MR. BLAKE: Yeah. Of course in the rule itself, it's,
16 not substantially outweighed, but the probative value is
17 outweighed by its prejudicial effect, yes, Judge.

18 THE COURT: Your memorandum admits they fall within
19 the technical requirements of the statute as far as being
20 within the ten-year period.

21 MR. BLAKE: Absolutely.

22 THE COURT: But you object to them because, in your
23 view, the probative value is, is outweighed by the
24 prejudicial effect because they are not probative of
25 truthfulness.

1 MR. BLAKE: Well, the burglary is not probative of
2 truthfulness unless -- I state *State vs. Bryant* that
3 indicates that and to me, that's the essence of this rule.
4 It's attacking credibility of the witness. That is to say
5 is the witness actually telling the truth. And so there's
6 a difference in analysis between the burglary conviction
7 which has to -- focuses more on the actual truthfulness,
8 whether it's probative for truthfulness.

9 And then you have the aggravated assault, which
10 focuses more on the third factor in the Colf factors, which
11 is the similarity between the past crime and the charged
12 crime. And there's of course a long line of cases, most
13 recently *State vs. Howard*, opinion number 4, 9, and 6 which
14 I cite. In that cite, *State vs. Bryant*, is a South
15 Carolina Supreme Court case holding that when a prior
16 offense is similar to the charged offense, danger of unfair
17 prejudice to the defendant from impeachment by that prior
18 offense weighs against this admission.

19 All those cases talk about the inherent danger in
20 allowing the conviction of a crime that's substantially
21 similar to the charged crime, which is, of course, the case
22 here.

23 THE COURT: All right. So, your objection on the
24 burglary primarily is that under the *State vs. Bryant*, 633
25 SC 2nd 155, that that's not probative for truthfulness.

1 And so the prejudicial effect is outweighed by the -- I
2 mean, the probative value is outweighed by the prejudicial
3 effect. And on the assault and battery, it focuses more on
4 the second Colf factor, the similarity of the crimes
5 charged.

6 MR. BLAKE: That's right, Judge, and just to restate
7 the burglary, doesn't -- you know, it's not probative for
8 truthfulness. It does not assist the trier of fact in
9 determining whether or not the defendant is telling the
10 truth in his testimony, which is what, what impeachment is
11 for.

12 THE COURT: All right. I understand.

13 All right, now, Mr. Daniel, I'll hear from you.

14 MR. DANIEL: Judge, we will agree to not impeach with
15 either of these convictions so long as Mr. Hogan, if he
16 takes the stand, of course, doesn't say I have never been
17 convicted of any crime. But short of him doing that, we
18 have no ---

19 THE COURT: All right, the fact that he's going to
20 take the stand, you're not going to use them unless he ---

21 MR. DANIEL: That's correct.

22 THE COURT: --- affirmatively says that he has not had
23 any prior convictions.

24 MR. DANIEL: That's correct. So long as that's not
25 mentioned, we won't bring it up.

1 THE COURT: All right.

2 MR. BLAKE: Judge.

3 THE COURT: That solves that problem.

4 MR. BLAKE: He's has, like, four DUI convictions. I
5 might bring that in. Is that a problem?

6 MR. DANIEL: You might bring them in?

7 MR. BLAKE: Yeah. I might.

8 MR. DANIEL: Oh.

9 THE COURT: Okay, you bring that up, I don't -- well,
10 that probably -- I guess -- what's your position?

11 MR. DANIEL: Well, if that's introduced as saying
12 that's all he's got, if you get up there -- if, if Mr.
13 Blake gets up there and talks about the fact that he's got
14 four DUI convictions and doesn't mention anything else, I
15 think that implies to the jury that all he's got on his
16 record is DUIs.

17 THE COURT: Yeah. I think it does, too.

18 MR. DANIEL: So, I think either we talk about ---

19 THE COURT: I don't think you can have your cake and
20 eat it, too, Mr. Bryant -- Mr. Burke. I mean, I think
21 you've got to -- if you want to rely on the DUI and
22 take the position of the DUI and the drugs having an effect
23 on his mental ability to form the requisite intent to
24 commit murder, and that's what obviously the purpose of the
25 four DUI convictions would be, then I think you've opened

1 the door.

2 MR. BLAKE: Well, actually, it would be going to his
3 addictive personality. But, you know, I understand the
4 court's ruling, and I'll stay away from that.

5 THE COURT: Okay. All right, that resolves that.
6 Okay.

7 MR. DANIEL: So, there's no mention of any prior
8 convictions of any ---

9 THE COURT: Either way.

10 MR. DANIEL: Okay.

11 THE COURT: All right. All right. Now, the other
12 thing that we need to get on the record, and I want to take
13 care of this, is just so the record will be protected. I
14 don't think it's necessary because there's a written order
15 place, Mr. Burke, but I want to make sure that there's no
16 issue or ---

17 MR. BLAKE: Judge, I, I hate to correct you. It's Mr.
18 Blake.

19 THE COURT: Excuse me.

20 MR. BLAKE: You keep going on about Mr. Burke. I ---

21 THE COURT: Excuse me. I'm sorry, Mr. Blake.

22 The issue is about the proffer of the expert witness's
23 testimony. That has been -- there's a written order in
24 place on that, and I think the record is protected. But
25 for the record, I will let the record reflect that Mr.

1 Blake proffered the testimony of the expert witness that
2 was the subject of the court's order in the previous
3 hearing. And my ruling on that, even after the motion for
4 reconsideration, reconsideration is affirmed, it did result
5 in the court's order of December the 21st whereby I found
6 that the expert testimony was not admissible. And that is
7 fully set forth in that order.

8 And I later declined a motion for reconsideration.
9 Mr. Blake is tendering that testimony again during the
10 course of the trial and proffering that testimony. And the
11 court would recognize Mr. Blake has a proffer, and the
12 record is protected for that purpose.

13 MR. BLAKE: I appreciate that, Judge. If I could just
14 a second? The first hearing was December 22, 2011. This
15 just is for later. Second was January 10, 2012.

16 And if you would allow, I'd use my motion for
17 reconsideration for a court's exhibit. Is that -- just so
18 they can keep track of it.

19 THE COURT: I figured it was filed; I figured your
20 motion for reconsideration was filed. It's in the court
21 file.

22 MR. BLAKE: It is. It just -- like I said, I talked
23 to Appellate Defense, and I guess they're over ---

24 THE COURT: Appellate Defense is scared of their
25 shadows. They don't know what they're doing over there

1 sometime. If it, if it's filed in the court records, then
2 you don't need to offer it into evidence, but okay. Mark
3 it as a court's exhibit.

4 (MOTION FOR RECONSIDERATION MARKED INTO EVIDENCE AS
5 COURT'S EXHIBIT NUMBER 3.)

6 COURT REPORTER: Court's 3.

7 MR. BLAKE: Appreciate your indulgence, Judge. Thank
8 you.

9 THE COURT: Maybe I ought to make my order a court's
10 exhibit under the same philosophy.

11 (COUNSELORS CONFER.)

12 THE COURT: All right. Yeah.

13 MR. DANIEL: Judge, Mr. Blake did point out, and I'm
14 glad he caught it. State's 7 is one of the search warrants
15 in this case. And on page 4 of that, number 3 -- it's a
16 numbered list -- number 3 mentions something about failing
17 a polygraph, so we'd like to have permission to black that
18 out before it goes back to the jury.

19 THE COURT: Any objection to that?

20 MR. BLAKE: Well, Judge, I probably shouldn't have
21 done that, but I pointed that out to the state, and I will
22 not object.

23 THE COURT: Okay.

24 MR. DANIEL: And we thank Mr. Blake for pointing that
25 out.

1 THE COURT: That will be redacted. Also, there was
2 one of the other exhibits that had something at the top of
3 it, Mr. Blake. What was that? That was the autopsy
4 report.

5 MR. BLAKE: That was the pharma, pharmacology ---

6 THE COURT: Toxicology.

7 MR. BLAKE: Toxicology, and what that was, I had put
8 in their missing fourth page, so I, I have done that, too.
9 So, however we want to deal with that.

10 THE COURT: Does that need to be cleaned up, or is it
11 okay?

12 MR. BLAKE: I don't think you can see through it, but
13 that's up to the court.

14 THE COURT: Okay.

15 (A PAUSE.)

16 MR. BLAKE: Judge, I do have one final issue I want to
17 make part of the record. I think it's important, and Judge
18 may think differently, but I was completely surprised by
19 the blood spatter testimony by Agent LaRosa. I was given
20 extensive records from the solicitor's office about
21 LaRosa's records, his notes and things. There, of course,
22 was no report made, so I had nothing to refer to. Didn't
23 know if it was coming up at all.

24 I do refer to Rule 5(a)(1)(d) which talks about
25 reports of examinations and tests. This circuit's always

1 had an open-file policy. I didn't know anything about the
2 blood spatter analysis. There was no notes from which I
3 could have derived such testimony. Perhaps it was my fault
4 for not trying to contact him directly, but they had forty
5 witnesses, a number of them from SLED. I don't know who
6 they were going to call.

7 I just want the court to know Rule 5, we've always had
8 an open-file policy since I was solicitor and public
9 defender, and I knew nothing about what was going to come.
10 Of course it was presented. Part -- Rule 5(b)(1)(d) does
11 talk about reports, examinations, and tests. I guess
12 that's perhaps a gray area that he obviously did some
13 examination and he made some tests, and he formed a
14 conclusion, and I didn't know about it before trial court.

15 THE COURT: But I, maybe I misunderstood you, Mr.
16 Blake, but I understood you to say there was no report. Is
17 that right?

18 MR. BLAKE: That's correct.

19 THE COURT: Okay. Is that right, Mr. Daniel, there
20 was no report given to your office for y'all to disclose?

21 MR. DANIEL: That is absolutely correct, Your Honor.
22 And as an officer of the court, I will tell you that we do
23 have an open-file policy, and we have nothing to hide,
24 particularly in this case of all cases.

25 We have nothing to hide here. We have given Mr. Blake

1 everything we've got. He's been more than welcome to come
2 over and look at our file. But there is no report as to
3 blood spatter. There were no tests done, as Mr. Blake
4 says.

5 What happened was Mr. LaRosa, as he testified, noticed
6 a bunch of blood on the blinds and a pool of blood on the,
7 on the carpet. And he analyzed in his head based on his
8 experience, which is what he testified to, that it must
9 have been violent. And that, that's the extent of that
10 testimony. So, I don't know what's so surprising.

11 THE COURT: All right. I understand.

12 MR. BLAKE: Well, of course ---

13 THE COURT: With regard to the alleged, or the
14 misstatement as to whether there was a Rule 5 violation,
15 the court's position would be twofold.

16 First is the objection comes too late. The witness
17 has already testified, and there's nothing that I can do to
18 unring that bell. So, I think that the objection to his
19 testimony for that nondisclosure comes too late.

20 Secondly is that under -- as I understand Rule
21 5(a)(1)(d), there has to be a report that the -- that was
22 not disclosed by the state. The state had no such report.
23 They disclosed the witness's name. Everybody has access to
24 the witnesses, and so I don't think there's any violation
25 of Rule 5.

1 But again, I'm not asking you to agree with me about
2 that, and your position is on the record.

3 MR. BLAKE: If I could just take one second, Judge?
4 You say they're all available. However, it's increasingly
5 difficult to speak to SLED witnesses, to get their notes.
6 I did not speak to him beforehand. That's correct.

7 THE COURT: All right. Now, Mr. Blake, is your client
8 ready to address Fifth Amendment matters?

9 MR. BLAKE: Yes, Your Honor.

10 THE COURT: All right, Mr. Hogan, yesterday I
11 explained to you your rights under the constitution as
12 enumerated through the Fifth Amendment to the constitution,
13 your privilege against self incrimination. You indicated
14 at that time that you understood these rights. Is that
15 correct?

16 DEFENDANT: Yes, sir.

17 THE COURT: Have you had a chance to talk with your
18 lawyer, Mr. Blake, about your Fifth Amendment rights?

19 DEFENDANT: Yes, sir. I have.

20 THE COURT: And have you understood your talks with
21 him?

22 DEFENDANT: Yes, sir. I have.

23 THE COURT: Do you have anything you want to ask me or
24 him about your Fifth Amendment rights?

25 DEFENDANT: Not that I can think of, sir.

1 THE COURT: Have you made a decision as to whether you
2 do or do not wish to testify in this matter?

3 DEFENDANT: Yes, sir.

4 THE COURT: And what is that decision?

5 DEFENDANT: I'm going to testify.

6 THE COURT: All right. Is that decision on your part
7 made freely and voluntarily?

8 DEFENDANT: Yes, sir.

9 THE COURT: All right. Thank you, sir. You may be
10 seated.

11 The court would find that the defendant, after having
12 been advised of his Fifth Amendment protections by both the
13 court and his attorney, has made a free, voluntary,
14 knowing, and intelligent decision to waive that privilege
15 and to testify in this case. And the court will respect
16 that decision.

17 MR. BLAKE: Thank you, Judge.

18 THE COURT: All right, we got all the jurors? Where
19 are my bailiffs?

20 (A PAUSE.)

21 THE COURT: You have some witnesses you're, in
22 addition to the defendant in this case, that you're going
23 to call this afternoon? I know you've got one flying in
24 tonight.

25 MR. BLAKE: Yes, Judge. One flying in tonight will be

1 available in the morning. I have several witnesses this
2 afternoon. We'll see if my client fits in today or is up
3 tomorrow.

4 THE COURT: Okay.

5 MR. DANIEL: Judge, I'm not sure who his first witness
6 is going to be, but one of them is sitting in the
7 courtroom. So, if he's not the first one, he would need to
8 be removed.

9 MR. BLAKE: Oh. I thought he was -- they told me he
10 was out.

11 (COUNSELORS CONFER.)

12 THE COURT: Okay, take care of the -- is that going to
13 be your first witness, or are you going to call somebody
14 else? He's going to be your first witness, he needs -- if
15 he's not going to be your first witness, he needs to be
16 sequestered.

17 MR. BLAKE: Well, we're still going to argue the
18 motion for a directed verdict or -- so, we got to bring him
19 in.

20 THE COURT: I understand that. We can take care of
21 that, too, but I'm going to do that. He's already rested.
22 I'll go ahead and hear from you on that.

23 CLERK OF COURT: Judge, the foreman's not in yet.

24 THE COURT: Okay. Well, we can go ahead.

25 All right, let's, let's consider that the state has,

1 and they have announced that they have rested in this
2 matter. I'll hear from you with regard to motions on
3 behalf of the defendant pursuant to Rule 19, Mr. Blake.

4 MR. BLAKE: Judge, I just make a bare motion for
5 directed verdict.

6 THE COURT: All right. All right, under Rule 19 of
7 the South Carolina Rules of Criminal Procedure, the rule
8 provides that:

9 The court shall direct a verdict in the
10 defendant's favor on any offense charged in the
11 indictment after the evidence when either side
12 has closed if there's a failure of the competent
13 evidence tending to prove the charge in the
14 indictment.

15 I've always thought that the word competent that's
16 used in that rule is unfortunate because it tends to make
17 one think that you need to weigh the evidence or to
18 determine whether it's believable evidence, and that's not
19 the way that competent is used in that rule. Competent
20 means admitted evidence or evidence in the record.

21 The rule does go on to say that:

22 In ruling on the motion, the trial judge shall
23 consider only the existence or non-existence of
24 the evidence and not its weight.

25 In my view, there is evidence in the record by which

1 the jury could reach a verdict in this case on the charge,
2 charges of the indictment. And it would be up to the jury
3 to make that determination as to weight or credibility
4 given to the evidence. And so I would respectfully deny
5 the motion for a directed verdict.

6 All right, now, we still one witness.

7 MR. DANIEL: He's here, Judge.

8 THE COURT: One juror.

9 MR. DANIEL: He's here in the back.

10 THE COURT: All right, what about you with the, the
11 witness that is here? Is that going to be your first
12 witness?

13 MR. BLAKE: Yes, Judge. Could we approach just a
14 second?

15 THE COURT: Yeah.

16 MR. BLAKE: It's a matter of scheduling.

17 (OFF THE RECORD.)

18 THE COURT: What are we waiting on, Mr. Daniel? I
19 don't understand.

20 MR. DANIEL: You'd have to ask Mr. Blake that.

21 THE COURT: Well, what's he looking for?

22 MR. DANIEL: He was getting a Social Security number
23 and a birth date of somebody, one of his witnesses that we
24 asked for yesterday, to run the rap sheet.

25 THE COURT: Well, how long does it take to get a

1 birthday and a Social Security number? Where has he got to
2 go to get it?

3 MR. DANIEL: I think he's making a phone call, Judge.
4 You'd have to ask him.

5 (A PAUSE.)

6 THE COURT: All right, ready to go forward, Mr. Blake?

7 MR. BLAKE: Yes, Your Honor. Thank you for the delay.

8 THE COURT: Well, let's not have any more delays. I'm
9 getting kind of tired of it; I'm getting a little bit
10 impatient with it. When I say we take -- that 2:15, that
11 means to be here at 2:15 so we can take care of all these
12 things so when the jury gets here, we're ready to go with
13 the jury. When I say we start at 9:30, that means be here
14 ready to go with the jury at 9:30, and not a lot of
15 different peripheral matters that could be taken care of.
16 That was the purpose of having a thirty-minute delay.

17 All right, bring the jury in.

18 (THE JURY ENTERS AT 2:53 P.M.)

19 THE COURT: All right, thank you, ladies and
20 gentlemen, and we are now ready to proceed. I need to ask
21 you now as I did this morning since you have been away from
22 the courthouse. If anyone has tried to talk with you or
23 contact you about this matter in any way whatsoever over
24 the lunch recess, I would need to know about it now.

25 Negative response, and that's good.

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1 All right, Mr. Daniel, state may proceed.

2 MR. DANIEL: Thank you, Your Honor. May it please the
3 court? At this time, the state respectfully rests its
4 case.

5 THE COURT: All right. All right, ladies and
6 gentlemen, you have heard to state announce they have
7 rested their case. That means the state has presented all
8 the testimony and evidence to you that they will present at
9 this time. And now the defense has the right to present
10 any testimony, evidence that they wish to present.

11 Mr. Blake.

12 MR. BLAKE: Thank you, Your Honor. We'd call Casey
13 McCall to the stand.

14 CASEY MCCALL, BEING DULY SWORN,
15 TESTIFIES AS FOLLOWS:

16 CLERK OF COURT: If you would be seated there in the
17 witness box, and state your full name for me.

18 WITNESS: Casey McCall.

19 DIRECT EXAMINATION BY MR. BLAKE:

20 Q. And how old are you, Casey?

21 A. Thirty-three.

22 Q. And where do you live?

23 A. [REDACTED] Washington Street here in Bennettsville.

24 Q. And what was your relationship to Monesha Brown?

25 A. She was a friend.

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1 Q. She was a friend?

2 A. Yes. We were at school together.

3 Q. Just somebody you went to school with?

4 A. Sir?

5 Q. Just somebody you went to school with?

6 A. No. I seen her in the neighborhood, you know? We was
7 pretty cool, but I can say we went to school together.
8 Basically grew up around each other.

9 Q. I, I'm sorry. I really didn't catch that.

10 A. I said we went to school together and basically grew
11 up around one another.

12 Q. Okay. She a close friend?

13 A. Yes.

14 Q. Okay. Was she a sexual friend?

15 A. No.

16 Q. So, you and she did not have sexual relations?

17 A. No, sir.

18 Q. Were you saddened by her death?

19 A. Yes, I was. Still is.

20 Q. And back on July 16th, handing up State's Exhibit 32,
21 did you talk to a SLED artist?

22 A. Yes, I did.

23 Q. Okay. Is this the drawing that she made from that?

24 A. Yes.

25 Q. Okay. Did you know Mr. Hogan's name at that time?

1 A. No. I just, I seen him a couple times when he had
2 came through. You know, he was purchasing drugs, and that
3 my first time -- well, like, my second time talking to him.
4 But he had told me his name when I got in trouble with him.

5 Q. I'm sorry, he told you his name what?

6 A. When I got in trouble with him, he had told me his
7 name.

8 Q. Okay. So, you saw him in the jail or something?
9 That's where you ---

10 A. No. I seen him in the area of Main Street where he
11 was purchasing drugs. You know where I seen him at.

12 Q. Oh, oh. I see what you're saying. You're talking
13 about that night back on June 5, 2010, where you ---

14 A. I don't remember exactly what date it was, but...

15 Q. Okay. When you were with Monesha?

16 A. Well, we wasn't together, but we was back in the
17 neighborhood area hanging out with one another. You know,
18 me, her, and other, other people, you know? And that's
19 when he, he pulled up.

20 Q. He pulled up and you jumped in the truck, huh?

21 A. Sir?

22 Q. He pulled up, and you jumped in the truck?

23 A. No. He didn't just pull up and I jump in the truck.
24 He pulled over, and I done seen him down there purchasing
25 drugs, and he told me he'd give me \$30, you know, if I

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1 could find him some, and that's what I did.

2 And when I was on the way to the truck, Monesha
3 actually asked me where I was fixing to go. I told her I
4 was fixing to go get him something. And she said well, can
5 I ride, and I said well, that ain't my truck. But then he
6 asked me was that my girlfriend. I said no. She just
7 cool, you know, from the neighborhood. We hang out. He
8 said well, she can go. She can ride, you know, and that's
9 when we got in.

10 Q. So, according to you, that was all on Mr. Hogan
11 because that's why Monesha got in the truck? Is that
12 correct?

13 A. Well, on my own thought, too, you know, but...

14 Q. Huh?

15 A. I say on my own thought, too. It ain't like he just
16 asked her, but he, he said that she can ride. So, we all
17 rode together. We got in the truck and we left.

18 Q. Y'all rode together and smoked crack together?

19 A. I didn't smoke. I just wanted my \$30.

20 Q. Oh, okay. So, you didn't smoke any crack?

21 A. No.

22 Q. You were just making the side hustle?

23 A. Yeah. I was just making -- you know, getting what he
24 wanted to get.

25 Q. Well, I thought you said \$30. You just, you just got

1 him what he wanted, and that was it?

2 A. Yeah. I got \$30 from him, yeah.

3 Q. Huh?

4 A. Yeah, I got \$30.

5 Q. You got \$30?

6 A. Yes.

7 Q. Okay. Just trying to understand.

8 A. Okay.

9 Q. And y'all drove around?

10 A. Well, we went over east by Jack's Island we stayed out
11 there, like, five minutes.

12 Q. Is that Lake Paul Wallace?

13 A. Yes.

14 Q. Okay. Go ahead.

15 A. And so we went around to the other side, and it was a
16 lot of people down there fishing. And he'd been riding,
17 smoking, and I was telling him, you know, the police or
18 somebody might see you flicking your lighter like that. We
19 was on the way back towards uptown, and he dropped me back
20 off on Amelia Street.

21 Q. All right. So, you just got him drugs once?

22 A. Yes.

23 Q. And you didn't smoke any of it yourself?

24 A. No.

25 Q. And Monesha -- this is a -- you said Amelia Street.

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1 That's like a drug area?

2 A. I don't believe it's no drug area, you know? Just a
3 area, you know, a lot of people hang out at.

4 Q. A lot of people hang out, and sometimes drugs are
5 sold?

6 A. He ain't get no drugs from down there that night
7 because we -- I took him somewhere else on Breeden Street.

8 Q. Breeden Street in the Bennettsville area?

9 A. Yes.

10 Q. Okay. You said you had seen him ride through the area
11 before?

12 A. Yes. I seen people dealing with him.

13 Q. So, you saw him buying crack before?

14 A. I ain't say I seen him purchase it, see it drop in his
15 hands, nothing like that, but I know what was going on.

16 But, yes, I have seen him in the area.

17 Q. So, in that area, a number of drug transactions take
18 place, right?

19 A. Well, I ain't got no -- say something about no drugs.
20 I don't be watching what nobody else doing. You know what
21 I'm saying? I can't say with nobody else, you know, but I
22 ain't get nothing from down there that night.

23 Q. You ever worked for the Bennettsville Police
24 Department?

25 A. No.

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1 Q. Never have? Okay, and you were just hanging out there
2 that night?

3 A. Yes.

4 Q. Okay, and Monesha Brown was a friend, I guess you'd
5 call her. You said she was a close friend but not a sexual
6 friend. Is that right?

7 A. Correct.

8 Q. Okay. Have you ever talked about this incident that
9 night with anybody else?

10 A. Yes.

11 Q. Okay. Do you get in and out of jail a lot?

12 A. Yes. I've been locked up.

13 Q. Okay, and you've never worked off charges with the
14 Bennettsville Police Department?

15 A. No. I did my time.

16 Q. Okay. Never bought any drugs for the Bennettsville
17 Police Department?

18 A. Have I ever bought any drugs? I bought, yeah, I've
19 bought drugs myself.

20 Q. Bought drugs yourself, but do you work as a
21 confidential informant for the Bennettsville Police
22 Department?

23 A. No.

24 Q. Okay. You have been to prison, have you not?

25 A. Yes.

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1 Q. Okay. Have you ever had charges that just were
2 dropped?

3 A. I had one charge dismissed because they didn't have
4 probable cause to search me.

5 Q. Okay. What did you go to prison for, Casey?

6 A. Burglary in the second, and assault on three officers.

7 Q. Okay. How long were you in prison there?

8 A. Eighteen months.

9 Q. Was that the same time you were charged with
10 possession of a sawed off shotgun?

11 A. No.

12 Q. That was different?

13 A. I got sixty-day house arrest for that.

14 Q. Okay, and a resisting arrest from '98, malicious
15 injury to personal property, is that you?

16 A. Yes.

17 Q. Okay.

18 A. Yes.

19 Q. I noticed here you've had some various charges that
20 have been dismissed. Those were just shouldn't have been
21 brought, I guess? Resisting arrest in 2001, convicted?

22 THE COURT: What's the question, Mr. Blake?

23 Q. Were you convicted of resisting arrest in 2001?

24 A. Yes.

25 Q. And also convicted of burglary at the same time?

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1 A. Yes.

2 Q. I notice a number of charges again dismissed. Those
3 were just because they were not correctly brought. Is that
4 what you're saying?

5 A. I had one charge dismissed because they didn't have
6 proximate cause to search me. Which ones you talking
7 about? Which ones you talking about?

8 Q. Common-law robbery in 2009.

9 A. I did time for that.

10 Q. It says non-conviction here.

11 A. Non-conviction? I got two years for strong-arm
12 robbery.

13 Q. Some shoplifting, possession of drug paraphernalia,
14 entering premises after warning, petit larceny, possession
15 of hypodermic needles.

16 MR. DANIEL: Is there a question? What ---

17 THE COURT: Yeah. What's the question?

18 MR. BLAKE: He's -- we were in the middle of that
19 question. These are various charges which had been
20 dropped.

21 THE COURT: Well, ask him the question. Don't
22 testify.

23 MR. BLAKE: Okay.

24 BY MR. BLAKE:

25 Q. I just listed some different charges there. There