

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable George C. James, Circuit Court Judge

RALPH BEVERLY HAYES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001593

APPENDIX

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Vol. I of II
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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 RALPH HAYES,)
)
 DEFENDANT.)
_____)

2011-GS-23-07681

OCTOBER 15-17, 2012

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

JUDY MUNSON, ESQUIRE
WANDA ADAMS, ESQUIRE
ATTORNEYS FOR THE STATE

CAROLINE HORLBECK, ESQUIRE
TEAL JOHNSON, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Def.	
4	Anderson, Jeanene L	W	F				x
17	Blandin, Laquan T	B	M		x		
209	Tinsley, James L Jr	W	M			x	
64	Farr, Michael R	W	M				x
21	Brooks, Robert L	W	M			x	
114	Kilcoyne, Christopher D	W	M			x	
78	Grady, Steven L	B	M				x
238	Martin, Ellen L	B	F			x	
196	Staton, Christy M	W	F			x	
101	Ivey, Gary R	W	M			x	
184	Simpson, Michael	W	M			x	
149	Padgett, Marshall G III	W	M				x
91	Holly, Jennifer S	W	F				x
155	Pool, Gerald T	W	M			x	
157	Powell, Trevor K	B	M				x
42	Comley, Carolyn E	W	F			x	
112	Keels, Kimberly S	W	F		x		
1	Adcock, Todd L	W	M				x
153	Penland, Brenda K	W	F				x
53	Derrick, Henry P	W	M			x	
118	Ledford, Fred C	W	M			x	
87	Henson, Danna C	W	F				x
164	Redding, Erika N	W	F				x
19	Bowers, Pamela A	W	F		x		
208	Thompson, Jonathan C	W	M				x
8	Barnes, Erica R	B	F			x	
211	Toppeta, Laura S	W	F				x

22 And I don't know if we need to do this before the
23 jury or not, but some of the photographs are a little
24 graphic. And what we've done is, the photographs that I
25 will introduce into evidence, I've provided a set of

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1 those to the Defense. But what I want for the forensic
2 person to be able to do is present them to the jury in
3 the form of a Power Point presentation that he's put
4 together. And the Defense has been given a copy of that
5 as well. He doesn't alter the images, he just, like,
6 highlights things on them. So I didn't know if that's
7 anything we need to do ahead of time or not. That's all
8 that we have, Your Honor.

9 THE COURT: The pictures that you're talking
10 about are pictures from the crime that we're here on
11 today?

12 MS. MUNSON: Yes, sir.

13 THE COURT: Or are they pictures from -- you
14 have three issues, I guess, then?

15 MS. MUNSON: Yes, sir.

16 THE COURT: Biggers, the 404 evidence and then
17 the pictures?

18 MS. MUNSON: Yes, sir.

19 THE COURT: Okay. Anything from the Defense?

20 MS. HORLBECK: Yes, Your Honor. I would agree
21 that those issues need to be addressed. But I would have
22 an additional issue. I believe that the State is going
23 to be trying to introduce evidence of flight, and I have
24 a motion to exclude that.

25 THE COURT: An estimate, and I know -- I

1 understand the validity of estimates of time from
2 everyone, but for all four of these matters, the rest of
3 the day or is it a couple of hours or do you have any
4 idea how long those may take?

5 MS. MUNSON: From my perspective, Your Honor,
6 a couple of hours. I only have two witnesses on the Neil
7 versus Biggers, other bad acts evidence is just one
8 witness. And the photographs, and they are what they
9 are.

10 THE COURT: Okay.

11 MS. HORKBECK: I would agree with that.

12 THE COURT: A couple of hours?

13 MS. HORLBECK: Yes, sir.

14 THE COURT: Okay. So maybe we can -- do y'all
15 have any special voir dire questions to ask the jury that
16 I normally wouldn't ask?

17 MS. MUNSON: Nothing from the State, Your
18 Honor.

19 MS. HORLBECK: Your Honor, I'll defer to Ms.
20 Johnson.

21 THE COURT: Okay.

22 MS. MUNSON: To maybe save some time, Judge,
23 the stack I just handed back to Ms. Johnson, I think
24 you're going to ask them anyway. And even if you don't,
25 we don't find anything objectionable.

1 THE COURT: Okay.

2 MS. MUNSON: The one that I have in my hand
3 here doesn't have a number on it yet. Number one. I
4 don't necessarily object as long as you answer -- I mean,
5 ask both sides of the question. It says, has any member
6 of the jury panel or member of their immediately family
7 ever been a complaining witness or a victim in a violent
8 crime or any other type of crime involving a person. I
9 would also ask you to ask the jury if they've been
10 accused of it. But the rest of them, no objection. And
11 I don't necessarily object to number one, I just ...

12 MS. JOHNSON: May I approach?

13 THE COURT: Yes, ma'am. How long do you
14 anticipate this trial lasting?

15 MS. MUNSON: My estimate, Your Honor, is all
16 day today, most of the day tomorrow, best case scenario,
17 argue and charge Wednesday morning.

18 MS. HORLBECK: I agree with that.

19 THE COURT: Okay. All right. Do you believe
20 one alternate -- do y'all prefer two alternates or one
21 alternate?

22 MS. MUNSON: I can't see that we need more than
23 one, but you never know.

24 THE COURT: Yeah. Do you think you can get by
25 with one? Do you think we ought to have ---

1 MS. HORLBECK: I think that's fine, Judge, yes.

2

3 THE COURT: Okay. We'll do one alternate.

4 Strikes are five and ten, y'all in agreement with that?

5 MS. MUNSON: Yes, Your Honor.

6 THE COURT: All right. I guess we can have the
7 jury panel come up then.

8 (WHEREUPON, the jury panel entered the open court at
9 approximately 11:39 A.M.)

10 THE COURT: Good morning, ladies and gentlemen.
11 I'm Eddie Welmaker. I'm from Pickens County. I've been
12 assigned to work in Greenville this week. I'll be
13 working with you in a trial that we're going to start
14 today. I'm going to be working with some of you. You've
15 all been qualified already by Judge Verdin to serve as a
16 juror this week. I need to ask you some additional
17 questions to determine whether or not you're qualified to
18 serve in the first case that we're about to begin a
19 trial.

20 I've been presented an indictment. This indictment
21 charges Mr. Ralph Beverly Hayes, Sr., with a criminal
22 offense. And the indictment says that here in Greenville
23 County on or about the 7th of June, 2009, Mr. Hayes,
24 unlawfully and with malice aforethought did kill
25 Jacquelyn Doretha Alexander by means of stabbing her.

1 And that Ms. Alexander died as a proximate result
2 thereof. That constitutes the crime of murder. There's
3 also a second count of the indictment that says that Mr.
4 Hayes, here in Greenville County on that same date,
5 possessed or visibly displayed a knife or sharp object
6 during the commission of a violent crime, that being
7 murder. He's charged with both of those offenses. He's
8 entered a plea of not guilty to each of those offenses.
9 That places the burden on the State of South Carolina to
10 prove his guilt beyond a reasonable doubt. Every person
11 charged with any criminal offense in South Carolina is
12 presumed innocent and that innocence stays with the
13 defendant until the State meets that burden of proof
14 beyond a reasonable doubt.

15 I've been assigned to be the judge of the law in
16 this case. We need to find twelve fair and impartial
17 jurors to be the judges of the facts in the case,
18 determine what the facts are. The State of South
19 Carolina and Mr. Hayes, they desire, and they deserve to
20 have fair and impartial jurors to hear this case.

21 First of all, let me ask you, does any member of the
22 jury panel have any prior knowledge about this particular
23 allegation that has been set forth in this indictment,
24 either by living in the neighborhood, reading something
25 in the newspaper, hearing something on television or the

1 radio, hearing something at a coffee shop. If you have
2 any prior knowledge from any source about this
3 allegation, would you please stand?

4 (No response.)

5 THE COURT: Thank you. There is no response.

6 Is there any member of the jury panel related by
7 blood or marriage to Mr. Ralph Hayes? If you would,
8 please stand if you're related by blood or marriage?

9 (No response.)

10 THE COURT: Is there any member of the jury
11 panel who has a close business or a social, a personal
12 relationship with Mr. Hayes? If so, would you please
13 stand?

14 (No response.)

15 THE COURT: Thank you. There is no response.

16 Several witnesses may be called upon to testify.
17 I'm going to read out the list of these names. It
18 doesn't mean everyone of them is going to testify. But
19 as I call these names please make a mental note and then
20 I'll have some follow-up questions to ask you about these
21 individuals. First of all, from the Greenville County
22 Sheriff's Office, Christopher Miller, Ashleigh Swanson,
23 Jennings Autry, Antonio Bailey, Christopher Manly, Dr.
24 Michael Ward, a Greenville County Medical Examiner. From
25 the Department of Public Safety, Jonathan Hamilton, Tyler

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1 Bucholtz, Warten Valentine, Captain Jinny Moran, Kara
2 Bennick, Sherri Williams, Dominique Thompson. Again,
3 from that department, Dr. Kandala, Christopher Gary.
4 From the South Carolina Law Enforcement Division,
5 Adrienne Hefney, Nikki Perry. And also, from the
6 Sheriff's office Officer J.C. Hinds. Other potential
7 witnesses would be Tracy Burkette, Mike Ellis, Amanda
8 Wicker, Larry Dell White, Janie Ashmore, Barbara McNeil,
9 Jo Lynn Wood, Constance Griffin, Jason Hayden, Anthony
10 Murdaugh. Is there any member of the jury panel who is
11 related by blood or marriage to any of these potential
12 witnesses? If so, would you please stand?

13 (No response.)

14 THE COURT: Is there a member of the jury panel
15 who has a close business or a social, a personal
16 relationship with any of these potential witnesses? If
17 so, would you please stand?

18 (No response.)

19 THE COURT: Thank you. There is no response.

20 Is there any member of the jury panel who has
21 expressed or formed an opinion in any way about the facts
22 in this case. If so, would you please stand.

23 (No response.)

24 THE COURT: Is there any member of the jury
25 panel aware of any bias or prejudice that would interfere

1 with your ability to be a fair juror if called upon to
2 serve in this case? If so, would you please stand?

3 (No response.)

4 THE COURT: Is there a member of the jury panel
5 or a member of your immediate family who is involved in
6 law enforcement in any way. You or a member of your
7 immediate family, if you're in law enforcement, would you
8 please stand?

9 All right. Let me start with you, sir. If you
10 would state your please?

11 THE JUROR: Chris Kilcoyne.

12 THE COURT: And what relative do you have in
13 law enforcement?

14 THE JUROR: You said if we were?

15 THE COURT: You or a member of your immediate
16 family, either way?

17 THE JUROR: I'm a pilot with Delta Air Lines.
18 I'm a Federal Flight Deck Officer, that's a law
19 enforcement officer to an extent.

20 THE COURT: Okay. During the -- in the nature
21 of your work as a pilot?

22 THE JUROR: Yes, sir. If I fly internationally
23 and if I fly domestically.

24 THE COURT: Okay, sir. If you would remain
25 standing just a moment. Your name, please, sir?

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1 THE JUROR: Bill Bridenburg.

2 THE COURT: All right. And is it you or a
3 family member?

4 THE JUROR: It's myself.

5 THE COURT: Okay.

6 THE JUROR: I had over twenty-five years of law
7 enforcement experience in Colorado. And I currently work
8 as a consultant for a company called Public Safety
9 Consultants, Incorporated. We consult with different
10 police agencies across the company.

11 THE COURT: All right, sir, if you'd remain
12 standing. Your name, please?

13 THE JUROR: Fred Ledford.

14 THE COURT: And is it a relative or ---

15 THE JUROR: My brother-in-law.

16 THE COURT: And where does he ---

17 THE JUROR: Anderson County.

18 THE COURT: Anderson. Is he at the sheriff's
19 department?

20 THE JUROR: Yes.

21 THE COURT: And he's your brother-in-law
22 through your -- married your sister or ...

23 THE JUROR: He married my sister.

24 THE COURT: All right. If you'd remain
25 standing. Your name, please?

1 THE JUROR: Gerald Pool.

2 THE COURT: And do you have a relative in law
3 enforcement?

4 THE JUROR: Yes, sir, my uncle.

5 THE COURT: Okay. And where does he work?

6 THE JUROR: Burleson County, Texas.

7 THE COURT: Texas? All right.

8 Those of you gentlemen who are standing, the fact
9 that you yourself, have law enforcement experience, that
10 you yourself, or a relative has -- is involved in law
11 enforcement, we need jurors in this case who will sit in
12 the jury box, listen to the testimony, weigh all the
13 evidence and listen to the law that I give you. Do any
14 of you who are standing believe that because you
15 yourself, or relatives that you have, have been involved
16 or are involved in law enforcement, that that would
17 hinder you in any way in being a fair juror in this case,
18 to listen to all the evidence and make a decision on the
19 evidence presented from this courtroom in light of the
20 law that I give you. If you feel you could be a fair
21 juror in this case based upon the experiences you have
22 and the relationships you have with others, I'm going to
23 ask if you feel you could be a good juror to please be
24 seated. If you have any hesitancy, I ask that you'd
25 please remain standing. All right. Yes, sir, your name

1 again, please?

2 THE JUROR: Bill Bridenburg.

3 THE COURT: All right, sir. I'm going to
4 excuse you from the trial of this case. If you'd just be
5 seated, you don't need to respond to any of the other
6 questions that I ask.

7 Is there any member of the jury panel a contributing
8 member of any organization whose primary concern is that
9 of the promotion of law enforcement or victims' rights,
10 such as MADD or SADD, an organization called PARR, CAVE.
11 If you're a contributing member of any such organization,
12 Sheriff's Association, anything related to law
13 enforcement or victims' rights, would you please stand if
14 you make contributions to any organization such as that?

15 Yes, ma'am, your name, please?

16 THE JUROR: Carolyn Comley.

17 THE COURT: And do you make a contribution to
18 one of those organizations?

19 THE JUROR: I have but it's probably been a
20 while. MADD.

21 THE COURT: MADD. Sometime in the past.

22 THE JUROR: Yes, sir.

23 THE COURT: All right. Your name, please,
24 ma'am.

25 THE JUROR: Christy Staton. And I contribute

1 to MADD every year.

2 THE COURT: Every year? All right.

3 Again, I'll ask you the questions that you have
4 responded on. Would the fact that you make these
5 contributions interfere with your ability to be a fair
6 juror in this case? Could you give the State and give
7 the Defendant a fair trial based on the law and the
8 evidence. If you feel you could, I'll ask if you would
9 be seated. If you have hesitancy at all, please remain
10 standing. Thank you. Let the record reflect that both
11 ladies have been seated.

12 Is there any member of the jury panel who has worked
13 with any such organization in the past as a counselor,
14 that relates to victims or alleged victims of violent
15 crimes. If you've been a counselor in any of those
16 organizations in the past, would you please stand?

17 (No response.)

18 THE COURT: Thank you. There is no response.

19 Is there any member of the jury panel or a member of
20 your immediate family who has ever been a complaining
21 witness, a victim, or been accused or charged in anyway
22 with a crime of violence against a person? If you or a
23 member of your immediate family have had that, either
24 being a victim, a complaining witness or an individual
25 charged or accused of such a thing, would you please

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1 stand?

2 All right, sir. And your name, please?

3 THE JUROR: Gary Ivey.

4 THE COURT: All right. And what's the --
5 briefly, was it a family member or you?

6 THE JUROR: My mother's little boyfriend. He
7 got murdered.

8 THE COURT: Okay.

9 THE JUROR: And it was up here.

10 THE COURT: So your mother's boyfriend?

11 THE JUROR: After my -- yeah.

12 THE COURT: How long ago was that?

13 THE JUROR: Probably seven or eight years ago.
14 My mother found him murdered.

15 THE COURT: Do you believe that would affect
16 your ability to be a fair juror in this case?

17 THE JUROR: No.

18 THE COURT: You could set that aside and make a
19 decision on what happens in this courtroom and that
20 alone?

21 THE JUROR: Yes, sir, I do.

22 THE COURT: All right, sir. Thank you. You
23 may be seated. Yes, sir, on the front here. Your name,
24 please?

25 THE JUROR: Gary Morgan.

1 THE COURT: Okay.

2 THE JUROR: I was charged with a CDV.

3 THE COURT: Okay. And how long ago was that?

4 THE JUROR: Probably about three years ago,
5 something like that.

6 THE COURT: Do you believe that would interfere
7 with your ability to be a fair juror in this case?

8 THE JUROR: No, I don't think so.

9 THE COURT: Do you have any hesitancy at all?

10 THE JUROR: No, sir.

11 THE COURT: All right. Thank you. You may be
12 seated. Your name, please, sir?

13 THE JUROR: Todd Adcock.

14 THE COURT: Okay. And was it you or a family
15 member?

16 THE JUROR: My father was charged with criminal
17 domestic violence.

18 THE COURT: How long ago was that?

19 THE JUROR: Two years ago.

20 THE COURT: Okay. Would that affect your
21 ability to be a fair juror?

22 THE JUROR: Not at all.

23 THE COURT: All right. Thank you, sir. Yes,
24 sir. Again, if you'd state your name again for the
25 record?

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1 THE JUROR: Gerald Pool.

2 THE COURT: All, right, sir.

3 THE JUROR: And my cousin was murdered two and
4 a half years ago in Michigan.

5 THE COURT: In Michigan? Do you believe that
6 would -- this being a murder trial, do you think that
7 would affect your ability to be a fair juror?

8 THE JUROR: No, sir.

9 THE COURT: You can be fair to the State and
10 you could be fair to the Defense?

11 THE JUROR: Yes, sir.

12 THE COURT: All right. Thank you, sir. You
13 may be seated. Your name, please?

14 THE JUROR: Erika Redding. And my father was
15 charged with criminal domestic violence.

16 THE COURT: How long ago was that?

17 THE JUROR: I can't really tell you because
18 he's been in and out of trouble so much.

19 THE COURT: All right. Well, would that affect
20 your ability to be a fair juror in this case?

21 THE JUROR: I don't think so.

22 THE COURT: You say you don't believe so. Do
23 you believe that in any way that if that event that
24 happened in the life of your family would affect your
25 ability to be a fair juror?

1 THE JUROR: No, sir.

2 THE COURT: You could be fair to both sides?

3 THE JUROR: Yes, sir.

4 THE COURT: Thank you. You may be seated.

5 At this time, I'm going to ask the attorneys if you
6 would, please, stand and introduce yourselves to the
7 jury.

8 MS. MUNSON: May it please the Court, Your
9 Honor. I'm Judy Munson of the Thirteenth Circuit
10 Solicitor's Office.

11 MS. ADAMS: Thank you, Judge Welmaker. I'm
12 Wanda Adams. I'm also a Solicitor with the Solicitor's
13 Office.

14 MS. HORLBECK: May it please the Court. My
15 name is Caroline Horlbeck. And I work part-time for the
16 Public Defender's Office here in Greenville.

17 MS. JOHNSON: My name Teal Johnson and I work
18 in Pickens County as a lawyer.

19 THE COURT: All right. Thank you. Is there
20 any member of the jury panel related by blood or marriage
21 to any of these attorneys or anyone who works on their
22 staff or in their offices? If you are related by blood
23 or marriage to anyone in their offices or these
24 attorneys, would you please stand?

25 (No response.)

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Jury Voir Dire

25

1 THE COURT: Is there any member of the jury
2 panel that has a close business or a social, a personal
3 relationship with any of these attorneys. If so, would
4 you please stand?

5 (No response.)

6 THE COURT: Thank you. There is no response.

7 Is there a member of the jury panel who has ever
8 been involved in any litigation in which any of these
9 attorneys represented you or represented the opposing
10 side. If so, would you please stand?

11 (No response.)

12 THE COURT: Thank you. There is no response.

13 Ladies and gentlemen, I've stated it before; this
14 bears repeating. These parties, the State, the
15 Defendant, Mr. Hayes, they deserve to have fair and
16 impartial jurors to hear this case, to make a decision on
17 the law that I give you and the evidence that's presented
18 and that alone. Is there any member of the jury panel
19 aware of any reason whatsoever that you believe in this
20 particular case you could not be fair to both the State,
21 to the Defendant and render a verdict based upon the law
22 and the evidence and that alone? If for any reason you
23 believe you could not be a fair juror, would you please
24 stand?

25 (No response.)

1 THE COURT: Thank you, there is no response.

2 Any other questions from the State?

3 MS. MUNSON: Nothing from the State, Your
4 Honor.

5 THE COURT: From the Defense?

6 MS. HORLBECK: Nothing from the Defense.

7 THE COURT: Could I see the attorneys just for
8 a moment up here.

9 (WHEREUPON, Ms. Munson, Ms. Adams, Ms. Horlbeck and
10 Ms. Johnson approached the bar.)

11 THE COURT: All right. Let's empanel a jury.

12 THE CLERK: When I call your name if you would
13 come forward, bring all your personal belongings.

14 Juror number 4, Jeanene Anderson. Step forward and
15 turn and face the attorneys, please. Thank you. What
16 says the State?

17 MS. MUNSON: Please present the juror.

18 THE CLERK: Thank you. What says the
19 Defendant?

20 MS. HORLBECK: Please swear the juror.

21 THE CLERK: Thank you. You may be seated in
22 the jury box.

23 Juror number 17, Laquan Blandin. What says the
24 State?

25 MS. MUNSON: Please excuse the juror from the

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1 trial of this matter.

2 THE CLERK: Thank you. You may be seated. You
3 are excused from the trial of this case.

4 Juror number 209, James Tinsley. What says the
5 State?

6 MS. MUNSON: Please present the juror.

7 THE CLERK: Thank you. What says the
8 Defendant?

9 MS. HORLBECK: Please excuse Mr. Tinsley.

10 THE CLERK: Thank you. You may be seated.
11 You're excused from the trial of this case.

12 Juror number 64, Michael Farr. What says the State?

13 MS. MUNSON: Please present the juror.

14 THE CLERK: Thank you. What says the
15 Defendant?

16 MS. HORLBECK: Please swear Mr. Farr.

17 THE CLERK: Thank you. You may be seated in
18 the jury box.

19 Juror number 21, Robert Brooks. What says the
20 State?

21 MS. MUNSON: Please present the juror.

22 THE CLERK: Thank you. What says the
23 Defendant?

24 MS. HORLBECK: Please excuse Mr. Brooks.

25 THE CLERK: Thank you. You may be seated.

1 Excuse me. Thank you. You may be seated. You're
2 excused from the trial of this case.

3 Juror number 114, Christopher Kilcoyne. What says
4 the State?

5 MS. MUNSON: Please present the juror.

6 THE CLERK: Thank you. What says the
7 Defendant?

8 MS. HORLBECK: Please excuse the juror.

9 THE CLERK: Thank you. You may be seated.
10 You're excused from the trial of this case.

11 Juror number 78, Steven Grady. What says the State?

12 MS. MUNSON: Please present the juror.

13 THE CLERK: Thank you.

14 MS. HORLBECK: Please swear Mr. Grady.

15 THE CLERK: Thank you. You may be seated in
16 the jury box.

17 Juror number 238, Ellen Martin. What says the
18 State?

19 MS. MUNSON: Please present the juror.

20 THE CLERK: Thank you.

21 MS. HORLBECK: Please excuse the juror.

22 THE CLERK: Thank you. You may be seated.
23 You're excused from the trial of this case.

24 Juror number 196, Christy Staton. What says the
25 State?

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1 MS. MUNSON: Please present the juror.

2 THE CLERK: Thank you. What says the

3 Defendant?

4 MS. HORLBECK: Please excuse Ms. Staton.

5 THE CLERK: Thank you. You may be seated.

6 You're excused from the trial of this case.

7 Juror number 101, Gary Ivey. What says the State?

8 MS. MUNSON: Please present the juror.

9 MS. HORLBECK: Please excuse Mr. Ivey.

10 THE CLERK: Thank you. You may be seated.

11 You're excused from the trial of this case.

12 Juror number 184, Michael Simpson. What says the

13 State?

14 MS. MUNSON: Please present the juror.

15 THE CLERK: Thank you.

16 MS. HORLBECK: Please swear Mr. Simpson.

17 THE CLERK: Thank you. You may be seated in

18 the jury box.

19 Juror number 149, Marshall Padgett. What says the

20 State?

21 MS. MUNSON: Please present the juror.

22 MS. HORLBECK: Please swear Mr. Padgett.

23 THE CLERK: Thank you. You may be seated in

24 the jury box.

25 Juror number 91, Jennifer Holly. What says the

1 State?

2 MS. MUNSON: Please present the juror.

3 THE CLERK: Thank you.

4 MS. HORLBECK: Please swear Ms. Holly.

5 THE CLERK: Thank you. You may be seated in
6 the jury box.

7 Juror number 155, Gerald Pool. What says the State?

8 MS. MUNSON: Please present the juror.

9 THE CLERK: Thank you.

10 MS. HORLBECK: Please excuse the juror.

11 THE CLERK: Thank you. You may be seated.

12 You're excused from the trial of this case.

13 Juror number 157, Trevor Powell. What says the
14 State?

15 MS. MUNSON: Please present the juror.

16 MS. HORLBECK: Please swear Mr. Powell.

17 THE CLERK: Thank you. You may be seated in
18 the jury box.

19 Juror number 42, Carolyn Comley. What says the
20 State?

21 MS. MUNSON: Please present the juror.

22 THE CLERK: What says the Defendant?

23 MS. HORLBECK: Please excuse Ms. Comley.

24 THE CLERK: Thank you. You may be seated.

25 You're excused from the trial of this case.

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1 Juror number 112, Kimberly Keels. What says the
2 State?

3 MS. MUNSON: Please excuse the juror from the
4 trial of this matter.

5 THE CLERK: Thank you. You may be seated.
6 You're excused from the trial of this case.

7 Juror number 1, Todd Adcock. What says the State?

8 MS. MUNSON: Please present the juror.

9 THE CLERK: What says the Defendant?

10 MS. HORLBECK: Please swear Mr. Adcock.

11 THE CLERK: Thank you. You may be seated in
12 the jury box.

13 Juror number 153, Brenda Penland. What says the
14 State?

15 MS. MUNSON: Please present the juror.

16 THE CLERK: Thank you.

17 MS. HORLBECK: Please swear her.

18 THE CLERK: Thank you. You may be seated in
19 the jury box.

20 Juror number 53, Henry Derrick. What says the
21 State?

22 MS. MUNSON: Please present the juror.

23 MS. HORLBECK: Please excuse Mr. Derrick.

24 THE CLERK: Thank you. You may be seated.

25 You're excused from the trial of this case.

1 Juror number 118, Fred Ledford. What says the
2 State?

3 MS. MUNSON: Please present the juror.

4 THE CLERK: Thank you.

5 MS. HORLBECK: Please excuse the juror.

6 THE CLERK: Thank you. You may be seated.

7 You're excused from the trial of this case.

8 Juror number 87, Danna Henson. What says the State?

9 MS. MUNSON: Please present the juror.

10 THE CLERK: Thank you. What says the

11 Defendant?

12 MS. HORLBECK: Please swear Ms. Henson.

13 THE CLERK: Thank you. You may be seated in
14 the jury box.

15 Juror number 165, Erika Redding. What says the
16 State?

17 MS. MUNSON: Please present the juror.

18 THE CLERK: Thank you.

19 MS. HORLBECK: Please swear Ms. Redding.

20 THE CLERK: Thank you. You may be seated in
21 the jury box.

22 Juror number 19, Pamela Bowers. What says the
23 State?

24 MS. MUNSON: Please excuse the juror from the
25 trial of this matter.

1 THE CLERK: Thank you. You may be seated.

2 You're excused from the trial of this case.

3 Juror number 208, Jonathan Thompson. What says the
4 State?

5 MS. MUNSON: Please present the juror.

6 THE CLERK: Thank you. What says the
7 Defendant?

8 MS. HORLBECK: Please swear Mr. Thompson.

9 THE CLERK: Thank you. You may be seated in
10 the jury box.

11 Juror number 8, Erica Barnes.

12 THE COURT: This is for the alternate now.

13 THE CLERK: What says the State?

14 MS. MUNSON: Please present the juror.

15 MS. HORLBECK: Please excuse Ms. Barnes.

16 THE CLERK: Thank you. You may be seated.
17 You're excused from the trial of this case.

18 Juror 211, Laura Toppeta. What says the State?

19 MS. MUNSON: Please present the juror.

20 MS. HORLBECK: Please swear the juror.

21 THE CLERK: Thank you. You may be seated in
22 the jury box.

23 THE COURT: Are there any matters we need to
24 take care of as far as the selection of the jury in this
25 case? From the State?

1 MS. MUNSON: No, sir, Your Honor.

2 THE COURT: From the Defense?

3 MS. HORLBECK: No, sir.

4 THE COURT: All right. The rest of you who
5 were not selected, you may be excused to go back down to
6 your assembly room. There will be further instructions
7 for you there. Thank you very much.

8 Everyone else, please remain seated.

9 (WHEREUPON, the jury panel exited the open court at
10 approximately 12:16 P.M.)

11 THE COURT: Ladies and gentlemen, let me just
12 make a few brief remarks to you relating to the process
13 we'll be in now and the -- a little bit about the times
14 that we will be going.

15 You've seen the process by which you were selected.
16 These parties felt like you were the best twelve to hear
17 this case, to be the deciders of the facts in this case.
18 There's thirteen of you. The alternate, the last juror
19 chosen, she's every bit as much a part of this jury as
20 anyone else. We pick an alternate because sometimes if
21 an emergency comes up, one of the jurors were to get sick
22 or have an emergency at home, we can continue with the
23 trial without having to start it all over again. That
24 alternate will step into the shoes of whichever juror had
25 to leave us. So she will always occupy that seat, just

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1 in case that we need to use her services during the
2 course of the trial. I'm honored to have a chance to
3 work with you in this matter. You may have some
4 apprehension about being here. You had a summons that
5 you received in the mail and you came and went through
6 the jury assembly, the film. And now, all of a sudden,
7 you're see yourself sitting in a jury box. I've told you
8 that you're going to be judges in this case and you may
9 have some apprehension about the title I've given you,
10 about the ability that you have. Ladies and gentlemen,
11 I'm assuring you now that you bring into this courtroom
12 every skill you're going to need to be the judge of the
13 facts in this case because what you bring into this
14 courtroom is the everyday experiences that you enjoy in
15 the home, in the workforce, social activities. You bring
16 into this courtroom the good commonsense with which
17 you've been blessed, that's what you're going to need to
18 utilize in deciding the facts of this case as the
19 evidence unfolds, as I give you the law at the end.

20 I know you're here at a sacrifice. I'm going to do
21 everything in my power to make sure that we run in a
22 smooth manner. I'll try to let you know when there might
23 be some times that you won't be actively participating
24 out here. I'm going to be the judge of the law and
25 at the end of the case I'm going to explain what the law

1 is under South Carolina statutes and cases. You, of
2 course, will be accepting that law as I state it to you.
3 Part of my job also is to preside over the course of the
4 trial, to decide when we take breaks, to decide when we
5 end the day, when we start in the mornings. I've told
6 you your job is going to be a good listener. Normally,
7 we will take a break every hour, hour and a half maybe,
8 depending on how long a witness is and when we get to a
9 good time to take a break. If there's ever a time you
10 need to take a break and I haven't called for a break,
11 please get my attention. You know, raise your hand, let
12 one of these bailiffs know. You've already had a chance
13 to meet the bailiffs to your left in the back, Mr.
14 Morris. He's certainly here to serve you. Ms. Simms
15 over to your right. Both of these bailiffs will be
16 helping you and helping me during the course of the week.
17 You get their attention. You get the attention of the
18 Clerk, Ms. Lanfear, from the Clerk's Office. She's the
19 one that called your name earlier. She'll be sitting
20 down here, she or another member from the Clerk's Office
21 to help conduct this trial. Seated directly in front of
22 me is Ms. Danette Hanks, the court reporter. She's
23 taking down everything that's said during the course of
24 this trial, maintain a record. Perhaps there will be
25 some exhibits marked. She'll help with that in marking

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1 those and identifying those. Seated to my right is David
2 Brown, a recent law school graduate and my law clerk.
3 He's a very helpful tool as well. During the court
4 proceedings you may see him come and go during the
5 course of the trial, to take care of matters back at the
6 office. Any of these folks will certainly be willing to
7 help you, to get my attention if I do miss you, because I
8 want to make sure you are comfortable so that you can be
9 observant to what's going on in the courtroom, to watch
10 the attorneys, to watch the activities, to listen
11 carefully as the testimony is given under oath.

12 Sometimes in the course of a trial an objection is
13 made. We operate under rules of procedure, under rules
14 of evidence. Part of my job is to rule on those
15 objections that are made. If one of the lawyers makes an
16 objection then sometimes I can rule immediately and say
17 sustained or overruled and we move on to the next
18 question or the next exhibit. Sometimes, as you've
19 already seen, we may have a sidebar where the attorneys
20 come up and we whisper and we can get a matter resolved.
21 Sometimes even in the course of a trial an issue may come
22 up where you'll need to be excused from the courtroom, go
23 back to your jury room while I listen to legal arguments.
24 I perhaps have to research law books. I may have to hear
25 some matters that wouldn't even be properly presented

1 before a jury. My job is to judge the law of the case.
2 And, sometimes, in order to do that, I have to hear
3 matters that would not be properly presented before you
4 for your decision on the evidence. I want to do the best
5 job I can in ruling upon these legal matters and
6 sometimes it requires that you be out of the courtroom
7 while I do that. Just in different stages of the trial
8 that happens.

9 You're a judge of the facts and I'm the judge of the
10 law. It's very similar that when all of the evidence is
11 in and I've instructed you on the law, you'll be back in
12 your jury room deciding what the facts are. Even though
13 I'm a judge like you, I won't be back there with you
14 giving you my opinion of the facts. I'm prohibited by
15 law, by our Constitution in South Carolina, to have an
16 opinion about the facts of a case. That's totally and
17 exclusively up to you, the trial jury. So you'll be
18 deciding the facts. I'll be deciding the law.

19 Sometimes it's easy for us to start deciding those
20 facts prematurely, too. You're not to be discussing this
21 case while it's in progress, one with another or with
22 anyone else, until all the evidence is in and certainly
23 until I've instructed you on the law. So as we come and
24 go, you be mindful of the fact that you're not to discuss
25 it one with another. Obviously, you're going to have

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1 family and loved ones and business associates or friends
2 who are going to know that you were on jury service this
3 week. Did you get picked? What's the case about?
4 They're going to want to say, well, let me tell you about
5 this. You should just tell those folks that you can't be
6 talking about the case. That's the commitment you've
7 made to these parties. You can't be receiving
8 information about the case. You've made a high
9 commitment. These attorneys have specially selected you.
10 You're going to have plenty of opportunity when this case
11 is over and concluded to share your experiences as being
12 a juror, sharing about what took place in the courtroom,
13 the facts that were presented to you, the evidence that
14 was. But while the trial is in progress, that's not the
15 time to be discussing it.

16 I hope you understand the purity of the process
17 we're involved in. We want to make sure that both
18 parties, the State and Mr. Hayes, they receive a fair
19 trial and you're a very important part of that process
20 that's now taking place.

21 Trials normally begin with an opening statement by
22 the attorneys and then the evidence will be presented,
23 some testimony, may be documentary evidence, tangible
24 evidence of some kind. After all the evidence is in, the
25 attorneys will again have a chance to address you in a

1 closing statement. I'll then instruct you on the law and
2 that's the point in the trial when I'll tell you that you
3 can now begin your deliberation. But you should not be
4 deliberating before that. It makes me proud that you've
5 accepted this responsibility to serve as a juror in this
6 case and I look forward to working with you, ladies and
7 gentlemen.

8 We have some matters that I need to take care. We
9 also have a lunch hour approaching. I don't know quite
10 how long these matters may take, but based upon the
11 procedures that I know that we're going to need to take
12 care of, it's probably not going to be -- we're not going
13 to need your services until probably three o'clock.
14 We're going to try to get part of our work done. We'll
15 take a short lunch break, get a sandwich, and then we'll
16 try to conclude some of the matters. Hopefully, we can
17 get some exhibits marked. The things that we can do now
18 hopefully will expedite the trial so it'll run smoothly
19 when you come back. So we're going to take care of some
20 of those matters. If you'll be back at three o'clock,
21 the bailiffs will show you where to report back. Let me
22 again remind you that you shouldn't be discussing the
23 case, one with another or with anyone else. You may be
24 out to lunch, you may go to lunch with your fellow
25 jurors. It would be improper for you to be speculating

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1 or talking about it. And you may be at a restaurant and
2 there might be a booth next to you or a table next to you
3 where some witnesses or others are talking about the
4 case. You take the initiative, ladies and gentlemen, you
5 just move to another table. You want to make sure that
6 all the information in your mind to decide this case is
7 coming from this courtroom and not from somewhere else.
8 I can't imagine that anyone would want to approach you
9 and give you information or ask you questions about this
10 trial now that you're a juror. If that were to happen,
11 please explain to that person you can't be talking about
12 it because that's part of my instruction to you. If an
13 individual were to persist and want to give you
14 information or ask you questions, please excuse yourself
15 as quickly as you can. If possible get the name of that
16 individual, report it back to me and I can assure you
17 I'll take care of that. Again, I don't anticipate that
18 happening. I just want you to realize that you need to
19 be on the alert.

20 When we come back to the courthouse, after your
21 lunch break, you may see these attorneys in the hallway
22 or on the elevator. And some of them may seem a little
23 unfriendly and high-hat you and walk another way. Don't
24 take that personally that the lawyers are avoiding you,
25 that's their training. They want to make sure there's no

1 appearance of any impropriety, that they're walking down
2 the hall and talking about a sporting event or the
3 weather or anything else, it can give the appearance of
4 an impropriety. So as you see these attorneys and they
5 seem distant toward you, you should certainly not hold
6 that against them. That's the way they've been trained
7 to do.

8 Ladies and gentlemen, we're in a high technological
9 information age. To such an extent our Chief Justice in
10 South Carolina has issued an order to all of us Trial
11 Judges, such as myself, to relay this order from the
12 Chief Justice to you as a sitting juror. Sometimes we
13 get curious and we want to research archives or we want
14 to check words and find out what the meaning is based on
15 what we've heard during the course of the trial. We
16 might want to do a little research ourselves, go to the
17 library, get on the internet, check things out. That
18 would be improper for you to do that, ladies and
19 gentlemen. You've made a high commitment under the
20 selection process that you're going to make a decision on
21 what takes place here and not anywhere else. It would be
22 improper. It would be against the Chief Justice's order
23 to you, related by me, to do any kind of independent
24 research about the case, check on any kind of archives.
25 It would be improper for you to discuss it with anyone.

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1 I'm confident these attorneys are going to give you all
2 the evidence that you're going to need to make a good
3 sound decision about this case. I'm going to do my best
4 to give you the law. And I believe under our system of
5 justice, that's the way the decision has to be made. Not
6 from extraneous sources.

7 You have a good lunch; a little extended today.
8 We'll usually operate until five. Sometimes it may go to
9 five-thirty or quarter to six depending again on the
10 witness. But we'll be ready to start usually at nine
11 o'clock in the morning. We'll certainly work around
12 those schedules as we need to. If you'll go with Ms.
13 Simms now, she'll show you where your jury room will be
14 and where you're to report back. And I look forward to
15 seeing you at three o'clock.

16 (WHEREUPON, the jury exited the open courtroom at
17 approximately 12:32 P.M.)

18 THE COURT: Do y'all need a short break or can
19 we do part of it now and take a break? The Neil v.
20 Biggers, is that going to be longer?

21 MS. MUNSON: It's just two witnesses, Your
22 Honor.

23 THE COURT: Why don't we at least get part of
24 it and then we can see whether y'all -- whether we're
25 going to get an hour lunch or a thirty minute lunch. So

1 let's see what we can do on those.

2 MS. ADAMS: May it please the Court?

3 THE COURT: Yes, ma'am.

4 MS. ADAMS: The State would now call Chris
5 Miller.

6 THE CLERK: Mr. Miller, if you would come
7 forward to be sworn in, please. Please place your left
8 hand on the bible and raise your right.

9 Do you swear or affirm that the testimony you're
10 about to give is the truth, the whole truth and nothing
11 but the truth, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Thank you. You may be seated.
14 Would you please state your name for the record.

15 THE WITNESS: Christopher Miller.

16 THE CLERK: Thank you.

17 CHRISTOPHER MILLER,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MS. ADAMS:

21 Q. Officer Miller, where are you employed?

22 A. Greenville County Sheriff's Office.

23 Q. Okay. And in what capacity?

24 A. I am a homicide investigator.

25 Q. And how long have you been with them?

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1 A. I've been with the Sheriff's Office since 1999. I
2 started my law enforcement career in 1994.

3 Q. Okay. Now, were you involved in this case, the
4 State v. Ralph Hayes?

5 A. Yes, ma'am.

6 Q. Will you please briefly explain to the Court how you
7 became involved?

8 A. I was the on-call investigator on that evening, June
9 the 13th, 2009.

10 Q. Were you involved in a photo display, a photo
11 including Mr. Hayes?

12 A. Yes, I was.

13 Q. Okay. When did that occur?

14 A. That was on June the 19th, 2009.

15 Q. 2009?

16 A. Yes.

17 Q. And who was this photo lineup done with? Who was
18 the individual you showed the photos to?

19 A. That was Mr. White.

20 Q. Okay. Is that Larry White?

21 A. Larry White, yes.

22 Q. I'm going to show you what's been pre-marked as
23 State's Exhibit Number 1. Do you recognize those photos?

24 A. Yes, I do.

25 Q. Are those the photos that were used in this lineup?

1 A. Yes, they are.

2 Q. Now, let's get a description of the way the lineup
3 was done. Was Mr. White brought to you?

4 A. He was. He was brought to me by the Greenville City
5 Police Department.

6 Q. Okay. And how? I mean, what was done?

7 A. Okay. We were -- the witnesses identified Mr. Hayes
8 as the boyfriend of the victim, Ms. Alexander. And while
9 trying to locate him, we put together what we call a
10 BOLO, which is be on the lookout. And it was a flier
11 with his picture and we had our directive patrol units
12 pass that out on Thursday, June the 18th of 2009. Then
13 on the morning of June 19th, 2009, Mr. White approached a
14 city officer and said that he may know something about
15 this case and may know something about Mr. Hayes. And at
16 that time, it was brought to the sheriff's office
17 attention and then he was brought down to the law
18 enforcement center.

19 Q. Okay. So on June 19th of 2009, Mr. White was
20 brought to the law enforcement center. About what time
21 of day did this occur?

22 A. It was A.M.

23 Q. A.M.?

24 A. Yes, it was first thing in the morning.

25 Q. All right. Late morning?

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- 1 A. No. It was about nineish.
- 2 Q. All right. And was Mr. White, did he appear to be
- 3 of sound mind, under the influence of anything when you
- 4 met with him?
- 5 A. No. He was of sound mind.
- 6 Q. Okay.
- 7 A. He was ---
- 8 Q. So these pictures, is this the order or the manner
- 9 in which the lineup was shown to him?
- 10 A. Yes, it is.
- 11 Q. Okay. Before you showed him these pictures,
- 12 Detective, did you give him any instructions?
- 13 A. Yes. We always advise that the defendant may or may
- 14 not be in these photos. There's going to be a series of
- 15 six photos with -- using similarities. And then I
- 16 instruct the person looking at the photo lineup to look
- 17 at it closely, take their time and to make sure if they
- 18 do recognize a person, that they're a hundred percent
- 19 sure. And if they're not sure don't say anything at all.
- 20 Just tell me that you don't recognize them.
- 21 Q. Okay. Now, did you suggest to Mr. White the
- 22 selection of anyone in particular ---
- 23 A. No.
- 24 Q. --- from this lineup?
- 25 A. No.

- 1 Q. Did you in any way indicate to him which photo in
2 this lineup was of Mr. Hayes?
- 3 A. No, I did not.
- 4 Q. Now, once you showed him these pictures, did he
5 select one?
- 6 A. He did. He, almost immediately, went to photo
7 number five, which is Mr. Hayes.
- 8 Q. Detective Miller, I'm going to now refer you to
9 what's been marked as State's Exhibit Number 2. Do you
10 recognize that document?
- 11 A. This is a Greenville County Sheriff's Office
12 Affidavit of Photographic Identification.
- 13 Q. Okay. And that Affidavit indicates he selected
14 number five?
- 15 A. Number five.
- 16 Q. Now, Mr. White's selection of Mr. Hayes in this
17 lineup, did he appear to be sure of his selection?
- 18 A. Yes, he was completely sure.
- 19 Q. Okay. Did he choose any other photo, other than Mr.
20 Hayes?
- 21 A. No, ma'am.
- 22 Q. And did he mark his selection on the lineup?
- 23 A. Yes, he did.
- 24 Q. And he communicated clearly to you that that was his
25 selection?

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1 A. He did.

2 Q. He did not indicate to you that he had any confusion
3 or that he was unclear about this photo of Mr. Hayes?

4 A. No, he was completely clear.

5 Q. And, again it's, Detective Miller, your testimony
6 that there was no suggestion on your part for Mr. White
7 to select Mr. Hayes in this lineup?

8 A. No, not at all.

9 Q. Okay. Would you say he was comfortable when you met
10 with him?

11 A. Yes. We offered coffee and gave him a comfortable
12 place to look at the photos.

13 Q. Okay. All right.

14 MS. ADAMS: Your Honor, we submit these to you
15 just for purposes of this hearing, Exhibits that have
16 been marked State's Exhibits 1 and 2.

17 THE COURT: Any objections for the purpose of
18 this hearing to 1 and 2?

19 MS. JOHNSON: Judge, we need to see them.

20 THE COURT: You want to look at those, just for
21 the purpose of this hearing that being ---

22 MS. ADAMS: That's the questions from the
23 State.

24 THE COURT: And then the witness is yours Ms.
25 Johnson, Ms. Horlbeck.

1 MS. JOHNSON: Judge, for the purpose of this
2 hearing, that's fine.

3 THE COURT: All right. The witness is yours.

4 MS. JOHNSON: Judge, just as a preliminary
5 matter, I would just ask that Mr. White leave. He's
6 going to be testifying after Detective Miller. If we
7 could sequester him and if we could also sequester the
8 witnesses throughout this trial. I failed to do that
9 earlier, Judge.

10 THE COURT: All right. Mr. White will step out
11 and any other witnesses.

12 MS. MUNSON: I don't mind Mr. White stepping
13 out, Your Honor. I think that's completely appropriate.
14 But one of the witnesses that may testify is Janie
15 Ashmore. She's the mother of the victim and I would
16 object to her being kept away from this.

17 THE COURT: Well, we'll comply with the
18 victims' statute. In other words, the State is saying
19 that the mother of the victim would be allowed under the
20 statute to be here. Everyone else will be sequestered.

21 MS. JOHNSON: That's fine, Your Honor.

22 THE COURT: All right.

23 MS. MUNSON: And, also, Detective Miller stays.

24 THE COURT: Yeah. He'll be the prosecuting
25 witness. He'll be here.

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1 MS. MUNSON: Okay. Thank you, Your Honor.

2 THE COURT: But for those two. Is White out
3 now?

4 MS. ADAMS: Yes.

5 THE COURT: All right. You may proceed in your
6 cross-examination.

7 MS. JOHNSON: Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 **BY MS. JOHNSON:**

10 Q. Detective Miller, were you aware that this BOLO
11 flier was floating around at the shelter the night
12 before?

13 A. Yes.

14 Q. Okay. You weren't there. Do you know what
15 detective or officer was there?

16 A. Our directive patrol division was asked to do that
17 by our supervisors.

18 Q. Okay. And are you aware that he showed this flier
19 to the people at the shelter?

20 A. Yes.

21 Q. Okay. And are you also aware that upon seeing this
22 flier, Mr. White did not positively identify Mr. Hayes?

23 A. At what point?

24 Q. That first night?

25 A. No, I'm not aware of that.

1 Q. Okay. You don't know who Mr. White talked to that
2 night while he was at the shelter after seeing this
3 picture?

4 A. No.

5 Q. Okay. So let me get this straight. Mr. White calls
6 the police the next day?

7 A. Yes.

8 Q. Okay. And a police officer comes out to Labor
9 Finders?

10 A. That's my understanding.

11 Q. Okay. And there's a big crowd of people? Or a
12 crowd of people?

13 A. Generally. I've been there before, generally.

14 Q. Okay. And you don't know what information was
15 shared with Mr. White prior to him getting in the police
16 car?

17 A. No.

18 Q. Okay. So Larry calls you or you're -- you meet with
19 Larry, I should say?

20 A. I was contacted by one of my partners.

21 Q. Okay. And then you show him this lineup eventually?

22 A. Eventually, yes.

23 Q. Okay. And are you aware if the BOLO picture and the
24 picture on the lineup are the same picture?

25 A. They -- yes.

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1 Q. They're the same picture?

2 A. Yes.

3 Q. Okay. And he just saw that same picture the night
4 before?

5 A. Yes.

6 Q. Okay. And he didn't ---

7 A. I'm assuming that he did, yes.

8 Q. Okay. And he didn't make an ID that night before?

9 A. I wasn't there, so I don't know.

10 Q. Okay. And your testimony is that there's no
11 surprise that he picked out Ralph's picture on June 19th?

12 A. No, he picked it out immediately.

13 Q. Okay. There's no surprise there?

14 MS. MUNSON: Objection, Your Honor, to that
15 tone. I know the jury's not in here but just the ---

16 THE COURT: Overruled.

17 Q. And what instructions did you give Mr. White before
18 the lineup?

19 A. That there was six random photos and that the
20 Defendant may or may not be in the photos and that they
21 would be numbered. And I needed him to study and look at
22 it very hard and make sure to see if he did recognize
23 anyone in the photo. But if he did not, to not say
24 anything, just tell me that he did not -- he couldn't
25 pick anyone out.

1 Q. Okay. But, again, it's the same picture that he
2 presumptively saw the night before.

3 A. Yes.

4 Q. Okay.

5 MS. JOHNSON: That's all I have, Your Honor.

6 THE COURT: Any redirect?

7 **REDIRECT EXAMINATION**

8 **BY MS. ADAMS:**

9 Q. One question, Detective Miller. Were you ever told
10 that he, Mr. White, had seen the picture the night
11 before?

12 A. No, ma'am.

13 MS. ADAMS: That's all, Your Honor.

14 THE COURT: All right. Thank you, sir. You
15 may step down.

16 MS. ADAMS: The State now calls Larry Dell
17 White.

18 THE CLERK: Mr. White, if you would come
19 forward to be sworn in, please. Please place your left
20 hand on the bible and raise your right.

21 Do you swear or affirm that the testimony you're
22 about to give is the truth, the whole truth and nothing
23 but the truth, so help you God?

24 THE WITNESS: Yes, ma'am.

25 THE CLERK: Thank you. You may be seated.

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1 Would you please state your name for the record.

2 THE WITNESS: Larry Dell White.

3 THE CLERK: Thank you.

4 LARRY DELL WHITE,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MS. ADAMS:

8 Q. Good afternoon, Mr. White.

9 A. How you doing?

10 Q. Mr. White, where do you live now?

11 A. Centreville, Illinois, [REDACTED] Base Avenue.

12 Q. And that's East St. Louis?

13 A. Centreville, Illinois. People get it mixed -- yeah.

14 Q. All right. And how long have you been there?

15 A. I got back June the 2nd, 2010.

16 Q. Well, were you living in Greenville in June of 2009?

17 A. Yes.

18 Q. And why were you here?

19 A. Just traveling, exploring, you know. I had been --

20 I lived here four times. The first time I came was back

21 in 1998.

22 Q. But you were living here in June?

23 A. Yes.

24 Q. Mr. White, you understand why you're here today?

25 A. Yes.

1 Q. We're going to talk a little bit about this lineup
2 that you did with the sheriff's office.

3 A. Uh-huh (affirmative).

4 Q. Do you remember what date you participated in that?

5 A. I don't. I know it's in June.

6 Q. Okay. June 2009?

7 A. Yes. It was real hot.

8 Q. Well, how did you become involved in this case?

9 A. Okay. It was hot that day, real hot. And I was
10 waiting on the church to feed down here and so I was
11 behind Able Body. It's a labor hall. And I ran up on
12 the individual back there crying, drinking, I think, a
13 Bud Ice, drinking a beer, crying, crying. I'm trying to
14 cheer him up. I said, what's wrong, brother? He said,
15 man, I done -- can I cuss?

16 Q. Yeah. Just say what he said.

17 A. He said, man, I done fucked up. I said, well, we
18 all fuck up. He said -- and he just kept on crying. I
19 said, man, we all fuck up, man. I said, man, I fucked up
20 back. I cashed my brother's check, man, and I done
21 messed up with womens and everything. We all, we all do
22 that. He said, no, man, I really fucked up bad this
23 time. I mean, I fucked up bad. Still trying to cheer
24 him up. He kept on crying. And we started talking and
25 everything and he kept saying, man, I fucked up bad. I

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1 done fucked up real, real bad. And he said, when I tell
2 my sister, it's going to fuck her up. I said, where you
3 going man? He said, I'm going to Kentucky. But he never
4 did show me the ticket to -- said he was going to. And
5 then we kept on talking and he said ---

6 Q. How long did you talk to this individual?

7 A. Probably a good hour, something like that, because
8 we was waiting on the church to feed. I know I was. And
9 then he starts -- and he brought up, yeah, man, I went
10 home, I went home and found my girl dead. He said, the
11 dope dealers had killed this girl.

12 Q. So stop right there, Mr. White. Now, you're having
13 this conversation with this individual.

14 A. Yes.

15 Q. And are you outside or are you inside?

16 A. Outside.

17 Q. Okay. What time of day?

18 A. It's in the evening time because the church start
19 feeding about five o'clock if I ain't mistaken. Yeah.
20 Five o'clock they start feeding.

21 Q. So about five o'clock. So it's still daylight?

22 A. Yes.

23 Q. How -- are you sitting facing this person? I mean,
24 can you get a good ---

25 A. Good look.

1 Q. --- real look at his face?

2 A. It was a bench. He's sitting on the other side with
3 his back against a wall and I'm sitting on the other
4 side, on the end.

5 Q. Okay. Was he as close to you as I am to you ---

6 A. Yes.

7 Q. --- or closer?

8 A. Yes, yes.

9 Q. Okay. So it's your testimony that you were able to
10 get a very good look at his face?

11 A. A good look.

12 Q. Okay. And you talked for about an hour to him?

13 A. Yeah.

14 Q. So you have this hour-long conversation. And what
15 happens after that?

16 A. Okay. He say he found his girl dead. He said, the
17 dope mans killed her, cut her all up. And I said, damn.
18 He said, they had her panties down to her ankles and put
19 -- and she's in the bathtub. And I said, well, what you
20 do? He say he ran out because he say he figured that
21 they thought he did it. I said, well, why you, you know,
22 why you didn't call the police? And he said, because
23 it's my girlfriend. And so we started talking about
24 other things and he kept on crying. I'm trying to cheer
25 him up. He kept on crying, everything. Then he said, he

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- 1 hesitated, but you ain't never killed nobody. He said it
2 like that. And I said, no, I thank God that I haven't.
3 And that's when it hit me. Then a couple of days later,
4 some of the guys I met living here said that ---
5 Q. Now, slow down.
6 A. Okay.
7 Q. So now you say a couple of days later. Are you
8 talking about two days later, a week later?
9 A. Maybe two, because I was at the labor hall. They
10 was talking about this girl they knew, used to hang over
11 there at the Shady Rest, had got stabbed and cut all up.
12 Q. But you had this conversation with this man at the
13 Able Body ---
14 A. Labor hall, yeah.
15 Q. --- Labor Hall?
16 A. Uh-huh (affirmative).
17 Q. Five o'clock in the evening, still daylight, for
18 about an hour?
19 A. Yeah.
20 Q. So a few days later then you hear about ---
21 A. Yeah.
22 Q. --- this murder?
23 A. Uh-huh (affirmative).
24 Q. Okay. Now, where were you when you heard about this
25 woman being killed?

1 A. At Able Body.

2 Q. Able Body?

3 A. Yeah.

4 Q. And did something happen in particular that got
5 people talking?

6 A. Because they knew her. I didn't know her.

7 Q. Okay.

8 A. They knew her. I'm like, damn, man, this guy was
9 talking about this girl, talking about this -- I'm
10 talking to myself then. And I said, well -- I think it
11 was the next morning, if I ain't mistaken, Labor Finders,
12 and I said -- I told one of the dispatchers, I said, call
13 the policeman about that girl that got cut all up, man.
14 I was talking to this guy, man, and, you know, I don't
15 know what's up, but call them. And they ---

16 Q. So you're thinking now that this is the guy you had
17 the conversation with?

18 A. Yeah. Yes.

19 Q. Well, let me ask you this Mr. White. Now, when
20 these people are talking about this lady being murdered,
21 have the police been through there?

22 A. Not at Able Body.

23 Q. Okay. Had the police been through there -- had you
24 seen a picture or anything?

25 A. No, I haven't, no. Not me.

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1 Q. Of this man?

2 A. No, uh-uh (negative).

3 Q. Of anybody?

4 A. No.

5 Q. So you have -- when you hear them talking about this
6 murder, you have a dispatcher at Labor Finders ---

7 A. Yes.

8 Q. --- call the sheriff's office?

9 A. Yes. Uh-huh (affirmative).

10 Q. All right. So what happens after that?

11 A. So they come get me and I started telling them what
12 this guy had told me. We talked about -- maybe I was in
13 there about three hours or so. And I'm telling them what
14 he was telling me, you know. And they interviewed me and
15 everything. And they went and got some photographs.

16 Q. Okay. Hold on. Hold. Excuse me. Okay. Now,
17 before you look at these pictures, you're talking with
18 who at the sheriff's office?

19 A. Some of the officers. I forgot their name.

20 Q. Okay. Was it Detective Miller, do you remember that
21 name?

22 A. I couldn't remember their name, but I know they, you
23 know, detective.

24 Q. So before you're shown pictures, what did they tell
25 you?

1 A. They told me to pick the guy out that you talked to
2 that day.

3 Q. Okay. And, again, you have never seen a picture?

4 A. Never seen it in my whole life.

5 Q. And when you talked to him at Able Body Ready, you
6 had, had you ever seen him before?

7 A. Had never seen it in my entire life.

8 Q. Okay. But this is a few days later?

9 A. Yes.

10 Q. Now, I'm going to refer you to what's been marked as
11 State's Exhibit Number 1.

12 A. Uh-huh (affirmative).

13 Q. Does that look familiar to you?

14 A. When I looked at it, I picked out number five.
15 Wasn't even a minute.

16 Q. Now, why were you so sure?

17 A. Because I remember that face, because I'm looking at
18 -- while he talking to me, I'm looking dead in his face
19 because he, he kept crying. And kept saying, I f-ed up.
20 Man, I done f-ed up so bad this time, so bad.

21 Q. And I'm going to refer you to what's been marked as
22 State's Exhibit Number 2. Does that look familiar to
23 you? Did you sign that?

24 A. Yes. Uh-huh (affirmative).

25 Q. Showing that you chose number five ---

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- 1 A. Yes. Uh-huh (affirmative).
- 2 Q. --- on that lineup?
- 3 A. Yes.
- 4 Q. Now, Mr. White, looking at these pictures, do these
- 5 men -- I mean, are they of similar build, hair style and
- 6 were they all bald?
- 7 A. He's bald.
- 8 Q. Okay. And I mean, would you say that most of these
- 9 men look similar to you?
- 10 A. No. Like I said, I was close. I talked to him for
- 11 a whole hour and I knew, when he showed me the
- 12 photographs, I knew which one to pick out because I
- 13 talked to him for a whole hour. I'm looking dead in his
- 14 face while I'm trying to cheer him up because he's
- 15 crying.
- 16 Q. So without any hesitation you chose number five?
- 17 A. It wasn't even, wasn't even maybe three seconds and
- 18 I picked him out.
- 19 Q. Ralph Hayes?
- 20 A. Yeah.
- 21 Q. Do you see him in the courtroom?
- 22 A. Yes.
- 23 Q. Okay. Let the record reflect -- point him, point
- 24 him out?
- 25 A. Right there.

1 MS. ADAMS: Let the record reflect that he did
2 point out the Defendant, Ralph Hayes, in the courtroom.

3 Q. Now, Mr. White, I want to be sure that no one
4 influenced your decision when you made this selection. I
5 mean, did anyone point to him and ask you, could that be
6 him?

7 A. Nobody.

8 Q. Did anyone, again, suggest a particular photo, you
9 know, again suggesting that that might be ---

10 A. No.

11 Q. --- the Defendant?

12 A. No.

13 Q. When you made this selection, it was totally without
14 any influence from anyone?

15 A. Yeah.

16 Q. Were you the only one in the room with the detective
17 at the time?

18 A. Just me and the detective, yeah.

19 Q. Okay. Were you under the influence of anything?

20 A. Sober.

21 Q. No alcohol?

22 A. Nothing.

23 Q. No drugs?

24 A. Nothing.

25 Q. What time of day was this?

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1 A. It was the morning.

2 Q. Early morning, late morning?

3 A. About nine-thirty, ten, somewhere along there
4 because the labor hall was open. You know, I was waiting
5 to try to get on.

6 Q. So you were fully awake?

7 A. Yeah.

8 Q. Okay. Answer any questions from the Defense.

9 MS. JOHNSON: May it please the Court?

10 THE COURT: Yes, ma'am.

11 **CROSS-EXAMINATION**

12 **BY MS. JOHNSON:**

13 Q. Mr. White, you talked to this man for an hour?

14 A. Yes.

15 Q. Okay. And you saw the tears in his eyes?

16 A. Yeah. Crying.

17 Q. Crying. Okay. And you saw a picture the night
18 before this photo identification lineup?

19 A. No, I never did, no.

20 Q. You never saw that?

21 A. No.

22 (WHEREUPON, Defendant Exhibit Number 1 was marked
23 for identification.)

24 Q. Okay. Mr. White, I'm going to hand you what's been
25 marked as Defendant's Exhibit 1 for this -- for purposes

1 of this hearing only.

2 A. Uh-huh (affirmative).

3 Q. You gave a statement in this case; correct?

4 A. Uh-huh (affirmative).

5 Q. I'm going to hand you this statement. I'm going to
6 get you to read starting with, then last night, Thursday.

7 Will you read that for me?

8 A. Last night, Thursday, June the 18th, around nine-
9 thirty P.M.

10 Q. Can you speak up? Right here.

11 A. Then last night, Thursday, June the 18th around
12 nine-thirty P.M. or so the sheriff officer, deputy came
13 around to where we sleep at the Inn, was showing pictures
14 of the guy or asking if we knew the guy. They didn't
15 tell us what he had done. So, at first, I didn't really
16 look at the picture. There was someone, there was some
17 rumors, some rumors that the guy had just stole some
18 checks but nobody knew for sure. Then this morning they
19 were telling me that the guy had stabbed his girlfriend a
20 bunch of times. And that when I told the guy at the
21 Labor Finders that the guy that the sheriff officer was
22 looking for last night was the same guy that last week
23 had told me about ---

24 Q. Okay. I'm going to stop you. That's all I need.

25 A. Okay.

1 Q. Okay. So you looked at the picture?

2 A. I didn't see no pictures. I didn't see them. I
3 didn't see no picture.

4 Q. But you had to look?

5 A. No, I didn't see no pictures.

6 Q. You said, at first, I didn't really look at the
7 picture.

8 A. I didn't see no pictures that night.

9 Q. Well, then how did you find out that the police were
10 even looking for him.

11 A. Well, now, I'm saying when I saw him the first time
12 in my life when I met him at Able Body, okay. I didn't
13 say what time the cops was looking for him. I'm saying
14 that I seen him that Sunday afternoon crying. That's the
15 first time I ever saw that man. And when they showed me
16 the pictures, I pointed him out, who I talked to.

17 Q. Okay.

18 A. That's the only time I saw that man's face, the only
19 time in my whole life. The only time I saw him.

20 Q. But you didn't answer my question. How did you know
21 they were looking for him then?

22 A. I didn't say that.

23 Q. So you just heard a bunch of rumors?

24 A. About what?

25 Q. About somebody stealing checks and you're going to

1 go call the police?

2 A. I don't know nothing about that.

3 Q. Okay.

4 A. I don't know nothing about that.

5 Q. Okay. Well, you didn't call the police the next
6 morning?

7 A. Call them?

8 Q. You didn't call officer Morton with Greenville City
9 to come pick you up?

10 A. No. Like I said, when I got back to Able Body and
11 some of the guys who I met when I got here was telling me
12 about this girl had got killed. And while I'm listening
13 and I'm saying -- and the way they was saying about how
14 she got killed, I'm like kind of like, damn, I talked to
15 this dude behind Able Body. I'm talking to myself this.
16 And so the next morning, a couple of days before -- I
17 mean, after, I went to Labor Finders and said, hey, man,
18 look, you need to call the police because I talked to
19 somebody and I need to talk to somebody about this girl
20 who got killed, stabbed up.

21 Q. Okay. So let me stop you there. You're telling me
22 that you told somebody at Labor Finders to call the
23 police?

24 A. No, no, not -- yeah. Yeah.

25 Q. Okay.

1 A. Yeah.

2 Q. Well, they didn't call the police?

3 A. Yes, they did.

4 Q. When?

5 A. They called the same morning, the same morning when

6 they took me down there to interview me.

7 Q. We're confused?

8 A. What you mean?

9 Q. Well, you talked to Mr. Ralph on June 9th, okay?

10 And then you eventually talked to the police on June

11 18th, nine days -- or excuse me -- June 19th. Ten days

12 go by before the police contact you. Don't you think

13 that if you had information prior, they would have come

14 out to you and talked to you?

15 A. Okay. Listen, number one, I was homeless on the

16 street, okay? No, I was homeless. And like I said, I

17 heard peoples around this from her, talking about that

18 case. And by me being homeless and got other things on

19 my mind, okay, and I said, well, ---

20 Q. So you had other things on your mind than somebody

21 being killed.

22 A. Okay. Listen. Let me finish now, please. And I

23 had other things on my mind, where to lay my head that

24 night and where to get something to eat at. And they

25 talking about it, and I said, well, you know what, to

1 myself, I remember this guy back in Able Body talking
2 about this girl got killed and it was his girlfriend. So
3 I decided then to go and tell it -- the guy at the labor
4 hall to call the police.

5 Q. Okay.

6 A. That's why I took so long.

7 Q. Well, and you gave a statement, right? You gave a
8 statement right after this incident, on June 19th?

9 A. Yeah. I guess the same day. I can't remember the
10 date now.

11 Q. I'm going to give you a copy of your statement and I
12 want you to find in your statement where you called the
13 police prior to this date?

14 A. I don't see it now.

15 Q. I'm going to stop you, Mr. White. You didn't make
16 any point of contacting the police. They contacted you.

17 A. What you mean? No, no. Like I said, like I said, a
18 couple days after, I went to the labor hall and -- well,
19 what I been hearing people talk about, I decided to do
20 the right thing and say, hey, man, you need to call the
21 sheriff officer or police officer because -- about that
22 girl that got killed.

23 Q. Well, why isn't there any record of it?

24 A. Well, I don't know. I don't know.

25 Q. I mean, that's kind of important information ---

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1 A. I don't know. I don't know. I just was telling
2 them what he told me that day.

3 Q. You're a witness. You're a key witness, and if the
4 police get a call that you know something about this case
5 that they're investigating, they're going to come right
6 then and there and talk to you.

7 A. Well, like I said ---

8 Q. They didn't do that until ten days later.

9 A. Like I -- hold on. Like I said, after I talked to
10 him, this guy sitting over here, and after I heard some
11 other peoples talking about it, that's when I decided to
12 go report this.

13 Q. To do the right thing?

14 A. Yes. Okay because when they said we know this girl,
15 we know her. And I was like to myself, well, I been
16 talking to this guy in the back of Able Body. And he
17 said this is his girlfriend and all this and the dope man
18 killed her, so I decided to tell the guy to call the
19 police.

20 Q. But you decided to do the right thing after you saw
21 this man's picture ---

22 A. I didn't see his picture.

23 Q. --- being flashed around?

24 A. No, no, no, uh-uh (negative). No.

25 Q. Okay. Well, let's say you didn't see it.

1 A. No, I didn't see his picture.

2 Q. You heard about people ---

3 A. Talking.

4 Q. --- talking about ---

5 A. They knew her. They knew her. I didn't see his
6 picture at all.

7 Q. Well, that's not what your statement says. Your
8 statement says ---

9 A. No, I didn't see it.

10 Q. --- I didn't really look at the picture.

11 A. I didn't see the picture.

12 MS. JOHNSON: Beg the Court's indulgence.

13 That's all I have, Your Honor.

14 THE COURT: Any redirect?

15 MS. ADAMS: Just a couple of questions, Your
16 Honor.

17 **REDIRECT EXAMINATION**

18 **BY MS. ADAMS:**

19 Q. Mr. White, when you had dispatch call the sheriff's
20 office ---

21 A. Uh-huh (affirmative).

22 Q. --- is that when someone came out ---

23 A. Yes.

24 Q. --- and picked you up?

25 A. Yes. It was a black officer. Yes.

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1 Q. Okay. Was it the same day or the next day?

2 A. What you mean? It was the same day -- I mean, when
3 I told them to call, they came out the same morning. And
4 he said, someone will be here shortly. And he came up.
5 I talked to a black officer first and some more officers
6 after that. I talked to him about a hour, then they
7 interviewed me too.

8 Q. Okay. So when you called the police you got a
9 response?

10 A. Yes, yes, yes.

11 Q. And you never saw a photo?

12 A. I never saw a photo, never.

13 Q. Before the photo lineup?

14 A. No, never.

15 Q. All right.

16 MS. ADAMS: That's all, Your Honor, from the
17 State.

18 THE COURT: All right. Thank you, sir. You
19 may step down, Mr. White.

20 MS. ADAMS: Your Honor, that's all from the
21 state for purposes of this hearing.

22 THE COURT: Anything from the Defense?

23 MS. JOHNSON: Your Honor, I would ask that you
24 suppress the in-court identification.

25 THE COURT: Is there any evidence that you wish

1 to present on this hearing?

2 MS. JOHNSON: No, Your Honor.

3 THE COURT: Okay. Let's take a lunch break
4 now, how about that. And then we've got all the
5 evidence in here. We've got three other issues. Flight,
6 pictures and 403s; correct?

7 MS. MUNSON: 404(b), Your Honor.

8 THE COURT: 404, excuse me. And then you've
9 got one witness, one more witness?

10 MS. MUNSON: On?

11 THE COURT: On -- it seemed like there was one
12 witness. Two on one, and one on another.

13 MS. MUNSON: Yes. Just one witness that we may
14 need if you want to hear it on the 404.

15 THE COURT: Okay.

16 MS. MUNSON: Although you may -- that might not
17 even be necessary.

18 THE COURT: All right. Have y'all got any
19 cases or anything that David could be looking at over
20 lunch on any of these issues. We'd be glad to be
21 reviewing those now.

22 MS. MUNSON: I only have my own copies.

23 THE COURT: Okay. Well, why don't you make
24 some copies and then if y'all have some, y'all can make
25 them and get them to him.

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1 MS. MUNSON: We'll get them to him.

2 THE COURT: Since we're moving it along, we
3 might even get an hour lunch. Let's try to be back about
4 ten after two.

5 MS. MUNSON: Okay.

6 THE COURT: That way we'll be able to proceed
7 on.

8 (WHEREUPON, the court stood at recess for a lunch
9 break.)

10 THE COURT: All right. Let's wind up our Neil
11 v. Biggers matters. I'll be glad to hear from you, Ms.
12 Johnson, or Ms. Horlbeck.

13 MS. JOHNSON: Judge, at this time, we're asking
14 the Court to suppress the identification. I think this
15 identification hinges on Mr. White's statement. Of
16 course, he denies that he saw the BOLO picture before,
17 but he says in his statement, the sheriff's office
18 deputies came around to where we sleep at and they were
19 showing pictures of the guy and were asking if we knew
20 the guy. They didn't tell us what he had did. So at
21 first, I didn't really look at the picture.

22 Well, you know, he comes in here and he denies
23 looking at the picture. But before that BOLO picture was
24 floated around the shelter, Mr. White never came to the
25 police. He never made a call. So it's kind of rather

1 convenient that he comes in the day after this picture is
2 floated around this shelter and says, I need to make a
3 statement.

4 So I do want to go over the factors to be considered
5 in determining the likelihood of misidentification. The
6 first one is the opportunity of the witness to view Ralph
7 and the degree of attention. Those two kind of go
8 together. According to Mr. White's very own statement,
9 he talks to this man for an hour and then can't identify
10 him initially in this BOLO picture. The time between the
11 crime and the confrontation could not have been more than
12 two weeks. There was no prior description made by Mr.
13 White. He could have gleaned all the descriptive
14 information from the picture. And we would argue that he
15 leaves out some key details at his identification. And
16 as to the level of certainty, there is no certainty
17 demonstrated by Mr. White as he needs a second
18 identification. He couldn't identify him in the first
19 attempt. So -- and I'm going to argue that that's only
20 when it matters. The night before the police are
21 floating around pictures of Ralph without using a photo
22 lineup. He sees Ralph's picture, knowing the police are
23 looking for him. As he says, he didn't know what he did.
24 But my argument is, it doesn't matter. He knows the
25 police are looking for him and he does not identify Ralph

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1 at this time. He says he didn't get a good look at
2 Ralph, but he had to look at the picture at some point.
3 So in a fit of conscience, Larry walks to talk to the
4 police. The next day, he participates in a lineup with
5 presumptively the same picture he saw the night before.
6 And the second time is a charm, of course.

7 And my argument is that he shouldn't get a second
8 bite at the apple by getting a second look. This whole
9 process is tainted. Of course he's going to pick out of
10 the lineup Ralph because it's the psychology of crime
11 scene recency. And coupled with the fact that the rumor
12 mill was going crazy at the shelter the night before.
13 People were saying that Larry or that man or that person
14 in that BOLO killed his girlfriend. At that point, he
15 decides to identify Ralph, twelve hours after he
16 initially saw the picture. The lineup procedure is
17 impermissibly suggestive and gives rise to a likelihood
18 of misidentification. And, you know, I feel like the
19 prosecution is going to say, well, they can cross-examine
20 Larry Dell White. They can cross-examine the officer.
21 No. This whole process is tainted and is suggestive and
22 this evidence should be suppressed.

23 THE COURT: All right. Thank you. Ms. Adams.

24 MS. ADAMS: Your Honor, may it please the
25 Court. Your Honor, in Ms. Johnson's mini-closing, she

1 points out several things. And in response the
2 prosecution's -- we'll point out for the Court that
3 you've heard testimony from Mr. White who sought out the
4 police himself. He adamantly denied that he saw the
5 photo before he picked Mr. Hayes out in the lineup. You
6 heard his testimony that he was outside, broad daylight,
7 face-to-face with this man for at least an hour. So he
8 had more than ample opportunity to see his face, his
9 features, and without hesitation -- granted it was a few
10 days later -- but without hesitation, without any
11 reservations, he picked Ralph Hayes out of that photo
12 lineup.

13 You heard from Detective Miller who described -- who
14 testified he described the procedure to Mr. White,
15 suggested at no time that Mr. Hayes picture was even in
16 that lineup. All the subjects in the lineup were of
17 similar complexion. All had bald heads. And despite all
18 of that, Larry Dell White chose Mr. Hayes out of that
19 lineup.

20 There was no testimony whatsoever to any
21 suggestibility or any influence. Detective Miller
22 testified that Mr. White, again, did not hesitate.
23 Within a few seconds of looking at what was -- clearly he
24 looked at the pictures very closely, but he chose this
25 man. He did not choose anyone else. He showed no

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1 indications that he was mistaken about the identity of
2 the man he had spoken to, again, just a few days later
3 [verbatim] for more than an hour.

4 So, again, based on all of that we would ask the
5 Court to allow the testimony and this eyewitness
6 identification.

7 THE COURT: Can you, Ms. Adams, give me -- I
8 know y'all are familiar with the time line. The death
9 occurred on the 7th of June?

10 MS. ADAMS: We're not sure when the death
11 occurred.

12 THE COURT: Okay.

13 MS. ADAMS: She was last seen alive on the 7th.

14 THE COURT: All right.

15 MS. ADAMS: Mr. White spoke to Mr. Hayes on the
16 9th, which would be that Tuesday, June 9th.

17 THE COURT: All right. And then what was the
18 date of the statement, the 19th?

19 MS. ADAMS: Well, he contacted law enforcement
20 on the 18th. Law enforcement came out, spoke with him
21 briefly, and took him into law enforcement on the 19th.

22 THE COURT: Okay. So he spoke with them a day
23 before?

24 MS. ADAMS: Yes.

25 THE COURT: Okay. And so the BOLO was on the

1 18th and then the statement was on the 19th?

2 MS. ADAMS: Yes. The BOLO was around the 17th
3 or the 18th. Yes, sir.

4 THE COURT: Okay. All right. Ms. Johnson.

5 MS. JOHNSON: Judge, I would just draw your
6 attention to the fact that timing is everything here.
7 Prior to this lineup or BOLO, I should say, Mr. White
8 never went to the police. And from his very own
9 statement, last night, Thursday, June 18th, around nine-
10 thirty or so, the sheriff's office deputies came around
11 to where we sleep at. He didn't contact the sheriff's
12 office, they contacted him. He had the opportunity to
13 make the identification then and he didn't.

14 MS. ADAMS: Your Honor.

15 THE COURT: Yes, ma'am.

16 MS. ADAMS: To I clear that up. He contacted
17 law enforcement. He did that at his own initiative. He
18 called them when he heard the rumors. Again, he denied
19 that he ever saw the photo that was being circulated at
20 the shelter. He contacted them and they almost
21 immediately responded to him on the 18th, and he went
22 into law enforcement on the 19th, which is when he was
23 shown the photo lineup.

24 THE COURT: Well, I've reviewed the Exhibits,
25 including the statement put up by the Defense. And I

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1 believe in light of the witness's testimony as to his
2 opportunity to see this individual and the accuracy of
3 that description, I think this is a proper
4 identification. I believe all the factors have been met
5 by the State. So, over your objection, Ms. Johnson, I
6 will allow the photo identification in and the testimony.
7 All right. What's our next ---

8 MS. MUNSON: The next thing, Your Honor, is we
9 would like to introduce 404(b) evidence, specifically a
10 prior conviction for domestic violence against the victim
11 and the live testimony of the deputy who was on the
12 scene, who will testify that he heard the defendant
13 threaten the victim. That happened on September the 6th
14 of 2008.

15 Now, he's got a total of four convictions for
16 domestic violence against this victim, Your Honor. And
17 I'm just going to concede right now that the three
18 earlier ones are too far removed or not quite clear
19 enough. So I'm not even going to try to introduce those.
20 This other one, though, I do think is proper under
21 404(b). And we can call the deputy or however you want
22 to ---

23 THE COURT: All right. I'll need to hear his
24 testimony.

25 MS. MUNSON: Okay. The State calls Jason

1 Hayden.

2 THE CLERK: Mr. Hayden, if you would come
3 forward to be sworn in, please. Please place your left
4 hand on the bible and raise your right.

5 Do you swear or affirm that the testimony you're
6 about to give is the truth, the whole truth and nothing
7 but the truth, so help you God?

8 THE WITNESS: I swear.

9 THE CLERK: Thank you. You may be seated.
10 Would you please state your name for the record.

11 THE WITNESS: Jason Hayden.

12 THE CLERK: Thank you.

13 **JASON HAYDEN,**

14 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

15 **DIRECT EXAMINATION**

16 **BY MS. MUNSON:**

17 Q. Mr. Hayden, you were with the sheriff's office back
18 in September of 2008?

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

20 Q. And you got a call involving a Jackie Alexander?

21 A. Yes, ma'am.

22 Q. Do you remember the date?

23 A. September 6th, 2008.

24 Q. Okay. And where did you go?

25 A. Lakeside Apartments.

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- 1 Q. In Greenville County?
- 2 A. Yes, ma'am.
- 3 Q. What type of call was it?
- 4 A. A domestic disturbance.
- 5 Q. Okay. When you got there, were you -- did you go by
- 6 yourself?
- 7 A. Yes, ma'am.
- 8 Q. Okay. And when you got there, was it an apartment,
- 9 a house?
- 10 A. It was an apartment.
- 11 Q. Okay. Did you go in?
- 12 A. Yes, ma'am.
- 13 Q. How many people were in there?
- 14 A. Just two.
- 15 Q. And how did they identify themselves?
- 16 A. Mr. Hayes answered the door and I could hear Ms.
- 17 Alexander in the back, or someone crying.
- 18 Q. Okay. And were you allowed into the apartment?
- 19 A. Yes, ma'am, I was.
- 20 Q. Did you have an opportunity to observe how this
- 21 Defendant was acting towards Ms. Alexander?
- 22 A. Yes, ma'am.
- 23 Q. How was he acting towards her?
- 24 A. Very aggressive.
- 25 Q. What do you mean by that?

1 A. He was being aggressive to me and also towards her.
2 When I was trying to get her side of the story, he was
3 over-talking her, telling her that she would get what was
4 coming to her, and making minimal threats and stuff of
5 that nature.

6 Q. Okay. And did you take him into custody that night?

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

8 Q. Okay. And how was he acting towards you?

9 A. Very aggressive. He stated to me that he wasn't
10 going to go to jail tonight. If he was going to go
11 tonight, I'd better call for backup. At that time, I
12 withdrew my taser and he became compliant.

13 Q. Okay. Did the female in the apartment, did she have
14 any injuries on her?

15 A. No physical injuries at that time.

16 Q. Okay. All right.

17 MS. MUNSON: I have nothing further at this
18 time, Your Honor.

19 THE COURT: Any cross-examination?

20 MS. HORLBECK: Judge, at this point, I don't
21 believe I have any cross, but I would like to be heard.

22 THE COURT: All right. Step down, officer.

23 Yes, Ms. Horlbeck.

24 MS. HORLBECK: Judge, our position is that this
25 information that Deputy Hayden just testified to doesn't

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1 fit into any exception under State v. Lyle. And the
2 probative value of this testimony is just extremely
3 prejudicial and it out -- the probative value is
4 outweighed by the prejudicial effect that this is going
5 to have.

6 I would point out that under the case law that I
7 have read, there is a very distinct temporal connection
8 between the incidents. Here, we don't have that temporal
9 connection, Judge. We have a situation where this deputy
10 reported to the incident location in September of 2008.
11 And the incident that Mr. Hayes is on trial for today
12 happened nine months later in June. We just don't
13 believe that that shows the necessary temporal connection
14 that is required for this type of evidence to come in.
15 And that if this evidence comes in in front of the jury,
16 it's just going to be overwhelmingly prejudicial. I'm
17 afraid that they would just be moved by their passions to
18 make a decision rather than make their decision just on
19 the facts that we'll discuss today.

20 THE COURT: All right. Thank you. Anything
21 from the State on that?

22 MS. MUNSON: There has to be a logical
23 relevance, Your Honor. I'm not sure that I remember
24 reading anything that it must be within a certain time
25 period, although that is certainly helpful. I think

1 there is -- one of these cases I looked where it was
2 almost three years between the trial case and the one
3 that the State was trying to introduce. I'm trying to
4 find that right now. But in any event, it's the State's
5 position that it was close enough in time. He made a
6 direct threat that he would get her and that she would
7 get hers. And then she's dead nine months later. We do
8 believe that there's the logical relevance. Certainly,
9 it's prejudicial but it's not unfairly prejudicial. It
10 goes towards motive and intent, which although we don't
11 necessarily have to prove motive, it certainly is
12 circumstantial evidence of malice. So for all these
13 reasons, Your Honor, we would certainly ask that you
14 allow us to use that.

15 THE COURT: Is there going to be any evidence
16 concerning the nine months in between?

17 MS. MUNSON: No, Your Honor. I mean, there is
18 some evidence out there but I can't -- legally, I don't
19 think that I should try to get that in.

20 THE COURT: Ms. Horlbeck?

21 MS. HORLBECK: Judge, I would direct the
22 Court's attention to State versus King, 334 SC 504. And
23 I think that this -- State versus King is a good example
24 of the type of evidence that is admissible. And our case
25 is certainly distinguishable from that. Judge, in State

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1 versus King, the evidence was that the defendant actually
2 stole the victim's watch and that stealing of the watch
3 happened prior to a rape incident. So, of course, the
4 victim testified against the defendant for stealing her
5 watch. And he got put in prison, got put on the chain
6 gang. After he was let off the chain gang, he went --
7 the defendant went to go rape the victim and told her,
8 I've come to kill you. I've been planning every day
9 since you put me on the chain gang for stealing your
10 watch. That is the kind of temporal connection that is
11 necessary between the statement and the incident, Judge,
12 and we don't have that here. The statement that the
13 State wants to get in happened nine months before this
14 lady ever passed away. I don't think that that is a
15 logical or relevant connection, not enough of a
16 connection for this evidence to come in.

17 THE COURT: All right. I don't believe the
18 proffered evidence would be admissible. I think the
19 probative value substantially is outweighed by the
20 prejudicial effect based upon the standard of proof that
21 I need. So I will not allow that testimony in.

22 Anything else that we have now? Pictures?

23 MS. MUNSON: Yes, Your Honor. I'll let Ms.
24 Hornbeck go over those.

25 MS. HORLBECK: I'm going to start with the easy

1 one, first, Judge.

2 THE COURT: How many pictures are there total?

3 MS. HORLBECK: I believe there's -- was it
4 fifty-six.

5 MS. MUNSON: There were forty-six that are on
6 the CD.

7 THE COURT: Okay.

8 MS. HORLBECK: I'm going by the numbers that I
9 saw. Quite frankly, just to begin on an easy foot,
10 pictures thirty-eight and forty-one are literally the
11 same picture. And I didn't know if that was an oversight
12 or if I just got the wrong disk. I'm referring to the
13 disk that you dropped of at -- the State dropped off at
14 the public defender's office this weekend. When I
15 reviewed it, pictures thirty-eight and forty-one are
16 literally the same picture.

17 MS. MUNSON: There will be -- two or three of
18 the photographs are used several times in the CD for
19 different reasons. We may show one photograph looking
20 into the door, just to show the jury the outline or the
21 layout of the place. We may show that photograph again
22 when we go back to where evidence was collected and the
23 forensic technician puts a little circle there, much the
24 same as he would do with a laser pointer.

25 But the thing is, Judge, the photographs that will

1 be in evidence, that's what will be in evidence, not
2 doubles of it. And I don't think that the CD itself is
3 something that should be introduced into evidence. It's
4 simply a demonstrative aid for the jury and for the
5 technician, rather than going through this bulky pile of
6 forty-seven photographs.

7 THE COURT: So the pictures are going to be
8 shown to the jury but not introduced into evidence?

9 MS. MUNSON: No, they will be introduced into
10 evidence first through the officer who took them.

11 THE COURT: Okay.

12 MS. MUNSON: I'll get him to look through all
13 of them and he will -- I anticipate he's going to be able
14 to say, yes, these are the photographs I took, an
15 accurate depiction and so on and so forth. And then I
16 will offer them into evidence. Then, what I would want
17 to do is rather than one-by-one put those photographs on
18 the presenter, move them around, get everybody dizzy,
19 that we just use this Power Point that he has put
20 together. And I've got a copy of it right here if you
21 want to look through it.

22 THE COURT: So the photographs are going to be
23 into evidence. The CD is not going to be into evidence.
24 It's going to be the demonstrative?

25 MS. MUNSON: Correct.

1 THE COURT: Ms. Horlbeck, have you seen the
2 photographs?

3 MS. HORLBECK: I have.

4 THE COURT: And you're saying photograph forty-
5 one and photograph thirty-eight are the same?

6 MS. HORLBECK: Yes, sir, but I was referring to
7 the numbered photographs on the demonstrative aid.

8 THE COURT: Are those going to be consistent?
9 Are the hard photographs the same number as the CD?

10 MS. MUNSON: No. They will have State's
11 Exhibit Numbers on them. And there aren't any numbers on
12 the CD. They haven't been numbered yet.

13 THE COURT: So you just counted, Ms. Horlbeck,
14 the thirty-eighth one you've looked at?

15 MS. HORLBECK: I just -- I went by the numbers
16 that were on the demonstrative aid because that's where I
17 saw some numbers.

18 THE COURT: Okay.

19 MS. HORLBECK: And I thought that might be the
20 easiest for everyone to follow along. Maybe we could ---

21 MS. MUNSON: What we've done, Judge, is this is
22 the stack of photographs that I would like to introduce
23 into evidence. Now, none of these are duplicates. And I
24 gave the Defense an exact copy of this. There are no
25 duplicates in here. You will, on the CD, see one or more

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1 photographs more than once. In other words, the officer
2 -- the first thing he does is photograph the outside of
3 the house. Then he photographs the inside of the house.
4 Well, then we may go back to one photograph of -- the one
5 I have in my mind is, there's a letter, like a -- a
6 letter on a stairs, just using a photograph that you've
7 already seen on the CD. And then we use that one again
8 for him to point out where he found the drop of blood.

9 THE COURT: All right. Ms. Horlbeck, do you
10 have an objection to the photographs. Let's talk about
11 the photographs first, then we'll talk about the CD.

12 MS. HORLBECK: Yes, sir. And I've got the ones
13 that I'm objecting to on the basis that they are
14 cumulative. And I'm sure the State will argue that the
15 photographs corroborate one or more witness' testimony;
16 however, I believe that one photograph is -- you can make
17 that argument about it being necessary to help the
18 witness or corroborate the witness' testimony. But I
19 don't believe three photographs are needed to corroborate
20 the testimony. For example, we've got several
21 pictures of the downstairs bathroom, and they're just
22 varying degrees of -- they just vary in how close up the
23 picture is. But essentially, they end up being the same,
24 a picture of the same thing. And I would just ask the
25 State to choose. I know the State doesn't want to, but

1 those are my objections. Should I hand the pictures up
2 that I'm objecting to, Judge?

3 THE COURT: Does the jury need to see three
4 photographs that are unmarked?

5 MS. MUNSON: Do they need to see ---

6 THE COURT: Three of the same photograph that
7 you're not going to ---

8 MS. MUNSON: Well, I -- certainly I disagree.
9 The first photograph is just what the officer is seeing
10 as he goes through the house. As he gets closer, there
11 are different things about what has fallen out of the
12 ceiling that get his attention. One is, the stain
13 itself. The other thing is how it has splashed up on the
14 toilet. So those are different things to him.

15 MS. HORLBECK: Right.

16 MS. MUNSON: And those aren't even particularly
17 gruesome.

18 MS. HORLBECK: Okay. Well, we still have two
19 pictures of the same exact stain that I object to. And
20 I'm asking that the State choose a picture and not choose
21 the other.

22 THE COURT: One is a close-up of the stain and
23 one is a distance ---

24 MS. MUNSON: Yes, sir.

25 THE COURT: --- photograph of the stain?

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1 MS. HORLBECK: Yes, sir.

2 THE COURT: Okay. What other photographs do we
3 have issues with?

4 MS. HORLBECK: Judge, it's the same issue with
5 the vent in the downstairs bathroom. One is a faraway
6 picture of the vent and the other is a picture of the
7 vent where some -- I guess, alleged blood possibly
8 dripped through. And I have the same objection with
9 respect to that.

10 And, again, we have a picture of two rooms. One is,
11 I guess, a guest bedroom on the left. The other is a
12 photograph of the victim in the bedroom -- I mean, in the
13 bathroom. And in the second photograph we have a close-
14 up of the victim in the bathroom. And then you have a
15 third picture of the victim in the bathroom. Just all
16 varying degrees of closeness. And we have the same
17 situation with the pictures of the bathtub. We've got a
18 faraway picture of the tub with blood in it, and then a
19 close-up of the blood stains. And those are my
20 objections to the photographs, Your Honor.

21 THE COURT: What probative value would it be to
22 the jury to have those back in their jury room, Ms.
23 Munson? The duplicates of closer and further away.

24 MS. MUNSON: Well, they're not duplicates, Your
25 Honor. They're absolutely not duplicates. What we have

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1 a responsibility and a right to do is as much as possible
2 help them understand what the scene looked like, not just
3 a shot from here to where the bailiff is of the body, but
4 also what was around the body, what was not around the
5 body. The blood stain stuff, there's some blood stain in
6 the tub, but there's also a further back shot is there
7 for a different purpose, so that the forensic person can
8 show from where he recovered fingerprints. The probative
9 value is to, as much as possible, help them to understand
10 what the scene looked like, what was there, what was not
11 there. None of these ---

12 THE COURT: Can I see the pictures?

13 MS. MUNSON: Your Honor, I hate to do this, but
14 can I just add something while you're going through
15 those?

16 THE COURT: Yes, ma'am.

17 MS. MUNSON: And I've provided these to the
18 Defense. If the Court wants to look at these, there are
19 much more gruesome, horrible photographs that we took
20 care, with the forensic person, to pick out the ones that
21 were necessary but not as bad as some of these, if you
22 want to review these as well.

23 THE COURT: All right. If you'll bring those
24 up and I'll look through them.

25 MS. MUNSON: We don't intend to introduce any

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1 autopsy photographs, no close-ups of her face.

2 THE COURT: Let me give you these back so we
3 don't get them confused.

4 Ms. Horlbeck, can you tell me which ones are exactly
5 the same that you -- you said thirty-eight and forty-one
6 on the disk. But now we're looking at the pictures.

7 MS. HORLBECK: Judge, the pictures that you're
8 looking at, no, I don't see any ---

9 THE COURT: Yeah. I'm thinking of the last
10 ones I was looking at. In other words, aren't they all
11 at different angles, close-up, further away or a
12 different place in the room?

13 MS. HORLBECK: No. I would not say that they
14 are all close up. I would say ---

15 THE COURT: Show me which ones are the --
16 exactly the same.

17 MS. HORLBECK: No, they're -- I'm not saying
18 that they're exactly the same, Judge. I was talking
19 about the Power Point when I made that reference.

20 THE COURT: Okay.

21 MS. HORLBECK: The objection I've got to these
22 photographs are that they are -- if one photograph is
23 further back, shows everything, then I'm asking the Court
24 to make the State use just that photograph, rather than
25 using a close-up of the same thing.

1 THE COURT: So if they use that on the screen,
2 they could just zoom it up and make it larger, would they
3 be allowed to do that or not?

4 MS. HORLBECK: I don't know whether they have
5 that capability.

6 THE COURT: But if they did, would that be the
7 same matter? To put one at a distance and then put the
8 zoom lens on there and make it larger, wouldn't that be
9 the same thing?

10 MS. HORLBECK: No. I think that's different.
11 I think when you're talking about photographs like these
12 that tend to jerk at one's emotions, the more cumulative
13 -- the more you have the more cumulative that is. And
14 that's the standard that I'm asking the Court to apply.
15 Not that there's so many other more horrible pictures
16 they could put in, but whether or not the photos are
17 necessary to substantiate a material fact or necessary to
18 corroborate testimony or are they cumulative? And my
19 objection is that the photographs that I've just
20 discussed are cumulative.

21 THE COURT: Well, perhaps we might need to just
22 -- are you going to -- your plan, Ms. Munson, was to show
23 all the photographs and get them to identify them, and
24 then have them talk about each photo on the Power Point?

25 MS. MUNSON: Yes, sir. That the group of

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1 photographs, once they're in evidence will just go
2 wherever the evidence goes. But in order to present
3 them, as a demonstrative aid for him, and for the jury.

4 THE COURT: But without the Power Point, the
5 same effect could be done on the picture with the laser
6 and a pointer and so forth?

7 MS. MUNSON: Sure.

8 THE COURT: Well, maybe I just need to have her
9 object as the pictures are introduced. We might have to
10 do them one-by-one rather than a package because I might
11 need to see what he's laid as the foundation for the
12 first few pictures to -- is there anyway to go to the CD
13 to do that simultaneously with the pictures being
14 introduced rather than all at one time? I don't want to
15 prevent you from using your Power Point necessarily, but
16 ---

17 MS. MUNSON: We could do that, Your Honor.

18 THE COURT: I'm going to have to have a basis
19 upon which each picture is admissible.

20 MS. MUNSON: And in introducing the
21 photographs, he will say that. I'm not going to just
22 throw forty-six pictures at him and say, are these your
23 pictures?

24 THE COURT: Okay.

25 MS. MUNSON: We'll go group-by-group. What

1 does this group show? He's going to say this group shows
2 me -- shows the angle of the building. What does this
3 show? This shows looking into the bathroom. What does
4 this show? The location of the vent. And you can see
5 that the vent is in the ceiling.

6 THE COURT: Are you going to offer them into
7 evidence in groups?

8 MS. MUNSON: Yes, sir.

9 THE COURT: All right. Well, let's see how
10 that develops. Are there other objections to the
11 photographs, other than there's a duplication?

12 MS. HORLBECK: No, Your Honor.

13 THE COURT: Okay. We might have to just take a
14 little longer, but hopefully we can see how it develops
15 on that. Anything else?

16 MS. HORLBECK: Yes, Your Honor. Just that I
17 believe the State is going to offer evidence of flight
18 and we are asking that that not be offered. Judge, the
19 cases that I've read, and I'm looking specifically at
20 State versus Pagan, 369 S.C. 201, and that cites United
21 States versus Bean, which is 664 F.2d 414, and that's a
22 Fourth Circuit Case. Judge, the evidence must create an
23 inference that the Defendant had knowledge he was being
24 sought by authorities. And we don't believe that there's
25 any such evidence that Mr. Hayes knew that he was sought

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1 by authorities. He was apprehended, I believe, a year
2 later in New York, Judge. And I believe the State
3 intends to offer that as evidence of flight and I'd ask
4 that that be excluded.

5 THE COURT: Solicitor?

6 MS. MUNSON: It's actually a little more than
7 that, Your Honor. Mr. White is going to testify that the
8 Defendant told him that he was thinking fleet because
9 everybody was going to think he did this to his
10 girlfriend. This is not just a suggestion from the fact
11 that he was caught in New York. This is from his own
12 mouth. And he told this to the witness after the victim
13 was dead but before her body was discovered. He said he
14 was leaving because he was afraid they were going to
15 think he did it. So I think that certainly does
16 indicate that he was fleeing the authorities. And I
17 haven't had a chance to review these cases, Your Honor.
18 And I don't intend to say he was fleeing the authorities.
19 But I do think we should be allowed to say that he said
20 he was going to go, and he did go.

21 THE COURT: I believe Pagan's analysis would
22 allow that evidence in based upon what the State proposes
23 that Mr. White is going to say. And I think the nexus is
24 greater there for the offense charged and the flight.
25 Again, that's the -- it certainly won't be charged to the

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1 jury, flight. But I'll allow the State to bring that
2 testimony up based upon the nexus between when the
3 alleged event occurred and the statement was made to this
4 witness. Any other matters we need to take care of
5 now?

6 MS. MUNSON: Just for clarification, Your
7 Honor, I intend to call Chris Manly from the Greenville
8 County Sheriff's Office and would ask him to testify that
9 he personally went to New York September the 20th, 2010,
10 and got the Defendant and brought him back to South
11 Carolina.

12 THE COURT: He's going to be your first
13 witness?

14 MS. MUNSON: For his convenience, yes, sir, I
15 was going to call him first.

16 THE COURT: All right.

17 MS. MUNSON: But I don't have to.

18 THE COURT: Any other matters we need to take
19 care of?

20 MS. HORLBECK: No, sir.

21 MS. MUNSON: Nothing else, Your Honor.

22 THE COURT: Do y'all need a five-minute break
23 before we start? Are we all right. Everybody's ready to
24 go?

25 MS. HORLBECK: I'm ready.

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1 MS. MUNSON: We're good.

2 THE COURT: We'll have the jury sworn and then
3 have your opening statements. So he'll be somewhat
4 lengthy?

5 MS. MUNSON: My opening?

6 THE COURT: Your first witness?

7 MS. MUNSON: Oh. No, sir, Your Honor.

8 THE COURT: He won't be? All right.

9 MS. MUNSON: I went to New York and got him.

10 THE COURT: All right.

11 MS. MUNSON: That's it.

12 THE COURT: Okay. Let's have our jury come in
13 if they're ready.

14 (WHEREUPON, the jury entered the open court at
15 approximately 3:11 p.m.)

16 THE COURT: Thank you for bearing with us,
17 ladies and gentlemen. We're now ready to proceed with
18 the trial of the case. The attorneys are going to now
19 make an opening statement to you. I told you before that
20 what the attorneys have to say to you in opening
21 statement -- or maybe I didn't tell you, but I'll tell
22 you now -- that's not evidence. The evidence is going to
23 come from the witness stand and it's going to come from
24 any tangible evidence or photographs or otherwise. These
25 attorneys will be addressing you. They'll give you an

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1 overview of what you need to be alerted to, what you can
2 expect during the course of the trial. I'm sure it will
3 be very valuable information for you to have. I urge you
4 to listen carefully as they address you. But bear in
5 mind that what they tell you is not evidence. You'll
6 hear the evidence after their opening statements.

7 Before these attorneys address you, the Clerk's
8 going to administer an oath to you. I hope you'll listen
9 carefully as this oath is administered to you. It's a
10 time-honored oath. It's been in existence since well
11 before the foundation of our country. Citizens such as
12 you have sat in chairs such as yours throughout the
13 foundation of our country and even in England before
14 then, have decided what the facts are in a case. And I'm
15 confident that you'll be able to fulfill that task, as
16 well. After the oath is given, then the State will
17 proceed with its opening statement. Ms. Lanfear.

18 THE CLERK: Would you please stand and raise
19 your right hand. The response to the oath is I will.

20 You shall well and truly try the case 2011-GS-23-
21 7681, The State -vs- Ralph Beverly Hayes, Sr., indicted
22 for murder and possession of a weapon during the
23 commission of a violent crime, and a true verdict render
24 according to the law and the evidence, so help you God?

25 (WHEREUPON, the jury was duly sworn.)

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Opening Statement by Ms. Munson

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1 THE COURT: Solicitor, you may address the jury
2 in your opening.

3 MS. MUNSON: May it please the Court, ladies.

4 **OPENING STATEMENT**

5 **BY MS. MUNSON:**

6 Ralph Hayes loved Jackie Alexander. Evidence in
7 this case will show that he loved her to death, that he
8 killed her by stabbing her and that he is guilty of
9 murder. He is guilty of killing her maliciously,
10 intentionally and with malice.

11 Back in June of 2009, it had been a while since
12 anybody had seen or heard from Jackie Alexander. So one
13 of Jackie's sisters, Barbara, went over to Jackie's place
14 just to check on her. She got over to Jackie's apartment
15 on Galphin Drive in Greenville County on a Saturday
16 evening, and she let herself into Jackie's apartment
17 through the open front door. And she found her sister in
18 the upstairs bathroom of her apartment dead.

19 Good things can happen to a human soul after death,
20 but nothing good happens to a human body. Because
21 Barbara found her sister in what the medical examiner
22 will tell you is a moderate state of decay. The
23 condition of her body was such that at the time and on
24 the scene, law enforcement and other personnel who got
25 there weren't really sure what had happened here.

1 An autopsy was performed on Jackie's body. And she
2 died as a result of being stabbed twenty-eight times in
3 her chest, in her abdomen and a lot in her back.

4 While Jackie's family was mourning her and burying
5 her, the Defendant was nowhere to be found. In fact, it
6 was September of 2010 that he was brought back to South
7 Carolina from New York to face these charges.

8 Now, as far as evidence goes in this case, what you
9 might want is the Defendant in possession of the murder
10 weapon, the Defendant confessing to law enforcement, her
11 DNA on him; things of this nature. We don't have that,
12 but what we do have is going to be sufficient to leave
13 each and every one of you firmly convinced that he's
14 guilty of murdering Jackie Alexander and possessing a
15 deadly weapon while he did it. You'll hear some
16 fingerprint evidence important for where these things
17 were found. You'll hear a little bit of DNA evidence
18 only relating to Jackie. And you will hear about a
19 conversation that the Defendant had with a homeless guy
20 after Jackie was dead, but before her body was found.

21 We introduced ourselves to you earlier. I'm Judy
22 Munson and this is Wanda Adams. We're the prosecutors in
23 this case. It's our duty and it's our great privilege to
24 represent the people of South Carolina in this matter, in
25 particular, the people of Greenville County. And at the

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Opening Statement by Ms. Horlbeck

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1 close of this case, after carefully considering the
2 evidence, we will ask you, without hesitation, to find
3 the Defendant guilty of murder and of possession of a
4 weapon during a violent crime. Thank you.

5 THE COURT: Ms. Horlbeck, you may address the
6 jury.

7 **OPENING STATEMENT**

8 **BY MS. HORLBECK:**

9 Good afternoon, ladies and gentlemen. My name is
10 Caroline Horlbeck. This is Teal Johnson. And it is our
11 great privilege to represent Ralph Hayes. He's an
12 innocent man and he's not guilty of these charges.

13 Now, when I was preparing for this case, I was doing
14 a little bit of surfing on the net to try to find a word
15 that I thought would best describe this case from the
16 defense point of view. And the word I found -- and y'all
17 have probably heard of it before, but I hadn't -- it was
18 panacea. Panacea is just a fancy word for snake oil.
19 And if you look at the ingredients of snake oil, it's
20 made up of mineral oil, red pepper, turpentine, something
21 known as camphor, and beef fat. And what they would do,
22 what the salesmen would do is they would take this snake
23 oil and they would sell it to the first Europeans that
24 came over here. And they would get these guys to buy
25 this stuff by saying that the -- mischaracterizing the

1 ingredients in the snake oil and saying, buy this stuff.

2 This oil can do all kinds of things that it really can't

3 do. And it can cure all kinds of things that it really

4 can't cure. And when I saw that, I thought, great.

5 That's a perfect description for this case. Because

6 that's what the State's trying to do.

7 Their evidence -- they're trying to mischaracterize

8 their witnesses and their evidence to say Mr. Hayes did

9 and said things that he didn't do and didn't say. Now,

10 we don't know who did this to Ms. Alexander. We're not

11 going to be able to tell you. But no one's going to come

12 into this courtroom and say that Mr. Hayes was in Ms.

13 Alexander's condo at the time she was attacked and died.

14 There's not going to be anyone coming in here with a

15 weapon that has Mr. Hayes' fingerprints on it. They

16 can't even find a weapon. And there's not going to be

17 anyone coming in here saying that Mr. Hayes' DNA is all

18 over the condo. Now, at this point some of you may be

19 wondering how can this woman say that this man is not

20 guilty when there's been an arrest warrant and an

21 indictment issued? And my answer to you would be,

22 wouldn't it be a horrible country that we live in if all

23 the government had to do was get an arrest warrant and an

24 indictment to get somebody convicted. Thankfully, our

25 country requires so much more. The government in this

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Opening Statement by Ms. Horlbeck

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1 case has the burden of proof and they have the burden of
2 bringing you witnesses and evidence that prove their
3 claims. And their witnesses and their evidence have to
4 dispel reasonable doubt and it has -- and their witnesses
5 and their evidence has to overcome the presumption of
6 innocence.

7 We believe that at the end of this case it's going
8 to be abundantly clear that they haven't met their
9 burden. Ralph Hayes had nothing to do with Ms.
10 Alexander's attack or her death. Find him not guilty.

11 THE COURT: Solicitor, you may call your first
12 witness.

13 MS. MUNSON: Thank you, Your Honor. The State
14 calls Christopher Manly.

15 THE CLERK: Mr. Manly, if you would come
16 forward to be sworn in, please. Please place your left
17 hand on the bible and raise your right.

18 Do you swear or affirm that the testimony you're
19 about to give is the truth, the whole truth and nothing
20 but the truth, so help you God?

21 THE WITNESS: Yes, ma'am.

22 THE CLERK: Thank you. You may be seated.
23 Would you please state your name for the record.

24 THE WITNESS: Christopher Manly.

25 THE CLERK: Thank you.

1 CHRISTOPHER MANLY,
2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
3 DIRECT EXAMINATION
4 BY MS. MUNSON:
5 Q. Who do you work for, sir?
6 A. Greenville County Sheriff's Office.
7 Q. What is your job title?
8 A. I'm a deputy sheriff in our warrant division.
9 Q. What are your duties?
10 A. Our duties include the location and apprehension of
11 people that have active warrants with this agency. We
12 also assist in extradition of people back to Greenville,
13 South Carolina.
14 Q. Okay. How long have you been with the sheriff's
15 office?
16 A. About six years.
17 Q. How long in the warrants?
18 A. A little over three.
19 Q. All right. Now, back in September of 2010, did you
20 perform your duties relative to this case?
21 A. Yes.
22 Q. Where did you go?
23 A. We went up to New York.
24 Q. And why were you going there?

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- 1 A. To pick up the Defendant, Mr. Hayes.
- 2 Q. Okay. Did you go by yourself?
- 3 A. No, ma'am. I went with Master Deputy Ron Bishop.
- 4 Q. Okay. At anytime during this process were you
- 5 separated from Ron Bishop?
- 6 A. No.
- 7 Q. And where did you go in New York?
- 8 A. We went to the Bronx.
- 9 Q. Any particular location?
- 10 A. We picked up the Defendant from the Bronx Superior
- 11 Court.
- 12 Q. Okay. How long were you with the Defendant?
- 13 A. I would say that he was brought to the Superior
- 14 Court, handed over to our custody, probably early to mid-
- 15 afternoon. And we didn't return back to Greenville until
- 16 probably around nine o'clock that evening.
- 17 Q. All right. And he traveled with you?
- 18 A. Yes.
- 19 Q. How long were you with him altogether?
- 20 A. Altogether that day? Six hours, maybe.
- 21 Q. Okay. Do you think you would recognize him if you
- 22 saw him again?
- 23 A. Yes.
- 24 Q. Do you recognize him now?

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Christopher Manly - Cross Examination by Ms. Horlbeck

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1 A. I do.

2 Q. Could you please tell the jury where he is?

3 A. He's sitting at the Defense table in the blue shirt.

4 Q. Okay.

5 MS. MUNSON: I have nothing further, Your

6 Honor.

7 THE COURT: Any cross-examination.

8 MS. HORLBECK: Just briefly.

9 **CROSS-EXAMINATION**

10 **BY MS. HORLBECK:**

11 Q. Mr. Manly, were you at all connected in any way with
12 the investigation in this matter?

13 A. No, ma'am.

14 Q. Thank you.

15 MS. HORLBECK: That's all I have.

16 THE COURT: Thank you, sir. You may step down.

17 MS. MUNSON: Your Honor, may this witness be
18 excused?

19 THE COURT: Without objection, the witness may
20 be excused.

21 MS. ADAMS: Your Honor, the State now calls
22 Barbara McNeil.

23 THE CLERK: Ms. McNeil, if you would come
24 forward to be sworn in, please. Please place your left
25 hand on the bible and raise your right.

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1 Do you swear or affirm that the testimony you're
2 about to give is the truth, the whole truth and nothing
3 but the truth, so help you God?

4 THE WITNESS: Yes, I do.

5 THE CLERK: Thank you. You may be seated.

6 Would you please state your name for the record.

7 THE WITNESS: Barbara McNeil.

8 THE CLERK: Thank you.

9 **BARBARA MCNEIL,**

10 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

11 **DIRECT EXAMINATION**

12 **BY MS. ADAMS:**

13 Q. Ms. McNeil, do you live in Greenville County?

14 A. Yes, ma'am.

15 Q. Are you related to the victim, Jacquelyn Alexander?

16 A. Yes, ma'am.

17 Q. What did you call her?

18 A. Jackie.

19 Q. And was she your sister?

20 A. Yes.

21 Q. We're going to get into some hard testimony.

22 A. Okay.

23 Q. I need for you to speak up so that the jury can hear
24 you and the court reporter, okay?

25 A. Okay.

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1 Q. Let's go back to June 13th. Did you go to Jackie's
2 apartment?

3 A. Yes, ma'am.

4 Q. Tell the Court and the jury why you went to her
5 apartment?

6 A. I went to Jackie's apartment because my dad called
7 me and told me to go check on her.

8 MS. HORLBECK: Your Honor, I object to hearsay.

9 THE COURT: I sustain the objection.

10 Q. Without getting into what your dad said, why did you
11 go to that apartment?

12 A. To check on Jackie.

13 Q. How long had it been since you had talked to her?

14 A. I talked to her that Thursday before I went to check
15 on her.

16 Q. So this was on a Saturday?

17 A. Yes, ma'am.

18 Q. Saturday evening?

19 A. Not the same week of that, the week before.

20 Q. And about what time was it when you got there?

21 A. It had to be about four o'clock, I believe.

22 Q. In the afternoon?

23 A. Yes, ma'am.

24 Q. And so when you get to the apartment, what do you
25 do?

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1 A. Well, I knocked on the door and I didn't get an
2 answer. So something just say, twist the knob. And I
3 twisted the knob and the door was open and I went in.
4 When I went in, I called her name. She didn't answer.
5 But at the same time, I was dialing her phone because I
6 didn't get an answer on the phone, but the phone did not
7 ring at the house. So I walked on through the house.

8 Q. Take your time. What was the first thing you saw
9 when you got into the apartment?

10 A. Well, I went through her living room. I had gave
11 her a living room set, so I noticed, you know, everything
12 was still intact. I went through the kitchen. I was
13 just calling her name and I still didn't get an answer.
14 So I come back through to the front door and I went
15 upstairs. When I went upstairs, I looked to the left. I
16 didn't see her. I looked to the right. She was in the
17 bathroom, bathroom on the floor dead. I saw blood
18 everywhere.

19 Q. What did you do then?

20 A. I went back downstairs. I called my dad. And
21 evidently he couldn't understand me. He kept saying he
22 was coming. He was coming. And I tried to call the
23 police. I just -- I didn't know what I was saying, I
24 guess. They couldn't understand me. The girl next door
25 took the phone from me and she told them to come.

1 Q. So you got upstairs and you see Jackie's body in the
2 bathroom?

3 A. Yes, ma'am.

4 Q. Did you immediately come, immediately come back
5 downstairs?

6 A. Well, actually, I had a seizure and fell down the
7 stairs. When I get real upset, I have seizures. I
8 remember calling my dad and I was looking around. I was
9 like -- when I saw my sister upstairs, my sister was --
10 she was my size and my sister wasn't that big. And I
11 started to say then, this can't be my sister, it just
12 can't be my sister.

13 Q. Did you touch anything in that apartment?

14 A. No, ma'am.

15 Q. Other than opening the door?

16 A. No more than opening the door.

17 Q. Now, let's get back to when you get into her
18 apartment and you start to walk around. You said that
19 you didn't see anything, well, disturbed?

20 A. No, ma'am.

21 Q. Was anything -- furniture turned over?

22 A. No, ma'am.

23 Q. Did you see anything that would indicate maybe a
24 burglary had occurred?

25 A. No, ma'am.

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1 Q. You also said that you called her, but the phone
2 didn't ring?

3 A. Yes, ma'am.

4 Q. To your knowledge, was the phone working?

5 A. I mean, it was sitting on the table, but it wasn't
6 ringing.

7 Q. So the ringer was off?

8 A. I guess so.

9 Q. And the door was unlocked?

10 A. Yes, ma'am.

11 Q. Then you come outside and the neighbor helps you
12 call 9-1-1?

13 A. Yes, ma'am.

14 Q. Let's talk about Jackie and Ralph, Ralph Hayes. Do
15 you see Ralph in the courtroom?

16 A. Yes.

17 Q. Will you point him out, please?

18 A. That's him.

19 Q. Barbara, how long were Jackie and Ralph in a
20 relationship?

21 A. I would say about five years.

22 Q. So you -- during those five years, you saw him many
23 times?

24 A. Yes. They would come to my house for dinner, for
25 Thanksgiving dinner, Christmas dinner.

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1 Q. Okay. So once your sister was found, you were
2 making funeral arrangements. Did you ever hear from
3 Ralph?

4 A. Never heard from him.

5 Q. Did Ralph come to the funeral?

6 A. No, ma'am.

7 Q. Did Ralph ever call you?

8 A. No, ma'am.

9 Q. So your family or you didn't hear from him?

10 A. No, ma'am.

11 Q. During the time you're making arrangements for the
12 funeral ---

13 A. Never heard from him.

14 Q. After the funeral?

15 A. No, ma'am.

16 Q. Anytime since then?

17 A. No, ma'am.

18 Q. Let's talk about Jackie a little bit. How would you
19 describe Jackie?

20 A. Jackie was a good person, a loving person. She
21 wasn't perfect. She made mistakes like we all do, but
22 she was a good person.

23 Q. So Jackie had some problems?

24 A. Yes.

25 Q. What kind of problems did she have shortly before

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1 her death?

2 A. She was on drugs. Yes, ma'am.

3 Q. But did she have any enemies?

4 A. No, ma'am. Everybody loved Jackie, everybody.

5 Q. So would you say you had a good relationship with
6 her?

7 A. A wonderful relationship. She was my strength. She
8 was.

9 Q. So it's your testimony she was a kind person?

10 A. Yes, ma'am.

11 Q. You didn't know of any enemies?

12 A. No, ma'am.

13 Q. And, again, just for clarification, when you went
14 into that apartment -- how long would you say you were
15 there?

16 A. It seemed like forever to me. I don't know.

17 Q. Were valuables, Jackie's valuables, still in the
18 apartment?

19 A. Everything was there. Everything was still intact.
20 Everything. I mean, if, if it would have looked like a
21 burglary, I would have called the police right then. I
22 wouldn't have went upstairs. Everything was still
23 intact.

24 Q. Answer any questions from the Defense.

25 THE COURT: Ms. Horlbeck.

1

CROSS-EXAMINATION2 **BY MS. HORLBECK:**3 Q. Ms. McNeil, my name is Caroline Horlbeck. And I
4 have just a few questions for you.

5 A. Yes, ma'am.

6 Q. Now, Jackie lived at the condo, that's correct;
7 right?

8 A. Yes, ma'am.

9 Q. And Mr. Hayes stayed there some; didn't he?

10 A. He lived with her.

11 Q. And did any other family members live with Ms.
12 Alexander?

13 A. No, ma'am.

14 Q. And did she have any children?

15 A. She has a son.

16 Q. And was he high school age at the time?

17 A. No, ma'am.

18 Q. Is he grown?

19 A. He's a grown man, yes, ma'am.

20 Q. All right. At the time of her death in 2009, how
21 old was he?

22 A. He's twenty-six now. He was twenty-three.

23 Q. Okay. All right. And when you came to the scene do
24 you recall whether or not your sister's panties were down
25 around her thighs?

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Barbara McNeil - Cross Examination by Ms. Horlbeck

1 A. Yes, ma'am. She was laying like in a sitting
2 position.

3 Q. And were any -- you mentioned that a neighbor lady
4 helped you?

5 A. Yes, ma'am.

6 Q. Were any other neighbors around?

7 A. It could have been. I don't know.

8 Q. Do you recall the name of the neighbor that assisted
9 you in calling 9-1-1?

10 A. No, ma'am.

11 Q. And you mentioned that you called your father. Did
12 other family members come to Jackie's condo?

13 A. Yes, ma'am.

14 Q. What family members came?

15 A. My mom, my aunt, my sisters, my daddy's girlfriend,
16 everybody showed up, my son.

17 Q. And you mentioned that you had not talked to Jackie
18 in more than a week. Is that correct?

19 A. Yes.

20 Q. And you had not talked to her -- I'm going to strike
21 that. You mentioned that Ms. Alexander had some
22 problems, that she was on drugs?

23 A. Yes, ma'am.

24 Q. Was Ms. Alexander working at the time?

25 A. No, ma'am. She was on disability.

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Barbara McNeil - Redirect Examination by Ms. Adams

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1 Q. Did she -- did you find any letters? Was there
2 anything on the door when you appeared?

3 A. Yes, ma'am. It was ---

4 Q. What was there?

5 A. It was a note from whoever delivered her food. They
6 left a little note to let her know they came by.

7 Q. All right. And did Ms. Alexander, did your sister
8 have an EBT card or a food stamp card?

9 A. Yes, ma'am.

10 Q. Did she have her own vehicle?

11 A. No, ma'am.

12 Q. Is it fair to say she relied on other people for
13 transportation?

14 A. She walked mostly everywhere she went.

15 Q. Okay. Thank you, Ms. McNeil.

16 MS. HORLBECK: That's all I have.

17 THE COURT: Anything in redirect?

18 MS. ADAMS: Yes. Just one question.

19 **REDIRECT EXAMINATION**

20 **BY MS. ADAMS:**

21 Q. Now, Barbara, you talked about Mr. Hayes would often
22 come to your house, other relatives' homes, for dinners
23 and that kind of thing?

24 A. Yes, ma'am.

25 Q. So he and Jackie did live together?

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Barbara McNeil - Redirect Examination by Ms. Adams

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1 A. Yes, ma'am.

2 Q. And had lived together, say, for the last five
3 years?

4 A. Well, when we'd come up here -- I mean, they lived
5 in Atlanta together. Where, I don't know. But when she
6 moved home, we went and got her and she moved home, then
7 he moved up here with her.

8 Q. Okay. So they shared a household?

9 A. Yes, ma'am.

10 Q. And there was nobody else that lived with them?

11 A. No, ma'am.

12 Q. Okay. Thank you.

13 THE COURT: All right. Thank you, ma'am. You
14 may step down.

15 THE WITNESS: Thank you.

16 MS. ADAMS: The State now calls Janie Ashmore.

17 THE CLERK: Ms. Ashmore, if you would come
18 forward to be sworn in, please. Please place your left
19 hand on the bible and raise your right.

20 Do you swear or affirm that the testimony you're
21 about to give is the truth, the whole truth and nothing
22 but the truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Thank you. You may be seated.

25 Would you please state your name for the record.

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1 THE WITNESS: Janie Ashmore.

2 THE CLERK: Thank you.

3 JANIE ASHMORE,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MS. ADAMS:

7 Q. Good afternoon, Ms. Ashmore.

8 A. Good afternoon.

9 Q. Now, you're the mother of the victim?

10 A. I am.

11 Q. And you also live here in Greenville County?

12 A. I do.

13 Q. Ms. Ashmore, you heard some of Barbara's testimony,
14 your daughter?

15 A. I did.

16 Q. Would you agree that Ralph and Jackie had this long
17 time, long term relationship?

18 A. I do.

19 Q. Did you see them often?

20 A. I did.

21 Q. You agree that they shared a household, they lived
22 together?

23 A. They did.

24 Q. Did you go over to the apartment the day Jackie's
25 body was found?

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Janie Ashmore - Direct Examination by Ms. Adams

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1 A. I did. After my daughter Barbara called me that
2 night, I went over.

3 Q. Now, after Jackie's death, did you have any
4 communication from Ralph?

5 A. None at all. None.

6 Q. Not during the funeral?

7 A. Nothing.

8 Q. Okay. How long had it been since you had talked to
9 Jackie or had had any contact ---

10 A. Two weeks before Jackie was killed, she called me
11 and said, Mama, I love you.

12 Q. Was that unusual for you to go a couple of weeks,
13 you know, and not talk to her?

14 A. Kind of. It was. But, you know, I still thought
15 she was all right. I had no idea that my child was dead.

16 Q. Let's talk a little bit about, about Jackie and
17 Jackie's personality.

18 A. She was so sweet.

19 Q. What was that?

20 A. She was such a sweet child. She was. She loved
21 everybody and everybody loved her, except Ralph.

22 Q. So as far as you know, Jackie didn't have any
23 enemies?

24 A. None. Everywhere she went people that knew her
25 loved everything about Jackie, you know. She made

1 mistakes, like Barbara said. She was human. But she was
2 a lovable person.

3 Q. Now, Barbara testified that, you know, she had a
4 drug problem?

5 A. She did.

6 Q. Did you ever get involved with, you know, any issues
7 relating to her drug use?

8 A. No. No. No.

9 Q. You never had to bail her out of any situations?

10 A. No, never. Never.

11 Q. Have you ever dealt with any drug dealers or anybody
12 regarding Jackie?

13 A. Lord, no. Uh-uh (negative). No. Matter of fact,
14 Jackie never really come around me when she was doing
15 drugs.

16 Q. But before Jackie's death, you saw Ralph, would you
17 say, on a regular basis?

18 A. Well, yeah. Uh-huh (affirmative).

19 Q. But after her death ---

20 A. After, we didn't see Ralph at all.

21 Q. Never heard from him?

22 A. Never heard from him. He never called and said,
23 Jackie been hurt or anything. We didn't hear nothing.

24 Q. And to this day, have you heard from him?

25 A. No.

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1 Q. Answer any questions the Defense has.

2 MS. JOHNSON: May it please the Court?

3 THE COURT: Yes, ma'am.

4 **CROSS-EXAMINATION**

5 **BY MS. JOHNSON:**

6 Q. Ms. Ashmore, my name's Teal Johnson. And I just
7 have a couple of questions for you. You said that she
8 didn't really come around you when she was doing drugs?

9 A. Right.

10 Q. So it's safe to say that she wasn't always under
11 your thumb?

12 A. Well, of course not. I mean, she was a grown woman.
13 You know, she had her own house and everything.

14 Q. And she did her own thing?

15 A. Yeah.

16 Q. So you wouldn't know everything that was going on in
17 her life?

18 A. I knowed about her and Ralph. I knowed that much.

19 Q. Okay. But you wouldn't know about things that are
20 going on when you're not there, as far as, I guess her
21 night life and her drug activities?

22 A. Jackie, like I said, she was on drugs but no one
23 would hurt her but Ralph. He's the only one that hurt my
24 daughter. Nobody else because he has threatened her so
25 many times. So I know he did it, without a doubt.

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1 Q. Okay.

2 MS. JOHNSON: That's all I have.

3 THE COURT: Any redirect?

4 MS. ADAMS: Nothing else, sir.

5 THE COURT: All right. Thank you. You may
6 step down, ma'am.

7 MS. ADAMS: The State now calls Larry Dell
8 White.

9 THE CLERK: Mr. White, if you would come
10 forward to be sworn in, please. Please place your left
11 hand on the bible and raise your right.

12 Do you swear or affirm that the testimony you're
13 about to give is the truth, the whole truth and nothing
14 but the truth, so help you God?

15 THE WITNESS: Yes, ma'am.

16 THE CLERK: Thank you. You may be seated.
17 Would you please state your name for the record.

18 THE WITNESS: Larry Dell White.

19 THE CLERK: Thank you.

20 **LARRY DELL WHITE,**

21 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

22 **DIRECT EXAMINATION**

23 **BY MS. ADAMS:**

24 Q. Mr. White, where do you live?

25 A. Centreville, Illinois, [REDACTED] Base.

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- 1 Q. Is that East St. Louis?
- 2 A. Yes. But some people get them mixed up. It's still
- 3 East St. Louis, but it's Centreville, too, yeah.
- 4 Q. How long have you been there?
- 5 A. I got back home 2010, June the 2nd.
- 6 Q. So that's your home?
- 7 A. Yeah. For right now.
- 8 Q. That's where your family is?
- 9 A. Yes.
- 10 Q. Were you living in Greenville in June of 2009?
- 11 A. Yes.
- 12 Q. Tell the jury why you were living here?
- 13 A. I likes to explore and go from state-to-state,
- 14 seeing how other states is and then compare it to my
- 15 state, where I'm from. I was homeless, out on the
- 16 streets, that's my choosing, thing to do. You know, I
- 17 just like -- I love to travel because when I was coming
- 18 up, I wasn't able to travel. So I started traveling.
- 19 Q. So you were here as part of your travels, but you
- 20 were homeless?
- 21 A. Yes.
- 22 Q. So now let's go back to June. Did you ever meet
- 23 Ralph Hayes?
- 24 A. Only that time that I talked to him.
- 25 Q. Okay. Let's -- I want you to describe for the jury

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1 how you came to meet Mr. Hayes.

2 A. Okay. It was, it was hot that day. Maybe a

3 hundred, hundred and one degrees. And so I wanted to

4 find some shade. So I went in the back of Able Body.

5 It's a labor hall. They had a bench there with a thing

6 over your head, to get you out of the sun.

7 Q. Let me interrupt you, Mr. White. What kind of

8 business is labor -- Able Body?

9 A. It's a labor hall. You go work. They pay you every

10 day that you work. And it was closed that particular

11 day, they were closed on a Sunday.

12 Q. So you would go there to find work?

13 A. Yeah, Monday through Saturday. Mostly Monday

14 through Friday I would work.

15 Q. So what date are we talking about?

16 A. I couldn't remember the date, but I know it was on a

17 Sunday because that church, I went to that church to

18 feed. Yes.

19 Q. Okay. So, but this was in June?

20 A. Yes.

21 Q. Maybe June 9th, does that sound about right?

22 A. Yes.

23 Q. So go ahead.

24 A. And I get back there, I see a young man crying. I

25 mean, he's crying. He was drinking a Bud Ice, a Bud Ice

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1 beer and I said, brother, what's wrong, brother? And
2 he's crying and he said, man, I done fucked up bad, real
3 bad.

4 Q. Is that the language he used?

5 A. Yes. I said, well, we all fuck up. I said, I fuck
6 up. I said, womens. I said, I fucked up. I stole my
7 brother's check. And then I said, man, I was so messed
8 up a whole month and I was depressed. But man, you ain't
9 fucked up like I done fucked up. Kept crying. I'm
10 trying to cheer him up. He said, I done messed up. Kept
11 crying. Kept crying.

12 Q. Mr. White, had you ever seen him before?

13 A. Never. Never in my life until then. And never seen
14 him, never on my travels nowhere until then. I kept
15 trying to cheer him up, he kept crying. And then he
16 started, saying, man, it's going to fuck my sister up
17 when I tell her what I done. I said, man. And he said,
18 I went in the house and found my girl dead, man. The
19 dope boys cut my girl all up, pulled her panties down to
20 her ankles and put her in the bathtub. I said, damn,
21 man. I said, what you do? He said he ran out the house.
22 I'm like, why didn't you go tell the police, man? He's
23 like, because they'll think I done it because that's my
24 girlfriend. And I'm like, wow. And so, instead of
25 trying to cheer him up, I said, man, man.

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1 Q. Let's back up a minute, Mr. White. Before he tells
2 you about finding his girlfriend, when he kept saying
3 he'd messed up so badly, I mean, did you ask him what had
4 he done that was so bad?

5 A. No. I didn't ask him that. He just kept saying, I
6 done fucked up. And I kept telling him I -- excuse my
7 language -- I done fucked up in my life. And he just
8 kept crying. He couldn't stop crying for nothing. He
9 just couldn't stop crying, you know. I have cried when
10 somebody in my family died, you know, cause that's my
11 loved one. But he just kept on crying. I couldn't stop
12 him from crying. I'm kind of trying to cheer him up.

13 Q. So did you ask him what could be so bad and did you
14 get a response from him?

15 A. He hesitated for a while, because like I said, I was
16 trying to cheer him up. And he looked at me and he did
17 like this on the table. But you ain't never killed
18 nobody. I said, no, thank God I haven't. And I raised
19 back, eased back like that, damn, man. So he kept on
20 talking. He kept on crying. Talked about an hour. But
21 there was some of the main things that he told me that I
22 remember. He kept saying, I fucked up. I fucked up bad.
23 Then he said, I'm going to kill myself. I said, now,
24 don't do that. I done fucked up bad, man, this time.

25 Q. So after he tells you this, what did he do? What

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1 did he say?

2 A. He said he was going to Kentucky. He didn't show me
3 the -- he showed me the bus ticket, but he didn't show me
4 the city. You know, he didn't let me read it, but he
5 showed me he had the bus ticket. He showed it to me.

6 Q. So he told you he was going to Kentucky?

7 A. Going to Kentucky.

8 Q. For what?

9 A. He said he was going on to his sister house, to tell
10 his sister what he had done. Because he said, it's going
11 to fuck my sister up when I tell her what I have done.

12 Q. And why did he say he was leaving?

13 A. I don't know. I guess because he kept saying he
14 done fucked up so bad.

15 Q. Did he talk about why he didn't want -- did you ask
16 him to call the police?

17 A. I had ask him, I said, man, why you didn't call the
18 cops? And he said, because I was her boyfriend. And he
19 probably -- they probably figure that he did it.

20 Q. Did he say why he would think -- why he thought the
21 police ---

22 A. No.

23 Q. --- would think he did it?

24 A. No. Uh-uh (negative). He just kept crying.

25 Q. Okay. Did he talk about anything that had happened

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- 1 to them in the past?
- 2 A. No. No.
- 3 Q. Did he say he'd hurt her before?
- 4 A. No.
- 5 Q. So he tells you he's leaving for Kentucky?
- 6 A. Yes.
- 7 Q. Because of what he's done?
- 8 A. He said he fucked up.
- 9 Q. And he told you how her body ---
- 10 A. Yes.
- 11 Q. --- the state of her body?
- 12 A. He said, the dope man stabbed his girl up, cut her
- 13 all up, pulled her pants down to her ankles, put her in
- 14 the bathtub.
- 15 Q. He gave you all those details?
- 16 A. Yes, he did.
- 17 Q. And he said the dope man did it?
- 18 A. That's what he told me. Drug dealer, dope man, same
- 19 thing.
- 20 Q. Did he say anything about her mother?
- 21 A. No.
- 22 Q. About her mother paying the dope man?
- 23 A. No. Uh-uh (negative).
- 24 Q. How long were you with him?
- 25 A. About an hour. Because, like I say, I was waiting

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1 on for the church to feed and it was hot.

2 Q. Uh-huh (affirmative).

3 A. And I wasn't going to like leave until the church --

4 so I can leave about four-thirty or something because

5 they start feeding at five o'clock.

6 Q. Okay. Now, when you were talking to him at this

7 Able Body, were y'all outside?

8 A. Outside.

9 Q. Okay. What time of day?

10 A. I say it had to be around at least about three

11 o'clock because I only had a couple of hours to wait for

12 the church to start feed.

13 Q. Okay. So it's broad daylight?

14 A. Yeah.

15 Q. And you're outside?

16 A. Yes.

17 Q. When you're talking to him, I mean, how close were

18 you to him?

19 A. Like to you from here.

20 Q. And you're face-to-face?

21 A. Face-to-face.

22 Q. So would you say you got a real good look at him?

23 A. Good look. I mean, I was leaning on the bench

24 trying to calm him down, saying, man, it's going to be

25 all right. Whatever you did, it's going to be all right.

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1 I said, God forgives us for everything that we do. You
2 know, I said, because he is a forgiving God. And like I
3 kept telling him, I done messed up. I done fucked up,
4 man. We all have. But he kept saying, but you ain't
5 fucked up like me. I done really fucked up this time.
6 He kept saying -- he couldn't stop saying that, couldn't
7 stop. And kept crying, just kept crying.

8 Q. And this was a man you had never seen before?

9 A. Never.

10 Q. You had no relationship with him?

11 A. None.

12 Q. You had no gripe with him?

13 A. None.

14 Q. So after you talked with him on this day, on the
15 9th, do you ever see him again?

16 A. I saw him at the church.

17 Q. Was this the same day?

18 A. Same day. I left before he left and I saw him in
19 there. He was shaking a lot of people's hands. He was
20 showing them, the peoples that brought the food, his bus
21 ticket. And I saw them praying for him. They gave him
22 some food because he showed them the bus ticket. They
23 gave him a bag of food to take with him on his trip. He
24 went along laughing, talking, you know. I guess when
25 they prayed for him he was cheered up, I guess. I don't

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1 know because I had stopped talking to him. I was talking
2 to some more people that I met since I been here. And
3 that was last time I saw him until a couple days after
4 whatever when ---

5 Q. Well, let's get to there.

6 A. Okay. Okay.

7 Q. So that's the last time you saw him?

8 A. Yes.

9 Q. Was on June 9th?

10 A. Yes.

11 Q. When you had that conversation with him?

12 A. Yes.

13 Q. So what happens after that? Do you talk to anybody
14 else about this?

15 A. No. No.

16 Q. So how did you get involved in this?

17 A. I'm at Able Body, you know, the labor hall,
18 everybody talking about this and that. And I heard some
19 of the guys who I met since I was living here about this
20 young lady who they know, that used to hang out at the
21 Shady Rest, had got killed and had got cut up and stabbed
22 real, real bad. And, you know, they was telling me about
23 some of the things that she used to do, but I'm
24 listening. And I'm like, damn. In the back of my head,
25 I'm like, damn, this guy was talking to me about this

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1 lady who got stabbed real, real bad, you know. I said,
2 damn. So a couple of days later I thought about what
3 they was -- what they had -- was talking about and what
4 this individual had told me. So I decided, well, I'm
5 going to tell this man to call the police and let them
6 know that I talked to this guy about this lady had got
7 killed like that. And they called the officer and he
8 came and got me and talked me. He took me down to the
9 office and talked to me for about three or four hours.

10 Q. Now, again, I know this has been three years ago.

11 A. Yeah.

12 Q. You know, can you remember about how many days it
13 was after you talked to Ralph and when you called or when
14 you decided to call the police?

15 A. No, I can't remember. I just can't remember.

16 Q. Was it about a week?

17 A. Maybe. I just can't remember.

18 Q. Okay.

19 A. But I just remember that after I heard everybody in
20 the labor hall talking about it, because they knew her.
21 I didn't know her.

22 Q. Does around the 18th sound about right?

23 A. Probably. But like I said ---

24 Q. About a week later?

25 A. --- I heard them talking about this individual had

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1 got cut up and everything and I remember this individual
2 was telling me about this young lady.

3 Q. So when you hear these rumors or these people
4 talking about this woman being killed, then you called
5 the police?

6 A. Yes. I went to the labor hall, yes.

7 Q. You had somebody from the labor hall to call the
8 police?

9 A. Yeah. To call, yeah.

10 Q. Okay. So what happens then?

11 A. I told him, I said, man, look here, about this young
12 lady that got killed a couple of days ago, whatever, a
13 week ago. He said, yeah, man. I said, look here, call
14 the police man. He said, why? Because I talked to this
15 young man. And he said, well I'll call the police. And
16 he called this officer and I told him, I said, man, about
17 that lady that got cut all up and everything, man, I was
18 talking to this guy behind Able Body. So he interviewed
19 me about an hour or two then. This other officer talked
20 to me about an hour or two.

21 Q. So when you called the police, they come and get
22 you?

23 A. Yes.

24 Q. They come to Able Body and get you?

25 A. No. Labor Finders, the one that's --

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1 Q. Labor Finders.

2 A. Able Body's tore down now.

3 Q. I'm sorry. Okay.

4 A. Yeah.

5 Q. Labor Finders. Now, did you go to the police
6 station like right away or the next day?

7 A. They took me. When I told that man to call, they
8 came and got me and took me down there.

9 Q. Okay. All right. So what happens when you get
10 there, get to the police department?

11 A. I told him what this individual was telling me in
12 the back of Able Body. And that how he fucked up, fucked
13 up, fucked up. Going to kill his self. You know, he was
14 crying, couldn't stop crying. He was going to go to
15 Kentucky. It was going to mess his sister up when he
16 tell his sister what he had done. Because he really
17 fucked up this time real, real, real, real bad. You
18 know, I'm trying to remember all the things that he had
19 told me that particular day, you know. Because like I
20 said, I had problems of my own. I'm homeless. I'm going
21 to worry about where I'm going to lay at night and all
22 that.

23 Q. So you get to law enforcement and you meet with, was
24 it Detective Miller?

25 A. It was the black officer first. I forgot his name.

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1 He interviewed me first.

2 Q. Okay. So you tell Detective Miller what Mr. Hayes
3 has said to you?

4 A. Yes.

5 Q. So did you identify him, did you use a photo lineup?

6 A. When they asked me -- when they -- they said that
7 we're going to show you some pictures and we want you to
8 point out the guy who you talked to. I said, okay.

9 Q. Okay. Hold on just a minute.

10 MS. HORLBECK: At this point, Judge, I would
11 renew my prior objections.

12 THE COURT: All right. Your objection is
13 noted.

14 Q. Before I show you these pictures, now you're talking
15 with Detective Miller about, about this conversation?

16 A. Yes.

17 Q. So before he shows you these pictures, do y'all talk
18 about it? Does he explain the procedure to you?

19 A. He said, the guy who you talked to that day, I want
20 you to see do you see him in this -- on these -- in any
21 of these pictures. I say, okay.

22 Q. Did he suggest or try to direct you to any
23 particular picture?

24 A. No. No.

25 Q. Did he tell you that Ralph Hayes might or might not

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- 1 be in the pictures?
- 2 A. No.
- 3 Q. Mr. White, I'm referring you here to State's Exhibit
- 4 Number 1.
- 5 A. Uh-huh (affirmative).
- 6 Q. Can you see that pretty good?
- 7 A. Yes, I can see it..
- 8 Q. Do you recognize this, Mr. White?
- 9 A. Yes, I do.
- 10 Q. Tell the jury what you recognize?
- 11 A. Number five.
- 12 Q. Is this the same array of pictures that were shown
- 13 to you of ---
- 14 A. Yes.
- 15 Q. --- photos?
- 16 A. Yes.
- 17 Q. Why do you recognize these photos?
- 18 A. It took me three seconds to identify the person
- 19 because I talked to him for a whole hour; about three
- 20 seconds. I said, that's the guy right there. No ifs and
- 21 but about it.
- 22 Q. Now, again, you're talking to Detective Miller?
- 23 A. Yes.
- 24 Q. Again, did he ask you is this him or give you any
- 25 kind of influence?

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1 A. I looked over and I said, this is him. Right here.

2 That's the guy. About three seconds I pointed him out.

3 It was no minute. It was a couple of seconds, is all it

4 was.

5 Q. You had absolutely no reservations?

6 A. None.

7 Q. And you feel that you had had plenty of time to look

8 at Mr. Hayes?

9 A. Yes.

10 Q. Get a good look at his facial features?

11 A. A good look.

12 Q. And no one suggested that that ---

13 A. Nobody.

14 Q. --- might be the picture of him?

15 A. Nobody.

16 Q. And number five is the one you selected?

17 A. That's the man I talked to for a whole hour.

18 Q. Do you see him in the courtroom?

19 A. Yes, I do.

20 Q. Okay. Point him out, please.

21 A. That's him right there.

22 MS. ADAMS: Let the record reflect that the

23 witness has identified the Defendant.

24 Q. Let me show you one more document. This is State's

25 Exhibit Number 2. Do you recognize that?

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- 1 A. Yes, it's my handwriting.
- 2 Q. Okay. It's titled an Affidavit. Do you doing that
- 3 the day you identified Mr. Hayes in the photo lineup?
- 4 A. Yes. Uh-huh (affirmative).
- 5 Q. And, again, that is your signature?
- 6 A. Yeah. That's my handwriting.
- 7 Q. And what does that Affidavit say? Would you agree
- 8 that it indicates that you selected number five on the
- 9 lineup?
- 10 A. Yes. Yes. Yes, ma'am.
- 11 Q. At that time, Mr. White, and I'm going to refer you
- 12 now to Defendant's Exhibit Number 1. Did you give a
- 13 written statement?
- 14 A. I didn't write nothing down.
- 15 Q. Okay. But did you give a statement and -- I'm going
- 16 to show you, again, Defendant's Exhibit Number 1. Do you
- 17 recognize that?
- 18 A. Yes, I recognize this. I was under the influence of
- 19 no alcohol or nothing.
- 20 Q. Were you under the influence of any alcohol or any
- 21 drugs when you did this photo lineup?
- 22 A. Sober.
- 23 Q. Sober? What about when you made this statement?
- 24 A. Sober.
- 25 Q. Did anybody coerce you or force you into giving this

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1 written statement?

2 A. Nobody.

3 Q. Is this statement an accurate and true statement of
4 the conversation that you had with Ralph Hayes?

5 A. True. Everything that this man told me, from the
6 bottom of my heart, I tried to remember everything he
7 said. And the key things that he said to e is on here,
8 what he kept saying over and over again, that I fucked up
9 this time badly. He couldn't stop saying that. He
10 couldn't stop crying for nothing. I tried to cheer him
11 up. I tried. I tried my best to cheer this brother up.

12 Q. And again, what did you say to you when you said,
13 what could be so bad?

14 A. But you ain't never killed nobody. He did like
15 this. But you ain't never killed nobody. I said, no,
16 thank God I haven't. The exact words he said to me.

17 Q. I want to clear something up. Before you went down
18 to talk to law enforcement ---

19 A. Uh-huh (affirmative).

20 Q. You talking about the police had been around asking
21 about this guy, asking about somebody?

22 A. Well, they did. Well, I was -- okay. I was in a
23 soup kitchen and I saw the sheriffs in there, police.
24 They didn't ask me nothing because I'm in line trying to
25 get me a plate. And so I ain't know what was wrong.

1 Only I figured they was trying to find somebody that had
2 probably stole something or whatever. They ain't showed
3 me no pictures or nothing, because I'm not from here. I
4 don't know nobody. Even if they would have showed me,
5 but they didn't, I wouldn't have know who he was. I'm
6 not from here. I was trying to get me something to eat
7 before it's all gone. I remember officers coming down
8 there with green uniforms on. I remember that. But
9 didn't nobody show me no picture, no picture I can
10 remember. No picture at all, nobody.

11 Q. So you didn't look at any pictures ---

12 A. Any picture. I was trying to get something to eat
13 before it's all gone.

14 Q. So the only time you saw a picture of Ralph Hayes
15 was at the photo lineup?

16 A. The only time I saw this man, when I talked to him
17 and when they showed me this -- asked me did I -- was the
18 same guy that I talked to on there? I said, yes, number
19 five.

20 Q. Again, why did you get involved?

21 A. I was brought up in a church. I was brought up to
22 do the right thing. And when I heard these peoples
23 talking about how this girl got killed, then I thought
24 about what he had told me, how he found her. I start
25 thinking, I said, man, I ain't never been involved like

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1 this with nothing in my life. And like I said, I grew up
2 in a church. So it had to been the good Lord, it had to
3 been. Go do this. Go and make a phone call. Because I
4 ain't had no cell phone. That's why I got involved
5 because they was talking about down at the labor halls
6 how she was killed. Then I thought about what he had
7 told me. That's why I got involved. It was the Godly
8 thing to do. Like I said, God had to put it on my heart
9 to do this and I done it. That's why I did it.

10 MS. ADAMS: Your Honor, the State would ...
11 Can I just have one second?

12 THE COURT: Yes, ma'am.

13 Q. One more question, Mr. White. Did you encourage him
14 to tell somebody about Jackie's body?

15 A. He said they would think that he done it.

16 Q. So you told him to call ---

17 A. Yes. If you go in the house and see your girlfriend
18 like that, and I'm not God, but if you see somebody, who
19 I guess is your girlfriend -- if it was my girlfriend,
20 I'm going to call. And say, I found my girlfriend dead.

21 How he said -- he told me that he went in there and found
22 her dead, then he left. That's what he told me now.

23 Q. And that was after he had said you ain't never
24 killed nobody?

25 A. No. That was the last, that was one of the last --

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1 mostly one of the last things he told me. Because I kept
2 trying to cheer him up. And I guess it had to have been
3 the work of the good Lord when he said, but you ain't
4 never killed nobody. And the expression on his face,
5 like, messed me up. I like, no, thank God, I haven't.
6 That's exactly what he told me that particular day.

7 Q. Answer any questions from the Defense.

8 **CROSS-EXAMINATION**

9 **BY MS. HORLBECK:**

10 Q. Mr. White, my name's Caroline Horlbeck and I've got
11 some questions for you. You testified on direct that you
12 got back home June 2nd, 2010?

13 A. Yes. Just left Minnesota.

14 Q. All right. And I was just going to ask you, where
15 were you coming from?

16 A. What you mean?

17 Q. When you got back home, where did you get back home
18 from?

19 A. Minnesota.

20 Q. All right. And before Minnesota, where did you
21 live?

22 A. Florida.

23 Q. And before Florida, where did you live?

24 A. South Carolina.

25 Q. All right. And when you lived in South Carolina, is

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1 that all the way back to 2009 or is that another time you
2 lived in South Carolina?

3 A. When I first got to South Carolina, Greenville, back
4 in 1998.

5 Q. That's the first time you lived in South Carolina?

6 A. The first time I came down through, in my life, to
7 South Carolina.

8 Q. And then you came back in 2009, to South Carolina,
9 to Greenville?

10 A. No, I came back again. I caught a freight train.

11 Q. Okay. When was that? Was that 2005?

12 A. It was in the 2000s. I can't remember.

13 Q. Okay. And then you came back to Greenville again in
14 2009. Is that correct?

15 A. Yeah. 2009 because I liked Greenville. It was a
16 little small, little southern town and I liked it.

17 Q. Okay. So in your words, you like to travel?

18 A. Yes.

19 Q. And that's why you move place-to-place?

20 A. Yes.

21 Q. Okay. And you had actually moved to Greenville in
22 2009 from Atlanta. Is that true?

23 A. I got tired of Atlanta because Atlanta had too many
24 homeless people. I couldn't really get no help.

25 Q. Okay. And you were looking for some help; weren't

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1 you?

2 A. Yes. Because I used to stay at the Greenville,
3 Greenville Rescue Mission.

4 Q. Okay. You were looking for a better place to stay?

5 A. Yes. I could have went back home, but I didn't want
6 to go home.

7 Q. Okay. You were looking for some employment?

8 A. Yes. And it was a small little town to live in. I
9 said, I can get me -- I can come up here, you know, I'm
10 thinking.

11 Q. A stable job?

12 A. Yes.

13 Q. Okay. Hopefully, your own place to live so that you
14 don't have to stay at the shelter ---

15 A. Yes.

16 Q. --- and eat at the soup kitchen?

17 A. Yes.

18 Q. Okay. All right. And do you work now?

19 A. Yes, I do. I found a job a week before last, Friday
20 before last.

21 Q. Okay. Where you working?

22 A. St. Claire Square Mall in Fairview Heights,
23 Illinois.

24 Q. All right. What kind of work you doing at the mall?

25 A. Janitorial.

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1 Q. Okay. All right. All right. Mr. White, on direct
2 you testified that you'd never seen that picture before
3 the time that the officer showed it to you?

4 A. Never in my life.

5 Q. Okay. But you recall making your statement; don't
6 you?

7 A. Like I said I had never seen that picture in my life
8 until he showed me the picture.

9 Q. And that's not what I asked you. You recall making
10 this statement that's in Defendant's Exhibit 1; correct?

11 A. Well, I need some glasses. I need some glasses, I
12 can't ---

13 Q. Okay. Sure. Take all the time you need.

14 A. Like I said, they didn't show me no pictures. I
15 didn't see no pictures. When I saw him in the back of
16 the Able Body, the first time I ever seen that gentleman
17 sitting over there, first time in my life.

18 Q. But you're satisfied -- this is your statement;
19 correct?

20 A. I had never saw him. And I had never seen ---

21 Q. That's not what I'm asking you. Listen to my
22 question. You've reviewed the statement. This is your
23 statement; correct?

24 A. Yes. When he kept saying ---

25 Q. Okay.

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1 A. When he kept crying.

2 Q. Okay. Yes. Now, when you made this statement, the
3 police had picked you up from the temporary agency, ---

4 A. Yes.

5 Q. --- the Labor Ready, I think you said?

6 A. Yes.

7 Q. Okay. And they took you to the station; didn't
8 they?

9 A. Yes.

10 Q. And you talked to Investigator Miller?

11 A. Yes.

12 Q. And you wanted to help Investigator Miller?

13 A. Yes. I wanted to help, yes.

14 Q. All right. And you gave this statement. And in
15 your statement you try to be as accurate as possible?

16 A. Yes. I'm only human.

17 Q. You gave this statement when things were fresh on
18 your mind?

19 A. Yes.

20 Q. Okay. And you tried to give that -- Investigator
21 Miller as full and complete information as you could.
22 Isn't that correct?

23 A. Yes. Yes.

24 Q. Okay. And you've reviewed the statement. You even
25 initialed, initialed the paragraphs; didn't you?

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1 A. Yes.

2 Q. All right. And up at the top it says, I attended
3 high school at East St. Louis Senior High located in East
4 St. Louis, Illinois; correct?

5 A. Yes, yes.

6 Q. I completed high school up to twelfth grade, but I
7 did not graduate?

8 A. Yes.

9 Q. And it also says, I can read and write?

10 A. Yes.

11 Q. All right. And when you were done giving your
12 statement to the investigator, you signed it; didn't you?

13 A. Yes.

14 Q. Okay. And you just testified on direct examination
15 with Ms. Adams that everything in this statement was true
16 and correct and accurate?

17 A. Yes.

18 Q. Okay. Now, I'm going to direct your attention to
19 page two of your statement, line nineteen. And it
20 actually starts -- and I just want you to read it to
21 yourself. It's the second paragraph. I want you to read
22 that last paragraph to yourself.

23 A. Okay.

24 Q. Have you read it?

25 A. Uh-huh (affirmative).

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1 Q. Okay. And it says, then last night, Thursday, June
2 the 18th, 2009, around nine-thirty P.M. or so, the
3 sheriff's office deputies came around to where we sleep
4 and were showing pictures of the guy and were asking if
5 we knew the guy. Isn't that what your statement says?

6 A. No, but they didn't show me no pictures. I didn't
7 see no pictures. I didn't see no pictures.

8 Q. Is that what your statement says, sir?

9 A. Yeah, but I didn't see no pictures. I didn't.

10 Q. Okay. Is that what your statement says?

11 A. Yeah.

12 MS. ADAMS: Objection, Your Honor.

13 A. But I didn't see no pictures.

14 THE COURT: Wait, wait, wait just a minute.
15 Wait just a minute.

16 THE WITNESS: Yeah.

17 THE COURT: This court reporter can only take
18 one person talking at a time.

19 THE WITNESS: Okay.

20 THE COURT: When the Solicitor's talking, when
21 the lawyer's talking and when you're talking, it's
22 impossible for her to get everything down. She needs to
23 protect the record.

24 THE WITNESS: All right.

25 THE COURT: You let the lawyer ask the

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1 question. You give the answer. Then let her ask the
2 question.

3 THE WITNESS: Okay.

4 THE COURT: And you give the answer.

5 THE WITNESS: Okay.

6 THE COURT: And she's going to do the same for
7 you. She's going to make sure you get to fully answer
8 your -- give your answer before she asks her next
9 question.

10 THE WITNESS: Okay.

11 Q. This statement says, sheriff deputies came around to
12 where we sleep and were showing pictures of the guy.
13 Isn't that what this statement says?

14 A. Yes.

15 Q. And then it also says, they didn't tell us what he
16 did so at first I didn't really look at the picture. It
17 says that too; doesn't it?

18 A. Yes.

19 Q. Okay. And then on down a few lines, that's when you
20 told the guy at Labor Finders the next day, that the guy
21 that the sheriff's office was looking for last night was
22 the same guy that I talked to last week. Isn't that what
23 your statement says?

24 A. No. Uh-uh (negative), no. No.

25 Q. Sir, all right. I'll hand it to you again. I want

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1 you to read that last paragraph to yourself.

2 A. Like I said, they didn't show me the pictures. I'm
3 not from here. They didn't show them to me.

4 Q. It says, your statement says, they showed us
5 pictures of the guy.

6 A. Yeah, us, but not me.

7 Q. Okay.

8 A. Not me.

9 Q. So what's in this statement is not true?

10 A. Yeah. No. They didn't show them to me.

11 Q. It says, sir, at first I didn't really look at the
12 pictures.

13 MS. ADAMS: Asked and answered, Your Honor.

14 THE COURT: What's your objection?

15 MS. ADAMS: I don't know how many ways he can
16 answer her question.

17 THE COURT: I'll allow her to cross-examine.

18 Q. It says in this statement, at first I didn't really
19 look at the picture; doesn't it?

20 A. Like I said, they didn't show them to me.

21 Q. I'm just asking you if this is what your statement
22 says?

23 A. Yeah. But they didn't show them to me.

24 Q. Okay. But it says in here, at first, I didn't
25 really look at the pictures. At first; doesn't it, sir?

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- 1 A. I never looked at the picture at all.
- 2 Q. I'm just asking you if your statement says what I
- 3 just said.
- 4 A. Okay.
- 5 Q. Does it?
- 6 A. Yes, it says that.
- 7 Q. Okay. All right. And you signed your statement;
- 8 didn't you?
- 9 A. Yeah, I signed it.
- 10 Q. Okay. And it also says that you told the guy at
- 11 Labor Finders that the same -- that the guy that they
- 12 were showing pictures of the night before, is the same
- 13 guy that you talked to a week prior. Doesn't your
- 14 statement say that?
- 15 A. Yes.
- 16 Q. All right. And you said that you talked to Mr.
- 17 Hayes on June the 9th?
- 18 A. Yeah. About an hour. Yes, I did.
- 19 Q. I missed that. Say that again?
- 20 A. About a whole hour I talked to him.
- 21 Q. Okay. And after your hour, you told him how to get
- 22 a sandwich?
- 23 A. I went to the church, yes.
- 24 Q. You told him how to get a sandwich?
- 25 A. Yeah, he -- I guess he already knew anyway.

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- 1 Q. And then ---
- 2 A. And I went up there. I went to the church and he
- 3 was there.
- 4 Q. Did you tell him to get a sandwich, yes or no?
- 5 A. I said, man, since, you know, you got a bus ticket,
- 6 they'll help you get some food.
- 7 Q. Okay. All right. And then you told him good luck;
- 8 didn't you?
- 9 A. Yeah. Good luck.
- 10 Q. All right.
- 11 A. On your trip.
- 12 Q. And you knew what time the bus left and everything
- 13 because you said ---
- 14 A. Well, he told me.
- 15 Q. Right.
- 16 A. Yes.
- 17 Q. According to you, he told you?
- 18 A. Yeah. Yeah. He told me.
- 19 Q. So you knew what time the man was leaving town.
- 20 Someone that confessed to murder to you, you knew he's
- 21 leaving town?
- 22 A. Well, like I said, he said, but you ain't never
- 23 killed nobody.
- 24 Q. No. I'm not talking about that. I'm just asking
- 25 you -- according to you, Mr. Hayes told you what time he

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- 1 was leaving town?
- 2 A. He said -- I said, what time your bus leave? He
- 3 said, my bus leave at nine forty-five, somewhere around
- 4 that time.
- 5 Q. And you never called the police?
- 6 A. Never. Never.
- 7 Q. Never called the police that day?
- 8 A. No, no, I did not. I went on with my homeless life
- 9 what I was, you know, doing.
- 10 Q. And you had -- you could have gone -- let's see,
- 11 down in that area, you were right at the Labor Finders.
- 12 You could have used their phone, couldn't you?
- 13 A. Wasn't no Labor Finders open on Sunday. That was on
- 14 a Sunday.
- 15 Q. Could you have gone -- you're right down Main
- 16 Street. Could you have gone to -- there are a number of
- 17 shops down there, and made a phone call.
- 18 A. I didn't do that. I didn't do that.
- 19 Q. You didn't do that; did you?
- 20 A. I didn't. I didn't think of ---
- 21 Q. Did you go to the Museum?
- 22 A. No. No.
- 23 Q. Did you go to the Triune Mercy Center?
- 24 A. I went and ate because I was hungry that day.
- 25 Q. A man confesses murder to you, allegedly, according

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1 to you, and you're concerned about eating?

2 A. Yes. I'm homeless. Tired.

3 Q. And finding a place to stay?

4 A. I want to find somewhere to lay my head that night.

5 Q. Okay. And then when the police came to your shelter

6 nine days later on the 18th ---

7 A. They didn't come to my shelter.

8 Q. --- showing you pictures.

9 A. They didn't come to my shelter. I laid outside.

10 Q. Okay. I'm going to hand you your statement again.

11 We're going to review the same paragraph, second

12 paragraph. Read that to yourself, please, silently.

13 A. What, the bottom line or what?

14 Q. The last paragraph?

15 A. Oh, okay. Okay. Yeah, I signed it.

16 Q. It says they came to your shelter?

17 A. No, no, uh-uh (negative). I slept outside. So if

18 you want to call it a shelter, it's a shelter then.

19 Q. All right. So they came to where you sleep?

20 A. Yes.

21 Q. All right. Okay. And they asked you questions?

22 Asked you if you'd seen anybody?

23 A. Well, they talked to most the guys, you know, we was

24 all -- we was laying down there by the Salvation Army, I

25 remember.

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1 Q. They were asking for information?

2 A. The Salvation Army. And we thought they was going
3 to come tell us to move. And they start showing
4 pictures. I'm not from here. They didn't showed me
5 nothing. They didn't show me no picture. I don't know
6 nobody here. They didn't show me ---

7 Q. And you didn't tell them anything; did you?

8 A. No, they didn't show me no pictures. They didn't
9 show me no picture at all.

10 Q. But it says here in your statement that at first you
11 didn't look at a picture. That's what it says?

12 A. They didn't show me no pictures. They didn't show
13 me no pictures.

14 Q. But it says in your statement, at first, you didn't
15 look at the pictures?

16 A. Well, they ain't showed me no picture.

17 Q. And then it says that you told the guy at Labor
18 Finders that the guy the sheriff's office was looking for
19 last night when the cops came to where we sleep was the
20 same guy that I talked to last week?

21 A. They didn't show me no pictures.

22 Q. But you would agree that your statement says, at
23 first?

24 A. Like I said, ma'am, ---

25 Q. At first, I didn't look at the picture?

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- 1 A. --- they didn't show me no picture.
- 2 Q. And you didn't tell the police anything either?
- 3 A. What you mean?
- 4 Q. On the 18th. You didn't tell them anything?
- 5 A. What you talking about?
- 6 Q. When the police came to where you were sleeping, you
- 7 didn't tell them anything?
- 8 A. No.
- 9 Q. That was your second chance to tell the police about
- 10 what somebody -- some confession somebody had given you
- 11 the week before?
- 12 A. Well, like I said earlier, peoples was talking about
- 13 it at the labor hall, at the labor hall. And they was
- 14 telling me how this young lady got killed, then I
- 15 remember me talking to him. So that's when I decided to
- 16 go and tell somebody to call. That's when.
- 17 Q. Didn't say anything to the police on the 9th?
- 18 A. No, I ain't -- no.
- 19 Q. Didn't say anything to the police when they came ---
- 20 A. No.
- 21 Q. --- to where you sleep?
- 22 A. No. No, because I hadn't talked to him.
- 23 Q. And you said that June the 9th when you first had
- 24 this conversation with Mr. Hayes was a Sunday. Look at
- 25 the first line on your statement. What day does that

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1 say?

2 A. Well, that's when they feed. They feed sometime on
3 Saturday and Sunday. Listen, ---

4 Q. What day does it say? That's my question. It
5 doesn't say Sunday; does it?

6 A. The date, on the 19th. Right there.

7 Q. No. I'm sorry. Right there. That first line right
8 there. The line with your initials by it.

9 A. June the 9th. June the 9th.

10 Q. That you initialed?

11 A. June the 9th.

12 Q. What day? Was it Sunday?

13 A. Tuesday.

14 Q. Thank you. So, again, you didn't talk -- you heard
15 this confession. You don't tell anybody at Labor Finders
16 to call the police for you; do you, ---

17 A. No.

18 Q. --- not on the 9th? Okay. Now, after the police
19 came to where you sleep, there was a lot of talk about
20 the case; wasn't there?

21 A. What you mean?

22 Q. You heard rumors?

23 A. Yes. Yes.

24 Q. Okay. Everybody's talking about the case?

25 A. The ones that's from here, yeah.

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1 Q. And the next day, everybody's still talking about
2 the case; aren't they?

3 A. Talking about it, because they knew her. I didn't
4 know her.

5 Q. They were talking about who she was, her name?

6 A. Yes.

7 Q. Where it happened?

8 A. No, they didn't say where it happened. They just
9 said that -- how she got killed and they knew her.

10 Q. What happened?

11 A. Yeah.

12 Q. Okay. And after you talk about the case, that's
13 when you call Labor Finders, ten days later?

14 A. Well, like I said, that's when I heard all them
15 talking about they knew her and how nice she was. And
16 then I start -- then I remembered me talking to him and
17 what he told me. And I put two and two -- I said, you
18 know, what, I've got to do something about this because
19 I talked to this guy and he used to go with her, he said.
20 So I decided to tell this man to call the police for me.

21 Q. And after all this talk, that's when you called the
22 police?

23 A. Well, he called. I didn't call. He called them for
24 me.

25 Q. He called them because you asked him to?

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1 A. Yes.

2 Q. And the police showed you the lineup?

3 A. After we got through talking for a while, yes.

4 Q. And you saw the same picture that you'd seen the
5 night before?

6 A. The same -- no. No. I saw the same guy who I saw
7 in the back of Able Body.

8 Q. You and I agree your statement says something
9 different; doesn't it?

10 A. Well, like I said, when they showed me the pictures,
11 I remember him when I'm talking to him in the back of
12 Able Body. That's when the second time I saw him.

13 MS. ADAMS: Your Honor, again, I renew my
14 objection. This question has been answered ---

15 THE COURT: Overruled.

16 MS. ADAMS: --- twenty times, at least.

17 THE COURT: Overruled. I'll allow her to
18 cross-examine the witness.

19 Q. So the part in your statement that says you didn't
20 look at the picture at first when the police came to
21 where you sleep, that's not true?

22 A. Like I said ---

23 Q. Just yes or no, sir?

24 A. Well, like I said, the only time I saw a picture
25 when I went down to the office, and they showed me these

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1 pictures and I pointed him out. That's the guy who I
2 talked to who said, I fucked up and you ain't never
3 killed nobody.

4 Q. Once again, the part in your statement that says, at
5 first I didn't look at this picture. That's incorrect?

6 A. Once again, I didn't look at no pictures that night.

7 Q. Now, when you had the man at Labor Finders call the
8 police for you, did you expect any kind of reward from
9 the police?

10 A. No. No. I'm doing the Godly thing to do. That's a
11 Godly thing to do, because like I was saying, when people
12 was telling me how she got killed and he said that how he
13 found her, it was a Godly thing to do.

14 Q. They paid for your transportation down here?

15 A. Yes, they did.

16 Q. And they paid for you to have a place to stay while
17 you're here?

18 A. Yes.

19 Q. And your meals?

20 A. Yes.

21 Q. Okay. And all that moving around that you did, all
22 the traveling that you say you did, does that have
23 anything to do with the times where you smoked up your
24 check that you say you talked to Mr. Hayes about?

25 A. Yes. Like I said, I said, yeah, I'm fucked up, too.

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- 1 Q. And that includes smoking up your check?
- 2 A. Yes. Yes.
- 3 Q. So you ---
- 4 A. Yeah. I ain't going to lie about it. Yeah, yeah.
- 5 I'm not perfect.
- 6 Q. You've done some drugs in the past?
- 7 A. Yes. Yes.
- 8 Q. Okay. All right. And while you were having
- 9 problems smoking up your check is when you actually stole
- 10 your own brother's check?
- 11 A. Yes.
- 12 Q. Put your name on the back of it or signed his name
- 13 on the back of it?
- 14 A. But what does it have to do with this?
- 15 Q. I'm ---
- 16 A. My brother's dead now. So don't do that.
- 17 Q. I'm just asking. You brought it up on direct ---
- 18 A. Yeah.
- 19 Q. --- so I'm asking you questions about it.
- 20 A. Yeah. I brought it up to him when I was talking to
- 21 him that day.
- 22 Q. Signed his name on the back of the check?
- 23 A. Yes.
- 24 Q. Took it to the bank?
- 25 A. I got it cashed.

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1 Q. Lied about who you were?

2 A. Well, that's -- you know, this ain't got nothing to
3 do with this case right here.

4 Q. But you're here -- you say you were brought up to do
5 the right thing?

6 A. Yes. I make mistakes.

7 Q. And you say it took you three seconds ---

8 A. Three seconds.

9 Q. --- to look at this? But ten days to call the
10 police?

11 A. Well ---

12 Q. Isn't that right, sir?

13 A. Well, like I said, like I said, everybody was
14 talking about it, and they knew her, and how nice she
15 was. So, you know, the good Lord touched my heart and
16 said go do this and I did it.

17 MS. HORLBECK: I've got nothing else for this
18 witness.

19 **REDIRECT EXAMINATION**

20 **BY MS. ADAMS:**

21 Q. Mr. White, just a few questions.

22 A. Okay.

23 Q. I'm not going to keep asking you about seeing that
24 picture.

25 A. Okay.

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1 Q. Can you explain why it would have been put in the
2 statement that you -- at first, I didn't really look at
3 the picture? What did you mean by that?

4 A. I, look, I really don't know. Because, like I said,
5 my -- I had a bad situation, too. Homeless, away from
6 home, thinking about going home and everything. Then I
7 have never done anything like this, never in my life, to
8 go make a statement about nobody getting killed.

9 Q. Okay. But were you saying that you looked at the
10 picture or half-way looked at the picture or anything
11 like that?

12 A. I didn't look -- they didn't show them to me.

13 Q. Okay.

14 A. Because like I say, I'm not from here.

15 Q. Okay.

16 A. If they would have showed -- I don't know him.

17 Q. All right. She talked to you, she asked you about
18 stealing or using your brother's check. You felt bad
19 about that?

20 A. Oh, Lord. You know what, the good Lord punished me.
21 I could have died. I got stabbed twice. But God work in
22 mysterious ways and I guess that was part of my
23 punishment for what I had done to my brother. I never
24 got a chance to even to tell my brother I was sorry
25 because he died. He was on dialysis. And I called them,

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1 I said, tell my brother Lewis, I'm sorry what I did. I'm
2 sorry. So I never got a chance to tell him that one day
3 I'm going to come back home and give him all that money
4 back, what I stole from him. I never got the chance.

5 Q. And because you felt so bad about it, is that why
6 you shared that with Ralph Hayes?

7 A. Yes. I told him. I said, we all -- I fucked up
8 bad, man. I stole my brother's check and cashed it.

9 Q. Have you lied about anything that you've said ---

10 A. Nothing.

11 Q. --- in this courtroom today?

12 A. Nothing. Nothing. Nothing.

13 Q. Okay.

14 A. The words he told me that day, I'll never forget as
15 long as I live. And my hand on this Bible, they did not
16 show me no pictures. I didn't see them, not me. I
17 didn't see no pictures. Until I saw him that day and I
18 talked to him and when the officer showed me them
19 pictures, when they told me to look it and see if this is
20 the same who talked to you that day, that's the only time
21 I saw a picture. And I put my hand on this Bible right
22 here.

23 Q. She asked you about benefits. Prior to your trip
24 here, has anybody paid you to testify?

25 A. No, no.

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1 Q. Have you received any other kind of benefits,
2 financial or otherwise?

3 A. None, none.

4 Q. For getting involved in this?

5 A. None.

6 MS. ADAMS: Your Honor, the State would move
7 for this statement, which is Defendant's Exhibit Number
8 1, to be admitted into evidence. It's been relied upon
9 so greatly by the Defense.

10 THE COURT: Any objection?

11 MS. HORLBECK: Your Honor, I would object under
12 the best evidence rule.

13 THE COURT: All right. I sustain the
14 objection.

15 Q. And you've told the absolute truth?

16 A. On my two brothers, on my two dead brothers' grave.

17 Q. I'm going to have you read this statement.

18 A. And the Bible.

19 Q. I don't want any -- anything out of context. I want
20 you to read it from the beginning to the end.

21 THE COURT: Let's take a short break, ladies
22 and gentlemen. I think you might want a break before we
23 have this read into the record. Don't discuss the case
24 while you're back. We'll be able to finish up in a
25 little bit. Let's take a short break. Go back to your

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1 jury room. Don't discuss the case. We'll call you back
2 in about ten minutes.

3 Everyone else, please remain seated while the jury
4 departs. Thank you.

5 (WHEREUPON, the jury exited the open court at
6 approximately 4:43 p.m.)

7 THE COURT: All right. Let's take about a ten-
8 minute break. You may step down, Mr. White. Let me
9 remind you not to be discussing your testimony with
10 anyone.

11 THE WITNESS: Okay.

12 THE COURT: Certainly, you can read the
13 statement over.

14 THE WITNESS: You want me to keep this?

15 THE COURT: Y'all want to let him keep that
16 statement? Have y'all got another copy of it somewhere?

17 MS. HORLBECK: I've got it.

18 THE COURT: Okay.

19 (WHEREUPON, the Court stood at recess for a short
20 break.)

21 THE COURT: All right. Mr. White, you can come
22 back around.

23 MS. HORLBECK: And, Judge, I may have misheard.
24 I think the last thing I heard was the State asking that
25 Mr. White read the entire statement into the record.

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1 THE COURT: That's what I thought I heard.

2 MS. HORLBECK: Okay. Judge, I'm objecting to
3 that. I think that's just a backdoor attempt to get the
4 statement in when Your Honor just told them that they
5 could not get the statement in under the best evidence
6 rule. So I'm just going to object.

7 THE COURT: Well, that was the document itself
8 that you objected to; right?

9 MS. HORLBECK: Yes, sir. And I'm objecting on
10 the same basis. I think that their witness, if he wants
11 to testify and be subject to cross-examination then
12 that's fine. But I think that reading his own statement
13 into the record is just a backdoor way of getting the
14 statement in. And I'm objecting.

15 THE COURT: But haven't you asked him to read
16 parts of his statement already?

17 MS. HORLBECK: Yes. But I'm not reading -- did
18 not request that he read the whole thing, Judge.

19 THE COURT: Well, maybe they could just read
20 the parts that haven't already been read. I'll allow
21 them, if they desire to do that now. The redirect on the
22 statement -- this will be brief, I'm confident; right?

23 MS. ADAMS: Yes, sir.

24 THE COURT: This will be our last witness for
25 today?

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1 MS. ADAMS: Yes, sir.

2 THE COURT: So I'll allow them to complete
3 their redirect. And, again ---

4 MS. ADAMS: Your Honor ---

5 THE COURT: --- I don't know if she meant to
6 read it to himself. But I thought if he read it again,
7 the jury probably need a break. They were getting a
8 little antsy, I thought.

9 MS. ADAMS: Your Honor, to save some time, the
10 original is on its way. It should be here within five
11 minutes. So once it arrives, and it will not be
12 necessary for Mr. White to read the statement, which, of
13 course, I'm sure ---

14 THE COURT: All right. The original is on its
15 way to do what with it?

16 MS. ADAMS: And then at that time, I'll move
17 for it to be admitted.

18 THE COURT: Okay. Do you have the same
19 objection?

20 MS. HORLBECK: Yes.

21 THE COURT: All right. Okay. Your objection
22 is not so much that it's being a copy, but that the
23 testimony, I gather -- I'm not trying to put words in
24 your mouth, Ms. Horlbeck -- but that the testimony itself
25 is before the jury and the statement ---

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1 MS. HORLBECK: Yes, sir.

2 MS. ADAMS: Well, Your Honor, we're talking
3 about a statement which, again, that she just had the
4 witness read just bits and pieces. And it is unfair for
5 this jury, the triers of the fact, the triers of facts,
6 to not get the whole statement.

7 THE COURT: Well, that's what she just objected
8 to and I just overruled her. But I'm not letting the
9 document in to go before the jury to have in their jury
10 room.

11 MS. ADAMS: Okay. All right. The State calls
12 Larry White.

13 THE COURT: Do you need to wait a minute ---

14 MS. ADAMS: Yes, sir.

15 THE COURT: --- for the statement to be here in
16 any minute. Do you need to wait any time more?

17 MS. ADAMS: I'm going to let him read it, and
18 then I'll ---

19 THE COURT: But you ---

20 MS. ADAMS: Well, okay.

21 THE COURT: You said that something was on its
22 way and Ms. Munson just left. Do we need --

23 MS. ADAMS: No. I'll ---

24 THE COURT: I don't want to bring the jury out
25 if we're not ready to proceed?

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1 MS. ADAMS: No. I misunderstood. I thought
2 you were saying that was still going to be a problem,
3 even with the original.

4 THE COURT: No. I don't think there's -- is
5 there an objection made to the fact that he's reading the
6 copy? I know there was an objection made that they're
7 going to be -- I'm going to allow them to ask questions
8 about the statement in redirect, such as you asked on
9 cross-examination.

10 MS. HORLBECK: Is he reading it in?

11 MS. ADAMS: Your Honor, we can bring the jury
12 in.

13 THE COURT: Okay. Let's have our jury come
14 back if they're ready.

15 MS. ADAMS: I'll try to speed it up a little
16 bit.

17 (WHEREUPON, the jury entered the open court at
18 approximately 5:00 P.M.)

19 THE COURT: All right. Ms. Adams, you may
20 continue your redirect.

21 MS. ADAMS: Thank you, Your Honor.

22 **REDIRECT EXAMINATION CONTINUED**

23 **BY MS. ADAMS:**

24 Q. Okay. Mr. White, we're going to go over your
25 statement in its entirety. I'm going to read the

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1 statement and ask you if it's true. And this is a
2 statement that was give on June 19th of 2009.

3 A. Okay.

4 Q. I am fifty-one years of age and reside at so and so.
5 I'm not under the influence of drugs or alcohol. I know
6 what I'm doing and saying. I attended high school at
7 East St. Louis High, completed high school up until
8 twelfth grade, 1976, but did not graduate. I can read
9 and write. I am allowing Deputy Mitchell to type my
10 statement for me. Is that true?

11 A. Yes.

12 Q. I have been living in Greenville, South Carolina for
13 about a month and four days. I came up here on a
14 Greyhound Bus from Atlanta, Georgia, because there was
15 too many homeless people down there. I also used to live
16 here, back in 2005 for a while. Since I have been back,
17 I've been trying to find work at either Labor Finders,
18 Able Body Labor, or Labor Ready, over near Washington
19 Street.

20 A. Uh-huh (affirmative).

21 Q. Is that true?

22 A. Yes.

23 Q. Last Tuesday, June 9th, 2009, some time after two
24 o'clock P.M., I was at the Able Body Labor at 47 Pete
25 Hollis Boulevard in Greenville, South Carolina, phone

1 number 864-233-2661. That's when I noticed this black
2 guy. He said he was fifty-one years of age. He had a
3 bald head, but he had a little hair on the sides, which
4 was greyish. He had a little hair on his chin that was
5 greyish, too, kind of like he hadn't shaved in a while.
6 He was wearing long pants, I think. The bag -- they were
7 light brown in color. I don't remember his shirt color,
8 but he was wearing a dark blue ball cap. He was carrying
9 a small green bag. The bag was cloth and kind of light
10 green color with two handles. And I think that it had
11 white letters on the outside. I don't know what was
12 inside of the bag. He didn't tell me his name, but he
13 was sitting down and crying. I asked him, why you crying
14 like that? He said, man, I done fucked up. I fucked up,
15 man. Is that true?

16 A. Yes.

17 Q. He said it about four or five times. He also said,
18 I done fucked up so bad, that God won't forgive me for
19 what I've done. I'm going to kill myself. I told him,
20 don't kill himself, that it couldn't be so bad that God
21 couldn't work it out for you. I said, what did you do?
22 Did you smoke your check up? Did you smoke your money
23 up? I told him that we've all smoked our money away,
24 man. He said, I've done something worse than that, man.
25 I fucked up worse than that. I told him that I

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1 understood why he was crying because I had cashed my
2 brother's check before, and I cried for a month after
3 that. That's when he said, yeah, but you ain't never
4 killed anybody.

5 A. Uh-huh (affirmative).

6 Q. Is that true, Mr. White?

7 A. Yes. Yes.

8 Q. I said, yeah, but I have fucked up in life. I asked
9 him what he was going to do? And he said that he was
10 leaving town. I asked him where he was going to go and
11 he told me he was going to his sister's house in
12 Kentucky. I asked him where in Kentucky he was going to
13 and he got mad and told me he wasn't going to tell me.

14 Is that true, Mr. White?

15 A. Yes.

16 Q. He told me he was leaving on a Greyhound bus that
17 night, Tuesday, at nine forty-five P.M. And he showed me
18 the tickets, but I couldn't see the destination or time.
19 But I definitely saw the Greyhound symbol. It was
20 definitely a bus ticket. He said that he was going to
21 tell his sister in Kentucky what he had done, and that he
22 had fucked up real bad.

23 MS. HORLBECK: Objection.

24 Q. Is that true, Mr. White?

25 THE COURT: Wait. Hang on just a minute.

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1 MS. HORLBECK: I'm sorry. I think I just have
2 a matter that we need to -- it's not on this page. It's
3 about something that's to come, and I thought -- if I
4 need to bring this to the Court's attention it would be
5 better to do it now.

6 THE COURT: All right. Why don't y'all come
7 here, if you could, and let's see if we can do it on a
8 bench conference.

9 (WHEREUPON, Ms. Adams and Ms. Horlbeck approached
10 the bar.)

11 THE COURT: Ladies and gentlemen, I believe
12 we're almost completed with this witness. There's one
13 matter of law I need to take care of briefly. I
14 understand the time restraints that some of us have.
15 We'll be out of here soon. I'm going to ask you to go
16 back to your jury room just briefly. Don't discuss the
17 case while we resolve this brief legal issue. We'll call
18 you right back.

19 (WHEREUPON, the jury exited the open court at
20 approximately 5:07 P.M.)

21 THE COURT: All right. Ms. Horlbeck.

22 MS. HORLBECK: Judge, my objection is that on
23 page two of the -- Mr. White's statement, there is a line
24 that talks about information of a past beating on Ms.
25 Alexander. And in accordance with the Court's ruling, I

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1 would ask that that not be read.

2 Now, I'm sure the State's going to claim that we
3 opened the door. My recollection of Ms. Johnson's
4 questioning of Ms. Ashmore -- is that her name? --- was,
5 I believe she asked her about prior -- knowledge of Ms.
6 Alexander's prior drug activity. And then I think Ms.
7 Ashmore blurted out some responses that were not
8 solicited. So our position is we've not opened the door
9 to any prior bad act evidence and we would ask that that
10 line -- and it's actually on page two, line -- if Your
11 Honor will just give me a second to count -- line twelve
12 through thirteen on page two of Mr. White's statement.

13 THE COURT: All right. What's the State's
14 position, Ms. Adams?

15 MS. ADAMS: Your Honor, the statement to which
16 Ms. Horlbeck is referring to, yes, he says that the
17 girlfriend had accused him in the past of beating her.
18 He doesn't make -- this is not an admission or anything
19 like that. He just stated that he'd been accused of this
20 at one time. He didn't -- he does not admit to beating
21 her, so it's harmless.

22 MS. HORLBECK: Well, Judge, certainly if a
23 prior conviction can't come in, then I would say that
24 something less than that, which is an accusation, should
25 not come in at all, Judge. And there we have the whole

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1 clear and convincing standard that has to be met.

2 THE COURT: Is that one sentence that ---

3 MS. HORLBECK: Yes, sir.

4 MS. ADAMS: It's one sentence.

5 THE COURT: --- beating her and then he was
6 arrested on his job or something?

7 MS. HORLBECK: Yes, sir.

8 THE COURT: That's all in one sentence?

9 MS. HORLBECK: Yes, sir.

10 THE COURT: All right.

11 MS. ADAMS: And, Your Honor, the way we look at
12 it, I mean, this was his explanation for why he was
13 leaving town.

14 THE COURT: I'll grant your motion to redact
15 that sentence, Ms. Horlbeck.

16 MS. HORLBECK: Thank you.

17 THE COURT: If you'll just not read that
18 portion when you go through the narration, Ms. Adams. I
19 think the prejudicial effect would outweigh the probative
20 value there and could cause confusion of the jury based
21 on the testimony of Ms. Ashmore.

22 All right. Let's have our jury come back if they're
23 ready.

24 (WHEREUPON, the jury entered the open court at
25 approximately 5:12 P.M.)

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1 THE COURT: All right. You may continue.

2 MS. ADAMS: Thank you, Your Honor.

3 REDIRECT EXAMINATION CONTINUED

4 BY MS. ADAMS:

5 Q. And I'm picking up where I left off. After he told
6 me he was going to tell his sister about what he had
7 done, he kept on crying. He said that he went home to
8 his apartment and found his girlfriend stabbed a lot of
9 times, and that her panties were down. I said, who do
10 you think did it, man? He said, the dope boy done it. I
11 asked him how he knew the dope boy done it. He said that
12 she owed the dope boy money and that her mama or her
13 mother had bailed her out before. Is that true, Mr.
14 White?

15 A. Yes.

16 Q. He said that he told her before to stop getting dope
17 on credit from the dope boy. He said that she ran out of
18 -- that he ran out of the house after he found her. I
19 asked him why did he run out of the house. And he said
20 that they're going to think I did it. I asked him why
21 did he leave her there if he loved her? He said, I done
22 fucked up. Is that true, Mr. White?

23 A. Yes.

24 Q. I asked him how long did he think she had been
25 there? And he said maybe a couple of days. I said, man,

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- 1 you better tell somebody because she's going to be
2 stinking, man. I told him that he needed to tell someone
3 because it would hurt her mama if she found her daughter
4 like that. True?
5 A. Yes.
6 Q. Then he said, I fucked up man, and I got to go.
7 That's when he went down to the ABC store and got a beer,
8 I think. I went over to the church down the street, it's
9 called Triune, I think. He came back to the church and I
10 told him that if he showed his bus ticket to the church
11 people, that they would give him some food to ride with.
12 And I told him good luck. At some point during the
13 conversation, he told me he was from Newark, New Jersey
14 and that he had been in Greenville for a couple of years.
15 The whole time I was talking to him, I could tell that he
16 was hurting inside, emotionally. And I thought it was
17 strange that he was crying so hard because he was a grown
18 man. Before he left I told him good luck. And then he
19 said for me not to tell anyone about what we had talked
20 about and where he said he was going. Then last night,
21 Thursday, June the 28th, 2009, around nine-thirty P.M. or
22 so, the sheriff's office deputies came around to where we
23 sleep at and was showing pictures of the guy and were
24 asking if we knew the guy. Is that true?
25 A. Yes.

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1 Q. They didn't tell us what he did, so at first, I
2 didn't really look at the picture. There was some rumors
3 that the guy had just stole some checks but nobody knew
4 for sure. Then this morning, they were telling me that
5 the guy had stabbed his girlfriend a bunch of times. And
6 that's when I told the guy at Labor Finders that the guy
7 that the sheriff's office was looking for last night was
8 the same guy that last week had told me about his
9 girlfriend being dead, and that he had fucked up. Then
10 an investigator had come and picked me up, picked me up
11 to take me to the sheriff's office so I could give this
12 statement. The guy that told me about finding his
13 girlfriend stabbed to death and that he had fucked up, is
14 the same guy I picked out of the photo lineup that
15 Investigator Miller showed me. This statement is true
16 and I allowed Deputy Mitchell to type this for me, the
17 statement. Is all of that true?

18 A. Yes.

19 MS. ADAMS: That's all from this witness, Your
20 Honor.

21 THE COURT: All right. Thank you. Mr. White,
22 you may step down.

23 Ladies and gentlemen, we've reached a good time to
24 break for the day. I remind you again not to discuss the
25 case with anyone tonight while you're out and about with

1 loved ones. Again, you'll have a chance to share with
2 your family and friends your experience, but while this
3 trial is in progress is not the time to do that.

4 I remind you again not to try to do any kind of
5 independent research or ride by the scene or do anything
6 like that. These attorneys are going to give you the
7 information you need to make a good sound decision.
8 Remember the commitment you've made to maintain the
9 purity of this process while it's on-going.

10 Have a good evening. We'll be ready to start back
11 at nine o'clock in the morning. If you'll be back in
12 your jury room then, we'll be ready to proceed with the
13 next witness. Have a good evening, ladies and gentlemen.

14 Everyone else, please remain seated while the jury
15 departs.

16 (WHEREUPON, the jury exited the open court at
17 approximately 5:17 P.M.)

18 THE COURT: All right. We'll be at ease until
19 nine o'clock in the morning.

20 (WHEREUPON, the court stood at recess for the day.)

21 **October 16, 2012**

22 (WHEREUPON, court convened with all parties present
23 and the following proceedings were had.)

24 (WHEREUPON, State Exhibit Numbers 3 through 56 were
25 marked for identification.)

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1 THE COURT: Are you ready to proceed, from the
2 State?

3 MS. MUNSON: Yes, sir.

4 THE COURT: And is the Defense ready?

5 MS. HORLBECK: Yes, Your Honor.

6 THE COURT: All right. Let's have our jury
7 come in if they're ready.

8 (WHEREUPON, the jury entered the open court at
9 approximately 9:08 A.M.)

10 THE COURT: Good morning, ladies and gentlemen.
11 We're now ready to proceed with the trial of the case.
12 The State may call its next witness.

13 MS. MUNSON: Thank you, Your Honor, may it
14 please the Court. The State calls Ashleigh Swanson.

15 THE CLERK: Mr. Swanson, if you would come
16 forward to be sworn in, please. Please place your left
17 hand on the bible and raise your right.

18 Do you swear or affirm that the testimony you're
19 about to give is the truth, the whole truth and nothing
20 but the truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: Thank you. You may be seated.
23 Would you please state your name for the record.

24 THE WITNESS: Ashleigh Lynn Swanson.

25 THE CLERK: Thank you.

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1 ASHLEIGH SWANSON,

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MS. MUNSON:

5 Q. Who do you work for, ma'am?

6 A. Greenville County Sheriff's Office.

7 Q. How long have you been with the sheriff's office?

8 A. Just under four years.

9 Q. What is your job title?

10 A. I'm a Deputy II.

11 Q. And what are your duties?

12 A. I answer 9-1-1 calls, calls for service.

13 Q. All right. Were you with the sheriff's office in
14 June of 2009?

15 A. Yes, ma'am.

16 Q. And did you get a call in reference to this case?

17 A. Yes, ma'am.

18 Q. About what time did you get the call?

19 A. I arrived on scene just after nine P.M.

20 Q. Okay. And where did you go?

21 A. I responded to ■ Galphin Drive, Apartment ■ which
22 is in Greenville County, South Carolina.

23 Q. Okay. Is this area, is it homes, is it apartments?

24 What kind of area is it?

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1 A. They're two-story apartments. They're like town
2 homes, yes, ma'am.

3 Q. Okay. When you got to the scene, were you in
4 uniform, marked car?

5 A. Yes, ma'am. I looked like this, except I had on
6 short sleeves on.

7 Q. Okay. Was anybody with you?

8 A. Yes, sir. Or yes, ma'am. I was in training at the
9 time. My training officer was there and several other
10 deputies responded.

11 Q. Okay. When you first got to the scene, were there
12 any other emergency personnel there?

13 A. Yes, ma'am. The fire department was already there.

14 Q. Okay. Had anyone gone -- any of the emergency
15 personnel gone in?

16 A. The fire department did, EMS did not.

17 Q. All right. Were there any other law enforcement
18 officers there when you got there?

19 A. No, ma'am.

20 Q. Okay. Now, you say you were in training. What was
21 the purpose of having the other officer with you?

22 A. To supervise, to prevent destruction of evidence, to
23 teach me, so I could respond to other situations like
24 this.

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1 Q. Okay. And when you went into the apartment, what
2 did you find?

3 A. I found the victim deceased, upstairs in her
4 bathroom.

5 Q. Okay. And what condition was she?

6 A. She was deceased. She -- her clothing had been
7 pulled down below her waist, so she was partially naked.
8 There was blood and a strong odor coming from the area.

9 Q. Okay. When did you notice the odor?

10 A. Immediately before, I believe, I walked in the front
11 door, a very distinguishable smell. I won't ever forget
12 that smell.

13 Q. Okay. What were your duties on scene?

14 A. To preserve the crime scene, to speak with the
15 initial witnesses, the people that had already responded,
16 and to figure out what their duties were and what they
17 had already done at the scene.

18 Q. Okay. Did you collect any evidence?

19 A. No, ma'am.

20 Q. How long were you on the scene?

21 A. I was on scene from nine-oh-three P.M. to one forty-
22 five A.M.

23 Q. Okay. Deputy Swanson, I'm showing you State's

24 Exhibit Number 56. If you could take a look at that. Do

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1 you recognize it?

2 A. Yes, ma'am. These are the apartments where I
3 responded to.

4 Q. Okay. Is that a true and accurate depiction of
5 where you responded on that date?

6 A. Yes, ma'am.

7 Q. All right.

8 MS. MUNSON: Your Honor, at this time, I move
9 State's 56 into evidence.

10 THE COURT: Any objection?

11 MS. JOHNSON: No, Your Honor.

12 THE COURT: Without objection, Exhibit 56 is
13 into evidence and may be published.

14 (WHEREUPON, State Exhibit Number 56 was admitted
15 into evidence.)

16 Q. All right. Deputy Swanson, if you could just take a
17 look at State's Exhibit Number 56. What does this show?

18 A. This is an overhead view of the apartments and the
19 victim's apartment is in this area right here.

20 MS. MUNSON: Madam Bailiff, maybe we could have
21 the lights ---

22 MADAM BAILIFF: You want me to put one of them
23 back on?

24 MS. MUNSON: Yes, ma'am. Thank you. There we
25 go. Okay.

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1 Q. Now, the victim's apartment is in what area?

2 A. This area right here.

3 Q. What is the closest main road to what's depicted on
4 State's 56? Do you remember?

5 A. I don't remember the exact road. I know it's near
6 the intersection of Rutherford and North Pleasantburg.

7 Q. Okay.

8 MS. MUNSON: I have nothing further, Your
9 Honor.

10 MS. JOHNSON: May it please the Court?

11 THE COURT: Yes, ma'am.

12 **CROSS-EXAMINATION**

13 **BY MS. JOHNSON:**

14 Q. Officer Swanson, you first responded to the scene?

15 A. Yes, ma'am.

16 Q. Okay. You were the first one there?

17 A. Yes, ma'am.

18 Q. Okay. And Wade Hampton Fire Department came?

19 A. Yes, ma'am. They were the first -- I was first from
20 the sheriff's office, but they were there before me.

21 Q. Okay. EMS was also there?

22 A. Yes, they did not enter the residence though.

23 Q. Okay. And the coroner was also there?

24 A. Yes, ma'am. He came after I arrived.

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1 Q. And how many deputies were there?

2 A. It was myself, my training officer, my sergeant,
3 another deputy and, of course, the CID investigator?

4 Q. So is that a total of five deputies or five
5 officers?

6 A. Yes, ma'am.

7 Q. Okay. All right. And so you talked to the
8 witnesses?

9 A. Yes, ma'am.

10 Q. You talked to the family?

11 A. A little bit, yes, ma'am.

12 Q. Okay. And the family told you they hadn't heard
13 from Jackie in a while?

14 A. That's correct.

15 Q. And so you entered the house?

16 A. Yes. To do a welfare check.

17 Q. Okay. And you didn't see any signs of a struggle
18 when you entered?

19 A. No, ma'am.

20 Q. Okay. And it was a relatively clean crime scene,
21 blood wasn't all over the place?

22 A. I don't remember seeing much blood outside the
23 bathroom.

24 Q. Okay. And so you were the first to arrive?

25 A. Yes.

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1 Q. And the last one to leave?

2 A. I believe so.

3 Q. And you secured the scene?

4 A. Yes, ma'am.

5 Q. Okay.

6 MS. JOHNSON: That's all I have.

7 THE COURT: Any redirect?

8 MS. MUNSON: Nothing further, Your Honor. I
9 apologize. Nothing further.

10 THE COURT: Okay. Thank you. You may step
11 down.

12 MS. MUNSON: We'd ask that this witness be
13 excused.

14 THE COURT: Without objection?

15 MS. HORLBECK: Without objection, Your Honor.

16 THE COURT: The witness is excused.

17 MS. MUNSON: Your Honor, the State calls Dr.
18 Michael Ward.

19 THE CLERK: Dr. Ward, if you would come forward
20 to be sworn in, please. Please place your left hand on
21 the bible and raise your right.

22 Do you swear or affirm that the testimony you're
23 about to give is the truth, the whole truth and nothing
24 but the truth, so help you God?

25 THE WITNESS: I do.

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1 THE CLERK: Thank you. You may be seated.

2 Would you please state your name for the record.

3 THE WITNESS: Michael Eugene Ward.

4 THE CLERK: Thank you.

5 MICHAEL WARD, M.D.,

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MS. MUNSON:

9 Q. Who do you work for, sir?

10 A. I'm employed by Pathology Associates of Greenville
11 and also by Greenville County as the Chief Medical
12 Examiner.

13 Q. All right. How long have you been the Chief Medical
14 Examiner for Greenville County?

15 A. Approximately seventeen years.

16 Q. What are your duties as the chief medical examiner?

17 A. My job is to investigate deaths that occur in
18 Greenville County to determine cause and manner of death.

19 Q. All right. What is your educational background?

20 A. I have a Bachelor's Degree in Biology from the
21 University of Alabama. I received my Master's Degree in
22 Forensic Science from the University of Alabama in
23 Birmingham. My Medical Degree is from the University of
24 South Alabama, which is in Mobile. I did a four-year

1 Anatomic Pathology Residency at the Medical University of
2 South Carolina in Charleston and a one-year Forensic
3 Fellowship at the University of New Mexico in
4 Albuquerque. I'm Board Certified by the American Board
5 of Pathology in both Anatomic and Forensic Pathology.

6 Q. What is forensic pathology?

7 A. Well, pathology is the study of disease and disease
8 processes and how they affect man. Forensics pathology
9 takes that one step further with disease, but also trauma
10 injuries, interpretation of those injury patterns to
11 determine cause and manner of death. And then to present
12 that information in the judicial process, as we are
13 today.

14 Q. And are you licensed to practice medicine in South
15 Carolina?

16 A. I am.

17 Q. Okay. About how many -- well, first of all, let me
18 back up a little bit. In determining cause and manner of
19 death, what is one of the main tools that you use?

20 A. The most frequently used tool that we use is the
21 autopsy. An autopsy is a detailed physical examination
22 performed on a person after they have died, which entails
23 an external examination as well as an internal
24 examination, looking at injury, injury patterns on the
25 outside, their extension to the inside, as well as a

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1 microscopic examination and a toxicological examination
2 of body fluids.

3 Q. All right. How many autopsies would you say you
4 have performed, Dr. Ward?

5 A. Several thousand.

6 Q. All right. Have you ever been qualified as an
7 expert in the field of Forensic Pathology in the courts
8 of South Carolina?

9 A. Yes, I have.

10 Q. Approximately how many times?

11 A. Well over a hundred times.

12 MS. MUNSON: Your Honor, at this time, I offer
13 Dr. Ward as an expert in the field of Forensic Pathology.

14 THE COURT: Any voir dire or any objection?

15 MS. HORLBECK: No objection and no voir dire.

16 THE COURT: All right. Ladies an gentlemen,
17 let me just briefly explain to you about an expert
18 witness. Normally, a person who's called to testify
19 can't give an opinion. They can testify to what they saw
20 or heard or sensed in some way. But there is an
21 exception when someone is qualified because of education
22 or experience. They're permitted to give an opinion in
23 certain areas that they're qualified in and give a basis
24 for that opinion. This expert is qualified in the -- has
25 been qualified in the Science of Forensic Pathology.

1 Therefore, he will be able to give opinions and the basis
2 thereof. That doesn't mean you must accept the opinion.
3 It's evidence, as all other evidence; you use it any way
4 you see fit.

5 Solicitor, you may continue your examination.

6 MS. MUNSON: Thank you, Your Honor.

7 Q. Now, Dr. Ward, did you perform an autopsy in this
8 case?

9 A. Yes, I did.

10 Q. On what date?

11 A. The autopsy was performed on June 15th, 2009.

12 Q. Now, if a body was located on the 13th of June and
13 autopsied on the 15th, would that two-day delay have any
14 impact at all on your findings?

15 A. It would not. What happened is my interpretation of
16 this is that she was found on a Saturday. We do not
17 perform autopsies on Sunday. So she was held until
18 Monday. Bodies are transported from the scene to the
19 morgue facility, which is at Greenville Memorial
20 Hospital, and placed in a cooler where the bodies are
21 maintained until the next autopsy day, which in this case
22 would have been Monday. She would have been in
23 essentially the same state on Saturday as she was on --
24 Saturday evening as she was Monday morning.

25 Q. Thank you, Doctor. Now, what did you first notice

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1 about this body that you performed the autopsy on, on
2 June 15th?

3 A. Well, the -- immediately the first thing you notice
4 is there's a state of decomposition. In that, that Ms.
5 Alexander had begun to autolyze or her tissues had begun
6 to break down. This is evident in the scene photos, the
7 description of the scene with the foul odor, and it was
8 obvious at the autopsy.

9 Q. All right. After examining, just looking at Ms.
10 Alexander's body, what was the next thing you did?

11 A. We documented the clothing that she was wearing, the
12 position of that clothing, then examined the external
13 surface of the body and documented the injuries that were
14 present.

15 Q. All right. What did you find or did you find
16 anything as far as injuries on the outside of Ms.
17 Alexander's body?

18 A. Yes. There were a total of twenty-eight separate
19 and distinct stab wounds to the body; one to the left
20 neck, four to the stomach region, and twenty-three to the
21 left upper and left mid back.

22 Q. All right. Dr. Ward, what is a defensive wound?

23 A. A defensive wound is a wound that's characterized by
24 its location, generally on the hands, sometimes on the
25 forearms or maybe even on the legs or feet, where it

1 appears that the victim was trying to block a stab wound
2 or ward off a blow, either from a blunt object or in this
3 case from a stab wound. So they receive cuts to the
4 hands, cuts to the back of the hands, to the wrist or
5 sometimes to the feet and legs.

6 Q. All right. With the condition that Ms. Alexander's
7 body was in, would you be able to see if there were any
8 defensive wounds on her?

9 A. Yes, we would.

10 Q. And did you notice any on her?

11 A. There were no defensive type wounds on Ms.
12 Alexander's body.

13 Q. Okay. After the external examination of the body,
14 what was the next thing you did?

15 A. Following external examination, there's an internal
16 examination. So we dissect the body in such a way as to
17 be able to visualize the underlying internal organs,
18 looking for trauma. We're able to dissect the stab wound
19 tracks to see where they go, to estimate their depth and
20 their direction, and to continue the examination to
21 determine cause of death.

22 Q. Do you generally, in an autopsy, perform a sexual
23 assault examination?

24 A. Not in every autopsy, no.

25 Q. Okay. Is this one where you would have performed

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1 one?

2 A. I do not recall. I'm sorry. I do not recall.

3 Q. Would the condition of her body have determination
4 on whether or not you would have performed a sexual
5 assault exam?

6 A. We have, on occasion, performed sexual assault exams
7 on bodies that are undergoing early autolysis. Ms.
8 Alexander was in a -- what I would I would consider to be
9 a moderate state of autolysis and a sexual assault
10 examination, in my opinion, would likely have been
11 fruitless.

12 Q. Okay. Now, as far as the internal examination, what
13 did you find of note that's relative to your opinion
14 today?

15 A. That there were stab wounds to the abdomen, which
16 traumatized the left hemidiaphragm, which is the muscle
17 that we use to breathe. And the stomach. There was
18 trauma to the right hemidiaphragm, which, again, is the
19 muscle that we use to breathe on the right side, and the
20 lower lobe of the right lung. There was also a
21 penetrating stab wound to the large intestine.
22 Examination of the back revealed most of the stab wounds,
23 most of the twenty-three stab wounds to the back to be
24 superficial, in that they did not penetrate into the
25 chest cavity. However, seven stab wounds did. Each of

1 these seven stab wounds penetrated into the back part of
2 the left lung causing trauma to that lung. So she had
3 traumatic injuries to the left lung, seven; the lower
4 lobe of the right lung, one; her stomach, the muscles
5 that she used to breathe; and her large intestine.

6 Q. So how would her body be reacting with trauma to the
7 hemidiaphragm and the lung?

8 A. Stab wounds that traumatize the diaphragm make it
9 difficult for that muscle to contract and so she's not
10 able to create the vacuum that allows us to inhale.

11 Also, anytime a wound penetrates into the pleural cavity
12 or into the cavity where our lungs are, that essentially
13 breaks a vacuum-type seal. And so instead of being able
14 -- when her diaphragm did contract, instead of air coming
15 in through her oral cavity or her mouth, it would suck in
16 through the wounds on her chest. So effectively, Ms.
17 Alexander would have extreme difficulty breathing and she
18 would also be extensively bleeding, primarily on the
19 inside into her pleural cavities.

20 Q. Okay. And what would be the effect of bleeding
21 extensively into her pleural cavities?

22 A. She would be unable to expand her lungs and she
23 would basically die from that.

24 Q. Okay. Did you also perform toxicology?

25 A. We did.

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- 1 Q. And what was the result of that?
- 2 A. Toxicological examination was performed on Ms.
- 3 Alexander's liver and the breakdown product of cocaine
- 4 called benzoylecgonine was identified. And there was
- 5 also a small amount of ethanol. But the ethanol in this
- 6 case is most likely as a result of decompositional change
- 7 as the bacteria break down the glucose, which is in the
- 8 bloodstream, they also produce a small amount of ethanol.
- 9 So there was a small amount of ethanol found and the
- 10 breakdown product of cocaine.
- 11 Q. All right. Dr. Ward, I'm showing you State's
- 12 Exhibit Number 3. If you can take a look at that?
- 13 A. Yes, ma'am.
- 14 Q. Did you create State's Exhibit Number 3?
- 15 A. I did.
- 16 Q. And what was the purpose of that?
- 17 A. The purpose of State's Exhibit 3 is a demonstrative
- 18 for the courtroom today. It is a copy of the wounds,
- 19 which were documented at the time of autopsy on a
- 20 separate diagram like this.
- 21 Q. Okay. And does State's Number 3 accurately depict
- 22 where the stab wounds were on Ms. Alexander's body?
- 23 A. Yes, they do.
- 24 Q. Now, Dr. Ward, did -- were also photographs taken of
- 25 these things?

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1 A. Yes, there were.

2 Q. All right. And how would you characterize those
3 photographs?

4 A. Gory.

5 Q. And will State's Number 3 be helpful to you in your
6 explanation to the jury?

7 A. Absolutely.

8 Q. Okay.

9 MS. MUNSON: Your Honor, at this time, I offer
10 State's 3 into evidence.

11 THE COURT: Any objection?

12 MS. HORLBECK: No objection.

13 THE COURT: Without objection, Exhibit 3 is
14 admitted and may be published.

15 (WHEREUPON, State Exhibit Number 3 was admitted into
16 evidence.)

17 Q. All right. Dr. Ward, here's a laser pointer. That
18 might be a little more helpful. Now, let's talk first on
19 State's Exhibit 3 about the first -- wound number one.

20 A. First of all, I would have to say that the stab
21 wounds are, what we call, arbitrarily numbered. So
22 they're not numbered to indicate the order in which I
23 think they occurred. They are numbered for convenience.
24 So basically, they start in the front and work their way
25 down. And then start in the back and work their way down

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1 in their numbering system. So stab wound number one is
2 here, which is in the left anterior neck, or the left
3 front part of the neck. It's a fairly superficial wound
4 in that it only goes into the subcutaneous tissues
5 beneath the skin. It does not traumatize any of the
6 great vessels of the neck. It does not penetrate into
7 the trachea. So this would be a fairly superficial
8 wound. It had a depth of about an inch and a half. And
9 in my opinion, this would be a non-fatal stab wound.

10 Q. All right.

11 A. Stab wound number 2 is present here in the left
12 upper quadrant. So we divide the abdomen into four
13 quadrants based on the belly button here. So this is in
14 the left upper quadrant. This wound penetrates through
15 the skin and the region of the ninth rib, which underlies
16 there, traumatizes the muscular fibers of the left
17 hemidiaphragm and penetrates into the underlying stomach.
18 So it perforates the stomach. It has a depth of
19 approximately four inches.

20 Q. Dr. Ward, I'm sorry. In what direction is that
21 wound, up or down or straight back?

22 A. This stab wound goes from Ms. Alexander's front to
23 her back and very slightly from her left towards the
24 right. So from the outside slightly towards the midline
25 like this.

1 Q. Okay.

2 A. Stab wound number three is in this region here.

3 This wound penetrates into the underlying abdominal

4 cavity, perforates or goes through the right

5 hemidiaphragm, traumatizes the underlying lobe of the

6 right lung, and penetrates for approximately six inches

7 into the body. It goes from Ms. Alexander's front to her

8 back and very slightly from her left to her right. So

9 very much in this direction here. So this wound is a

10 potentially fatal wound. This wound is a potentially

11 fatal wound. Stab wound number four, in the -- again, in

12 the lower portion of the left upper quadrant of the

13 abdomen, is a stab wound which only perforates or extends

14 into the subcutaneous tissue. So it goes into the skin,

15 into the soft tissue beneath the skin, but does not

16 penetrate into the underlying abdominal cavity. So this

17 would be a non-fatal superficial wound. But it also goes

18 from Ms. Alexander's front to her back and very slightly

19 from her left to her right, but only within the

20 subcutaneous tissues. Stab wound number five in the

21 right lower quadrant of the abdomen is a penetrating stab

22 wound, which goes into the abdominal cavity and

23 traumatizes the underlying large intestine. So it

24 perforated the large intestine, partially spilling

25 intestinal contents into the abdominal cavity. This

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1 wound was approximately three and a half inches deep and
2 extended from front to back. And this one went very
3 slightly from right to left, so more towards the midline.
4 So slightly this direction. Those were the stab wounds
5 to the front portion of Ms. Alexander.

6 Q. Now, Dr. Ward, can I ask you a question about the
7 front ones?

8 A. Yes, ma'am.

9 Q. As far as -- how would she be bleeding, would you
10 expect, with these five wounds?

11 A. From each of these stab wounds there's going to be
12 two types of bleeding. There will be bleeding from the
13 skin and from the vessels in the skin. So when you've
14 cut your hand, you know that even though it's not a very
15 deep wound, there is some blood that comes from the skin
16 surface. So it's a trickle type blood. These are a
17 little bit deeper so they may be more than a trickle, but
18 it's not going to be spurting arterial blood. There is
19 no -- there have been no great vessels traumatized. So
20 the stab wound to the neck is not going to spurting
21 arterial blood. But there will be blood oozing from the
22 skin's surface, especially from here. But also from the
23 skin of these stab wounds as well. But most of the
24 hemorrhage or bleeding that occurs from these wounds is
25 going to be inside the body. So there will be blood

- 1 accumulating in the right pleural cavity. There will be
2 blood accumulating into the peritoneal cavity from these
3 stab wounds.
- 4 Q. Okay. Thank you.
- 5 A. We move to the back. Stab wounds number six through
6 eighteen are all -- are fairly grouped together and are
7 all superficial in their nature, in that they do not
8 penetrate into the underlying pleural cavity. They do
9 not traumatize the spinal cord and they do not sever any
10 great arteries underlying. So they're hitting bone.
11 They're hitting the vertebral column. They're hitting
12 ribs. But they're not penetrating into the chest cavity.
13 Stab wounds numbers nineteen through twenty-eight are
14 slightly lower on the back. And seven of these wounds,
15 so seven out of ten of these wounds, penetrate into the
16 left chest and traumatize the underlying left lung. So,
17 again, making it very difficult for her to create the
18 vacuum that she needs to breathe, as well as allowing
19 blood to accumulate in the left pleural cavity; again,
20 making it extremely difficult for her to expand her lung.
21 So she's bleeding and she's having difficulty breathing,
22 resulting in her death.
- 23 Q. The wounds up higher on her neck, would any of those
24 be bleeding significantly?
- 25 A. Oh, certainly. Each one of these wounds is going to

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1 bleed from the skin surface. Each and every individual
2 wound is going to bleed just like any other cut that you
3 have to your skin. So each of these wounds is going to
4 bleed and allow external blood. So it will soak her
5 shirt. It will drip onto the floor. The stab wounds to
6 her abdomen very likely got blood on her hands. So if
7 her hands touched something else, she would transfer
8 blood to other objects.

9 Q. Okay. Now, as far as -- you know, with what we see
10 on TV of medical examiners telling the exact hour, minute
11 and second of the time of death, how does it really
12 work?

13 A. It really works in that we know when she was last
14 known to be alive. We know when she was found, and we
15 try to estimate a time of death in between those two
16 points of certainty.

17 Q. And what adds into that estimate? What kind of
18 conditions?

19 A. Well, the longer the period of death before she's
20 found and the more decomposition that we have, the less
21 accurate we become in our estimate of time of death.

22 Q. And with her being in a moderate state of
23 decomposition, how accurate, in your opinion, can someone
24 be about saying exactly when she died?

25 A. About saying exactly when she died would be a

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- 1 fallacy if you even though you could do that.
- 2 Q. Okay. Well, let me ask you this. With the
- 3 condition that you saw her body in, is it consistent with
- 4 having been killed, say, five or six days earlier?
- 5 A. Again, the scenario still fits as to when she's last
- 6 known to be alive.
- 7 Q. Okay.
- 8 A. So if you wanted to give me those -- that scenario,
- 9 I would try to work an estimated time of death.
- 10 Q. Okay. And the scenario is the body is found
- 11 upstairs apartment, not outside.
- 12 A. Uh-huh (affirmative).
- 13 Q. Approximately eighty degrees in the apartment. No
- 14 windows open, no way for nature to take its course with
- 15 insects and such.
- 16 A. Uh-huh (affirmative).
- 17 Q. With -- given that information, can you say that the
- 18 condition of her body is consistent with being killed
- 19 five or six days earlier?
- 20 A. I think that Ms. Alexander has been dead for days,
- 21 not four days, but for days. And if -- a reasonable
- 22 estimate would be anywhere from three to five days, yes.
- 23 Q. Okay.
- 24 MS. MUNSON: I have nothing further at this
- 25 time, Your Honor.

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1 THE COURT: You may cross-examine the witness.

2 CROSS-EXAMINATION

3 BY MS. HORLBECK:

4 Q. Dr. Ward, my name is Caroline Horlbeck and I've just
5 got a few questions for you about this case. To be
6 absolutely fair about the time of death, is it possible
7 it could have been six days?

8 A. It's possible but unlikely at eighty degrees in a
9 room. She was not that decomposed.

10 Q. Okay.

11 A. But to be fair, it's possible.

12 Q. Okay. All right. But it could be as short as three
13 days, too?

14 A. Yes.

15 Q. All right. And you testified on direct examination
16 that part of an autopsy includes the performance of a
17 toxicological screen?

18 A. Yes, ma'am.

19 Q. And a toxicological screen was performed on Ms.
20 Alexander; correct?

21 A. That is correct.

22 Q. And the results of that were the product of the
23 breakdown cocaine?

24 A. Yes.

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1 Q. Okay. And were you asked to look at any of the
2 knives collected in this case?

3 A. I was not.

4 Q. Were you asked to compare those to Ms. Alexander's
5 wounds?

6 A. I was not.

7 Q. Okay. And you said on direct examination that you
8 can perform a sexual assault, I guess, screening on a
9 person who's deceased?

10 A. (Affirmative nod.)

11 Q. And I understand none -- I'm sorry. You've got to
12 say out loud. I'm talking too much.

13 A. Yes. We can.

14 Q. Okay. All right. And I understand that none was
15 done in this case?

16 A. That is correct.

17 Q. All right. And since no sexual assault screening
18 was done on Ms. Alexander, there is obviously nothing
19 that can be tested; right?

20 A. That is correct.

21 Q. Were you asked to look at any of the pictures in
22 this case?

23 A. I was provided photographs of the scene, yes.

24 Q. Okay. And did you see any knife spatter? Was there
25 any blood droplets that you thought were consistent with

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1 being spattered off the knife?
2 A. There is spatter type blood present on a portion of
3 the tub, which could be droplets from -- dropping off of
4 either Ms. Alexander before she collapses, or off of the
5 assailant's hands. They do not particularly look like
6 what I would consider to be cast-off, which is, once the
7 stab -- once the knife becomes bloody and it's drawn back
8 up, when it reaches an arc, at the top of the arc, then
9 blood goes up and off. I did not see any of that. But
10 there is drop- type pattern present on the tub.

11 MS. HORLBECK: That's all I have. Thank you
12 very much.

13 THE COURT: Any redirect?

14 MS. MUNSON: Yes, sir.

15 **REDIRECT EXAMINATION**

16 **BY MS. MUNSON:**

17 Q. First, Dr. Ward, let's talk about the comparing a
18 knife to a wound. Would that even have been doable in
19 this case?

20 A. Even in the most pristine of conditions, comparison
21 of the very elastic skin and a stab wound to a knife is
22 difficult. We generally can, in a pristine situation or
23 a non-decomposed, determine if the knife had one cutting
24 side or two cutting sides. How wide the width of the

1 knife might have been and that's the best we can do. And
2 so that -- it narrows it down very little between knives.
3 In this decomposed state where the skin is now starting
4 to become soft, there's gas production. So the shape of
5 these stab wounds is now completely changed due to this
6 natural decompositional process. Comparison of any of
7 these wounds to any type of wounding object would not
8 have been possible.

9 Q. I'm also going to show you State's Exhibit Number
10 48. Take a look at that.

11 A. Yes, ma'am.

12 Q. Do you recognize that?

13 A. I do.

14 Q. And is this accurately depicting what you were just
15 talking about on cross-examination?

16 A. No, ma'am. This is obviously transfer blood and
17 blood which has run down into the bathtub from Ms.
18 Alexander. But between -- not shown in this view are
19 some droplets of blood that are immediately adjacent to
20 the curtain.

21 Q. All right. Look then at State's Exhibit Number 43.

22 A. Yes, ma'am.

23 Q. All right.

24 A. I'll take this one.

25 Q. Okay.

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1 A. State's Exhibit 43 shows droplets of blood on the
2 edge of the tub and on the adjacent wall, but these do
3 not appear to be cast-off from the knife.

4 Q. Okay.

5 THE COURT: Your Honor, at this time, I move
6 State's 43 into evidence.

7 MS. HORLBECK: Without objection.

8 THE COURT: Without objection it's admitted
9 into evidence and may be published.

10 (WHEREUPON, State Exhibit Number 43 was admitted
11 into evidence.)

12 Q. If you can, Dr. Ward, point out on State's Exhibit
13 Number 43 here what you're talking about that is not
14 cast-off, but is droplets.

15 A. Okay. For orientation, this is the edge of the tub
16 and it joins here with the wall. So this tile wall goes
17 up this way, the tub goes -- the edge of the tub goes out
18 this way. This is the shower curtain. These are
19 droplets of blood, which as you can see, they're
20 predominately round, which means they're falling and
21 hitting -- falling straight down and hitting the edge of
22 the tub without any directionality to them. This droplet
23 hits straight down on the wall and runs down this way.
24 Blood that would be cast off, one, would not be
25 immediately flat in this particular are, but would be

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1 going upward and then arcing away from the knife as it
2 reached its apex. So, one, I would not expect it to be
3 in this area. And, two, I would not expect it to be
4 round, such that it's striking perpendicular to this flat
5 surface.

6 Q. Okay.

7 MS. MUNSON: I have nothing further, Your
8 Honor.

9 THE COURT: Thank you, Doctor. You may step
10 down.

11 MS. ADAMS: Your Honor, the State ---

12 THE COURT: You may call your next witness.

13 MS. ADAMS: The State now calls Anthony
14 Murdaugh.

15 THE CLERK: Mr. Murdaugh, if you would come
16 forward to be sworn in, please. Please place your left
17 hand on the bible and raise your right.

18 Do you swear or affirm that the testimony you're
19 about to give is the truth, the whole truth and nothing
20 but the truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: Thank you. You may be seated.
23 Would you please state your name for the record.

24 THE WITNESS: Anthony Durrell Murdaugh.

25 THE CLERK: Thank you.

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1 ANTHONY MURDAUGH,

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MS. ADAMS:

5 Q. Good morning, Mr. Murdaugh?

6 A. Good morning.

7 Q. I'm going to have you spell your last name for the
8 record, please.

9 A. Okay. M-U-R-D-A-U-G-H.

10 Q. Thank you. Mr. Murdaugh, where do you live now?

11 A. I live in Hampton, South Carolina.

12 Q. And were you living in Greenville County in June of
13 2009?

14 A. I was.

15 Q. Where were you living?

16 A. I lived at ■ Galphin Drive, Apartment ■

17 Q. Is this the same apartment and town home complex
18 that Jackie Alexander lived?

19 A. Yes, ma'am.

20 Q. Did you know Jackie Alexander?

21 A. I met Jackie once. Well, I knew her a little bit,
22 but I really just talked to her really good one time.

23 After I found out that she was a sister of a good friend
24 of mine, you know, her sister's name is Barbara. And

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1 after I found that out, but, you know, I used to see her
2 to speak to her, but as far as talking not that much.

3 No, ma'am.

4 Q. Okay. Now, what apartment number did you live in?

5 A. I lived in number ■.

6 Q. And what apartment did she live in?

7 A. I think it was ■. Yes, ma'am, which was across the
8 way from us. You know, it's two different buildings, it
9 was.

10 Q. So how often do you say -- would you say you would
11 see her?

12 A. I used to see her -- after she moved in, I would
13 just see her every now and then. You know, in her
14 comings and goings, you know, I would see her coming in
15 and out. I used to see her walking to the store and
16 stuff like that. Yes, ma'am.

17 Q. What about Ralph Hayes, did you know him?

18 A. I met Ralph one time. Matter of fact, I met Ralph
19 the first time -- after I found out that that was
20 Barbara's sister, I was over there when Ralph came over
21 there. I was over there talking to her and I met Ralph
22 that same day. I did.

23 Q. Do you see Mr. Hayes in the courtroom?

24 A. Yes, ma'am, I do.

25 Q. Now, Mr. Murdaugh, let's go back to the week of June

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1 the 7th, 2009. Is there anything in particular that you
2 remember about that week?

3 A. In recalling that time, I think that was the day
4 that she had gotten locked out of her apartment. And I
5 had came outside. And I think she was trying to get in
6 touch with the landlord. So I don't know, I really don't
7 remember how we did it, got in touch with the landlord.
8 Because the landlord's normally in the complex. I might
9 have just say, he'll be back in a few minutes, because
10 he's always there.

11 Q. Now, do you remember what day of the week this was
12 that she was locked out?

13 A. Oh, gosh. I honestly can't remember that right at
14 this moment. I'm sorry.

15 Q. Does around Sunday the 7th sound familiar?

16 A. It does. Sunday would probably be the day. That
17 would probably have been the day. Yes, ma'am.

18 Q. Around what time?

19 A. It was early. It was early that day. I know it was
20 still daylight of course, it was. But the exact time, I
21 can't give you that.

22 Q. And she came to your apartment?

23 A. She came over. I had stepped outside. I live in a
24 place where -- my wife does not allow me to smoke inside
25 my house so I had to step outside, you know.

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1 Q. So this was Sunday morning?

2 A. Yes.

3 Q. The 7th?

4 A. Right.

5 Q. And do you recall this as the same week her body was
6 found?

7 A. I know after that day I did not see her for a while.

8 You know, my assumption was that maybe she was visiting
9 family or something like that. Because normally, I know
10 it was still warm, so normally she kept her door open.

11 We had storm doors. And normally, her doors would be
12 open. When I was like going and coming and coming back
13 home from work and stuff like that in the afternoons.

14 But I did not see her for a while. So my assumption is
15 that maybe she's visiting her family. I know, you know,
16 she has a family in the area. So, you know, that was --
17 and she was, you know, a single lady by herself there.
18 So, you know, that was the only assumption I placed on
19 it.

20 Q. Okay. So you never saw her again after that?

21 A. I never saw her again after that.

22 Q. Now, you mentioned her being a single lady. Did you
23 see Ralph Hayes at her apartment a lot?

24 A. I used to see -- like, I say, like I say, I'm always
25 outside and there's a dumpster at the end of the complex

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1 where everybody put their trash at, of course. But,
2 still, we could cut through the dumpster and there was a
3 Citgo Gas Station on the hill. So that was my little
4 shortcut to go to the store when I want to go to the
5 store. And I could see Ralph -- we used to pass each
6 other from time-to-time. There's a business there and,
7 you know, he's maybe cutting through like that. And he
8 would always come through that way, then go around to the
9 back of the building to go in, which was at her backdoor,
10 I'm assuming. And, you know, other than that, you know,
11 we spoke very little because to me he was a very
12 unapproachable person.

13 Q. All right. Answer any questions from the Defense.

14 **CROSS-EXAMINATION**

15 **BY MS. HORLBECK:**

16 Q. Good morning, Mr. Murdaugh. My name's Caroline
17 Horlbeck and I just have a few questions for you.

18 A. Yes, ma'am.

19 Q. Now, you indicated you saw Jackie on a Sunday
20 morning?

21 A. Yes, ma'am.

22 Q. And it was early?

23 A. It was. It was early. It was.

24 Q. All right. And do you know where she was the night
25 of -- the night before?

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1 A. No, ma'am.

2 Q. You don't ---

3 A. No way I could tell that.

4 Q. I'm sorry. I didn't mean to interrupt you.

5 A. Oh, no, ma'am. Just no way I could tell where she
6 was the night before.

7 Q. Okay. And you don't know what time she came in the
8 night before; do you?

9 A. No, ma'am. I don't.

10 Q. And she didn't have her key?

11 A. I'm assuming. You know what, because it was early
12 morning. I don't know if she could have left out that
13 morning and forgot her key, but not saying that she came
14 home late that night, no, I couldn't tell you.

15 Q. But you had to call the landlord?

16 A. The landlord always is on the complex normally or
17 either his son. He had two -- he had a son that lived
18 out there, as a matter of fact, at the time that this
19 happened. His son was also the one that did the
20 maintenance in the apartment complex. And his son lived
21 in the end apartment in the same building that she lived
22 in.

23 Q. And you had to call the landlord about the key?

24 A. No. I don't think I called the landlord. All I'm
25 saying that I knew that he would be back in a few

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1 minutes. You know, because like I said, his son was
2 there. His son had all the keys and his son did all the
3 maintenance in the complex.

4 Q. Okay. And after you saw her that Sunday, you don't
5 know where she went after you saw her?

6 A. No, ma'am. I don't know.

7 Q. You don't know who she was with after you saw her
8 that Sunday?

9 A. After I saw her, no.

10 Q. And you don't know what time she came home that
11 Sunday?

12 A. I have no idea.

13 Q. And you've stated that you'd seen Jackie in passing?

14 A. Yes, ma'am. Going to the store and stuff like that.
15 I've seen her at the Citgo Gas Station up above the hill.

16 Q. And you also know Ms. Alexander's family or her
17 sister?

18 A. I know her sister. We worked together.

19 Q. Okay. All right. That's all I have, Mr. Murdaugh.
20 Thank you.

21 THE COURT: Anything else?

22 MS. ADAMS: Not at this time, no.

23 THE COURT: All right. Thank you. You may
24 step down. You may call your next witness.

25 MS. ADAMS: The state now calls Jo Lynn Wood.

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1 THE CLERK: Ms. Wood, if you would come forward
2 to be sworn in, please. Please place your left hand on
3 the bible and raise your right.

4 Do you swear or affirm that the testimony you're
5 about to give is the truth, the whole truth and nothing
6 but the truth, so help you God?

7 THE WITNESS: Yes, ma'am.

8 THE CLERK: Thank you. You may be seated.
9 Would you please state your name for the record.

10 THE WITNESS: Jo Lynn Wood.

11 THE CLERK: Thank you.

12 JO LYNN WOOD,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MS. ADAMS:

16 Q. Good morning, Ms. Wood?

17 A. Good morning.

18 Q. Do you have a nickname?

19 A. JoJo.

20 Q. Is that what you'd like for me to call you?

21 A. Yes, ma'am.

22 Q. Just a few questions, JoJo. Where do you live now?

23 A. I live in Loris, South Carolina.

24 Q. And is that near Myrtle Beach?

25 A. Yes, ma'am.

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- 1 Q. What are you doing there?
- 2 A. I have three jobs and I just finished cosmetology
- 3 school.
- 4 Q. How old are you?
- 5 A. Twenty years old.
- 6 Q. In June of 2009, were you living in Greenville?
- 7 A. Yes, ma'am.
- 8 Q. Where were you living?
- 9 A. I was living at the apartment complex, the Town Home
- 10 Apartments.
- 11 Q. The Town Home Apartments?
- 12 A. Yeah. Uh-huh (affirmative).
- 13 Q. Is that on Galphin Drive?
- 14 A. Yes, ma'am.
- 15 Q. What apartment number were you living in?
- 16 A. Number [REDACTED].
- 17 Q. Were you living alone there?
- 18 A. No, ma'am. I was living with my mother.
- 19 Q. So you would have been, what, about seventeen then?
- 20 A. Yes, ma'am.
- 21 Q. Still in high school?
- 22 A. Yes, ma'am. I'd just finished my junior year of
- 23 high school.
- 24 Q. Do you recall the week of June 13th, 2009?
- 25 A. Around about. I was going to the beach during that

1 week.

2 Q. Let's back up a little bit. Had school already let
3 out for the term?

4 A. Yes, ma'am.

5 Q. So were you at home during the day?

6 A. Uh-huh (affirmative).

7 Q. I need for you to say yes or no?

8 A. Yes, ma'am. Sorry.

9 Q. Now, did you know Jackie Alexander?

10 A. I had seen her around, like around the apartment
11 complex.

12 Q. And do you recall what apartment number she lived
13 in?

14 A. Yes, ma'am. Number [REDACTED].

15 Q. So you would see her around the apartment complex?

16 A. (Affirmative nod.)

17 Q. Do you remember seeing her the week her body was
18 found?

19 A. No, ma'am. I remember seeing her about a week and a
20 half before her body was found. She'd come up to my
21 apartment around one-thirty, two A.M. in the morning.
22 And I was up watching TV. And she was trying to sell me
23 some shampoo.

24 Q. What about Ralph Hayes, did you ever see him around
25 the apartment complex?

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1 A. Yes, ma'am.

2 Q. Okay. Do you see Mr. Hayes in the courtroom?

3 A. Yes, ma'am.

4 Q. Now, did you ever have any conversations with him or

5 ---

6 A. He asked for me -- he asked me for a cigarette once
7 or twice.

8 Q. So you've had an opportunity to get a really good
9 look at him?

10 A. Yes, ma'am.

11 Q. And how long did you live at these apartments?

12 A. For about a year and a half, I want to say.

13 Q. Now, did you have an opportunity to talk with the
14 police about Jackie Alexander?

15 A. They came up to me as I was putting my baggage in my
16 car to go to Myrtle Beach for summer vacation. And I
17 told them what I'd seen and I gave them my mom's number
18 and I didn't hear anything else.

19 Q. When was this?

20 A. This was June of 2009.

21 Q. Was this before or after her body was found?

22 A. After.

23 Q. How long after?

24 A. A couple of days.

25 Q. I know this was a long time ago.

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- 1 A. I would say a couple of days. Yes, ma'am.
- 2 Q. A couple of days. So were you approached by the
- 3 police?
- 4 A. Yes, ma'am.
- 5 Q. And what did you tell them?
- 6 A. I told them that I'd seem him coming in and out of
- 7 the apartments that last week once or twice, twice.
- 8 Twice at night. And that was it. And if they needed to
- 9 contact me, I gave them my mom's number.
- 10 Q. And did anyone take a statement from you?
- 11 A. I remember them writing something on a little pad.
- 12 That was it.
- 13 Q. And you provided contact information?
- 14 A. Yes, ma'am.
- 15 Q. Did anyone ever contact you?
- 16 A. No, ma'am.
- 17 Q. Now, you know, this was three years ago, JoJo. And
- 18 are you absolutely sure you saw Ralph Hayes ---
- 19 A. Yes, ma'am.
- 20 Q. --- coming from that apartment?
- 21 A. (Affirmative nod.)
- 22 Q. And this was the week that her body was found?
- 23 A. Yes, ma'am.
- 24 Q. Now, describe how you saw him. And you said it was
- 25 at least twice?

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1 A. Uh-huh (affirmative).

2 Q. Is that your testimony?

3 A. Yes, ma'am.

4 Q. Describe how you would see him coming from that
5 apartment?

6 A. With his head down. He would come out the door and
7 then go across the parking lot, right beside the garbage
8 can, and go up the little alleyway.

9 Q. I'm going to refer you to what's been marked as
10 State's Exhibit Number 56. Can you point to where your
11 apartment is?

12 A. Where the red car is.

13 Q. Have you got the ---

14 A. Right there.

15 Q. Okay. And where did Jackie Alexander live?

16 A. Right there.

17 Q. And you said you saw him twice that week, late at
18 night?

19 A. Yes, ma'am.

20 Q. Why would you -- were you outside?

21 A. Yes, ma'am. I would be outside on the phone talking
22 to my friends.

23 Q. So how would he pass you?

24 A. He would come out, like, with his head down and then
25 walk through the parking lot and go up to the little

1 alleyway that's right beside the dumpster and then ---

2 Q. Point out the dumpsters?

3 A. Huh?

4 Q. Point out the dumpsters, please?

5 A. Right there. And there's a little walkway right

6 through there that people in the apartments made.

7 Q. And you're absolutely sure it was him?

8 A. Yes, ma'am.

9 Q. And when he would proceed up the parking lot, he
10 would have to pass your apartment?

11 A. Yes, ma'am.

12 Q. Is that your testimony?

13 A. Yes, ma'am.

14 Q. Did you speak to him when he passed you?

15 A. I waved, but I never -- he never waved back or
16 anything.

17 Q. Can you recall if this was early in the week or
18 later in the week?

19 A. No, ma'am. I' can't. I apologize.

20 Q. But you're absolutely sure it was that same man?

21 A. (Affirmative nod.)

22 Q. And this is what you told the police?

23 A. Yes, ma'am.

24 Q. Okay. Answer any questions from the Defense.

25

CROSS-EXAMINATION

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1 BY MS. HORLBECK:

2 Q. Ms. Wood, my name is Caroline Horlbeck and I just
3 have a few questions for you about your testimony. Now,
4 you testified that she lived -- that your apartment is on
5 the same side or was on the same side as Ms. Alexander's?

6 A. Yes, ma'am.

7 Q. Okay. So your apartment is just on down the
8 complex?

9 A. Yes, ma'am.

10 Q. All right. So your apartment is several -- is it
11 fair to say your apartment is several doors down?

12 A. About five doors down, five or six.

13 Q. All right. I believe you testified that you would
14 be outside on the phone talking?

15 A. (Affirmative nod.)

16 Q. Okay. And when you -- was it a cell phone you were
17 on or like a house phone or ---

18 A. It was my mom's cell phone.

19 Q. All right. Now, were you trying to be quiet when
20 you were talking out there or just talking normally?

21 A. Just talking normally.

22 Q. Okay. Were you hiding yourself or just kind of out
23 in the open talking naturally?

24 A. I was out in the open talking naturally.

25 Q. Okay. All right. And in this complex, how many

1 condos do you think are on each side, maybe six or seven?

2 A. I know there's two -- on the aerial view, there's

3 two apartments for each sidewalk that you see. So ---

4 Q. Okay. How many -- do you remember how many

5 sidewalks there were?

6 A. No, ma'am.

7 Q. Okay. So do you think maybe between five, six and

8 seven apartments; do you think?

9 A. Around about, yes, ma'am.

10 Q. Maybe more?

11 A. Maybe six or eight, I think.

12 Q. All right. And there's plenty of traffic in and out

13 of those houses and doors?

14 A. Not a lot, just the people who live there. I mean,

15 there wasn't really a lot of people who lived in the

16 apartments, not every apartment building was full.

17 Q. Okay. Okay. But the people that did live there,

18 certainly they were coming and going; correct?

19 A. Yes, ma'am.

20 Q. All right. And when you say that you saw Mr. Hayes,

21 you didn't know that there was any kind of investigation

22 going on?

23 A. No, ma'am.

24 Q. And you didn't know that someone in the complex had

25 passed away potentially?

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1 A. No, ma'am.

2 Q. Okay. Yet you say that this just stood out in your
3 mind?

4 A. Yes, ma'am. Because I was told to stay away from
5 him.

6 Q. Okay. And did you -- do you remember who else you
7 saw that day, that particular day?

8 A. No, ma'am.

9 Q. And you were packing to go the beach; correct?

10 A. Yes, ma'am.

11 Q. And you're not exactly sure what day during that
12 week that you may have seen Mr. Hayes?

13 A. No, ma'am. It was three years ago.

14 Q. I understand. I know it was three years ago. And
15 you were -- you also did not write a written statement?

16 A. No, ma'am. I was not asked to.

17 Q. I understand. So your testimony is based entirely
18 off your memory that was three years ago, or of what
19 happened three years ago?

20 A. Yes, ma'am.

21 Q. And to be fair, could it have been even longer that
22 you saw Mr. Hayes? You're saying you saw Mr. Hayes
23 during that week.

24 A. Yes, ma'am.

25 Q. And you also testified that your memory is from

1 three years ago?

2 A. Yes, ma'am.

3 Q. And you have no written statement?

4 A. Yes, ma'am.

5 Q. And to be fair, could it have even been longer than
6 that?

7 A. I would not think so, no, ma'am.

8 Q. Okay. When was -- do you recall what the time was
9 that you saw Mr. Hayes before that?

10 A. It would always be at dusk or at night. Because I
11 was always on the phone at night, outside.

12 Q. Okay. So when you saw -- the time that you're
13 saying you saw him was the normal time that you always
14 saw him?

15 A. Yes, ma'am.

16 Q. Okay.

17 A. I didn't think anything of it, seeing him.

18 Q. Uh-huh (affirmative). Okay. Now, we've got the
19 time that you say you saw him.

20 A. Uh-huh (affirmative).

21 Q. How about the time before that. Do you recall the
22 time before that, that you saw him?

23 A. I would see him on a weekly basis. I mean ---

24 Q. Okay. But you don't recall the exact date or the
25 time before that that you saw him?

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1 A. No, ma'am. I cannot give you an exact date.

2 Q. Okay. All right. And that day, you were packing
3 for the beach?

4 A. When the cops came up to me, the police officers
5 came up to me and asked me.

6 Q. Okay. Were you shown a photo lineup?

7 A. Not that day.

8 Q. But you have been shown a photo lineup since of six
9 pictures?

10 A. Yes, ma'am.

11 Q. Okay. And you said that you saw Mr. Hayes just a
12 couple of times when he asked to borrow -- asked for a
13 cigarette from you?

14 A. Yes, ma'am.

15 Q. That's all I have. Thank you.

16 A. Thank you.

17 THE COURT: Any redirect?

18 MS. ADAMS: Nothing else, Judge.

19 THE COURT: All right. Thank you. You may
20 step down, Ms. Wood.

21 MS. MUNSON: May it please the Court, Your
22 Honor ---

23 MS. ADAMS: May this witness be excused?

24 THE COURT: Any objection to this witness being
25 excused?

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1 MS. HORLBECK: No objection.

2 THE COURT: Ladies and gentlemen, let's take a
3 short break at this time and have a morning break. And
4 we'll see where we stand with witnesses. Don't discuss
5 the case while you're back in your jury room. We'll take
6 a short break and call you back in a moment.

7 Everyone else, please remain seated while the jury
8 departs.

9 (WHEREUPON, the jury exited the open court at
10 approximately 10:10 A.M.)

11 THE COURT: All right. Let's take about a ten
12 minute, fifteen minute break.

13 (WHEREUPON, the court stood at recess for a short
14 break.)

15 THE COURT: Okay. All right. Let's have our
16 jury come in if they're ready?

17 (WHEREUPON, the jury entered the open court at
18 approximately 10:30 A.M.)

19 THE COURT: You may call your next witness,
20 Solicitor.

21 MS. MUNSON: May it please the Court, Your
22 Honor, the State calls Christopher Gary.

23 THE CLERK: Mr. Gary, if you would come forward
24 to be sworn in, please. Please place your left hand on
25 the bible and raise your right.

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1 Do you swear or affirm that the testimony you're
2 about to give is the truth, the whole truth and nothing
3 but the truth, so help you God?

4 THE WITNESS: Yes, I do.

5 THE CLERK: Thank you. You may be seated.
6 Would you please state your name for the record.

7 THE WITNESS: It's Christopher Adam Gary.

8 THE CLERK: Thank you.

9 THE WITNESS: And the spelling of the last name
10 is G-A-R-Y.

11 CHRISTOPHER GARY,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. MUNSON:

15 Q. Who do you work for, sir?

16 A. I work for the Greenville County Department of
17 Public Safety in the Forensic Division.

18 Q. What is your job title?

19 A. I'm a latent print examiner.

20 Q. And what are your duties?

21 A. I receive fingerprint evidence from the crime scene
22 section, and I analyze it for detail and any evidentiary
23 value that it may have. I also receive tire track
24 impression evidence, as well as footwear impression
25 evidence from that section.

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1 Q. All right. How long have you been with the
2 department of public safety?

3 A. I've been with the DPS for approximately -- well,
4 actually over three years now, full-time. But prior to
5 that, I actually had the opportunity to work in an
6 apprentice style training program as an intern for about
7 three years with them, as well. So about over six years
8 total.

9 Q. What's your educational background?

10 A. I have a Bachelor's Degree from the College of
11 Charleston in Biology.

12 Q. Do you have any specialized training in the field of
13 latent fingerprint examination?

14 A. Yes. In 2009, I was selected with fourteen other
15 individuals from around the country to be sent to the
16 National Institute of Justice's sponsored training that
17 was held in Largo, Florida. At this training, it was
18 four hundred hours, which is over a ten-week span, where
19 we did everything from comparison exercises to discussing
20 the foundation for fingerprints and learning anything we
21 needed in order to conduct and to be proficient latent
22 fingerprint examiners. In 2010, I was selected by
23 Marshall University, that was sponsored training by the
24 FBI, to attend an impression evidence seminar there that
25 was forty hours, as well.

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1 Q. Okay. Over the time that you've been with DPS,
2 about how many latent fingerprint examinations have you
3 conducted by yourself?

4 A. I've conducted tens of thousands of examinations.

5 Q. Okay. Have you ever testified in court as to latent
6 examinations?

7 A. Yes, I have. Multiple times.

8 Q. Have you ever been qualified as an expert in the
9 field of latent print examination?

10 A. Yes, I have.

11 Q. How many times?

12 A. No fewer than five times.

13 Q. All right.

14 MS. MUNSON: Your Honor, at this time, I'd
15 offer Mr. Gary as an expert in the field of latent print
16 examination.

17 THE COURT: Any voir dire or any objection?

18 MS. HORLBECK: Neither, Judge.

19 THE COURT: All right. Thank you. He may
20 testify.

21 Q. All right. Mr. Gary, what is a latent fingerprint?

22 A. Well, a latent fingerprint, the term latent means
23 hidden. And that's because it refers to prints that we
24 recover from crime scenes. If you look at the surface on
25 the bottom of your hand, you have little raised ridges.

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1 And these raised ridges act just like rubber stamps that
2 you may have used as kid or may use now, depending on
3 what your occupation may be. Well, like any stamp, a
4 stamp is no good unless it has ink on it. Well, that's
5 where the sweat comes in. On each one of those ridges,
6 you have thousands of little sweat pores that exudes
7 sweat. You also, when you touch your face, you're
8 getting oils on your hand. If you, you know, were to
9 have blood or makeup or any other thing like that, when
10 you come in contact with an object, you're leaving behind
11 that replication of skin. And that is what is know as a
12 latent fingerprint.

13 Q. What factors determine whether or not, when you
14 touch a surface, you're going to leave a latent print
15 behind?

16 A. Well, like I said, a stamp is not good unless it has
17 ink on it, so to speak. Well, say, your hands aren't
18 sweaty or you have gloves covering your hand, or maybe
19 the condition of the surface, maybe the condition is very
20 dimpled or it's very dirty. Instead of leaving a print,
21 sometimes you may actually take the dust with you or the
22 dirt and grime with you and not actually leave a
23 fingerprint. So there are several factors that go into
24 it. Also, the condition of the skin is one factor.
25 Someone with very, you know, poor skin or maybe they have

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1 -- maybe take a brick mason, for example, who's
2 oftentimes lifting and moving heavy objects that are
3 rough, you're actually scratching and damaging your skin.
4 So the condition of the skin actually plays a key factor
5 in that, as well.

6 Q. Okay. Is there any way of dating a fingerprint or
7 telling how long it's been where you find it?

8 A. No. Unlike television shows that try to portray it
9 that we can date fingerprints and different things like
10 that, there is actually no scientific background for it
11 and you cannot date a fingerprint. It is impossible.

12 Q. What is the forensic value of a fingerprint?

13 A. Well, fingerprints are unique and identifiable to
14 every individual. Every person has a unique set of
15 fingerprints. All ten fingers are actually different, as
16 well. Twins actually share the same DNA, but twins do
17 not even share the same fingerprints. Fingerprints are
18 unique to every single person.

19 Q. All right. Were you asked to do a comparison in
20 reference to this case?

21 A. Yes, I was.

22 Q. And why were you specifically asked to do it?

23 A. Well, originally, the case was given to another
24 examiner, Sergeant Renee Sherbert. Sergeant Renee
25 Sherbert has since retired and the verifier for that

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1 case, Captain Kellett, is out of town on training
2 exercises. So I was asked to re-examine the case from
3 scratch and issue a new report.

4 Q. Okay. And did you do that?

5 A. Yes, I did.

6 Q. All right. I show you what's been marked as State's
7 Exhibits 52, 53, 54 and 55. If you could just take a
8 look at those. Do you recognize those Exhibits?

9 A. Yes, I do.

10 Q. Okay. And how did they get here today?

11 A. At the crime scene office when an evidence
12 technician processes a crime scene, they put all of the
13 information for that case, the case number, where the
14 event occurred, on the opposite side of where they would
15 actually lift that latent fingerprint. Once they do
16 that, they put it all in an envelope with the same case
17 information, the case number, the date, the offense
18 location, and it's dropped into a secure locked drop box.
19 Only myself and three other examiners have the key to
20 that box. Every morning, those prints are picked up and
21 brought over and that's where they remain, in my custody,
22 until today.

23 Q. Okay.

24 MS. MUNSON: Your Honor, at this time, I'd move
25 State's 52, 53, 54 and 55 into evidence.

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1 THE COURT: Any objection?

2 MS. HORLBECK: None, Your Honor.

3 THE COURT: Without object. It may be entered
4 and published to the jury.

5 (WHEREUPON, State Exhibit Numbers 52, 53, 54 and 55
6 were admitted into evidence.)

7 Q. I'll just let you hang on to those. Now, Mr. Gary,
8 when you're comparing a latent print -- well, first of
9 all, how do you go about making an identification?

10 A. Well, like I said, real forensics is unlike
11 television forensics in a lot of ways, and this is a key
12 example. When we receive a fingerprint, we can't just
13 put it on the computer and it comes back and it says,
14 this is who it is. This is what they're doing. This is
15 what they had for dinner last night. It doesn't work
16 like that. When I receive a latent fingerprint from the
17 crime scene section, I have to analyze that fingerprint.
18 I look at ridge structure. I look at -- like on that
19 rubber stamp I was talking about, those ridges don't just
20 continue around. They actually stop, they divide.
21 There's dots, there's numerous different ridge structure
22 patterns that make a fingerprint unique. So whenever I
23 look at the latent first from the crime scene, and then I
24 compare it to whatever knowns I have. Using all of those
25 points of identification, I render if this print was made

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1 by the person that I'm comparing it to, or this
2 fingerprint was not made by the person I'm comparing it
3 to.

4 Q. Okay. And in this case were you specifically asked
5 to compare the latent prints to known prints?

6 A. Yes, I was.

7 Q. And who were the known prints to whom you were asked
8 to compare State's Exhibits 52, 53, 54 and 55?

9 A. I was requested to examine those to a Ralph Beverly
10 Hayes, Sr.

11 Q. Okay. And did you make that comparison?

12 A. Yes, I did.

13 Q. And do you have an opinion about whether the
14 Exhibits that you have, the State's 52, 53, 54 and 55,
15 whether or not they match Ralph Beverly Hayes?

16 A. Yes, I do.

17 Q. And what is that opinion?

18 A. Latent lift number eight, which was from the
19 exterior top of the upstairs toilet lid, was identified
20 as being made by the left palm of Ralph Hayes.

21 Q. Is there a particular part of his left palm?

22 A. Yes. The palm is actually, in terms for examiners,
23 we divide the palm up, to kind of break it down just a
24 little bit, to different areas. You have three main
25 areas of the palm. The top part is called the

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1 interdigital. The thumb side is called the thenar. And
2 kind of the writer's palm that you'd put down, the fatty
3 part of the palm is called the hypothenar. And State's
4 Exhibit 52 was made by the left palm, hypothenar, so this
5 portion of the palm.

6 Q. And it was recovered from where?

7 A. That Exhibit, State's Exhibit 52, was recovered from
8 the exterior top of the upstairs toilet lid.

9 Q. Okay. And just go ahead with the next one, State's
10 ...

11 A. Okay. State's Exhibit 54, which was recovered from
12 the exterior top of the upstairs toilet lid, was
13 identified as being made by the left palm thenar, the
14 thumb side, of Ralph Hayes, Sr.

15 Q. Okay.

16 A. State's Exhibit 53, from the exterior top of the
17 upstairs toilet lid, was identified as being made by the
18 number seven, which is the left index finger, of Ralph
19 Hayes, Sr.

20 Q. Was there another print on State's Exhibit 54 that
21 you identified?

22 A. Yes. I also identified the left palm, which is the
23 interdigital region, of the victim, Jacquelyn Alexander.

24 Q. Okay. And then State's 55?

25 A. State's Exhibit 55, this was from the exterior top

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1 of the upstairs bathtub. It was identified as being made
2 by the right palm, the hypothenar, of Ralph Hayes, Sr.

3 MS. MUNSON: I have nothing further at this
4 time, Your Honor.

5 THE COURT: Ms. Horlbeck.

6 CROSS-EXAMINATION

7 BY MS. HORLBECK:

8 Q. All right, Mr. Gary, my name is Caroline Horlbeck.
9 I just have a few questions for you about your testimony.
10 Were you asked to analyze any knives in this case?

11 A. No, I was not.

12 Q. So there were no print -- you were not asked to
13 analyze any knives because no prints were lifted from any
14 of the knives the police collected in this case?

15 A. I did not examine any fingerprints from knives or
16 any knives in this case.

17 Q. Okay.

18 MS. HORLBECK: Your Honor, at this time I would
19 like to have this marked for identification only.

20 (WHEREUPON, Defendant Exhibit Number 2 was marked
21 for identification.)

22 Q. Mr. Gary, I'm handing you Defense 2, what's marked
23 as Defense 2 for identification purposes only. And I'm
24 asking you to take a look at that.

25 A. Uh-huh (affirmative).

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1 Q. And when you state that Mr. Hayes' prints were found
2 on the toilet -- well, let me back up a little bit. What
3 is that a picture of?

4 A. It appears to be a toilet.

5 Q. Okay. All right. And it's a picture of the whole
6 toilet or what parts of the toilet does that photograph
7 show in Defense 2?

8 A. It appears to be the top that you would lift up, the
9 toilet tank lid, as well as the toilet tank, with a
10 handle on the tank.

11 Q. Okay. And when you state that you found Mr. Hayes'
12 prints on the lid, are you talking about the lid that you
13 would lift up when you use the bathroom or are you
14 talking about the lid on the tank?

15 A. I wasn't at the scene that day. I would have to
16 refer back to the State's Exhibits 52 through 55.

17 Q. All right. I'm handing you State's Exhibits 52
18 through 55. Could you tell us where you found or where
19 those prints were? Were they on the lid that you would
20 lift up or on the tank lid?

21 A. Okay. State's Exhibit 52 was on the top -- if I'm
22 facing a toilet, the handle is here. It's on the top
23 left side of the toilet tank lid, where you'd lift the
24 top off of the lid.

25 Q. So the print -- and go ahead through all the

1 Exhibits, except the tub. I'm just talking -- I'm
2 focusing on the toilet.

3 A. State's Exhibit 54 was from the more right portion
4 of the toilet tank lid that you would lift off. And
5 State's Exhibit 53 was from the more right side of the
6 toilet tank lid from the upstairs toilet.

7 Q. And when you say the toilet tank lid, this is the
8 part of the tank that you would lift off if you were
9 going to try to fix something inside the tank?

10 A. Yes, that is correct.

11 Q. Thank you. Now, you testified on direct examination
12 that our fingers have raised ridges on them?

13 A. That is correct.

14 Q. And the raised ridges on our fingers act like a
15 stamp?

16 A. That is correct.

17 Q. And that the sweat and the oils on the hand are
18 actually what leave the print?

19 A. That and other contaminants. It's not just limited
20 to sweat and oil, but that is correct.

21 Q. But those are two of the things on your hands that
22 cause a print to be left?

23 A. That is correct.

24 Q. Okay. And you also mentioned blood, as well?

25 A. That is correct.

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1 Q. But the prints that you analyzed, these are not
2 bloody prints; correct?

3 A. That is correct. They are not.

4 Q. All right. And we leave finger -- we have the
5 possibility of leaving fingerprints wherever we go;
6 correct?

7 A. There is that possibility. That is correct.

8 Q. All right. So if I maybe leaned on this table, I
9 could have left a fingerprint; correct?

10 A. That is possible.

11 Q. All right. And then if someone, God forbid, came in
12 here and was killed tonight after this place is closed
13 and they left the weapon right here and my fingerprints
14 were lifted, then I could, I could be in trouble;
15 correct?

16 A. You would have to ask an investigator. But I assume
17 that would be correct.

18 Q. But my prints could be lifted near this blood or
19 weapon or whatever; correct?

20 A. That is possible.

21 Q. And I don't even live in this courtroom. I feel
22 like I do sometimes, but I don't ---

23 MS. MUNSON: Objection, Your Honor. Defense is
24 testifying.

25 Q. I'm sorry. No one lives in this courtroom. This is

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1 not a residence; correct?

2 MS. MUNSON: Objection, Your Honor. There's no
3 foundation for what he knows about who lives where.

4 THE COURT: Okay. Rephrase your question, Ms.
5 Horlbeck, if you would.

6 Q. The possibility of leaving prints, you can also
7 leave prints in the place where you live; correct?

8 A. That is correct.

9 Q. All right. And a place that you stay as well;
10 correct?

11 A. That is correct.

12 Q. And you also found Ms. Alexander's fingerprints;
13 correct?

14 A. Yes, that is correct.

15 Q. And you were asked to -- were you asked to analyze
16 latents that were lifted from the doors?

17 A. Yes, I believe I was. I would have to refer to my
18 notes.

19 Q. Do you have your notes?

20 A. Yes, I do.

21 Q. Okay. Would you please refer to your notes, if you
22 need to?

23 A. Yes, there were also latent fingerprints lifted from
24 a storm door.

25 Q. Whose prints were those?

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1 A. There were a total of eight latent lifts from the
2 front storm glass door. And I identified four of those
3 as being Jacquelyn Alexander.

4 Q. All right. And are you aware that these prints came
5 from where she lived?

6 A. I'm not aware of that. I just know the address [REDACTED]
7 Galphin Drive, number [REDACTED].

8 Q. Okay. And it's not unusual -- is it usual or
9 unusual to find prints at a place where someone resides?

10 A. It would be common.

11 Q. All right. And you stated on direct examination
12 that there's no scientific background that allows you to
13 put a date on a fingerprint?

14 A. That is correct.

15 Q. That it's impossible to determine when a fingerprint
16 was left?

17 A. That is correct.

18 MS. HORLBECK: That's all I have. Thank you.

19 THE COURT: Anything in redirect?

20 MS. MUNSON: Briefly, Your Honor.

21 **REDIRECT EXAMINATION**

22 **BY MS. MUNSON:**

23 Q. Is a fingerprint such as the one that you examined,
24 the ones that matched the victim and the ones that
25 matched the Defendant, are these -- is a latent print

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1 something that's fragile or if it's down there's nothing
2 you can do to wipe it away?

3 A. Well, in nature, latent fingerprints are fragile
4 because they are made out of sweat, oil, things that can
5 be easily wiped away or removed. So by the definition of
6 the word latent fingerprints, yes, they are fragile.

7 MS. MUNSON: I have nothing further, Your
8 Honor.

9 MS. HORLBECK: Nothing further.

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

11 MS. MUNSON: May this witness be excused, Your
12 Honor?

13 MS. HORLBECK: No objection.

14 THE COURT: Without objection. He may be
15 excused. You may call your next witness.

16 MS. MUNSON: The State calls Jonathan Hamilton.

17 THE CLERK: Mr. Hamilton, if you would come
18 forward to be sworn in, please.

19 Do you swear or affirm that the testimony you're
20 about to give is the truth, the whole truth and nothing
21 but the truth, so help you God?

22 THE WITNESS: Yes, ma'am. I do.

23 THE CLERK: Thank you. You may be seated.

24 Would you please state your name for the record.

25 THE WITNESS: Officer Jonathan F. Hamilton.

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1 THE CLERK: Thank you.

2 JONATHAN HAMILTON,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MS. MUNSON:

6 Q. Who do you work for, sir?

7 A. Greenville County Forensics, in the Department of
8 Public Safety.

9 Q. How long have you been with them?

10 A. Going on six years now.

11 Q. Okay. What are your duties?

12 A. I respond to crimes. Crimes could be anything from
13 small misdemeanor crimes to the major, more public
14 crimes.

15 Q. Okay. And when you get to these crimes, what is
16 your responsibility?

17 A. Processing the scene for any kind of evidence,
18 whether it be DNA, fingerprint evidence, anything left
19 behind. I photograph, process the scene for prints, that
20 kind of thing.

21 Q. Okay. How does one process a scene? What ---

22 A. Processing a scene is actually a broad term. I
23 mean, processing the scene could be me taking
24 photographs. But it also could mean, you know,
25 processing it for latent prints, applying something to

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1 retrieve those prints. Or it could be from collecting
2 trace evidence like hairs and fibers or DNA evidence.

3 Q. Okay. What sort of training have you had in the
4 field of forensics?

5 A. We have our own internal training that we all go
6 through, but I've also been to Florida. In the past, I
7 think the past year and a half, I've been there three
8 times for forensics processing, basic and for
9 intermediate, as well as DNA, chemical detection for DNA.
10 Using chemicals to be able to know that that's blood or
11 that's semen or body fluid.

12 Q. Okay. And how many crime scenes would you say that
13 you have processed over your time with the Department of
14 Public Safety?

15 A. If I'm not mistaken, I believe the last time I
16 checked, I was pushing about three thousand crime scenes.

17 Q. Okay. And did you get a call to process the scene
18 regarding this case?

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

20 Q. On what date, do you remember?

21 A. Yes, ma'am.

22 Q. What was the date?

23 A. I'll have to check my report just to verify. It was
24 on June 13th of 2009.

25 Q. And where did you go?

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1 A. I went [REDACTED] Galphin Drive, number [REDACTED], in
2 Greenville.

3 Q. And what type of residence was that?

4 A. It was a town home kind of establishment. Had many
5 different addresses and buildings.

6 Q. Okay. Were you on duty at the time?

7 A. Yes, ma'am, I was.

8 Q. Did anyone -- any other forensic person go over
9 there with you?

10 A. As per our protocol -- this was at nighttime. And
11 as our protocol, whenever we have a deceased person, we
12 normally contact an on-call supervisor so we can advise
13 them what's going on and they can make a decision whether
14 more manpower's needed or less manpower's needed. So I
15 was by myself going to the call, but I did make a phone
16 call to my supervisor.

17 Q. When you got to the scene?

18 A. On the way to the scene, I advised him what I had
19 until I got there and got further information.

20 Q. So when you first got to the scene, what did you do?

21 A. The first thing I do is I always get with the
22 officers, investigators, whoever's on the scene that was
23 there so they can advise me of -- a brief synopsis of
24 what may have occurred or what has been seen, so I know
25 what I'm looking at and how to handle it.

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1 Q. Okay. And did you do that in this case?

2 A. Yes, I did.

3 Q. And after you spoke with law enforcement on the
4 scene and got what information you needed, what did you
5 do next?

6 A. We do what we call a walk-through. What we do is I
7 and the investigating officer, we walk through both the
8 exterior and the interior of the home to ensure that we
9 see the house as is before anything is done. And we can
10 make a decision on whether this piece of evidence may be
11 pertinent to the case or this may not.

12 Q. Okay. And when you first walked through this scene,
13 what was your initial impression?

14 A. Initially, it looked like it was not a crime for
15 larceny of theft. There was no forced entries to the
16 home or no broken windows. Things weren't thrown all
17 over the living room like you would expect.

18 Q. Okay. And what about the body in this situation?

19 A. Unfortunately, it was in a decomposition state,
20 which means that there was an odor in the air and the
21 body was in a decomposition state.

22 Q. Did you notice anything, any blood or anything that
23 you thought was of value, other than in the bathroom with
24 the body?

25 A. Yeah. I did. Actually, I saw some blood at the

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1 entranceway on the floor. There's some time before the
2 stairway. I saw a little droplet of blood there. I also
3 saw another droplet of blood in the kitchen floor. And
4 then there was some -- we call suspected blood spatter.
5 It's where a directional blood droplet falls down and it
6 spatters outward in the bathroom, which is connected to
7 the kitchen on the downstairs.

8 Q. Okay. And the bathroom on the downstairs ---

9 A. Uh-huh (affirmative).

10 Q. --- after walking through, do you know what was
11 directly above the bathroom on the downstairs?

12 A. Uh-huh (affirmative). The blood spatter or the body
13 fluids I should say, was coming from the exhaust fan at
14 the ceiling of the bathroom, down near the kitchen. And
15 the blood and bodily fluids were coming through the
16 exhaust fan, dripping down onto the floor.

17 Q. Okay. So you got to the scene and photographed?

18 A. Uh-huh (affirmative).

19 Q. And after you did your photographing, what was the
20 next thing you did?

21 A. Next up -- well, of course, after photographing we
22 want to make sure we collect any evidence so that way
23 it's not contaminated. It is not, you know, destroyed by
24 anybody coming through the home. So what I did was I
25 initially took the photographs of the blood. I measured

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1 them with a scale and I also did a phenol -- it's called
2 a phenolphthalein presumptive blood test on those
3 droplets of blood.

4 Q. How did you do that?

5 A. What we do is we take a swab, put some distilled
6 water on it and we swab just a little area of that
7 suspected blood. Then I add alcohol and then a
8 phenolphthalein fluid. It's a fluid that reacts to the
9 blood. And then after that some hydrogen peroxide.
10 Basically, what this does, it mixes altogether on this Q-
11 tip and it turns it this big pink color. It turns pink,
12 so that way it gives me an affirmative test that this is
13 blood.

14 Q. Okay. And then you did that on the scene?

15 A. Every place that I collect a swab of bodily fluids
16 or suspected blood, I always do testing on it.

17 Q. Okay did you use the phenolphthalein on anything
18 else in the apartment?

19 A. phenolphthalein was also used on some knives that
20 were discovered later on.

21 Q. Where were the knives found?

22 A. They were in the kitchen. One was on a dish
23 drainer. I believe the other one was on the counter top,
24 and the other one was in a drawer next to the stove in
25 the kitchen.

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1 Q. And what was the result of the phenolphthalein test
2 on the knives that you found in the kitchen?

3 A. Those were going to be negative, negative results.
4 They did not turn that pink color that I was telling you
5 about.

6 Q. Okay. So what did you do with them?

7 A. The knives?

8 Q. Uh-huh (affirmative).

9 A. They were collected if I'm not mistaken. No, they
10 were left behind because there was no evidentiary value.

11 Q. Okay.

12 A. Sorry.

13 Q. All right. Now, did you also process for
14 fingerprints?

15 A. Yes, ma'am. What we do is, once the scene -- any
16 DNA evidence is collected, any physical evidence is
17 collected, then we process it for fingerprints. The
18 body's removed. Normally, it's the last thing that we do
19 in a major crime like this. So that way we can process
20 it for prints and see if we have any latent prints.

21 Q. How do you decide -- I mean, this is a, I guess,
22 small apartment, but how do you decide where in this
23 whole house you're going to look for latent prints?

24 A. Just like, I mean, people use doors to come in and
25 out of the home. People -- you know, if the body is in

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1 the bathroom, well, obviously, we're going to want to
2 process where the body is, around the area in which the
3 body was. Anywhere that could be affected and touched by
4 anyone that could be involved with the crime.

5 Q. Okay. So what areas did you decide that you should
6 process for latents in this case?

7 A. Okay. I processed the exterior and interior of the
8 front storm door. The exterior and interior of the front
9 door. I did, as well, the back door, exterior and
10 interior. I processed the toilet tank lid, the toilet
11 tank upstairs, the toilet seat, the bathtub, anywhere in
12 the bathroom.

13 Q. That was around the body?

14 A. Yes, ma'am.

15 Q. All right. And just briefly, how do you -- if you
16 see an area that you want to process for latents, how do
17 you go about doing that?

18 A. Okay. Latent prints is sweat and oils left behind
19 by the human hand or palm. And when it's left there, we
20 use a powder and a brush to bring that latent print up to
21 where we can see it. Once we see that print, we place a
22 tape over the top of it, make sure it's sealed down
23 securely, peel it off and put it on a white card. So
24 that way the contrast between the white card and the dark
25 powder that we use, it brings that print out. So that

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1 way a latent examiner can take a look at that and he can
2 try to determine whether or not that fingerprint belonged
3 to this person or that one.

4 Q. How do you determine whether or not a latent print
5 is going to be good enough for comparison?

6 A. Greenville County Forensics, we're really tight with
7 our latent print examiners. They advise us what we need
8 to look for so they can make a -- we have to work
9 together so they can make a match. Well, we have --
10 there are different areas, there's different points where
11 a little ridge on your finger will stop, whether it's a
12 short one, or a long one or where they meet together,
13 kind of like a river coming together from two rivers into
14 one. We look for points so they can use that to make an
15 identification.

16 Q. Okay. Let me show you what's already in evidence as
17 State's Exhibits 52, 53, 54 and 55. If you could just
18 quickly take a look at those.

19 A. Yes, ma'am.

20 Q. Do you recognize those?

21 A. I can distinguish that handwriting from anywhere,
22 yes, ma'am.

23 Q. Okay. And whose handwriting is it?

24 A. That would be mine.

25 Q. Okay. And these are the prints that you lifted?

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1 A. Yes, ma'am.

2 Q. Now, Officer Hamilton, did you, in preparing for
3 your testimony today, did you prepare -- well, let me go
4 back first and let's just go through this. I'm showing
5 you what has been marked as State's Exhibits 4 through 9.
6 You can take a look at those.

7 A. Yes, ma'am. Yes, ma'am.

8 Q. Do you recognize these?

9 A. Yes, ma'am. This is 1 through 5.

10 Q. The red sticker?

11 A. Oh, those. Yes. Then, yes, ma'am. These are all
12 the ones -- photographs I took from the outside of the
13 home at that location.

14 Q. Okay. And are these true and accurate depictions of
15 the outside of the town houses when you got there?

16 A. Yes, ma'am.

17 MS. JOHNSON: Without objection, Your Honor.

18 MS. MUNSON: Then I'll offer them into
19 evidence.

20 THE COURT: All right. Without objection,
21 Exhibits 4 through 8 are admitted into evidence and may
22 be published.

23 (WHEREUPON, State Exhibit Numbers 4 through 8 were
24 admitted into evidence.)

25 Q. All right. Next I'm going to show you Exhibits 9

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1 through 23.

2 A. Okay.

3 Q. Take your time.

4 A. Yes, ma'am.

5 Q. All right. Do you recognize those Exhibits?

6 A. Yes, ma'am.

7 Q. And what do you recognize them as?

8 A. Those are the interior downstairs of the town house,

9 number 16. Number [REDACTED] excuse me.

10 MS. MUNSON: Your Honor, we offer State's 9

11 through 23 into evidence.

12 MS. JOHNSON: No objection.

13 THE COURT: Without objection. They may be

14 published to the jury.

15 (WHEREUPON, State Exhibit Numbers 9 through 23 were

16 admitted into evidence.)

17 Q. All right. Officer Hamilton, now we're looking at

18 24 through 28.

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

20 Q. Do you recognize these?

21 A. Yes, ma'am.

22 Q. And what do they depict?

23 A. They depict the downstairs kitchen and bathroom area

24 of the town house.

25 Q. Okay. Now, let me ask you, Officer Hamilton, why

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1 would you need to take so many different photographs from
2 different angles?

3 A. So that way it shows the whole scene. So that way
4 that we can go back later and look at the entire scene as
5 it was from every angle that is possible.

6 Q. And these Exhibits that you have before you right
7 now, will they be helpful in your testimony to the jury?

8 A. Yes, ma'am.

9 MS. MUNSON: Your Honor, I offer State's 25
10 through 28 into evidence.

11 MS. JOHNSON: Judge, at this time I'm going to
12 object to 24 and 25 being cumulative, as well as 27 and
13 28.

14 THE COURT: I think she said 25. Did you mean
15 to say 24?

16 MS. MUNSON: 24. I apologize, Your Honor. 24
17 through 28.

18 THE COURT: Okay. All right. And you're
19 objecting to 24, 25 and 26, 27 or 27, 28?

20 MS. JOHNSON: 27 and 28, Your Honor.

21 THE COURT: All right. Let me look at the
22 pictures if I could. All right. Your objection is
23 noted. Overruled.

24 MS. JOHNSON: Thank you, Your Honor.

25 (WHEREUPON, State Exhibit Numbers 24 through 28 were

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1 admitted into evidence.)

2 Q. All right. Now I'm showing you State's 29 through
3 36. Take a look at those.

4 A. Okay.

5 Q. Do you recognize those?

6 A. Yes, ma'am.

7 Q. What do they depict?

8 A. They depict the downstairs area, again, and evidence
9 that was observed in the downstairs area.

10 Q. And evidence in the form of what?

11 A. Suspected blood and there was a sheet of paper, as
12 well.

13 Q. Okay.

14 MS. MUNSON: Your Honor, I'd offer State's 29
15 through 36 into evidence.

16 THE COURT: Any objection?

17 MS. JOHNSON: No, Your Honor.

18 THE COURT: Without objection, Exhibits 29 to
19 36 are admitted.

20 (WHEREUPON, State Exhibit Numbers 29 through 36 were
21 admitted into evidence.)

22 Q. Next, Officer Hamilton, Exhibits 37 through 40.

23 A. Okay. Yes, ma'am.

24 Q. Do you recognize these Exhibits?

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

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1 Q. And what do they show?

2 A. They show the stairway and the upstairs area
3 including the front, back bedrooms and the hallway area.

4 Q. Okay. The layout of the second floor?

5 A. Yes, ma'am.

6 Q. Okay.

7 MS. MUNSON: Your Honor, I offer State's 37
8 through 40 into evidence.

9 THE COURT: Any objection?

10 MS. JOHNSON: No, Your Honor.

11 THE COURT: Without objection. They will be
12 admitted and published.

13 (WHEREUPON, State Exhibit Numbers 37 through 40 were
14 admitted into evidence.)

15 Q. All right. Officer Hamilton, we've got State's
16 Exhibit 41, 42 and 44. Take a look at those.

17 A. Okay. Yes, ma'am.

18 Q. And what do they show?

19 A. That's going to be the bathroom area of the upstairs
20 hallway.

21 Q. Okay.

22 MS. MUNSON: Your Honor, I'd offer State's 41,
23 42 and 44 into evidence.

24 MS. JOHNSON: No objection.

25 THE COURT: Without objection, 41, 42 and 44

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1 are admitted.

2 (WHEREUPON, State Exhibit Numbers 41, 42 and 44 were
3 admitted into evidence.)

4 Q. And finally, finally, Officer Hamilton ---

5 A. Yes, ma'am.

6 Q. --- I'm showing you 45 through 49.

7 A. Yes, ma'am.

8 Q. Do you recognize them?

9 A. Yes, ma'am. I do.

10 Q. And what do they depict?

11 A. The bathroom area and the victim.

12 Q. Okay. And what is the difference in the different
13 Exhibits? Why is that necessary to aid you in your
14 testimony?

15 A. To show what I observed when I came onto scene, as
16 well as to preserve and seal the evidence in paper
17 documentation for the investigators, so when they go
18 back, they can look at it, as well.

19 Q. Thank you.

20 MS. MUNSON: Your Honor, I'd offer State's 45,
21 46, 47, 48 and 49 into evidence.

22 THE COURT: Any objection?

23 MS. JOHNSON: Your Honor, at this time, I would
24 object to 45, 46 and 47 as being cumulative and
25 duplicative.

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1 THE COURT: Let me look at those pictures.

2 MS. MUNSON: And it's the State's position,
3 Your Honor, that the officer has testified that they're
4 necessary for him to explain to the jury what he found.

5 THE COURT: All right. Subject to the
6 officer's testimony relating to the evidence in each
7 picture, I will admit them.

8 MS. JOHNSON: Thank you, Your Honor.

9 (WHEREUPON, State Exhibit Numbers 45, 46, 47, 48 and
10 49 was admitted into evidence.)

11 Q. All right. Now, Officer Hamilton in preparation for
12 your testimony, did you put together a Power Point?

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

14 Q. And the images that are shown on it ---

15 A. Yes, ma'am.

16 Q. --- from where did you get those images?

17 A. Our secured digital photograph database that we have
18 at the office.

19 Q. Well, how do they relate to the images that we just
20 got into evidence?

21 A. I don't understand.

22 Q. The pictures on the Power Point, are they the same
23 as what's in evidence?

24 A. Oh. Yes, ma'am. Yes, ma'am. The Power Point
25 pictures are exactly what the Exhibits are that you just

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1 admitted.

2 Q. Okay. And do you have your copy of it?

3 A. Of the CD, yes, ma'am, I do. The Power Point.

4 MS. MUNSON: Your Honor, at this time, I'd
5 request permission to allow us to show the Power Point.

6 THE COURT: All right. You may publish it to
7 the jury.

8 MS. MUNSON: I apologize, Your Honor, but can
9 we have just a minute.

10 THE COURT: All right. Let's take a short
11 break. Just go back and stretch. Ladies and gentlemen,
12 when you go back to your jury room, what I'd like for you
13 to do is to -- of the first twelve of you selected, and,
14 again, the alternate will remain in her position, but I
15 need you to select a foreperson from among the first
16 twelve selected. What the foreperson does, sometimes
17 when you're back there, you may have already discovered
18 that you may have a question or an inquiry that you need
19 to have the temperature adjusted or a cup of coffee or
20 whatever you may need. You will have a person to be your
21 spokesperson, so to speak, to talk with -- call the
22 bailiff if somebody needs to make a phone call. And that
23 person can be the liaison with the court and with the
24 clerk's office, sort of the presiding officer, if you
25 will. Ultimately, what the foreperson will be doing is

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1 when the deliberations start, that'll be the individual
2 who'll facilitate that discussion. Make sure everyone
3 has their opportunity to give their view of the evidence
4 and the facts as they determine, help facilitate that
5 discussion. And on behalf of your fellow jurors fill out
6 a verdict form that will be provided.

7 So if you would, from among the first twelve of you
8 select a person, just write that name on a piece of paper
9 while you're out taking this short break, give it to the
10 bailiff. Then when you come back, the foreperson will
11 occupy the seat on the front row closest to the witness
12 chair here. The others, as you have in the past, as you
13 come and go, you may want a back seat or front seat, a
14 left, right, whatever, but those two individuals will
15 have designated seats, the foreperson and the alternate.
16 So if y'all would do that while we're taking this short
17 break, we'll call you back in just a few moments. Don't
18 discuss the case while you're out.

19 (WHEREUPON, the jury exited the open court at
20 approximately 11:21 A.M.)

21 THE COURT: All right. We'll take a short
22 break.

23 (WHEREUPON, the court stood at recess for a short
24 break.)

25 THE COURT: Okay. If the jury's ready you can

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1 have them come in.

2 (WHEREUPON, the jury entered the open court at
3 approximately 11:40 A.M.)

4 THE COURT: Solicitor, you may continue your
5 examination of the witness.

6 MS. MUNSON: Thank you, Your Honor. I
7 apologize to the Court and the Defense for the problem.

8 Your Honor, may be the witness come down here?

9 THE COURT: Yes, sir. You make sure that you
10 project your voice so that the court reporter and the
11 jury can hear what you have to say.

12 THE WITNESS: Yes, sir.

13 THE COURT: Make sure you speak to them. And
14 the court reporter needs to hear you, as well.

15 THE WITNESS: Yes, sir.

16 **DIRECT EXAMINATION CONTINUED**

17 **BY MS. MUNSON:**

18 Q. All right. Officer Hamilton, if you will just --
19 let's get these lights so the jury can see these better.
20 And what is the point of this slide right here?

21 A. This slides shows the case number, the address, and
22 what the investigation was, that we're looking.

23 Q. Okay. And this is State's Exhibit Number 4. What
24 does this show?

25 A. This shows the front of the town home with ■ being

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1 the one that I responded to, and the one that's next door
2 to the -- the next door neighbor.

3 Q. Okay. And where is ■ on this, which is State's
4 Exhibit number 5?

5 A. ■ is right there.

6 Q. Okay. And where are you going with State's Exhibit
7 Number 5?

8 A. Whenever we take digital photographs of the scene, a
9 home, apartment complex, whatever the case may be, we
10 always want to get the front and rear, photographs from
11 both sides, from all sides actually. So this is just
12 showing which direction I was going. I was going -- if
13 you're staring at the town home, I'm going to the right
14 and going around the back.

15 Q. Now, this is State's Exhibit Number 6. What does
16 this show?

17 A. This shows the end of the building. If you're
18 staring at number ■ it's the very far right side, at
19 the very end.

20 Q. Okay. Now, State's Exhibit Number 7?

21 A. It's another shot of the right side as I'm going
22 around to the rear of the building.

23 Q. Did you find anything unusual or of evidentiary
24 value so far, as you're going around the building?

25 A. Not at that time, no, ma'am.

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1 Q. Okay. And this is State's Exhibit Number 8?

2 A. Now, this is actually going to be the rear of the
3 building, or the rear of the number ■. This is going to
4 be a kitchen window, also another kitchen next to the
5 back door.

6 Q. And what is noticeable to you as far as processing
7 the scene in State's Exhibit Number 8?

8 A. What we look for is any kind of forced entry into
9 the home, broken glass, screens removed, doors open, any
10 significant damage to show us that there was actually
11 forced entry into the home. And as you can tell, there
12 are none that are visible.

13 Q. Okay. Now, this is State's Exhibit Number 9,
14 Officer Hamilton. What does this show?

15 A. This is actually the front of number ■. This is
16 the front door being opened, and you're actually looking
17 at the stairway going upstairs. And right here is going
18 to be your living room to the right, as you enter the
19 home.

20 Q. Okay. As you go into this home, was there any room
21 at all to the left of the door?

22 A. No, ma'am. There's a wall, just a sheer wall going
23 straight, all the way to the end of the town house.

24 Q. Okay. Now, this is State's Exhibit Number 23. From
25 where did you take this photograph?

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1 A. This is actually me standing on the outside of the
2 home and me taking a picture of the frame of the front
3 door. And as you can tell -- normally, whenever we have
4 forced entries into the door, it's going to damage,
5 break, shatter the frame or the molding on the inside of
6 the home at the door. And as you can tell right here,
7 there was no signs of any kind of tool marks or any kind
8 of damage to the frame or the molding.

9 Q. Okay. Now, this is State's Exhibit Number 10.
10 Where is this photograph taken?

11 A. As you enter the home, this is going to be your
12 living. It's going to be on the right side, stairway
13 being right here. You can see a little piece of step,
14 with the front being on this side of the picture, the
15 front of the home.

16 Q. Okay. And State's Exhibit Number 11?

17 A. This is, again, another picture of the living room.
18 As I just stated, these are the front windows and the
19 front of the home.

20 Q. Did you find anything in or around the windows that
21 would indicate any kind of forced entry?

22 A. None. And as you can tell, the slats on the blinds,
23 they're not disheveled. They're -- you know how you have
24 one blind up, one blind down when someone messes with it,
25 you see nothing of that on the front window there. You

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1 also see the electrical cords. That doesn't appear that
2 anybody's unplugged anything as they were getting in or
3 anything's knocked over to the floor.

4 Q. Okay. Now, this is State's Exhibit Number 14. What
5 -- I'm sorry -- 14. Where were you standing when you
6 took this photograph?

7 A. This is at the corner of the room. So the picture
8 before was me coming into the home, looking to the right
9 and into the living room. This is a picture from that
10 corner near the front, looking back towards the front
11 door, this being the front door.

12 Q. Okay. Now, here we have State's Exhibit Number 13.
13 What does this depict?

14 A. This is a shot going left to right, going from the
15 living room on the front, going back towards the rear of
16 the living room.

17 Q. Okay. And this is State's Number 12?

18 A. Again, this is another shot of the living room,
19 looking back towards the kitchen, the kitchen being right
20 here.

21 Q. Okay. Now, this is State's Number 21.

22 A. This is going to be the love seat as you saw in the
23 previous picture. And it's going to be the thermostat.

24 One of the main things that we do whenever we have a
25 death investigation, we like to see the temperature and

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1 document it, document the temperature in the home for
2 doctors and pathologists to be able to make a
3 determination on the body and what evidence they find.

4 Q. Okay. Now, State's Number 22.

5 A. As you can see here, it's going to be the
6 temperature that it was currently in the home. Now,
7 again, this is in June, so you're getting close to eighty
8 degrees. This is the temperature that, of course, was
9 set on the thermostat. And it's set on auto and that is
10 the off for the system, and it was put in the off
11 position.

12 Q. All right. Now, we're back to the doorway here.
13 What is shown there?

14 A. Okay. This is going to be, of course, that shot
15 that y'all saw previously, with the stairway and the
16 living room. And right there where the circle is, is the
17 little area of suspected blood that I saw when I first
18 entered the home, which was right there.

19 Q. That ---

20 A. That's no problem.

21 Q. Okay.

22 A. Which that is all I saw of suspected blood, is that
23 little drop.

24 Q. And that is State's Exhibit Number 30. So this is
25 State's Exhibit Number 31. What does this depict?

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- 1 A. Oh, yeah. Once I take a photograph of orientation,
2 where the suspected blood was, and I take a up close
3 picture of that suspected blood, I put this scale tape
4 next to it. And what this does is just so that someone
5 who is blood spatter certified or someone who wants to
6 look at it, will know how big that droplet was when I was
7 on scene. And that right there is JFH-8-A, which I
8 apologize. My handwriting is not the best in the world.
9 But I always like to put that on any kind of tape or
10 measurement whenever I'm going to collect something like
11 a swab of blood or so on and so forth.
- 12 Q. Now, this is State's Exhibit Number 32. What does
13 this depict?
- 14 A. This is a picture of me holding the Q-tip. As I
15 stated earlier with phenolphthalein, that big pink on the
16 end of the Q-tip. This is me showing what the result was
17 from that test. And as you can see, you can see the pink
18 here. And then sometimes it's a shade darker and a shade
19 lighter, but as long as you get a pink, you know that you
20 have suspected blood there.
- 21 Q. Okay. Now, this is State's Exhibit Number 16,
22 Officer Hamilton. What is this view?
- 23 A. This is the kitchen with the living room being to
24 your back. You're facing the kitchen towards the rear of
25 the home.

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1 Q. And Exhibit 17?

2 A. This is another picture, just more closeup. Me
3 stepping a little bit further into the kitchen.

4 Q. State's 15?

5 A. This is the shot of the rear of the home or the rear
6 of the kitchen. And as I stated earlier with the blinds,
7 you see the slats are all nice and neat. You see no wood
8 on the floor, which normally, if there's a forcible entry
9 into a door, you're going to have -- the molding right
10 here is going to be on the ground. You're going to have
11 debris to show that there's been a forced entry.

12 Q. Okay.

13 A. This is a shot to the right of the sink in the
14 kitchen.

15 Q. All right. And what is this? This is State's
16 Exhibit Number 33?

17 A. This is a little droplet of suspected blood that I
18 saw when I came into the kitchen. And it's just in the
19 middle of nothing. There's nothing else around it. And
20 it's just suspected blood droplet that we found. This is
21 a little bit closer picture of it.

22 Q. Now, this is State's Exhibit Number 34?

23 A. Okay. This is a picture of that suspected blood
24 droplet that I found.

25 Q. And State's 35?

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1 A. And, again, this is where we put the measurement
2 tape to show the suspected blood droplet, how big it is.
3 And there's my nice, neat handwriting.

4 Q. This is State's 36?

5 A. Okay. This is going to be Q-tip again with the
6 phenolphthalein showing the positive/negative result that
7 I got. And, actually, it's -- the light's probably going
8 to make it a little bit hard, but if you look right here,
9 there's some pink in the phenolphthalein.

10 Q. And from where did you get that spot?

11 A. That came from the blood that you just saw on the
12 floor in the kitchen.

13 Q. Okay. Now, this is State's 36?

14 A. Okay. It's going to be a picture of your kitchen.
15 It's going to be in a different section. The back door
16 is to my left shoulder at this picture. You're looking -
17 - this is going into the living room. This is the
18 bathroom, which I stated earlier.

19 Q. Okay. Now we have State's Exhibit Number 20.

20 A. Okay. This is another picture of that wall that --
21 at this point in time again, my back -- the back door is
22 going to be to my left shoulder. The living entryway is
23 going to be to my right. And I'm looking at the back
24 wall with the downstairs bathroom being right there.

25 Q. State's Exhibit Number 20?

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1 A. Okay. This is going to be the bodily fluids, the
2 suspected blood that I saw, the droplets that had hit the
3 ground in the bathroom there.

4 Q. Okay. And this is State's Exhibit Number 19. What
5 does this depict?

6 A. All right. This depicts the blood spatter when it
7 drops down and it has fluid on the ground, it drops and
8 then splatters back out. And that's just showing the
9 blood ---

10 Q. Okay. State's -- go ahead.

11 A. This is just showing the blood spatter which got up
12 on the side of the toilet, as well.

13 Q. Okay. Now we have State's 24.

14 A. Okay. This is the, as I stated earlier, the exhaust
15 fan that I saw the bodily fluids coming from. It's
16 actually right here, which you'll see.

17 Q. Okay. This is State's 25?

18 A. And that is the only little droplet that I saw
19 coming from the ceiling. Now, directly above this is
20 going to be the bathroom.

21 Q. Okay. Now, we're back to State's Exhibit Number 9.

22 A. This is another shot of the front, front door
23 looking up the stairway. This is a letter that the
24 investigator wanted me to document for his purposes,
25 which I believe is in another shot you're going to have

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1 here.

2 Q. Okay. State's 29.

3 A. This is going to be where they delivered the frozen
4 meals to this resident. It's got name, time and the
5 date. Which, I believe that is the 12th, if I'm not
6 mistaken.

7 Q. All right. Now we have State's 37?

8 A. Okay. Now, this is -- we're starting to go up into
9 the second floor of the home. This is from me standing
10 at the base of the home, looking up to the upstairs.

11 Q. Okay. This is State's Exhibit Number 40. Where are
12 you when you take this photograph?

13 A. As I stepped up to the top of the stairs, this is me
14 taking a picture of the -- this is the back bedroom, the
15 bathroom, and then the front bedroom is going to be on
16 over to my right.

17 Q. Okay. State's Exhibit Number 39. What does this
18 depict?

19 A. This is me standing in the back rear bedroom with my
20 back to the back wall. Okay. So I'm looking at the
21 stairway, which is here. And then the upstairs bathroom
22 is going to be right there on the left.

23 Q. Okay. This is State's Exhibit Number 38.

24 A. Okay. This is going to be upstairs bedroom, totally
25 on the opposite side of where you just saw me. My back

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1 is to the front wall and I'm looking towards the -- where
2 the stairway and the bathroom is. And that's the back
3 bedroom.

4 Q. Now, we're back to State's Number 40.

5 A. Again, this is going to be another shot of me at the
6 stairway looking at the back bedroom and the bathroom.
7 And the -- there's a flipflop, you see the bodily fluids
8 here, a knocked over trash can right there.

9 Q. Now, this is State's Exhibit Number 45.

10 A. Yes, ma'am.

11 Q. What does this depict?

12 A. This depicts us walking in and seeing the victim.
13 The victim is laying on her right side. In between --
14 she is located in between the toilet and the bathtub. We
15 also see, of course, bodily fluids. Unfortunately,
16 during this state, bodily fluids are going to be on the
17 floor and we try to make sure that we document all of
18 that.

19 Q. Okay. Now, State's Number 41.

20 A. I took this picture -- of course, as stated before,
21 we take as much photographs as we can so that way we can
22 show everyone the state of the area that we're taking
23 photos. This is showing that there's toothbrush --
24 you've got the mouth rinse. Everything is in order on
25 the top of the sink and there's no blood or anything

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1 visible in the sink itself.

2 Q. Okay. State's 46?

3 A. Okay. Again, this is another shot of the victim
4 laying on her right side. And I'm going on into the
5 bathroom at this point in time. And this is when I start
6 noticing the suspected blood on the toilet lid, on the
7 side of the bathtub, and different areas. As well as,
8 like I said before, the trash can. This right here is
9 one of those toilet clean brush holders. It's flipped
10 over on it's top, sitting right next to the victim.

11 Q. And what do we have in 49?

12 A. Okay. Now, this is going to depict on here -- if
13 you see the suspected blood, you have suspected blood on
14 top of the toilet lid, which means that at one point in
15 time the lid was up. The seat was down. The blood got
16 on it from that point. And the victim here, showing her,
17 that she is wedged in between the toilet and the bathtub.

18 Q. All right. And what do you we have on State's 42?

19 A. All right. This is the shot of the toilet. I just
20 wanted to make sure we documented the suspected blood
21 droplets and the markings that are on the toilet lid.

22 Q. Now, this is State's 47. And when you got to the
23 scene, what is it about the circled area on State's 47
24 that drew your attention?

25 A. In my years of experience going to different scenes,

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1 seeing different rates of decomposition, that kind of
2 thing, the body does different things when it does
3 decomp. Unfortunately, sometimes there are blistering
4 and that kind of thing. I noticed that there was an
5 area, that is circled, and it just appeared to be
6 different. It appeared to be there's more secretion
7 coming out of it and there's nothing else on top of the
8 body here. Nothing busted, nothing's -- I hate to say it
9 -- leaking on top of her, except for that one area.

10 Q. So what did that appear to be to you?

11 A. It just seemed odd at that point in time.

12 Q. Okay.

13 A. To me it seemed something that, something that's not
14 supposed to be there at that point.

15 Q. Okay. Now we're at State's 47. What was
16 significant in this photograph?

17 A. Again, I'm -- when I first walked in here and I
18 looked above, this is going to be above where the victim
19 is. The victim is down here, at the side of the bathtub.
20 And the shower curtain -- if you look up at the shower
21 curtain here, I saw suspected blood a pretty significant
22 far distance up from where the victim was lying, along
23 with other, you know, blood droplets and whatnot, in the
24 bathtub, on the shower curtain and on the wall.

25 Q. Okay. And now this is State's 43.

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1 A. This is a shot of me taking the photograph as I'm
2 looking down with the victim being at the very lower part
3 of the photograph. The side of the tub and the interior
4 of the tub, with suspected blood.

5 Q. And that is 48.

6 A. Okay.

7 Q. Oh, I'm sorry. That was State's 44. Now, this --
8 for the record, please read out loud what the jury is
9 looking at right now.

10 A. All right. This is the case number and this is also
11 the latent print matches. So this is -- when I pulled
12 those cards that I spoke of earlier, the white cards,
13 this is the matches that I got.

14 Q. Okay. Now, this is State's Exhibit Number 52, being
15 eight of thirteen. Now, can you explain to the jury from
16 where you got this Exhibit?

17 A. Okay. First off this is the front of the card and
18 the rear of the same card. This right here is a picture,
19 of course, crude as it may be, shows the top of that
20 toilet tank lid that I took the photograph of. And it's
21 going to be -- the "X" is actually going to be where I
22 retrieved that latent print that we discussed earlier.

23 Q. Okay. So this is State's Exhibit Number 42?

24 A. Uh-huh (affirmative).

25 Q. And what is the -- please read out loud the bubble

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1 for the record?

2 A. Latent print prints collected from tank lid behind
3 the toilet lid. So you have the top of the toilet tank
4 lid, then you have the lid to the toilet, and it's behind
5 there, is where I retrieved that print.

6 Q. Okay. Now, these are State's Exhibits in evidence,
7 53 and 54.

8 A. Okay. There again, this is going to be the front
9 and back of the cards with the latent prints being here.
10 And as you can see, this is an "X" on the right side of
11 that same toilet tank, extreme right side, and top. And
12 then the bottom one is going to have, behind the same lid
13 that's lifted up, it's on top of the toilet tank lid
14 there.

15 Q. Now we're back to State's Exhibit Number 42.

16 A. This is showing in the general vicinity of where I
17 received those prints, which is on the right side of the
18 tank lid. And it's behind the lid itself.

19 Q. And if you could, for the record, read what the
20 jury's looking at?

21 A. Yes, ma'am. It's a latent print. The print was
22 collected from the tank lid behind the toilet.

23 Q. Okay. Now, this is State's Exhibit Number 55,
24 another print card that's already in evidence. And this
25 is State's Exhibit Number 48. And what does the yellow

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1 box indicate?

2 A. The yellow box indicates where I retrieved a latent
3 print. I dusted the bathtub and retrieved a latent print
4 off of the section that's in the general area where that
5 box is.

6 Q. Okay. Now, this is back to State's Exhibit Number
7 18. What does this circle show?

8 A. This shows where the knives down in the kitchen that
9 we observed were located. One being in the dish drainer,
10 one right there on the counter top, and one in the
11 drawer. These are the ones that Sergeant Shaw tested for
12 blood and got negative results.

13 Q. Well, when he tested those, where were you?

14 A. I was right there with him.

15 Q. And did he do it the same way that you did your
16 swabs?

17 A. The exact same way. I trained him, so ...

18 Q. Okay. Now, did you prepare a diagram?

19 A. Uh-huh (affirmative).

20 Q. Would that be helpful to show the jury about
21 measurements?

22 A. Sure. Diagraming, we also collect measurements
23 while we're on scene and we take them back to the office
24 so we can do a crime scene diagram on the computer. And
25 this is the diagram. This is the snippet of the diagram

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1 that's in my report showing, as I said before, the front
2 door of the bathroom, the sink area, toilet, the victim
3 in the bathtub.

4 Q. Okay.

5 MS. MUNSON: I have nothing further at this
6 time, Your Honor.

7 THE COURT: Ms. Johnson, you may cross-examine
8 the witness.

9 MS. JOHNSON: May it please the Court.

10 **CROSS-EXAMINATION**

11 **BY MS. JOHNSON:**

12 Q. Officer Hamilton, did you collect the knives that
13 night?

14 A. No, ma'am.

15 Q. And you didn't lift fingerprints from the knives?

16 A. No, ma'am.

17 Q. And, obviously, Ms. Alexander was found with her
18 underwear down below her knees?

19 A. Mid-thigh, yes, ma'am.

20 Q. Okay. And y'all didn't -- or you didn't swab her
21 vaginal area?

22 A. No, ma'am. That's not on-scene what we do.

23 Q. Okay. Y'all didn't test for sexual assault?

24 A. No, ma'am.

25 Q. You collected blood in two spots? But there was

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- 1 blood in the downstairs bathroom?
- 2 A. Body fluids, yes, ma'am.
- 3 Q. You never tested blood there?
- 4 A. No, ma'am.
- 5 Q. Okay. And you didn't receive a directive to test
- 6 for blood there?
- 7 A. No, ma'am.
- 8 Q. And the kitchen, y'all found blood there?
- 9 A. In the middle of the kitchen floor, yes, ma'am.
- 10 Q. Did you receive a directive to test there?
- 11 A. No, ma'am. That's just what I did.
- 12 Q. Okay. And the upstairs bathroom where Ms. Alexander
- 13 was found, there was blood on the tile?
- 14 A. Uh-huh (affirmative).
- 15 Q. Yes?
- 16 A. Bodily fluids, blood, yes, ma'am.
- 17 Q. Okay. You didn't test that tile?
- 18 A. No, ma'am.
- 19 Q. There was blood on the toilet?
- 20 A. Uh-huh (affirmative).
- 21 Q. You didn't test the blood on the toilet ---
- 22 A. No, ma'am.
- 23 Q. --- or around the toilet?
- 24 A. No, ma'am.
- 25 Q. And there was blood on the bathtub?

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- 1 A. Yes, ma'am.
- 2 Q. You didn't test around the bathtub?
- 3 A. No, ma'am.
- 4 Q. And there was blood on the shower curtain?
- 5 A. Uh-huh (affirmative).
- 6 Q. You didn't test around the shower curtains?
- 7 A. No.
- 8 Q. Or test the blood?
- 9 A. No, ma'am.
- 10 Q. There was a trash can that was recovered and flip
- 11 flops, or may be not recovered but found on the scene?
- 12 A. Yes, ma'am.
- 13 Q. Y'all didn't test those?
- 14 A. No, ma'am.
- 15 Q. You didn't photograph the back door?
- 16 A. Yeah. I did photograph the back door.
- 17 Q. Well, the -- I guess the lock?
- 18 A. The locking mechanism?
- 19 Q. Right?
- 20 A. I don't know believe -- I don't know if I've got
- 21 those in the other photographs that are not in the
- 22 Exhibits right now.
- 23 Q. Okay. You made a point to photograph the front door
- 24 real up close ---
- 25 A. Uh-huh (affirmative).

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1 Q. --- but not the back door?

2 A. There, again, the ones that we have in the Exhibits,
3 yes, ma'am, because that is the direction in which I
4 entered the room, I entered the home. I made sure I
5 photographed the frame.

6 Q. Okay.

7 MS. JOHNSON: Beg the Court's indulgence.

8 THE COURT: Yes, ma'am.

9 Q. And you only tested these two drops of blood?

10 A. Yes, ma'am. The ones that I collected.

11 Q. That's all you tested?

12 A. Yes, ma'am.

13 Q. Thank you.

14 A. Uh-huh (affirmative).

15 THE COURT: Any redirect?

16 **REDIRECT EXAMINATION**

17 **BY MS. MUNSON:**

18 Q. Why is that, Officer Hamilton?

19 A. Which one, ma'am?

20 Q. Why didn't you collect the fluids that was
21 underneath the decomposing body?

22 A. Well, a number of reasons. I mean, you've got blood
23 -- suspected blood and bodily fluids can be transferred
24 by insects if insects are present. Or it could be, you
25 know, it could be from, you know, the body sitting there.

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1 I, you know, suspected blood -- if the suspect or the
2 person involved, I mean, if it's that much blood the
3 body's going to tell more story than that.

4 Q. Okay. Now, the two spots, why did they stand out to
5 you, apparently, more than the blood around the body?

6 A. Because it was one droplet. One droplet at the base
7 of the stairs. One droplet in the middle of the kitchen.
8 I mean, it's just -- why is there just one droplet in
9 those two areas.

10 Q. Okay. And those two little droplets that you
11 swabbed and took photographs of, what did you do with
12 those little swabs?

13 A. The actual swabs that I collected the suspected
14 blood on, I put those into the property and evidence
15 section at the law enforcement center.

16 Q. Before you put them in there, did you do anything
17 with them?

18 A. Just made sure I sealed them and put them in.

19 Q. Okay. Does the forensic unit for the Department of
20 Public Safety ever do sexual assault test?

21 A. No, ma'am.

22 Q. Thank you.

23 MS. MUNSON: I have nothing further, Your
24 Honor.

25 MS. JOHNSON: Judge, may I recross him?

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1 THE COURT: Yes, ma'am. Briefly.

2 **RECROSS EXAMINATION**

3 **BY MS. JOHNSON:**

4 Q. You don't know whose blood that was on the bathroom?

5 A. No, ma'am.

6 MS. JOHNSON: That's all I have, Judge.

7 THE COURT: All right. Thank you. You may
8 step down.

9 MS. MUNSON: Your Honor, may this witness be
10 excused?

11 THE COURT: Any objection?

12 MS. JOHNSON: Without objection.

13 THE COURT: All right. Without objection, you
14 may be excused. Thank you. The State may call its next
15 witness.

16 MS. MUNSON: May we approach, Your Honor?

17 THE COURT: Yes, ma'am.

18 (WHEREUPON, Ms. Munson, Ms. Adams, Ms. Horlbeck and
19 Ms. Johnson approached the bar.)

20 THE COURT: Before the next witness is called,
21 ladies and gentlemen, there are some things we need to
22 take care and we're just going to take an earlier lunch
23 today than we normally would. We'll break for lunch now.
24 If you'll be back at one-thirty, we'll be ready to
25 proceed at that time with more testimony in the case.

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1 I remind you again the commitment you made yesterday
2 not to discuss the case with anyone. Don't let anyone
3 discuss the case with you. We're certainly not concluded
4 with the trial yet. Remember the admonition that I gave
5 you yesterday about the purity of the process that we're
6 in and how vital you are to that. Have a good lunch and
7 I'll see you back at one-thirty. We'll be ready to go
8 back then.

9 Everyone else, please remain seated.

10 (WHEREUPON, the jury exited the open court at
11 approximately 12:11 P.M.)

12 THE COURT: All right. We'll be ready to
13 proceed back at one-thirty. Have a good lunch.

14 (WHEREUPON, the court stood at recess for a lunch
15 break.)

16 (WHEREUPON, State Exhibit Numbers 57, 58, 59 and 60
17 were marked for identification.)

18 THE COURT: Are you ready to proceed?

19 MS. MUNSON: The State's ready, Your Honor.

20 THE COURT: If our jury's ready have them come
21 in, Mr. Simms.

22 (WHEREUPON, the jury entered the open court at
23 approximately 1:35 P.M.)

24 THE COURT: Solicitor, you may call your next
25 witness.

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1 MS. MUNSON: Thank you, Your Honor. May it
2 please the Court. The State calls Tyler Bucholtz.

3 THE CLERK: Mr. Bucholtz, if you would come
4 forward to be sworn in, please. Please place your left
5 hand on the bible and raise your right.

6 Do you swear or affirm that the testimony you're
7 about to give is the truth, the whole truth and nothing
8 but the truth, so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Thank you. You may be seated.
11 Would you please state your name for the record.

12 THE WITNESS: Tyler Bucholtz.

13 THE CLERK: Thank you.

14 TYLER BUCHOLTZ,

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MS. MUNSON:

18 Q. Who do you work for, sir?

19 A. Greenville County Forensic Division.

20 Q. What are your duties?

21 A. I currently am with the latent print division where
22 I analyze fingerprints that come up from crime scenes.
23 Since January of 2009, I've also worked the crime scenes.

24 Q. Okay. And so in June of 2009, where were you
25 assigned?

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1 A. I was at the crime scene unit.

2 Q. Okay. And did you get a call to go out to the crime
3 scene involving this case?

4 A. Yes.

5 Q. And what date did you go out there?

6 A. That was June 16th, 2009.

7 Q. Okay. And was it day or night when you went out
8 there?

9 A. It was in the daytime.

10 Q. And what was the purpose of you going back to the
11 scene?

12 A. We were requested by -- when we got on scene,
13 Investigator Whaley advised that he had a search warrant
14 and he would like for us to process for the presence of
15 blood, as well as collect knives that were on a counter.

16 Q. Okay. Who went out there with you?

17 A. Sergeant Lendway with the crime scene unit.

18 Q. And I need to back up a second, Officer Bucholtz.
19 Did you say where you went?

20 A. It was Galphin Drive.

21 Q. Okay. And what sort of area was this?

22 A. It's an apartment off of Pleasantburg and
23 Rutherford.

24 Q. Now, when you got to the scene, just quickly run
25 down what you did?

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1 A. After investigator Whaley requested what he did, we
2 went inside and observed the knives that he was talking
3 about. There were four knives on the kitchen counter.
4 He also requested that we collect the drain traps from
5 the kitchen sink in the downstairs and the drain trap
6 from the bathroom sink upstairs. So we located those,
7 observed them and then when I walked back out the front
8 door, down to my left, I noticed there was a knife laying
9 in the pine straw, just outside the door.

10 Q. Outside the apartment?

11 A. Yes.

12 Q. I'm showing you State's Exhibits 57 and 58. Can you
13 take a look at these?

14 A. Okay.

15 Q. Do you recognize those?

16 A. Yes.

17 Q. Who took those photographs?

18 A. I did.

19 Q. Are they accurate depictions of where you found the
20 knife that you were just talking about?

21 A. Yes, they are.

22 Q. Okay. Thank you.

23 MS. MUNSON: Your Honor, at this time, we'd
24 move State's 57 and 58 into evidence.

25 THE COURT: Any objection?

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1 MS. HORLBECK: Without objection.

2 THE COURT: Exhibit 57 and 58 are admitted into
3 evidence.

4 (WHEREUPON, State Exhibit Numbers 57 and 58 were
5 admitted into evidence.)

6 Q. Now, Officer Bucholtz, what did you do? Did you do
7 anything in the upstairs bathroom where the body was
8 found?

9 A. Yes. We mixed some LCV, Leuco Crystal Violet, which
10 is a presumptive test for the presence of blood, and that
11 was sprayed on the bathroom sink and counter top and the
12 bathroom walls, the door jamb entryway, as well as the
13 front and rear doors downstairs.

14 Q. Okay. And this LCV, how does that work?

15 A. When it contacts the surface where blood has been,
16 it turns a purplish, violent color immediately.

17 Q. Okay. Does that mean for sure that there's blood?

18 A. No.. It's a presumptive test, which means it's the
19 possibility for blood, and that gives me reason to swab
20 that area.

21 Q. Okay. Now, I'm showing you State's Exhibits 59 and
22 60.

23 A. Okay.

24 Q. Do you recognize those?

25 A. Yes.

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1 Q. Okay.

2 A. That's the left side of the bathroom sink upstairs
3 and the right side of the bathroom sink.

4 Q. Okay. And are these accurate depictions of after
5 you sprayed with the LCV?

6 A. Yes.

7 MS. MUNSON: Your Honor, we'd move State's 59
8 and 60 into evidence.

9 MS. HORLBECK: Without objection.

10 THE COURT: Without objection.

11 (WHEREUPON, State Exhibit Numbers 59 and 60 were
12 admitted into evidence.)

13 Q. Now, Officer Bucholtz, if you wouldn't mind coming
14 down in front of the jury. And if you would just take
15 State's Exhibit 57 and kind of show the jury what that
16 is.

17 A. This is the door jamb for the entryway into the
18 apartment. This is just a window at the front of the
19 apartment. And below the window, right there is where
20 the knife was. And then I zoomed in the lens and took
21 another photo. And that's the blade. Both the handle
22 and the blade is in the pine straw.

23 Q. Okay. Now, let's look at State's Exhibits 59 and
24 60. If you could just explain to the jury?

25 A. Okay. When you walk into the bathroom, the sink is

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1 on the left and this is the left side of the sink. This
2 is the soap. The purple area is where we sprayed the
3 LCV; and it reacted. And then this is the right side of
4 the sink. The purple area is where the LCV reacted,
5 positive presumptive reaction.

6 Q. Okay. Now, that knife that you collected from
7 outside the house, in what condition was it?

8 A. I don't recall at this time.

9 Q. Okay. That's fine. Did you do anything with that
10 knife?

11 A. I collected it and placed it into property and
12 evidence.

13 Q. Did you attempt to collect any evidence from the
14 blade or the handle?

15 A. Yes. When I returned to the crime scene unit
16 office, I swabbed the handle and I also swabbed the
17 blade.

18 Q. And when you say swabbed it, ---

19 A. Uh-huh (affirmative).

20 Q. --- how did you do that?

21 A. I took a sterile swab that comes in a container,
22 opened it and swabbed the whole area of the blade and
23 closed it and sealed that up. And then I also did the
24 same thing with the handle.

25 Q. Okay. And what did you do with those swabs once you

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Tyler Bucholtz - Cross Examination by Ms. Horlbeck

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1 sealed them up?

2 A. They were placed into property and evidence.

3 MS. MUNSON: I have nothing further at this
4 time, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. HORLBECK:

7 Q. I just want to make sure I'm pronouncing your last
8 name correctly. Is it Bucholtz?

9 A. Bucholtz, yes.

10 Q. Bucholtz. Okay. All right. Officer Bucholtz, you
11 went to the apartment on June 16th, 2009. Is that
12 correct?

13 A. Yes.

14 Q. And when you returned to the apartment on that day,
15 that's the first time you discovered the knife under the
16 window?

17 A. Yes. That was the first time I had been to the
18 apartment and it was during the daytime.

19 Q. All right.

20 A. I believe the night before it was dark when they had
21 responded to the scene.

22 Q. All right. So to your knowledge when you went to
23 the apartment on the 16th, that was the first time anyone
24 had discovered the knife under the window?

25 A. I believe so.

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Tyler Bucholtz - Cross Examination by Ms. Horlbeck

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1 Q. And you performed, you performed swabs of the blade
2 of that knife?

3 A. Yes. The blade and the handle.

4 Q. Okay. And then you packaged up the knife and put it
5 in property and evidence?

6 A. Yes.

7 Q. And the swabs also were placed in property and
8 evidence?

9 A. Yes.

10 Q. And the four knives from the kitchen, those were
11 also placed into property and evidence; correct?

12 A. Yes.

13 Q. And then you collected the trap from the upstairs
14 sink and also the kitchen?

15 A. Yes.

16 Q. And did you package those up and put those in
17 property and evidence?

18 A. I did.

19 Q. Did you observe any footprints?

20 A. No.

21 Q. And did you take any photographs of any footprints?

22 A. No. If there was anything like that, they would
23 have most likely done that the day before when they
24 processed the scene. We were specifically asked to
25 collect these items. And so ...

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Tyler Bucholtz - Cross Examination by Ms. Horlbeck

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1 Q. And that was not something -- no footprint was
2 photographed by you?

3 A. By me, no.

4 Q. And was there a swab done of Ms. Alexander's vaginal
5 area inside and outside?

6 A. That, I don't know. This is the only involvement I
7 had in this case and it was the day after.

8 Q. You had no contact with Ms. Alexander?

9 A. Correct.

10 Q. All right.

11 MS. HORLBECK: That's all I have. Thank you.

12 THE WITNESS: Okay.

13 MS. MUNSON: Nothing further, Your Honor.

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

15 Call your next ---

16 MS. MUNSON: Beg the Court's indulgence.

17 THE COURT: Yes, ma'am.

18 MS. MUNSON: Your Honor, I apologize, but my
19 next witness from Columbia is not here yet. She was
20 asked to be here at two. Dr. Kandala is on his way, as
21 well.

22 THE COURT: Okay. All right.

23 MS. MUNSON: I'm really sorry.

24 THE COURT: Okay. Let's just take a short
25 break. Go back to your jury room. We'll let you stretch

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Tyler Bucholtz - Cross Examination by Ms. Horlbeck

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1 and move around back there rather than waiting in here.

2 Don't discuss the case. As soon as we have the witness

3 here, we'll be ready to call you back.

4 (WHEREUPON, the jury exited the open court at

5 approximately 1:47 P.M.)

6 THE COURT: All right. We'll be at ease.

7 (WHEREUPON, the court stood at recess for a short

8 break.)

9 THE COURT: All right. Let's have our jury
10 come in if they're ready.

11 (WHEREUPON, the jury entered the open court at
12 approximately 2:03 P.M.)

13 THE COURT: All right, Solicitor.

14 MS. MUNSON: May it please the Court, Your
15 Honor. The State calls Nikki Perry.

16 THE CLERK: Ms. Perry, if you would come
17 forward to be sworn in, please. If you would turn this
18 way.

19 Do you swear or affirm that the testimony you're
20 about to give is the truth, the whole truth and nothing
21 but the truth, so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Thank you. You may be seated.

24 Would you please state your name for the record.

25 THE WITNESS: Nikki Perry Hughes, H-u-g-h-e-s.

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Nikki Perry Hughes - Direct Examination by Ms. Munson

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1 THE CLERK: Thank you.

2 NIKKI PERRY HUGHES,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MS. MUNSON:

6 Q. You're married?

7 A. Yes.

8 Q. Who do you work for, ma'am?

9 A. I'm employed with the South Carolina Law Enforcement
10 Division, commonly known as SLED.

11 Q. What do you do for SLED?

12 A. I'm a forensic technician in the evidence control
13 department at the forensic lab.

14 Q. What are your duties?

15 A. In my department we log in, package, and transfer
16 evidence brought into the lab for forensic analysis.

17 Q. And when you receive a package for analysis, what --
18 do you do any testing of it, on it, of your own?

19 A. No, ma'am.

20 Q. Let me show you State's Exhibit Number 61. Do you
21 recognize that item?

22 A. I do. I recognize the label that I affixed on the
23 outside of the package, belongs to SLED Lab Number L09-
24 07251 and it's container A.

25 Q. Okay. And what did you do when you received that?

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Nikki Perry Hughes - Direct Examination by Ms. Munson

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1 A. What I do, I receive the evidence from the officer
2 that comes into the lab. In my presence, I will then
3 take a SLED form, a request form that has all the case
4 information as well as the items listed on the form and
5 what analysis is needed for those items. I will then log
6 in that information into our computer and it will
7 generate a unique lab number for that case and an item
8 number for each item.

9 Q. Okay. Go ahead.

10 A. I'm sorry. And then I'll place it in a SLED heat
11 seal pouch. I will heat seal it in the presence of the
12 officer and have the officer initial and date the seals
13 and sign and date the front of the bag.

14 Q. Do you know from what officer you received that
15 particular piece of evidence?

16 A. I do. Per my chain of custody, I received this
17 evidence from Chris Miller of the Greenville County
18 Sheriff's Office.

19 Q. Okay. And once you had sealed it, what did you do
20 with it?

21 A. I would then place it in our DNA evidence intake
22 storage, which is a location in our secure evidence room.

23 Q. And on what date did you receive it?

24 A. I received it on June 16th, 2009.

25 Q. Okay. And can you say what time you received it?

State of South Carolina -vs- Ralph Hayes (2011-GS-23-07681)
Adrienne Hefney - Direct Examination by Ms. Munson

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1 A. I received it at twelve-oh-five.

2 Q. Okay.

3 MS. MUNSON: I have nothing further, Your
4 Honor.

5 THE COURT: Cross-examination?

6 MS. HORLBECK: No questions.

7 THE COURT: All right. Thank you. You may
8 step down.

9 THE WITNESS: Thank you.

10 MS. MUNSON: Your Honor, the State calls
11 Adrienne Hefney.

12 THE CLERK: Ms. Hefney, if you would come
13 forward to be sworn in, please. Please place your left
14 hand on the bible and raise your right.

15 Do you swear or affirm that the testimony you're
16 about to give is the truth, the whole truth and nothing
17 but the truth, so help you God?

18 THE WITNESS: I will.

19 THE CLERK: Thank you. You may be seated.
20 Would you please state your name for the record.

21 THE WITNESS: Adrienne Riley Hefney. Last
22 named spelled H-e-f-n-e-y.

23 THE CLERK: Thank you.

24 ADRIENNE HEFNEY,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

State of South Carolina -vs- Ralph Hayes (2011-GS-23-07681)
Adrienne Hefney - Direct Examination by Ms. Munson

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1 **DIRECT EXAMINATION**

2 **BY MS. MUNSON:**

3 Q. Who do you work for, ma'am?

4 A. I work for the South Carolina Law Enforcement
5 Division, more commonly known as SLED.

6 Q. What do you do with SLED?

7 A. I'm a forensic DNA analyst.

8 Q. And what does that entail?

9 A. Forensic DNA analyst, as a forensic DNA analyst, I
10 analyze biological specimens that were left behind at a
11 crime scene and make comparisons to known specimens,
12 which are known standards that we receive from the victim
13 and/or suspect in a case.

14 Q. Okay. What is your educational background?

15 A. I have a Bachelor of Science degree in Biology from
16 the University of South Carolina. I have a Master's of
17 Business Administration or MBA Degree from Winthrop
18 University. Since joining SLED, I was trained under a
19 court-qualified analyst. And I've also taken continuous
20 education courses in post -- like the field of molecular
21 biology, genetics and statistical population studies.

22 Q. Okay. How often would you say that you have
23 performed a DNA analysis?

24 A. Thousands of cases.

25 Q. Okay. Have you ever been qualified as an expert in

State of South Carolina -vs- Ralph Hayes (2011-GS-23-07681)
Adrienne Hefney - Direct Examination by Ms. Munson

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1 the field of forensic DNA analysis?

2 A. Yes, ma'am, I have.

3 Q. How many times?

4 A. About sixty times, at least.

5 Q. Okay. And how long have you been with SLED?

6 A. Since November of 1997, so a little shy of fifteen
7 years.

8 Q. Okay.

9 MS. MUNSON: Your Honor, at this time I offer
10 Ms. Hefney as an expert in the field of forensic DNA
11 analysis.

12 THE COURT: Any voir dire or any objection?

13 MS. HORLBECK: No, Your Honor.

14 THE COURT: You may proceed.

15 Q. Ms. Hefney, what is DNA?

16 A. Okay. DNA stands for Deoxyribonucleic acid. And
17 what that is is a chemical substance that's found in all
18 nucleated cells of our bodies. It makes us who we are.
19 A lot of our DNA is the same. The DNA that codes for us
20 to be human, gives us two eyes and two legs, two arms,
21 and a nose. But if we look around this courtroom, we
22 notice that we all look different. So our DNA is
23 different from person-to-person. No two people will have
24 the same DNA, with the exception of identical twins. How
25 we use that fact in forensics is we make comparisons. We

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Adrienne Hefney - Direct Examination by Ms. Munson

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1 make comparisons between unknowns, which will be evidence
2 left behind at a crime scene, such as blood, semen,
3 saliva, hair, tissue, so on and so forth. And make
4 comparisons to known standards, which is like a blood
5 standard or a buccal swab standard, which is from the
6 inside of your cheek of the known person, so we know the
7 origin of it and where it comes from. And that's from
8 the victim and/or the suspect in each case.

9 Q. And what do you do in a situation where you're just
10 asked to examine an unknown sample, such as a blood drop?

11 A. Okay. If we're asked to examine, we will do an
12 examination of it. And if we don't have any standards to
13 compare it to, we'll request a standard at that time to
14 make the comparison.

15 Q. But do you do anything with the sample once you get
16 it?

17 A. We develop a DNA profile from the items or the
18 sample.

19 Q. Okay. Let me show you State's Exhibit Number 61.
20 Do you recognize that?

21 A. Yes. It's a package, what typical swabs come in and
22 it has my initials on the envelope, as well as on the
23 heat seal pouch.

24 Q. And the initials AR there; correct?

25 A. Yes, that was my maiden name. Yes.

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Adrienne Hefney - Direct Examination by Ms. Munson

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1 Q. Okay. And since then you've been married?

2 A. Yes, ma'am.

3 Q. Okay. Now, when you received State's Exhibit Number
4 61, in what condition was it?

5 A. It was sealed. If it was not sealed we make notes
6 of it. But as we receive most of our evidence, it's
7 sealed and ready for analysis. And I am usually the
8 first one to open the package that I'm going to analyze.

9 Q. And is that the case with State's 61, you were the
10 first one to open it?

11 A. Yes, ma'am.

12 Q. Okay. And what did you analyze?

13 A. I analyzed two swabs from the scene that were
14 contained in that pouch. And I'll read directly from my
15 report. The two swabs, one was collected from tile at
16 the front door. And the other one was collected from the
17 kitchen floor.

18 Q. Okay. And what did you do with those swabs?

19 A. First, I did serology testing which is the body
20 identification, body fluid identification. And I
21 identified or tested for blood and there was blood
22 indicated on these swabs. Once blood was indicated, we
23 moved on to DNA analysis and I developed a DNA profile
24 from both of these swabs.

25 Q. And that was all you had in this case; correct?

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Adrienne Hefney - Cross Examination by Ms. Horlbeck

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1 A. Yes, ma'am.

2 Q. You didn't have a -- something to compare the DNA
3 to?

4 A. I did not receive a known standard.

5 Q. Okay. From your analysis, what can you tell about
6 the two separate drops?

7 A. Okay. Again, reading directly from my report, the
8 DNA profile developed from items one and two -- and items
9 one and two were the -- one is the tile at the front door
10 and two is the swab at the kitchen floor -- is from an
11 unidentified female individual.

12 Q. Okay.

13 MS. MUNSON: I have nothing further at this
14 time, Your Honor.

15 **CROSS-EXAMINATION**

16 **BY MS. HORLBECK:**

17 Q. Ms. Hefney, you just testified that you didn't
18 receive a known standard. Is that correct?

19 A. That is correct.

20 Q. Do you know why you didn't receive a known standard?

21 A. At the time, I did not know why I didn't. I
22 requested on the report to please admit a known standard
23 from the victim for comparison.

24 Q. And your analysis was actually done in October 2009;
25 correct?

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Adrienne Hefney - Cross Examination by Ms. Horlbeck

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1 A. That is correct.

2 Q. Okay. Earlier you stated that only identical twins
3 have identical DNA patterns?

4 A. That is correct.

5 Q. And that's true when a hundred percent of the DNA is
6 analyzed; correct?

7 A. That is correct.

8 Q. And in a forensics situation, only fifteen locyte
9 and the amelogenin are analyzed. Is that correct?

10 A. Fifteen locyte and amelogenin, which is our sex
11 typing chromosome.

12 Q. And those things that you analyzed, they represent
13 less than one percent of the total amount of cellular
14 DNA?

15 A. Yes. But they're the DNA that doesn't code for
16 anything, that makes us unique individual-to-individual.

17 Q. Okay. The one percent still leaves millions of base
18 pairs of DNA where we are unique?

19 A. I'm sorry.

20 Q. Is that correct?

21 A. Can you ask that again?

22 Q. What you said, you said that part of it doesn't code
23 for anything in particular. Is that correct?

24 A. Meaning coding from what makes us human, like the
25 two arms and two legs, is what's unique from person-to-

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Adrienne Hefney - Cross Examination by Ms. Horlbeck

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1 person. That's what we look at in forensics.

2 Q. Okay. So unless a hundred percent of the DNA is
3 analyzed, you could never be a hundred percent sure that
4 the evidential DNA you have is actually left by the
5 person that you say left it?

6 Q. After we make a comparison and, say, I had a
7 standard in this case and I made a comparison to the
8 unknowns, we apply statistical weight to it. The
9 statistical weight will say whether we expect to see this
10 DNA profile again in one and, say, a quadrillion people.
11 And that's done once we make a match to the standard.

12 Q. And are you talking about molecular and population
13 genetics? Is that the distinction you're making?

14 A. That's correct.

15 Q. Okay. And molecular genetics actually involves the
16 actual lab work; right?

17 A. Molecular genetics is, I guess you could say,
18 involves the actual lab work. It is what the lab work
19 is.

20 Q. Okay. And once there's a match between somebody's
21 profile and the evidential DNA profile, then a
22 statistical analysis is done?

23 A. A statistical weight is given to it, yes, ma'am.

24 Q. And that weight is given it to determine how many
25 other people in the world might match that profile?

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Adrienne Hefney - Cross Examination by Ms. Horlbeck

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1 A. Or how many people in the world -- if you look at
2 that many people in the world should you expect to see
3 that profile again.

4 Q. Okay.

5 A. And usually it will be in the quadrillions or even
6 more, which is more than the world's population, a
7 million times more than the world's population.

8 Q. And the need for population genetics demonstrates
9 why, unless you analyze a hundred percent of the DNA, you
10 could never be a hundred percent sure that a particular
11 individual matches a sample; correct?

12 A. Well, you can pretty much be sure if you look at
13 these fifteen core loci that everyone looks at, because
14 the human genome is massive. So you would probably never
15 look at all to compare it to. But a representative
16 sample, adding the statistical weight to it, will say
17 pretty much whether this is -- a DNA profile came from
18 this person or not.

19 Q. And you didn't look at the whole thing. You only
20 looked at part of it; correct?

21 A. I looked at the 15 core loci that we look at.

22 Q. And that's only part of it; correct?

23 A. That's part of it. The part that's unique from
24 human-to-human.

25 Q. Okay. And the technology used is actually called

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Adrienne Hefney - Cross Examination by Ms. Horlbeck

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1 polymerase chain reaction or PCR.

2 A. PCR. And PCR is where you can have theoretically a
3 pin-head size of stain and be able to get a DNA profile
4 from it. Whereas before, when I first joined SLED, we
5 were doing what's known as RFLP, Restriction Fragment
6 Length Polymorphism. That's where you had to have a
7 large stain, maybe like the size of a quarter to even be
8 able to get a DNA profile from it.

9 Q. And you wear gloves when you do this work in the
10 lab?

11 A. Yes, ma'am.

12 Q. And you wear the gloves because if you were to touch
13 an item with you bare hand, it's possible to leave your
14 own DNA?

15 A. It's possible, as well as you were gloves -- it's
16 just a precaution because you're dealing with blood from
17 unknown sources.

18 Q. And you change your gloves frequently during your
19 work?

20 A. Yes, ma'am.

21 Q. And at the end of all of this nothing matches Mr.
22 Hayes; correct?

23 A. No. This is from an unidentified female individual,
24 what I have from these two swabs.

25 Q. Thank you.

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Adrienne Hefney - Cross Examination by Ms. Horlbeck

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1 A. Uh-huh (affirmative).

2 MS. MUNSON: Nothing further, Your Honor.

3 THE COURT: All right. Thank you. You may
4 step down.

5 MS. MUNSON: Your Honor, may this witness be
6 excused?

7 MS. HORLBECK: Without objection.

8 THE COURT: Without objection.

9 MS. MUNSON: Along with Ms. Perry?

10 THE COURT: Certainly.

11 MS. HORLBECK: That's without objection.

12 THE COURT: Certainly, Ms. Hughes.

13 MS. MUNSON: Your Honor, the State calls Dr.
14 Kandala.

15 THE CLERK: Dr. Kandala, if you would come
16 forward to be sworn in, please. Please place your left
17 hand on the bible and raise your right.

18 Do you swear or affirm that the testimony you're
19 about to give is the truth, the whole truth and nothing
20 but the truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: Thank you. You may be seated.
23 Would you please state your name for the record.

24 THE WITNESS: Jagannadaha Kandala.

25 THE CLERK: Thank you.

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Jagannadha Kandala, Ph.D. - Direct Examination by Ms. Munson

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1 JAGANNADHA KANDALA, Ph.D.

2 BEING FIRST DULY SWORN TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MS. MUNSON:

5 Q. Dr. Kandala, who do you work for?

6 A. I work for the Greenville County Department of
7 Public Safety?

8 Q. In what area?

9 A. In DNA.

10 Q. All right. What are your duties?

11 A. My duties are getting the evidence, analyzing it and
12 then writing a report and coming to the court if
13 necessary.

14 Q. Okay.

15 A. And I'm also the DNA technical leader so I take care
16 of the lab.

17 Q. Okay. So you're a DNA -- I'm sorry. I didn't hear
18 that last part.

19 A. Technical leader.

20 Q. Technical leader. What does that mean?

21 A. I establish the lab rules and the technicalities of
22 the lab.

23 Q. Okay.

24 A. And take care of everything.

25 Q. All right. What is your educational background?

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1 A. I have a B.S. in Biology and Chemistry. And I have
2 a Masters in Chemistry, a Masters in Microbiology, and a
3 Ph.D. in biochemistry.

4 Q. All right. Do you have any specialized training in
5 the area of DNA analysis?

6 A. Yes. I first joined the St. Louis Metropolitan
7 Police Department and I had training there in the DNA
8 department, an analyst. And I worked there for about
9 seven years.

10 Q. Okay.

11 A. And I worked at San Bernardino Sheriff's DNA lab for
12 about three years. And I move here. And for the last
13 four years, I'm working here.

14 Q. All right. How many times would you say that you
15 have performed a DNA analysis?

16 A. I must have done about five hundred to six hundred
17 cases.

18 Q. Okay. Since you've been here or altogether?

19 A. Altogether.

20 Q. All right. Have you ever been qualified as an
21 expert in the field of DNA analysis?

22 A. Yes.

23 Q. Approximately how many times?

24 A. Probably ten times.

25 Q. Okay.

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1 MS. MUNSON: Your Honor, at this time, I'd
2 offer Dr. Kandala as an expert in the field of DNA
3 analysis.

4 THE COURT: Any voir dire or any objection?

5 MS. HORLBECK: None, Your Honor.

6 THE COURT: Without objection.

7 Q. All right. Now, Dr. Kandala, were you asked to
8 perform two separate analyses from this case?

9 A. Yes.

10 Q. Let's talk about the first one. I'm going to show
11 you State's Exhibits 50 and 51. If you could take a look
12 at those.

13 A. Yes. This was the second analysis I have done.

14 Q. Okay. That was the second one?

15 A. Yeah.

16 Q. Okay. Well, do you recognize State's Exhibits 50
17 and 51?

18 A. Yes, I do.

19 Q. And what are they?

20 A. This is the shirt or gown one, probably. I
21 inspected the evidence I got from the victim's shirt.

22 Q. Okay. Are State's Exhibits 50 and 51, are these
23 accurate depictions of the shirt that you analyzed?

24 A. Yes.

25 MS. MUNSON: Your Honor, at this time, I'd

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1 offer State's Exhibits 50 and 51 into evidence.

2 MS. HORLBECK: No objection.

3 THE COURT: Without objection. It will be
4 entered and published.

5 (WHEREUPON, State Exhibit Numbers 50 and 51 were
6 admitted into evidence.)

7 Q. Now, Dr. Kandala, when you went to do an analysis on
8 the shirt in the State's Exhibits, from where did you get
9 it?

10 A. From the property and evidence.

11 Q. Okay. And when you got the shirt back to your lab,
12 what did you do?

13 A. I stored it in the minus twenty freezer. Then when
14 I start analyzing, I take it and then analyze it. Once I
15 analyze the shirt, look at it, and take the samples, I
16 put it back in the freezer.

17 Q. Okay. From where did you take samples from that
18 shirt?

19 A. From the inside of the shirt, wherever there is some
20 bodily material is stuck to the gown, those areas where I
21 picked up.

22 Q. Okay. And how did you get that material separated
23 from the shirt?

24 A. I slowly cut it out with a scissors, which is a
25 sterilized instrument at that point.

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1 Q. Okay. Now, after you got the material from the
2 shirt, what was the next thing you did with it, with the
3 material?

4 A. I check for any blood, a presumptive test to see if
5 there is blood in it. And then later take the material
6 and extract DNA from it.

7 Q. Okay. How many parts on the shirt did you get
8 samples from?

9 A. I took three areas from the shirt.

10 Q. And what particular of the three areas?

11 A. I cannot recall unless I look at my notes.

12 Q. Feel free.

13 A. I took the areas from the bottom inside of the gown.

14 Q. Okay. And when you got this material from the gown,
15 you then analyzed what you had?

16 A. Yes. I extract the DNA and I quantify the DNA and
17 then I do the PCR on it. And then I do the actual
18 genetic analysis.

19 Q. Okay. Now, extracting DNA, what does that mean?

20 A. Extracting DNA -- because the material is bodily
21 skin and other kinds of material that get stuck, when you
22 take any material you have to separate DNA from the cell
23 parts that is present. So what we do is we put it
24 through a process called extraction using buffers and
25 enzymes. And then what it does, it takes care of

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1 breaking the cell and separating the DNA from the other
2 material and then we get pure DNA out of it.

3 Q. And were you able to get a DNA profile from the
4 shirt that's depicted in State's Exhibit 50 and 51?

5 A. Yes, I did get a profile. But what we do is, when
6 we do this profiling, we look at fifteen areas on the
7 DNA.

8 Q. Okay.

9 A. But here I could not get all the areas, so I got
10 only a partial profile.

11 Q. Okay. And the partial profile that you got from the
12 material on that shirt, was there enough of a profile for
13 you to offer an opinion -- well, let me back up. I'm
14 sorry, Doctor. What were you asked to compare -- the
15 profile that you extracted, were you asked to compare
16 that to anything?

17 A. It seems there were two blood spots recovered and
18 then analyzed by the South Carolina Department of Law
19 Enforcement. And that they found a female from that two
20 blood spots. And so they wanted to compare to see
21 whether the profile obtained from those blood spots,
22 whether it matches this DNA from this gown.

23 Q. Okay. Now, even though you found a partial profile,
24 do you have an opinion as to whether or not the profile
25 developed from SLED matches the DNA on that shirt?

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1 A. Yes. It has -- the results show that whatever areas
2 it has shown, that all those match the DNA obtained from
3 the blood spots.

4 Q. Okay. Thank you.

5 MS. MUNSON: Nothing further at this time.

6 (WHEREUPON, State Exhibit Numbers 61, 62 and 63 were
7 marked for identification.)

8 Q. Oh, I'm sorry. That was your first analysis. You
9 did another analysis. Actually you did a ---

10 A. No. This was the second analysis.

11 Q. Okay. But you did an analysis first?

12 A. Yes.

13 Q. Before you did the shirt?

14 A. Correct.

15 Q. All right. Let's look at State's Exhibits Number 62
16 and 63.

17 A. Yes.

18 Q. Do you recognize these items?

19 A. Yes, I do.

20 Q. And from where did you get these?

21 A. I also got them from property and evidence.

22 Q. Okay. And when you got them from property and
23 evidence, now in what condition was the seal on them?

24 A. They were sealed.

25 Q. Okay. Any tampering?

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1 A. No.

2 Q. Do you look for that?

3 A. I do.

4

5 Q. Okay. Now, State's Exhibit 62 and 63, what were you
6 asked to analyze as far as these Exhibits?

7 A. I was asked to analyze the DNA and see if I can get
8 a comparison with the suspect's DNA.

9 Q. Okay. Now, what are the -- specifically, what items
10 were you asked to compare?

11 A. Let me look at my notes, please. Item one is a swab
12 from the handle of the knife. And the second one is a
13 swab from the blade of knife.

14 Q. Okay.

15 A. And the third one is a swab from the left side of
16 the sink and a swab from the right side of the sink is
17 the number four item.

18 Q. All right. And were you able to develop even a
19 profile from any of those items in State's 62 and 63?

20 A. No, I could not because three of the samples did not
21 have any DNA and one sample had some DNA but not enough
22 for analysis.

23 Q. Okay. Thank you.

24 MS. MUNSON: I have nothing further.

25

CROSS-EXAMINATION

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1 BY MS. HORLBECK:

2 Q. Dr. Kandala, my name is Caroline Horlbeck and I just
3 have a few questions for you about your testimony?

4 A. Yes, please.

5 Q. Now, you wear gloves in the lab; correct?

6 A. Yes.

7 Q. And you wear gloves because if you touch an item
8 with your bare hands it's possible to leave your cells
9 and your DNA; correct?

10 A. Yes.

11 Q. And you don't want to leave any of that on the
12 sample while you're touching it?

13 A. Yes.

14 Q. Do you change your gloves frequently?

15 A. Yes.

16 Q. Now, the first analysis in this case was performed
17 by the SLED Lab?

18 A. Yes. I got a report from them at that point, when I
19 was asked to work on this case.

20 Q. Okay. And the results obtained from their samples
21 were that the blood matched an unknown female; correct?

22 A. Yes.

23 Q. And you performed an analysis ---

24 A. You don't call it as matching. It is -- from the
25 profile you can say it is a female.

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- 1 Q. Okay. And then you -- in your opinion, the samples
2 that you took from the shirt match Ms. Alexander?
3 A. Yeah, whatever.
4 Q. Right.
5 A. Yes.
6 Q. Okay. And there's nothing on that shirt that
7 matches Mr. Hayes; correct?
8 A. Yes.
9 Q. That's correct? There's nothing on the shirt;
10 correct?
11 A. Right.
12 Q. And you also analyzed or tried to analyze the swabs
13 from the knife?
14 A. Yes.
15 Q. And that would include the handle of the knife and
16 also the blade of the knife?
17 A. Yes.
18 Q. And those were -- you could not -- there was not
19 enough. Or you couldn't develop enough of anything to
20 really come to an opinion of what that was; correct?
21 A. Right. Because the quantification did not give
22 enough DNA for the analysis.
23 Q. Okay. Again, there was no match to Mr. Hayes;
24 correct?
25 A. There's no question there because there was no DNA

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1 to match at all.

2 Q. Okay. So, again, is it correct that there was no
3 match to Mr. Hayes?

4 A. That's beyond the point now. Because there was no
5 DNA to even to analyze.

6 Q. Okay.

7 A. Yes.

8 Q. Thank you very much.

9 MS. MUNSON: Nothing further, Your Honor.

10 THE COURT: All right. Thank you, Doctor. You
11 may step down.

12 THE WITNESS: Thank you.

13 THE COURT: Your Honor, may this witness be
14 excused?

15 MS. HORLBECK: Without objection.

16 THE COURT: Without objection. Thank you. He
17 may be excused.

18 MS. MUNSON: Your Honor, at this time, the
19 State moves Exhibits 63, 62 and 61 into evidence.

20 MS. HORLBECK: Without objection.

21 THE COURT: Without objection, 61, 62 and 63
22 are in evidence.

23 (WHEREUPON, State Exhibit Numbers 61, 62 and 63 were
24 admitted into evidence.)

25 MS. MUNSON: Your Honor, the next witness will

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1 probably be my last and could be kind of lengthy. I just
2 tell you that so you know.

3 THE COURT: All right. Let's go ahead and get
4 started with him and then we'll take a break when we need
5 to.

6 MS. MUNSON: Okay. The State calls Detective
7 Chris Miller.

8 THE CLERK: Detective Miller, if you would come
9 forward to be sworn in, please. Please place your left
10 hand on the bible and raise your right.

11 Do you swear or affirm that the testimony you're
12 about to give is the truth, the whole truth and nothing
13 but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Thank you. You may be seated.
16 Would you please state your name for the record.

17 THE WITNESS: Christopher Miller.

18 THE CLERK: Thank you.

19 **CHRISTOPHER MILLER,**

20 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

21 **DIRECT EXAMINATION**

22 **BY MS. MUNSON:**

23 Q. Who do you work for, sir?

24 A. The Greenville County Sheriff's Office in the
25 Homicide Division.

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1 Q. What is your job title?

2 A. My job title is -- I'm a master deputy in the
3 homicide unit. And my job duties are to investigate
4 deaths to determine whether the death was criminal or not
5 -- or the manner of death, the cause of death, and
6 whether it was criminal or not.

7 Q. Okay. How long have you been with the sheriff's
8 office altogether?

9 A. The sheriff's office, I've been there since 1999. I
10 have been a law enforcement officer since 1994.

11 Q. How long have you been in the homicide unit?

12 A. Five and a half years.

13 Q. As part of your duties in the homicide unit, have
14 you received any special training in investigating
15 homicides?

16 A. Yes. I've been to the University of Louisville to
17 homicide school there. I've also been to the University
18 of Tennessee for DNA identification and analysis. I've
19 been to the FBI Profiler, Criminal Profiling Schools.
20 Numerous schools at different places in the country for
21 homicide.

22 Q. All right. How many homicide scenes would you say
23 that you have investigated?

24 A. Just working in homicide, I've probably investigated
25 forty murders myself.

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1 Q. Okay. And did you get a call in reference to this
2 case?

3 A. I did. I was the on-call investigator that night.

4 Q. Okay. So you weren't on duty. You were just on
5 call?

6 A. That's correct.

7 Q. And you went out to the scene?

8 A. Yes.

9 Q. Now, when you first got to the scene, what was your
10 role? What were you doing out there?

11 A. My role was to oversee the crime scene. Once I
12 arrive, the uniform patrol supervisors are relieved, and
13 I become in control of the scene. And my job is to make
14 sure that evidence is preserved and collected and just
15 direct everybody on what to do, to canvass the
16 neighborhood, to see if any witnesses can be found, which
17 it was late at night, so it was kind of hard to find
18 witnesses at that time. But that's my normal procedure.

19 Q. Okay. Did you actually go into the apartment?

20 A. I did.

21 Q. When you first went in, what was the purpose of
22 that, just initially?

23 A. Initially, just to see what was there.

24 Q. And where did you look before you made like an
25 initial assessment?

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1 A. Well, I first, when I went in downstairs, I looked
2 around downstairs to see if there was any evidence of a
3 burglary, if anything had been disturbed, if there were
4 any other victims, possibly, that had not been located by
5 the patrol officers. And then I made my way upstairs.

6 Q. And you found Ms. Alexander there?

7 A. Yes.

8 Q. Okay. After you initially went through the scene,
9 what did you think that you had?

10 A. It was impossible to tell because of the state of
11 decomposition. We weren't sure if there was an upper GI
12 bleed, or you know, some type of natural disease or if it
13 was a suicide or a murder. We just didn't know because
14 you couldn't see any injuries or anything due to the
15 state of decomposition.

16 Q. And did you see anything else in the apartment that
17 might have given you a clue about what had happened to
18 Ms. Alexander?

19 A. No, and that was just the thing is, there was
20 nothing disturbed whatsoever in the apartment, not
21 upstairs, downstairs, anywhere, which it was puzzling,
22 you know, just -- so that's why we had no idea what it
23 ended up being.

24 Q. At some point, though, your mind changed? And when
25 was that? What changed your focus?

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1 A. Forensics Officer Hamilton, who testified earlier,
2 brought to my attention that there were a couple of drops
3 of blood. One at the very bottom of the steps, which I
4 missed when I walked in. And one in the kitchen. And we
5 knew those two blood spots couldn't have got there by the
6 victim because the victim was upstairs in the bathroom
7 and these blood spots were -- someone else put those
8 blood spots there. They came off of something.

9 Q. Okay. And at that point, what was your decision?

10 A. My decision at that point was to treat this as a
11 homicide.

12 Q. Okay. How long did you stay on the scene?

13 A. I got there at, I believe ten or ten-thirty,
14 somewhere in that area. And I was there until probably
15 five A.M.

16 Q. And who all did you talk to on scene?

17 A. On the scene, just the officers and the forensic
18 technicians that were there. I didn't talk to any
19 witnesses.

20 Q. Okay. All right. So after you left the scene, what
21 was the next stage in the investigation that you were
22 waiting on?

23 A. Was the autopsy, because then, as Dr. Ward said
24 earlier, this was Sunday morning once I left. They don't
25 perform autopsies on Sunday morning, so we had to wait

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1. until Monday morning.

2 Q. Okay. Did you attend the autopsy?

3 A. I did not because being on call for homicide, I had
4 other calls and I actually had another murder that week.
5 So I was working two murders at the same time and that is
6 very hard to do.

7 Q. Okay. So the results of the autopsy were provided
8 to you; correct?

9 A. Yes. I was called immediately once -- Coroner
10 Ramsey called me immediately and told me that they had
11 found the stab wounds.

12 Q. Okay. Now, at that point, did you have any
13 particular suspect in mind based on the evidence that you
14 got from the scene?

15 A. The way we are taught to work homicide
16 investigations are you work them from the inside out. So
17 you take the -- you find out who was the closest person
18 to the victim, family, if they have husband, boyfriend.
19 And in this case we knew that Ms. Alexander had a
20 boyfriend and he had not been seen for a while.

21 Q. Okay. So ---

22 A. So he became a focus at that point to try to find
23 out where he was at.

24 Q. Okay. And how did you go about trying to locate
25 him?

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1 A. Well, we canvassed the neighborhood that Monday
2 afternoon when we knew people would be home, talked to
3 them to see if they had seen Mr. Hayes. And no one had
4 seen him. We also got with our directive patrol
5 division, who works primarily at nights. And we knew
6 that Mr. Hayes was -- had been homeless in the past, and
7 near where this address is, there's a lot of homeless
8 shelters and food, soup kitchens and so forth. So we
9 sent deputies there in those areas to try to find Mr.
10 Hayes.

11 Q. Okay. Now, at some point did you speak with someone
12 who gave you information about Mr. Hayes?

13 A. Yes. I was contacted on a Friday morning by
14 Investigator Bailey and he said that here was a ---

15 MS. HORLBECK: Your Honor, I object to hearsay.

16 THE COURT: Sustained.

17 Q. Did you speak with someone who gave you information,
18 not Detective Bailey?

19 A. Yes. I did. I went to the office and spoke with
20 Larry White.

21 Q. Okay. And where did you speak with him?

22 A. In my office.

23 Q. All right. What did you know -- well, let's just
24 leave that out. When you met up with him, what was your
25 conversation about? How did you talk with him?

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1 A. He told me that ---

2 MS. HORLBECK: And, again, I object on the
3 basis of hearsay.

4 MS. MUNSON: It's already in evidence, Your
5 Honor.

6 THE COURT: I overrule your objection as to the
7 conversation with Mr. White. Overruled.

8 Q. Before we ask you that. During the course of your
9 investigation into Jackie Alexander's death, did the
10 sheriff's office put out a reward?

11 A. No.

12 Q. Okay. And when Mr. White, when you got up with him,
13 what did he ask you for?

14 A. He didn't ask me for anything.

15 Q. Okay. What did you give him?

16 A. I gave him some coffee. That's the only thing.

17 Q. What connection were you able to establish between
18 Larry White and this Defendant?

19 A. Ask again? I'm sorry.

20 Q. What connection were you able to establish between
21 Larry White and this Defendant? Did they have any past?

22 A. They didn't have any past. It was a one-time
23 encounter.

24 Q. Okay. So during the course of this written
25 statement, how did that -- how did you take a written

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1 statement from Mr. White?

2 A. I first asked him where he was from. Made sure that
3 he could read and write, make sure that he was not
4 intoxicated and that he was of clear mind. And let him
5 tell me his story of what he, of what he had encountered
6 when he spoke with the individual who he later identified
7 as Mr. Hayes. And then I typed it as he was telling it
8 to me.

9 Q. Okay. And after it was typed, did you let him look
10 at it?

11 A. What I do is I give the typed copy to -- a hard copy
12 to the person giving the statement, and I give them a red
13 pen. And if they have anything that they don't agree
14 with, that I didn't say that or whatever, I let them
15 circle it and then we will retype it or just let them
16 initial. But he -- but the final copy he initialed each
17 paragraph and then signed it.

18 Q. All right. During the course of the statement, what
19 information did you give him about the crime or the scene
20 or anything else?

21 A. I didn't give him any information.

22 Q. And when you had the directed patrol officers going
23 out trying to locate Mr. Hayes, what information were the
24 directed patrol officers asked to give about the crime
25 scene?

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- 1 A. They were asked to give none.
- 2 Q. Okay. Was any information put out to the public?
- 3 A. No.
- 4 Q. And why do you do that?
- 5 A. In order to preserve the evidence that we have.
- 6 Q. And you did something else with Mr. White; didn't
- 7 you?
- 8 A. Oh, yes. Also, I provided a six-person photo
- 9 lineup.
- 10 Q. Okay. I'm showing you State's Exhibits Number 1 and
- 11 2. If you can just take a look at those. Do you
- 12 recognize those?
- 13 A. I do.
- 14 Q. And what are those -- what are State's Exhibits
- 15 Number 1 and 2?
- 16 A. Number 1 is a six-person photo lineup, which are
- 17 obtained through a data base. And they're numbered one
- 18 through six.
- 19 Q. All right. And in State's Exhibit Number 1, which
- 20 one is the Defendant?
- 21 A. He is number five.
- 22 Q. Okay. And what is State's Exhibit Number 2?
- 23 A. That is an affidavit of photograph identification.
- 24 It's a standard Greenville County Sheriff's Office form.
- 25 Q. And how soon after a person --let's just stay with

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1 Mr. White. How soon after you showed Mr. White the
2 lineup did you have him execute that affidavit?

3 A. Immediately afterwards.

4 Q. Okay. And those two Exhibits, State's Exhibits
5 Number 1 and 2, where have they been this whole time?

6 A. In my possession.

7 MS. MUNSON: Your Honor, I move State's
8 Exhibits Number 1 and 2 into evidence.

9 THE COURT: Any objection?

10 MS. HORLBECK: Without objection.

11 Q. Now, ---

12 THE COURT: They may be published.

13 MS. MUNSON: I'm sorry. Your Honor.

14 (WHEREUPON, State Exhibit Numbers 1 and 2 were
15 admitted into evidence.)

16 Q. Investigator Miller, tell the jury how you presented
17 this lineup to Mr. White?

18 A. I advised Mr. White that I was going to show him six
19 photos of different individuals and that the person of
20 interest may or may not be in this series of photos. And
21 I wanted him -- and I'll instruct him to look at the
22 photos very carefully and study them and only -- do not
23 just say, well, I think this might be. You have to be a
24 hundred percent sure. If you're a hundred percent sure
25 you see the person in the photo lineup that you spoke

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1 with, then I want you to identify him. And if you can't,
2 then I need you to also advise me of that. But you have
3 to be a hundred percent sure.

4 Q. And when you show it to him, this might sound silly
5 but, like, where were your hands? Were you pointing at
6 anything, Detective?

7 A. No. He -- I actually gave it to him and let him sit
8 there and hold and study it himself.

9 Q. Okay. And when he identified number five, when he
10 identified the Defendant, how quickly did that happen?

11 A. He took the piece of paper, laid it on my desk and
12 said, that's him right there.

13 Q. All right. And then you had him do the affidavit?

14 A. Yes.

15 Q. After you were done with Mr. Hayes, about how long
16 was he -- I'm sorry -- Mr. White, how long was he with
17 you?

18 A. Probably about thirty more minutes. We had to get
19 him a ride back to where we had found him at.

20 Q. Okay. You gave him a ride back to where you found
21 him?

22 A. Back over to Rutherford Street.

23 Q. Okay.

24 MS. MUNSON: I beg the Court's indulgence.

25 Q. Was there anybody else on the lineup that he sort of

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1 looked at?

2 A. No.

3 Q. Now, as part of your investigation when you're
4 trying to figure out what happened, does it matter, as
5 part of your process, how a victim died?

6 A. Yes.

7 Q. Okay. And what in this case was important to the
8 focus of your investigation?

9 A. The number of stab wounds.

10 Q. And why does that matter?

11 A. Well, because the twenty-eight stab wounds indicates
12 there was rage, anger when that act was committed. This
13 was not just a, you know, stab them once or twice and
14 then, you know, incapacitate someone, and then go through
15 the house and look for goods. This was focused, twenty-
16 eight times, and you sit and count twenty-eight stab
17 wounds, that takes a long time to do. And that is a lot
18 of anger and a lot of rage, which makes -- focuses more
19 on an intimate level.

20 Q. Okay.

21 MS. MUNSON: I have nothing further at this
22 time, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. HORLBECK:

25 Q. Investigator Miller, I just have a few questions for

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- 1 you. You stated on direct examination that you worked
2 the case inside out?
3 A. Yes.
4 Q. From the inside out?
5 A. Yes, yes.
6 Q. Okay. Sorry. I don't -- it's getting late, so. I
7 meant to say you work the case from the inside on out?
8 A. Right. From the victim's closest family, husband,
9 whatever.
10 Q. Okay. And you learned that she had someone that she
11 was seeing?
12 A. That -- actually, I was told that they had been
13 together for quite a while.
14 Q. Okay. All right. And that that person, Mr. Hayes,
15 had not been seen in a while?
16 A. That's correct.
17 Q. All right. And your investigation focused on Mr.
18 Hayes?
19 A. Yes.
20 Q. And Ms. Alexander's family had not talked to her in
21 a while?
22 A. That's -- yeah. That's correct.
23 Q. All right. Were you provided any information about
24 whether Mr. Hayes and Ms. Alexander had broken up?
25 A. I was told that there had been an argument and that

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1 he had left.

2 Q. All right. And the tox screen on Ms. Alexander's
3 autopsy came up positive for cocaine metabolite; correct?

4 A. Yes, ma'am.

5 Q. And you learned that she was a daily user of drugs
6 and alcohol?

7 A. I wasn't told daily, but an avid user, yes.

8 Q. Okay. And Ms. Alexander wasn't working at the time;
9 correct?

10 A. That's correct.

11 Q. Now, were you able to interview anyone, family,
12 friends, about the identity of someone who might be
13 providing the drugs to Ms. Alexander, like a drug dealer?

14 A. No. We tried to obtain that information and weren't
15 able to. But we spoke with the family several times
16 during this investigation.

17 Q. All right. And you were not able to interview the
18 person that was selling the drugs to Ms. Alexander?

19 A. No, ma'am.

20 Q. And none of those photos of a drug dealer were
21 placed in your photo lineup?

22 A. No.

23 Q. And certainly none of the photos of a drug dealer
24 were shown at the soup kitchens or the shelters; correct?

25 A. That's correct.

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1 Q. And when you arrived you found a letter from Senior
2 Solutions?

3 A. That was found by the responding officers.

4 Q. And when you -- when Ms. Alexander was found, her
5 panties were actually mid-thigh?

6 A. Yes.

7 Q. All right. And no forensic testing was done around
8 her vaginal area or inside her vaginal area; correct?

9 A. That's correct.

10 Q. Okay. And through your investigation, you learned
11 that a person named Sammy Thompson had previously been
12 romantically involved with Ms. Alexander?

13 A. I remember Sammy Thompson's name coming up, but I do
14 not remember that without going back and looking at the -
15 --

16 Q. Do you have that with you?

17 A. Let me see.

18 Q. In your notes?

19 A. Yes. I was advised of a Sammy Lee Thompson. We
20 have debriefing forms that the sheriff's office and the
21 Greenville City Police Department have that are at the
22 detention center.

23 Q. Okay.

24 A. And once someone's arrested they're asked whether
25 they know anything about a murder or drug deals or any

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1 crimes that they may want to, you know, talk to us about.

2 So this Sammy Thompson told a Greenville City Officer
3 that he knew something about a homicide. And that's when
4 I made contact with Mr. Thompson, was after that.

5 Q. And he had been previously romantically involved
6 with Ms. Alexander; correct?

7 A. I'm looking for that, to see if I noted that.

8 Q. Or he'd seen her a couple of times, dated her some
9 in the past?

10 A. I don't see that I notated that on my report, that
11 they were previously ---

12 Q. Did you take a statement from Mr. Thompson?

13 A. I did. I do not have that in front of me.

14 Q. And your notes don't say anything about him dating
15 her a few times?

16 A. No. If it's in the statement, it may be. I just
17 don't have it notated in my notes.

18 Q. All right. Okay. And nevertheless, did you take
19 any sort of DNA sample from Mr. Thompson?

20 A. No, I did not.

21 Q. Did you ask him about the last time that he'd seen
22 Jackie?

23 A. I'm -- if I did, it's not in my notes. I may have.
24 I don't know.

25 Q. Okay. And if it's not in your -- you did not ask

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1 him that then? There's nothing your notes about asking

2 him that; correct?

3 A. It's not in my notes.

4 Q. Okay. And in cases of potential sexual assault,

5 it's important to preserve evidence; correct?

6 A. It is.

7 Q. And that was -- there was no attempt made to take a

8 sample from Ms. Alexander; correct? From her vaginal

9 area?

10 A. That was a decision that was made by Dr. Ward. Him

11 being the expert, he says -- he said that due to the

12 state of decomposition, it would have been fruitless.

13 Q. Did you request that a sample be taken?

14 A. Yes, I did.

15 Q. Okay. And did your -- did Investigator Bucholtz or

16 Hamilton take a sample from her vaginal area?

17 A. No. Those would be done at the morgue, at the time

18 of the autopsy.

19 Q. Okay. Is that -- but the morgue's not the only

20 place a sample can be taken; correct?

21 A. That's correct. It's normally done in the hospital,

22 but that's when the victim is alive. But when they are

23 deceased, it's done at the morgue.

24 Q. All right. And neither of your two investigators

25 took that kind of sample; correct?

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1 A. No. They wouldn't be the ones to do that. It would
2 have been Dr. Ward.

3 Q. Okay. And when -- now, at the time you -- well, at
4 the time that you were dealing with the body, you're not
5 an expert in decomposition; correct?

6 A. No.

7 Q. And you didn't know at that point what the time of
8 death was?

9 A. No, I did not. I knew it had been a few days, just
10 through my experience in working deaths.

11 Q. All right. And do you know how long the sperm can
12 live in the vaginal area?

13 A. No, I do not.

14 Q. All right. Would it surprise you if sperm can live
15 in the vaginal area ---

16 MS. MUNSON: Objection, Your Honor.

17 THE COURT: I sustain the objection. He's
18 answered the question.

19 Q. And you also interviewed Mr. White?

20 A. Yes, ma'am.

21 Q. All right. And you testified on direct examination
22 that you took a statement from Mr. White?

23 A. Yes.

24 Q. And in your training, you're trained to write down
25 what the person says; correct?

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1 A. Correct.

2 Q. You don't add in things that aren't said; correct?

3 A. Right.

4 Q. All right. And you had Mr. White initial the
5 paragraphs, each paragraph in his statement?

6 A. Yes.

7 Q. And after you were done taking the statement, you
8 handed the statement to Mr. White to review?

9 A. Yes.

10 Q. And you also gave him a red pen?

11 A. Just in case there's any, like, grammatical errors
12 or anything like that that they may find.

13 Q. Okay. Did he have any changes?

14 A. No.

15 Q. All right. And did Mr. White sign the statement?

16 A. He did.

17 Q. Okay. Did you hand Mr. White a copy for him to take
18 with him?

19 A. Yes. I always provide a copy.

20 Q. And did you get any calls from him later on saying
21 I've reviewed it again and something's wrong?

22 A. No.

23 Q. Okay. And you made sure that Mr. White could read
24 and write before you took his statement?

25 A. That's correct.

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1 Q. And there's no evidence that Mr. White contacted the
2 police or anybody on June the 9th; correct?

3 A. That's correct.

4 Q. And to your knowledge, Mr. White -- well, Mr. White
5 states a conversation between him and Mr. Hayes happened
6 at the Labor Finders?

7 A. Yes. At one of the day labor places.

8 Q. Okay. And is that the day labor place around the
9 Rutherford Road, the Pete Hollis area?

10 A. There's -- yes, it's around there. And then there's
11 some right here at -- near Channel 4 on Rutherford
12 Street.

13 Q. And that's near the Tommy's Ham House?

14 A. Yes.

15 Q. And near the Hardee's? There's a Hardee's right
16 there?

17 A. Yes.

18 Q. And a McDonald's?

19 A. Yes.

20 Q. Is the library nearby, as well?

21 A. Yeah. If you turn the corner back onto ---

22 Q. And, also, I think the Upstate Children's Museum?

23 A. Yes.

24 Q. And then Main Street, is that a couple of blocks
25 away?

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1 A. That's correct.

2 Q. All right. But, again, there's no evidence of any
3 report filed by Mr. White on June the 9th?

4 A. No, ma'am.

5 Q. Okay. Now, did you -- after talking to Mr. White,
6 did you go to the temp agency where he said this
7 conversation took place?

8 A. No, I did not.

9 Q. Did you ask anyone at the temp agency whether they'd
10 seen a crying man, crying his eyes out?

11 A. We did go back, not that day. We did go back, but
12 first when we were told that he had maybe gone out of
13 town, the first thing we did was went to the Greyhound
14 Station to see if we could find anything there.

15 Q. Well, I'm asking about the Labor Finders, where Mr.
16 White says that he saw Mr. Hayes on June the 9th?

17 A. No.

18 Q. Did you go there?

19 A. Not immediately, no.

20 Q. Okay. Did you go there at all?

21 A. Yes.

22 Q. All right. And had anyone -- did you ask anyone
23 there if they'd seen a crying man?

24 A. Not if they'd seen a crying man. We asked if they'd
25 seen Mr. Hayes.

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1 Q. And had they?

2 A. No.

3 Q. And you've indicated you'd gone to the bus station
4 as well?

5 A. Yes.

6 Q. And were you able to obtain evidence of a date that
7 Mr. Hayes left town?

8 A. Well, there was a bus that left, I believe it was
9 the Tuesday after -- which I guess would have been the
10 11th or 12th -- whatever that Tuesday was before the body
11 was found, there was a bus that went -- left Greenville,
12 went to Charlotte. We had been told that Mr. Hayes had a
13 sister in Danville, Virginia. The bus went to Danville,
14 Virginia. And from there went to Newark, New Jersey,
15 where we knew Mr. Hayes was from.

16 Q. Okay. You could not confirm that Mr. Hayes was on
17 that bus; could you?

18 A. No. And the guy at the bus station said that if
19 they paid by cash, there's no record.

20 Q. And, again, you were not able to verify that Mr.
21 Hayes was on that bus or any bus leaving town?

22 A. No.

23 Q. And on the 18th of June, your directive patrol unit
24 took a photograph of Mr. Hayes to one of the shelter
25 areas? I'm not sure if it was a shelter or an area where

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1 some people were sleeping.

2 A. Yes. Yes, they did.

3 Q. Okay. And to your knowledge no report was filed
4 that anyone identified the man in that picture; correct?

5 A. That's correct.

6 Q. And no one -- when the directive patrol showed the
7 picture to the -- whoever they showed it to, Mr. White
8 included, no information was given by Mr. White; correct,
9 on the 18th?

10 A. I didn't receive any -- anything.

11 Q. Okay. And the picture that was shown by the
12 directive patrol unit is the same picture that you showed
13 Mr. White the next day?

14 A. It was the same picture, but he was cropped, which
15 means that all the background was taken out, just the
16 facial features.

17 Q. So it's the same face?

18 A. Yes.

19 Q. Okay. And after seeing that picture on the 18th, it
20 was the 19th before Mr. White contacted the police?

21 A. Yes.

22 Q. Did you determine whether or not Mr. Hayes had a
23 sister in Kentucky?

24 A. No. We determined that he has one in Danville,
25 Virginia.

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Christopher Miller - Redirect Examination by Ms. Munson

1 Q. I see. Okay. And the search warrant in this case
2 was executed three days after Ms. Alexander's body was
3 found?

4 A. There was two separate search warrants.

5 Q. Okay.

6 A. There was a search warrant for the night of the
7 initial investigation. And then one was obtained again
8 to go back and get further evidence.

9 Q. Okay. And the one that was executed three days
10 later, that was the search warrant that was for the
11 knives in the case?

12 A. That's correct.

13 MS. HORLBECK: That's all I have. Thank you.

14 MS. MUNSON: I have some redirect, Your Honor.

15 THE COURT: Yes, ma'am.

16 **REDIRECT EXAMINATION**

17 **BY MS. MUNSON:**

18 Q. All right. Investigator Miller, do you have a lot
19 of experience in your years of law enforcement with these
20 day labor type places?

21 A. Yes.

22 Q. How often do you find the same people there on one
23 day that you find the other?

24 A. Seldom.

25 Q. Okay. Has Jackie Alexander's family been

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1 cooperative with you?

2 A. They -- I've stayed in touch with them throughout
3 these last three years.

4 Q. All right. On cross-examination Ms. Horlbeck
5 brought out that you got information from the family that
6 there was an argument and he left. Do you remember
7 answering that question?

8 A. Yes.

9 Q. And give us the time frame on that. Let's explore
10 that a little bit.

11 A. This argument took place just a few days before they
12 last heard, I guess -- when the argument -- when they
13 last heard from her was around the time of the argument.

14 Q. Okay. When they last heard from Jackie?

15 A. Yes.

16 Q. All right. What did they tell you about the
17 argument?

18 A. Not a whole lot. Just that Mr. Hayes had been asked
19 to leave.

20 Q. Okay. All right. Did you ever find out who Jackie
21 got her drugs from?

22 A. No.

23 Q. And if you had found out, what would you have done
24 with that information?

25 A. I would have investigated it and tried to either

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1 include them or rule them out as a suspect.

2 Q. All right. And when you're doing these lineups, how
3 do you decide which people will be in the lineup besides
4 the person you're trying to have your witness pick out?

5 How do you decide who the other five guys are going to
6 be?

7 A. Similar characteristics, whether they're bald or
8 they have blonde hair or brown hair, brown eyes, blue
9 eyes, beards.

10 Q. So if the drug dealer was a white guy, would you put
11 him in the lineup?

12 A. No.

13 Q. Ms. Horlbeck was asking you about Sandy Thompson's
14 statement that you took. Do you want to look at a copy
15 of it?

16 A. Yes.

17 Q. Now, after looking at that, is your memory refreshed
18 on what Mr. Thompson told you?

19 A. Yes.

20 Q. Okay. And how did you come in contact with him?

21 A. Through the Greenville City Police Department
22 Debriefing Form.

23 Q. Okay. So he got arrested and then said, hey, I know
24 something?

25 A. Yes.

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1 Q. Okay. Did he provide you any information about who
2 killed Jackie Alexander?

3 A. No.

4 Q. What kind of information did he give you?

5 A. Just the fact that she had a boyfriend who he knew
6 as Red, but was Mr. Hayes. And that he possibly was
7 living with a subject named Aunt Davis.

8 MS. HORLBECK: Okay. I'm going to object to
9 all this. It's hearsay.

10 THE COURT: Well, are there any other questions
11 you have about the statement?

12 MS. MUNSON: Well, I'm just following up on her
13 cross, Your Honor.

14 MS. HORLBECK: I didn't ask all that.

15 THE COURT: Well, I'm going to allow the
16 question. Limited.

17 Q. But the point is, based on the information you got,
18 why was Sandy Thompson coming to you?

19 A. To tell me to -- that I needed to check into her
20 boyfriend.

21 MS. MUNSON: I have nothing further, Your
22 Honor.

23 THE COURT: Thank you.

24 MS. HORLBECK: I've just got -- just briefly,
25 Judge.

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1 THE COURT: Briefly.

2 RECROSS EXAMINATION

3 BY MS. HORLBECK:

4 Q. Do you know why Mr. Thompson was incarcerated?

5 A. I can't recall.

6 Q. Okay. And after reviewing the statement, do you see
7 on line two where he says he dated her a few times ---

8 A. Yeah. I just -- I did put it in there.

9 Q. And you indicated that the same people were not at
10 these day labor places; correct?

11 A. That's correct.

12 Q. But the employees might be the same; correct?

13 A. The people who run the operation, yes.

14 Q. And did you talk to them?

15 A. Yes.

16 Q. Okay. And they hadn't seen anybody crying?

17 A. No.

18 Q. And did you show them pictures of Mr. Hayes? Had
19 they seen him?

20 A. Yes, I showed them pictures and they didn't
21 recollect him.

22 Q. They had not seen Mr. Hayes?

23 A. No.

24 Q. Okay. And drug dealers can be white and black;
25 correct?

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1 A. Yes.

2 MS. HORLBECK: That's all I have. Thank you.

3 MS. MUNSON: Nothing further, Your Honor.

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

5 Ladies and gentlemen, we're going to take a short break
6 at this time. I'll ask you to go back to your jury room.
7 Don't discuss the case. We'll call you back in just a
8 few moments after a short break.

9 (WHEREUPON, the jury exited the open court at
10 approximately 3:10 P.M.)

11 THE COURT: Does the State have any more
12 witnesses?

13 MS. MUNSON: No, sir, Your Honor.

14 THE COURT: I guess with the number of Exhibits
15 we need to make sure during the break that all the
16 Exhibits that are supposed to be introduced are
17 introduced and make sure that's clarified.

18 Obviously, I'll let you rest on the record in front
19 of the jury in just a few moments. So subject to all the
20 Exhibits that have been marked being admitted, is the
21 State resting at this time, Ms. Munson?

22 MS. MUNSON: Yes, Your Honor.

23 THE COURT: And, again, I'll let you rest
24 before the jury later. I just wanted to take care of any
25 matters that we have. You're resting, subject to all the

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1 Exhibits.

2 MS. MUNSON: Yes, sir.

3 THE COURT: All right. Ms. Horlbeck, I need to
4 talk with your client about his Constitutional rights.

5 MS. HORLBECK: Yes, sir.

6 THE COURT: And if you could come forward with
7 him and then we'll possibly take a short break.

8 (WHEREUPON, Ms. Horlbeck and the Defendant
9 approached the bar.)

10 THE CLERK: Would you raise your right hand,
11 please. Do you swear or affirm that the testimony you're
12 about to give is the truth, the whole truth and nothing
13 but the truth, so help you God?

14 DEFENDANT: Yes.

15 THE CLERK: Thank you.

16 THE COURT: Mr. Hayes, I need to ask you some
17 questions and go over certain matters with you. I'm
18 confident that the matters that I'm talking to you about
19 now have been discussed with you and your attorneys.
20 But I need to be satisfied in my own mind that you
21 understand the rights that you enjoy under our
22 Constitution. We've reached the state in the trial where
23 you'll have a right to present a defense. You have a
24 right to claim the protections of the Constitution of
25 South Carolina, the Constitution of the United States of

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1 America. Both of those Constitutions state that no
2 person in a criminal trial can be compelled or required
3 to be a witness against himself. This means you can't be
4 required to testify in this case. You have a right to
5 testify on your own behalf but nobody can make you
6 testify. The right to testify or not testify is an
7 individual right, a personal right that you enjoy.
8 Nobody can waive this right but you. You may exercise
9 your right to testify and if you do, you'd be subject to
10 the same rules that govern any other witnesses. You can
11 be examined and cross-examined on any relevant issue in
12 the case. In addition, if you have any prior crimes or
13 convictions involving dishonesty or false statements or
14 crimes punishable by imprisonment for more than one year,
15 and this Court determines that the probative value of
16 admitting that evidence outweighs any prejudicial effect
17 to you, the Solicitor will be able to introduce your
18 record to attack your credibility. Now, your decision to
19 testify must be made voluntarily on your part,
20 intelligently and freely, with the knowledge of the
21 protections that you enjoy under the Fifth Amendment to
22 our Constitution and the Constitution of this State.
23 Your decision to testify also must be intelligently and
24 voluntarily made in light of the consequences of your
25 decision to testify.

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1 Now, if you decide not to testify, I will instruct
2 the jury that they cannot give the fact that you chose
3 not to testify any consideration whatsoever in their
4 deliberations. There would be absolutely no prejudice at
5 all brought toward you because you chose not to testify.
6 That's left entirely up to you, whether to testify or
7 not. You can talk with your attorney. You can talk with
8 family or friends or anyone else. But ultimately that
9 decision of whether to testify or not is left entirely up
10 to you. Do you understand what I've explained to you,
11 Mr. Hayes?

12 MR. HAYES: Yes, sir.

13 THE COURT: Do you have any questions of me of
14 what I've gone over?

15 MR. HAYES: No, I don't.

16 THE COURT: All right. If you could, just
17 return to your seat with your attorney. Does the State
18 have any offenses for which they would seek to impeach
19 Mr. Hayes if he chose to testify?

20 MS. MUNSON: A 2008 assault and battery of a
21 high and aggravated nature. There's several property
22 crimes. I'm trying to find the dishonesty ones, Your
23 Honor. There's some from '77. I just don't think that
24 ...

25 THE COURT: Okay.

1 MS. MUNSON: That's too far back.

2 THE COURT: So the State would intend to use
3 the ABHAN as an impeachment?

4 MS. MUNSON: Yes, Your Honor.

5 THE COURT: That was 2008, you said?

6 MS. MUNSON: '08. There's a breaking and
7 entering in North Carolina. That's in 2000, Your Honor.
8 It's the State's position that that is a crime of
9 dishonesty.

10 THE COURT: Does it carry more than one year?

11 MS. MUNSON: I do not know that, Your Honor.
12 He has a -- that's all we would seek to use, Your Honor.
13 He's got a whole of stuff from the '70's and '80's that I
14 just don't -- wouldn't even try.

15 THE COURT: All right. What's the Defense's
16 position on those two charges as far as their
17 admissibility under impeachment?

18 MS. HORLBECK: Well, Judge, the breaking and
19 entering, if it's unknown whether it carries more than
20 one year, I would object to that.

21 THE COURT: Do you have a position on the other
22 one?

23 MS. HORLBECK: The ABHAN, I don't think I can
24 argue with that. The State mentioned several property
25 crimes.

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1 THE COURT: I think she's waiving it.

2 MS. MUNSON: I did, Your Honor, but they're
3 back in the '70's. And like I said, I wouldn't even try.

4 THE COURT: She's waiving that.

5 MS. MUNSON: I wouldn't mention it.

6 THE COURT: All right. Let's take a short
7 break and then we'll see where we're going to go for the
8 rest of the afternoon. Give you a chance to talk with
9 your client. Before y'all talk with him, could I see
10 y'all up here just a minute?

11 MS. HORLBECK: Yes, sir.

12 (WHEREUPON, Ms. Munson, Ms. Adams, Ms. Horlbeck and
13 Ms. Johnson approached the bar.)

14 (WHEREUPON, the court stood at recess for a short
15 break.)

16 THE COURT: All right. Is there anything else
17 we need to take care of before the jury comes back in?

18 MS. MUNSON: Nothing from the State.

19 MS. HORLBECK: Nothing from the Defense.

20 THE COURT: All right. So if I understand, the
21 State's going to rest and I'm going to call upon the
22 Defense ---

23 MS. HORLBECK: Yes, sir.

24 THE COURT: --- and then the Defense -- are you
25 ready to put up testimony.

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1 MS. HORLBECK: We're not. We're resting.

2 We'll rest on the record.

3 THE COURT: You're going to rest, as well.

4 Okay. All right. Let's have our jury come in if they're
5 ready.

6 MS. HORLBECK: And, Judge, of course, I'll be
7 making my motion for a directed verdict. I just know
8 that's not going to be in the jury's presence.

9 THE COURT: Right. I have a note of that and
10 we'll just cover that after we send them out.

11 MS. HORLBECK: All right. Thank you.

12 THE COURT: We'll rule afterwards, but you're
13 protected on that, after you rest.

14 (WHEREUPON, the jury entered the open court at
15 approximately 3:32 P.M.)

16 THE COURT: All right. Madam Solicitor, you
17 may call your next witness.

18 MS. MUNSON: May it please the Court, Your
19 Honor. That is the State's case.

20 THE COURT: All right. The Defense may call
21 its first witness?

22 MS. HORLBECK: Your Honor, the Defense rests.

23 THE COURT: Ladies and gentlemen, I told you at
24 the beginning there's certain stages in the trial that we
25 have. And the stage that you'll next be involved in is

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1 the time for the attorneys to address you in their
2 closing statements. But in the natural course of the
3 trial, there's legal matters that I need to take care of
4 and one of those is needed right now for me to take care
5 of that. After that is accomplished, it's probably not
6 going to be expedient for us to start into the closing
7 arguments. And then I'll have an opportunity to instruct
8 you on the law this afternoon, be getting fairly late in
9 the afternoon. So rather than starting that some time
10 later this afternoon, I think it would be best for
11 everyone to just do that first thing in the morning.
12 We'll get this matter taken care of and then we'll be
13 ready for the closing statements of the attorneys. After
14 that I'll instruct you on the law.

15 I remind you again as I did yesterday, you've heard
16 all the evidence, but you haven't heard my instructions
17 on the law. So it's not time to make your decisions yet.
18 So, again, I remind you not to discuss the case. Don't
19 let others discuss it with you. Don't do any kind of
20 independent research. This is a case that's going to be
21 committed to you in the morning for your deliberation and
22 for your disposition. Let's make sure that we maintain
23 that process that we're in now and fulfil the commitment
24 we've made to these parties.

25 Have a good evening. We'll be ready to start back

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1 at nine o'clock in the morning. You may be excused at
2 this time.

3 Everyone else, please remain seated.

4 (WHEREUPON, the jury exited the open court at
5 approximately 3:35 P.M.)

6 THE COURT: All right. Ms. Horlbeck, you may -
7 - you indicated you wanted to make your motions and I put
8 you off to let the jury be excused for the day. I'll be
9 glad to hear from you.

10 MS. HORLBECK: Yes, sir. We have a motion for
11 a directed verdict. Our position is that the State's
12 case against Mr. Hayes consists only of circumstantial
13 evidence. And the requirement is that there must be
14 substantial circumstantial evidence that reasonably tends
15 to prove Mr. Hayes' guilt. The evidence produced today
16 just shows a mere suspicion of Mr. Hayes' guilt. We
17 would ask that the court grant a directed verdict. Also,
18 at this time, we would renew all of our prior motions.

19 THE COURT: All right. Would the State like to
20 be heard on that?

21 MS. MUNSON: Taking the evidence in the light
22 most favorable to the State, Your Honor, we believe that
23 there is enough for the jury -- from which the jury could
24 rightfully convict the Defendant. We would ask you to
25 deny that motion.

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1 THE COURT: Well, as you both know, I must view
2 all the evidence in the light most favorable to the non-
3 moving party and I find there is sufficient evidence,
4 taking it as a whole, direct and circumstantial, for the
5 jury to make a decision on this. I respectfully deny
6 your motion, Ms. Horlbeck.

7 Are there any specific requests for charge, other
8 than -- obviously, I'll charge the normal charge that
9 y'all have heard me charge before about presumption of
10 innocence, and right to remain silent, intent, murder,
11 malice, weapons, expert witnesses, credibility, all those
12 things you'd expect. Identity, I'll be glad to charge
13 identity. That seems to be an issue here. Any other
14 particular charges that either of you feel would be
15 appropriate or do you have any requests for charge?

16 MS. MUNSON: I'm just asking Your Honor if
17 you're going to charge circumstantial evidence as well?

18 THE COURT: I'll charge direct and
19 circumstantial.

20 MS. MUNSON: The State has nothing further.

21 MS. JOHNSON: I do have some requested charges
22 that I would like to share with you.

23 THE COURT: Okay.

24 MS. MUNSON: Your Honor, let's see, we've got
25 one, two -- I have a request to charge one.

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1 THE COURT: I don't have a copy so I don't know

2 ... Maybe you can explain it to me as to what it is?

3 MS. MUNSON: Oh, request to charge one, is

4 bias, information or other witness for possible gain. We

5 request -- I know that you're going to charge the jury on

6 credibility of the witness, whether they had anything to

7 lose or gain. But the requests for charge in front of me

8 asks for the jury to consider whether a particular

9 witness has a motive to testify favorably for one party

10 versus the other. I don't necessarily object to that.

11 But thus you may consider whether a particular witness

12 was an informer providing evidence for pay or a witness

13 who has been granted immunity from punishment or a

14 witness who has entered a plea at -- a plea bargain with

15 the State, or a witness who may gain some other reward,

16 payment, personal advantage or vindication through his

17 testimony. The part about an informer, plea deals, and

18 all of that has nothing to do with this case and we would

19 ask that you not include that. And I think you're going

20 to cover it in your charge anyway, without telling them

21 what ---

22 THE COURT: Okay. What's number two?

23 MS. MUNSON: Number two is a request to charge

24 the jury that you don't have to believe a police officer

25 because they're a police officer. I just object to that.

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1 I don't think it's appropriate. There's a lot of quotes
2 about the rules in here so ...

3 THE COURT: How many charges are there? Five
4 or six?

5 MS. MUNSON: Five.

6 THE COURT: Okay.

7 MS. MUNSON: With three, four and five, I think
8 you cover these in your charge so I would not ask for you
9 to ---

10 THE COURT: Let me look at all of them. And
11 let Ms. Johnson can go from memory.

12 MS. MUNSON: She probably does.

13 THE COURT: Ms. Johnson or Ms. Horlbeck, I
14 can't tell who signed these. I guess Ms. Johnson did.

15 MS. HORLBECK: Well, it was not me.

16 THE COURT: All right. Ms. Johnson, do you
17 want to address any of these?

18 MS. JOHNSON: Yes, Your Honor.

19 THE COURT: Can you remember them?

20 MS. JOHNSON: Yes, Your Honor.

21 THE COURT: Okay. I think I'll be covering,
22 certainly, proof of malice aforethought, beyond a
23 reasonable doubt. That'll be covered. Burden of proof
24 is on the State throughout. Identification, I'll charge
25 that. That's what I mentioned to y'all about earlier. I

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1 think that will pretty much be covered in the
2 identification charge. So how about the credibility? Is
3 there any evidence at all about payment or immunity or
4 plea bargain?

5 MS. JOHNSON: Well, I will agree with what Ms.
6 Munson said. If you'll just remove the part about the
7 plea bargaining and the immunity, but if you would just
8 leave the part about motive.

9 THE COURT: Well, I think I cover that. I
10 think I even say motive or -- on the credibility charge,
11 I think I say it. And how about the police officer, do
12 you feel like I should -- do you cite a case on that or
13 just -- the testimony of a police officer is not entitled
14 to more weight than any other witness?

15 MS. JOHNSON: Yes, Your Honor. I think that
16 the jury will -- Your Honor, I do not want the jury to
17 give more, I guess, credence to a police officer's
18 testimony as opposed to a normal lay witness.

19 THE COURT: I believe my charge will cover that
20 just as it does for police officers, expert witnesses,
21 and anyone else. My instructions to them will be that no
22 witness has more credibility than anyone else, that's
23 their determination. I think I'll cover most of those.
24 But I won't charge verbatim as you've requested.

25 MS. JOHNSON: Thank you, Judge. Can we make

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1 those a Court's Exhibit?

2 THE COURT: You may. I'll just give them back
3 to you as well.

4 (WHEREUPON, Court Exhibit Number 1 was marked for
5 identification.)

6 THE COURT: Y'all come up and look over the
7 verdict form.

8 (WHEREUPON, Ms. Munson, Ms. Adams, Ms. Horlbeck and
9 Ms. Johnson approached the bar.)

10 THE COURT: All right. Let the record reflect
11 that the attorneys have reviewed the verdict form and
12 find it in order for the jury tomorrow. We'll be ready
13 to start back at nine o'clock in the morning. Y'all have
14 a good evening.

15 (WHEREUPON, the court stood at recess for the day.)

16 **October 17, 2012**

17 (WHEREUPON, court convened with all parties present
18 and the following proceedings were had.)

19 THE COURT: Everybody ready to proceed?

20 MS. MUNSON: The State's ready, Your Honor.

21 MS. HORLBECK: The Defense is ready, Your
22 Honor.

23 THE COURT: All right. Let's have our jury
24 come in if they're ready.

25 (WHEREUPON, the jury entered the open court at

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1 approximately 9:05 A.M.)

2 THE COURT: Good morning, Mr. Foreman, ladies
3 and gentlemen. We're now ready to proceed with the
4 closing statements of the attorneys. I've told you
5 before that what they have to say to you is not evidence.
6 I urge you to listen carefully as each of them wrap up
7 their view, at least, of the evidence. And I'm confident
8 that they can give you some valuable insights and perhaps
9 help you in your deliberations to take place soon. After
10 they've addressed you, I'll instruct you on the law and
11 then the case will be yours to decide. Solicitor, you
12 may address the jury in your closing.

13 MS. ADAMS: Thank you, Your Honor.

14 **CLOSING STATEMENT**

15 **BY MS. ADAMS:**

16 Good morning. Just to remind you, I'm Wanda Adams.
17 I'm one of the Solicitors in the Thirteenth Circuit. I
18 just want to speak to you a little bit this morning.
19 We're here at the close of this case. This was a tough
20 case. It's been a tough case for everyone involved.
21 But, you know, despite the toughness, you have given it
22 your undivided attention, and for that we both thank you.

23

24 Now, you heard just tons of raw emotion from this
25 family. You've seen some pretty horrific images during

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1 this trial. And there was no way for us to really
2 prepare you for some of the things you were going to hear
3 and see. But despite all of that, it was obvious that
4 you took the oath that was administered to you early on,
5 to consider all the evidence and to give it -- give this
6 trial your undivided attention. And we do appreciate
7 that. Every participant in this trial appreciates that.

8 You know, you're going to have to make a tough
9 decision. Tough trial, tough decision. Now, Judge
10 Welmaker is going to instruct you a little later on, on
11 what the law is that you will use to apply to the facts
12 as you determine them. And again, you're going to
13 determine what the facts are. You're going to determine
14 what happened to Jacquelyn Alexander. That's your
15 decision to make. You know, ladies and gentlemen, we
16 make, we make hard decisions all the time. It's just
17 necessary. That's just part of life. And that's what
18 we'll be asking you to do today. But you're here because
19 of your problem-solving skills. You're here because
20 you're trusted, because you're trusted.

21 Now, for the last couple of days when you had to sit
22 through what might seem sometimes like an endless list of
23 witnesses; we recognize that. But it was necessary.

24 Now, Ms. Horlbeck in her opening a couple of days
25 ago, she compared this trial to -- the term she used was

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1 a panacea. But the State, we don't sell snake oil. We
2 gave you everything that we felt you needed to know in
3 order to make an informed decision. So all these
4 witnesses, all this evidence, it was just absolutely
5 necessary. And I always say, you know, in a trial I
6 compare it to -- when you go to the grocery store you buy
7 a package of strawberries. You don't look just at the
8 ones on the top. You've got to turn that package over.
9 You've got to look for the rotten ones. And that's what
10 we're asking you to do. So, because, again, we're not
11 snakes -- snake oil sellers.

12 Let's review some of this evidence. Now, ladies and
13 gentlemen, I'm old school. I apologize for that. I was
14 not going to embarrass myself by trying to deal with some
15 type of Power Point. We're going to write it down. The
16 State has the burden of proving beyond a reasonable doubt
17 that Ralph Hayes who sits here at this table,
18 intentionally and maliciously killed Jackie Alexander. I
19 think that was pretty easy to prove. We had a woman that
20 was killed and maliciously. And that's evident by the
21 fact that she was stabbed twenty-eight times.

22 Now, he's also been charged with possessing a weapon
23 during the commission of a violent crime. I think we
24 also -- there was a pretty easy way to prove that. I
25 mean, obviously, twenty-eight stab wounds with a knife or

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1 some kind of sharp-edged weapon or object. And, of
2 course, the violent crime was the murder. Proven.

3 Now, we get to the evidence that points to Ralph
4 Hayes as the perpetrator. You know, you watch all these
5 Law and Order shows, and I think somebody alluded to CSI
6 and CSI type shows, that we watch in our everyday life.
7 Well, this is not a case where Ralph Hayes was found
8 standing over her body with a bloody knife. That wasn't
9 the case here. But there was a whole lot of evidence
10 that was presented to you during this trial that proves
11 he was indeed the perpetrator.

12 So let's look at that. Let's review that. Let me
13 remind you of the testimony of Anthony Murdaugh, the
14 neighbor. He testified that he saw her on Sunday
15 morning, June 7th, about ten o'clock when she was locked
16 out of her apartment. She was never seen alive again.
17 Then we had the lively testimony of Larry White. Larry
18 White was the homeless guy who now lives in St. Louis,
19 who met Ralph Hayes at the Able Body Labor Finders, one
20 of those day labor businesses. He met him on Tuesday,
21 June 9th. Broad daylight, business had closed. He sees
22 this distraught man sitting outside on the bench,
23 distraught, almost hysterical, crying. He approaches
24 him, hey, man, what is going on. Why are you so upset?
25 Again, this was a stranger, somebody he had never met in

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1 his life. Ralph Hayes starts to pour his heart out to
2 Larry White. He tells him my girlfriend's dead. She was
3 stabbed repeatedly. Her panties were down. The police
4 didn't realize until days later that she had been
5 stabbed, but he was able to give all these details. Told
6 Larry White she was stabbed. Yeah, this is a stranger.
7 Then he goes on to tell him that, I think the dope man
8 did it. And that her mama has paid for her drug debts
9 before. He talks about how he has done something so
10 horrible that even God won't forgive him. That God won't
11 even forgive him. And when Larry White asked him, what
12 could be so bad, his response was, you ain't never killed
13 nobody. Then he goes on to tell him, I'm leaving town.
14 Showed him some bus tickets. I can't hang around because
15 they're going to think I did it. And he leaves.

16 Larry also talked about seeking out the police. He
17 hears these rumors about this woman being killed. Now,
18 ladies and gentlemen, I want you to think about this.
19 This is a homeless man. He admitted he had stolen his
20 dead brother's check. Homeless people tend to avoid the
21 police, but -- and these were the words he used -- he
22 felt it was the Godly thing to do, to seek the police out
23 and tell them what he had heard. So, you know, again,
24 this is a man who admitted he stole his dead brother's
25 check. There was a lot of testimony about whether he'd

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1 seen a photo at the shelter before he went down to the
2 police department to identify Ralph Hayes in a photo
3 lineup. If he would admit doing something that, it was
4 obvious it still hurt him to describe what he'd done to
5 his brother, why wouldn't he admit he'd seen a picture?
6 But he was adamant. He never wavered. He goes down to
7 the police department, clear, within seconds he
8 identified him out of an array of six photos. All these
9 men look alike. He had no doubts about who he had talked
10 to. He said that nobody influenced him. He was
11 absolutely sure it was Ralph Hayes he had spoken to for
12 over an hour. One hour, he talked to this man face-to-
13 face. So we're not talking about mistaken identification
14 here. He was clear. He had nothing to gain but a cup of
15 coffee. He had a cup of coffee. There was no reward.
16 He wasn't paid. Nothing at all to gain.

17 So, Ralph talks about the dope man did it. She owed
18 the dope man money. But then you heard the testimony
19 from the mother of Jackie Alexander. She totally blew
20 that out of the water. That was Janie Ashmore. She was
21 honest about the problems her daughter had. But she had
22 no enemies. And she also swore she had never paid any
23 drug dealers for debts of her daughter.

24 Then you heard from Jo Lynn Wood. Remember, she was
25 seventeen at the time, high school student. Lived in the

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1 same apartments with her mother. Now in school,
2 advancing her education. She had seen Ralph Hayes. She
3 had seen Jackie Alexander many times. They lived in the
4 apartments up from her. But when the police came to her
5 a couple of days after Jackie's body was found -- now,
6 granted, this was three years ago. But when they came to
7 her asking questions she told them then, wow, I've seen
8 him this week at least twice coming out of that apartment
9 late at night. Now, the defense, you know, they asked
10 her, well, how could you remember from three years ago
11 who you saw? Well, I think that you -- if somebody comes
12 to you and says, we just found a body. A few days
13 before, I think you would remember what you had seen and
14 what you had heard. And she did. He had to pass her.
15 She showed you where she lived in relation to Jackie's
16 apartment. He had to pass her. She knew who he was.
17 And she would wave at him. Again, no mistaken
18 identification.

19 Then you heard from one of the first witnesses,
20 Barbara McNeil, the sister of the victim. Very emotional
21 testimony. It's been tough for all of this family, but
22 particularly for her because she found her sister in that
23 state. She testified she gets there, the door is
24 unlocked. She goes in, there's nothing out of place.
25 Nothing. All her valuables are still there. No signs of

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1 a burglary. Something else interesting she said, she's
2 calling the phone and the ringer is off. The phone
3 works, but the ringer is off. And she described her
4 sister as having some problems, but no known enemies.
5 Then, let me remind you of the testimony from
6 Detective Hamilton. He responds to a call of a death.
7 Initially, because again of the state of the body, he
8 didn't even know the cause of death. This is where you
9 saw the gruesome pictures. And he made a note to mention
10 also, no signs of a burglary. The body moderately
11 decomposed, drops of blood; a drop of blood at the bottom
12 of the stairs and in the kitchen. There was also some
13 testimony about some fluids found underneath the vent
14 that was directly beneath the bathroom where the body was
15 found. Obviously, bodily fluids from Jackie Alexander.
16 He was also asked if a sexual assault assessment or kit
17 was done. And I think that was probably an important
18 question because her panties were down. Detective
19 Hamilton explained to you that because she was deceased,
20 that was a role for the medical examiner.

21 Then we get to Dr. Ward, the medical examiner.
22 Obviously a very experienced man, a wide-range of
23 credentials, years of experience. And he also addressed
24 the issue of a sexual assault kit. Because of the
25 condition of the body, it would have been useless. He

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1 was also asked about comparing any knives to the stab
2 wounds, the twenty-eight stab wounds, five to the front
3 of her body, twenty-three to her back. Dr. Ward also
4 testified that there was no way to say exactly what date
5 and time she died. But what he was able to do, that I
6 think was very helpful, he said that his estimate was
7 that she had been dead three to five days.

8 So let me take you back to the time line. Last seen
9 on June the 7th, that Sunday. She was found on June
10 13th. If you go back three to five days, between the 8th
11 and the 10th. Remember, Ralph Hayes was almost
12 hysterical, distraught when he talked to Larry Hayes --
13 talked to Larry White on the 9th. He talked to him on
14 the 9th. That would have put her dead within that five
15 days. Dr. Ward also testified to something very
16 interesting. She didn't have any -- no defensive wounds.
17 Twenty-eight stab wounds. She had no defensive wounds.
18 She didn't have a chance to fight.

19 You heard some forensic testimony, DNA analysis.
20 There was the forensics guy, Chris Gary. He talked about
21 the fingerprint analysis here, the palm prints. Again, a
22 lot of this stuff, you'll have back there in the room
23 with you. You don't just have to take my word for it.
24 But it's here. He talked about a palm print of Ralph
25 Hayes found on the top of the toilet, the toilet to the

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1 left of the body. His palm print was also found on the
2 top of the tub. Why would your palm prints be on the top
3 of the toilet or the top of the tub like that? And she
4 was found wedged between the toilet and the tub. That's
5 in the photos. No, there was no knife found because it's
6 not there because he took it with him.

7 Then we've got Dr. Kandala. Dr. Kandala, who did
8 some DNA analysis, testified that he was able to
9 establish a DNA profile from Jackie Alexander's piece of
10 clothing, which he was able to match up to the blood that
11 was found at the bottom of the stairs and in the kitchen.
12 It was her blood. This killing happened in the bathroom.
13 So when Ralph Hayes left that bathroom he dropped blood
14 downstairs. Her blood. And then, what I thought
15 was something most compelling about this, was from
16 Detective Chris Miller, a seasoned detective, testified
17 to his many years of experience. He testified that they
18 identified no other suspects. You heard all his
19 testimony about the drug dealers. They were never able
20 to come up with anybody that they could point the finger
21 to, to say, maybe this person did this. He talked to her
22 family extensively. He talked to other people. He
23 talked to her friends. The only suspect was then and is
24 now, Ralph Hayes. He spoke about an argument Jackie
25 Alexander and Ralph Hayes had shortly before she was

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1 never to be seen alive again. He spoke about the
2 significance of twenty-eight stab wounds. Again, this is
3 a seasoned detective. And his testimony was that twenty-
4 eight stab wounds was an indication of rage. Something
5 personal. And in his experience a drug -- if this was a
6 drug deal gone bad, usually what would happen is somebody
7 would go in, do whatever they feel necessary to
8 incapacitate the victim, and if you're owed money, you
9 wouldn't walk out the door and not take anything. It
10 makes no sense. Nothing taken. Twenty-eight wounds, an
11 indication of rage, personal. He also clarified what he
12 did with Larry White with the photo lineup. He confirmed
13 Larry was clear. He had no questions. He chose nobody
14 else but Ralph Hayes as the person he had a one-hour
15 conversation with that told him, God won't forgive me.
16 And when responded when asked what could be so bad, you
17 ain't never killed nobody. And told you he got a cup of
18 coffee. That's the only thing Larry White got from this.
19 He checked with Greyhound Bus. They told him if he paid
20 in cash, no records. But we do know he left town.
21 Because Officer Manly testified that well over a year
22 later Ralph Hayes was located in New York in July 2010
23 and returned to Greenville.

24 You know, you'll go back there and you'll take all
25 these life experiences back in the jury room with you.

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1 But your role as jurors in this case, you've got to make
2 a decision. You've got to come together as one. And
3 when you took that oath, you did not take an oath to
4 leave your commonsense outside this courthouse. You
5 determine what the facts are. And like I said, the State
6 is not selling you snake oil.

7 Ralph Hayes, this man sitting right here, he
8 surprised that woman in the bathroom. He didn't even
9 give her time to pull her panties up. He didn't even
10 give her time to try to defend herself. And he thrust a
11 knife or some sharp-edged object into her body twenty-
12 eight times. Twenty-eight times. She didn't have a
13 chance. He did this. So what I ask you to do, ladies
14 and gentlemen, is this. This is Jackie Alexander.

15 MS. HORLBECK: And, Judge, I hate to object
16 during someone's closing, but at this point I would say
17 that this is objectionable and I would ask the Court to
18 have the State not use this in their closing.

19 MS. ADAMS: Your Honor, again, this is just a
20 picture of the victim.

21 THE COURT: Just move on with the case.

22 BY MS. ADAMS: Jackie Alexander, mother,
23 daughter, sister, paid the ultimate price with her life
24 at the hands of Ralph Hayes who brutally, with intent to
25 kill, who maliciously took her life while possessing a

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1 knife or some kind of sharp-edged weapon. And we ask you
2 to speak the truth. Just speak the truth.

3 Thank you again for your attention and for allowing
4 me to come speak to you.

5 MS. HORLBECK: Judge, at this point, we would
6 have just a brief matter to take up with the Court.

7 THE COURT: All right. Ladies and gentlemen,
8 I'm going to ask you to go back to your jury room just
9 for a moment. After that, we'll call you back. Please
10 don't discuss the case.

11 (WHEREUPON, the jury exited the open court at
12 approximately 9:48 A.M.)

13 THE COURT: All right. Ms. Horlbeck.

14 MS. HORLBECK: Judge, the State, during their
15 closing argument, used a picture of Ms. Alexander and
16 that's just highly objectionable. It's not introduced
17 into evidence. And I believe -- and I'd probably have to
18 do a little bit of research to just be definite. But I
19 believe case law states that mitigation evidence -- and I
20 don't believe it's to be used in just a regular murder
21 case. I thought that that was only supposed to be used
22 in the mitigation portion of a death penalty case. It's
23 been used in this case. It's objectionable. And I hate
24 to do this, but I just think at this point we're going to
25 have to ask for a mistrial.

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1 THE COURT: All right. Solicitor, I'll be glad
2 to hear from you on that.

3 MS. ADAMS: Your Honor, in response to the
4 comments from Ms. Horlbeck, it's not like this woman's
5 body has not been seen during the course of this trial.
6 This picture is just a picture of her in a different
7 form. And it is our position that it's not inflammatory,
8 it wasn't prejudicial to this Defendant. Again, she has
9 been introduced, her body has been shown. Again, it's
10 just in a slightly different form. And therefore, we
11 don't feel it's a basis for a mistrial.

12 THE COURT: While the jury's out taking a
13 break, let's just take a short break and we'll reassemble
14 in about ten minutes.

15 (WHEREUPON, the court stood at recess for a short
16 break.)

17 THE COURT: All right. Anything else from
18 either of you on the issue?

19 MS. HORLBECK: Judge, just that the State
20 introduced a photo that's not into evidence. At this
21 point, we're not even sure who was in the photo. We
22 don't know if Ms. Alexander was in the photo or if that's
23 truly her family. There's no testimony to corroborate
24 the identity of the people in the photo. And it's our
25 position that the State introduced that photo for the

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1 sole purpose of playing to the jury's emotions.

2 MS. ADAMS: Your Honor, the State denies that.

3 The State's position is that a mistrial should only be
4 used here in the case where irreparable harm has been
5 done. And we certainly do not feel that that is the case
6 here. That can be corrected if the Court feels it needs
7 to do so by a curative charge to the jury. But we
8 certainly do not feel that this picture -- it was pointed
9 out that she was in the picture and she was pointed to.

10 It wasn't something just arbitrarily presented. And, as
11 I stated earlier, it's not like this woman's body hasn't
12 been shown during the course of this trial. Again, this
13 was just a picture of that body.

14 THE COURT: All right. Thank you, Ms. Adams.

15 Well, the record is not -- the Appellate Court, I'm
16 sure, struggles with what a record shows. I was
17 observing and the Defense very timely made its objection
18 to the photograph at the very end of the closing. I
19 ruled promptly and told the Solicitor to move on, which I
20 believe that she did, without the photograph. I believe
21 the photograph could not have been displayed to the jury
22 more than fifteen seconds, if that long. Observing just
23 slightly the photograph as I did, it had several people,
24 I assume, family members in it. I'm really not sure that
25 all the jurors even saw the picture. And if they did,

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1 whether they had time to decipher which one was the
2 Defendant -- or the victim. Excuse me.

3 I don't believe that showing the picture was of such
4 a prejudicial effect that would require a mistrial. I
5 believe that due process to the Defendant can be
6 maintained. I'll be glad, Ms. Horlbeck, to give a
7 curative instruction if you desire one. I know that's a
8 decision that attorneys often have to decide as to
9 whether or not it creates more emphasis. And whether you
10 desire that, I'll be glad to give the jury a curative
11 instruction.

12 And, also, I guess the -- obviously, the picture's
13 not into evidence. It was only used for demonstrative
14 effect in the closing argument of the Solicitor.

15 Do you wish me to give a curative instruction?

16 MS. HORLBECK: Well, Judge, just for the
17 record, I need to say that I don't believe that a
18 curative instruction will cure the problem. But I don't
19 think I can refuse the curative instruction either in
20 order to preserve my objection. But I do just want to --
21 I want the record to reflect that ---

22 THE COURT: Do you want a curative instruction?

23 MS. HORLBECK: Yes, sir.

24 THE COURT: All right.

25 MS. HORLBECK: But I need the record to reflect

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1 that I don't believe it will -- it's sort of like telling
2 the jury to ignore the pink elephant. And that's all I
3 have. Thank you, Judge.

4 THE COURT: All right. Let's have our jury
5 come in if they're ready.

6 (WHEREUPON, the jury entered the open court at
7 approximately 10:22 A.M.)

8 THE COURT: Thank you, ladies and gentlemen.
9 We're now ready to continue with the closing statements
10 of the attorneys. Let me remind you that what the
11 attorneys say to you, demonstrative aids that are used
12 that are not part of the evidence, are not to be
13 considered by you in any way whatsoever. I'm going to
14 give you instruction on the law later as to what you are
15 to consider. But as I said before, and as I say now, and
16 have said even the days before, what the attorneys have
17 to say to you is not evidence. And any aids they use for
18 demonstrative purposes is not evidence either for you to
19 consider. I'll instruct you further on the law after the
20 closing statement of the defense attorney. Ms. Horlbeck.

21 MS. HORLBECK: May it please the Court.

22 CLOSING STATEMENT

23 BY MS. HORLBECK:

24 Good morning, ladies and gentlemen. Back when snake
25 oil was a problem in this country, there was no federal -

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1 - or Food and Drug Administration. There was no
2 governmental body to try to test the oil and figure out
3 what the ingredients were, figure out whether it was
4 turpentine or mineral oil and something known as camphor
5 and pepper, you know, red pepper and stuff like that.
6 There was no body like that to do that testing. Once the
7 FDA was formulated, then they could test for oils and
8 they could find out what the ingredients were in the
9 oils. And they could say, okay, these oils and these
10 ingredients, they're not doing what these salesmen are
11 saying that they're supposed to do, they don't cure
12 anything. And they could go after the salesmen.

13 Your role here today is just like the FDA. Your
14 role here today is to analyze and look at the witnesses
15 and the evidence the State has brought you today. And
16 you have tools that you're going to use to do that
17 analysis. The first one you're going to use is the
18 burden of proof. The government has the burden of proof
19 in this case. Mr. Hayes does not have the burden to
20 testify. He does not have the burden of bringing any
21 witnesses into this courtroom. It's all on the
22 government. And the question you need to ask today is,
23 has the government met their burden of proof. The second
24 question you need to ask is, have they overcome the
25 presumption of innocence. The presumption of innocence

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1 is a robe of righteousness. We learn that in law school.
2 And it covers everyone who takes the stand or stands on a
3 trail. That's what I was trying to say. It covers
4 everyone who is on trial. And it covers Mr. Hayes. The
5 only thing that removes that robe of righteousness is
6 proof of guilt beyond a reasonable doubt.

7 Proof of guilt beyond a reasonable doubt is proof
8 that leaves you firmly convinced. If you're wondering
9 why there's no murder weapon, that's a reason to doubt.
10 If you're wondering why Mr. Hayes' prints aren't on a
11 weapon, that's a reasonable doubt. If you're wondering
12 why no one call tell you why Mr. Hayes -- well, when Mr.
13 Hayes' prints were left in the bathroom, that's a
14 reasonable doubt. A reasonable doubt is a doubt based on
15 a rational, commonsense reason. This case is chocked
16 full of reasonable doubt and we need to go through some
17 of that today.

18 The government, one of the first things they said in
19 their closing was that they're not snake oil salesmen.
20 Yet they tell you that their theory is, is that Mr. Hayes
21 must have taken the weapon with him. Where is the
22 evidence of that? No one testified to that. There's no
23 evidence of any fingerprints on a weapon. There's no
24 evidence that they even have a murder weapon in this
25 case. There's no evidence of any weapon whatsoever that

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1 can be linked to Mr. Hayes. And they want to say they're
2 not snake oil salesmen? What is that argument but a
3 band-aid to cover up and try to cure and fix the fact
4 that they don't have a murder weapon. That's all that
5 argument is. And, yes, that is a panacea. And, yes,
6 that is snake oil. And, yes, your government is trying
7 to sell that to you today. That's their -- that's one
8 argument that they have made. That's not proof beyond a
9 reasonable doubt. That's not proof that leaves you
10 firmly convinced, and you must reject it.

11 They talked about Larry White. The State told you
12 that when you've got a pack of strawberries, you've got
13 to look on the top of the pack of strawberries and on the
14 bottom of the strawberries and look for the bad one and
15 pick it out. Well, that was a bad one and he sure took
16 the stand and testified before you today. Why did he
17 come to Greenville? He came to Greenville for a better
18 life. He came to Greenville to find a job. He came to
19 Greenville to try to make some money and hopefully get
20 his own place to live.

21 What's the reality of Mr. White coming to
22 Greenville? Living in a homeless shelter, not being able
23 to find a job, more soup kitchens. That was the reality
24 of his move to Greenville. He testifies that he heard a
25 confession from Mr. Hayes? Ladies and gentlemen, you

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1 don't leave your commonsense outside that courtroom door
2 when you walk in here. Mr. White didn't do any of the
3 things a normal person would do if they heard a
4 confession. He didn't go to the police. And we know
5 that this alleged conversation happened in a place that's
6 close to a McDonald's, a Hardee's, Tommy's Ham House.
7 It's a couple of blocks from Main Street. The museum is
8 nearby and so is the library. And he tried to argue with
9 me and he made excuses and he said, well, I couldn't have
10 made a phone call. It was on a Sunday. Yet we go back
11 to his own written statement, we realize it's a Tuesday.
12 Everything was open. He could easily have made a phone
13 call to the police. What does he do? He sits there for
14 an hour, according to him, according to his story, sits
15 there for an hour and listens to a confession, helps him
16 get a sandwich. Good luck. Never calls the police.
17 That's not something you do if you heard this type of
18 confession that Mr. White's trying to sell you.

19 The second thing we need to look at is that nine
20 days later, he had the chance, he had the opportunity to
21 talk to police. How do we know that? The police came to
22 him on the 18th. They came to him, ladies and gentlemen.
23 They came to his shelter. They had a picture, they
24 showed the picture to him and everybody else, or wherever
25 he was sleeping. I'm not sure if it was a shelter or

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1 just where -- was somewhere he was sleeping. They
2 showed the picture to him. No evidence that he made a
3 report. No evidence that he said, hey, I talked to him a
4 week ago. No evidence that he identified the photograph.
5 And he made a big deal of saying, well, I never saw the
6 photograph. He had to have seen the photograph. How
7 else would he have known that the man the police came by
8 looking for on the 18th was the same man he talked to the
9 week before? How else would he be able to say that? He
10 had to have seen the photograph.

11 The story that he gave to the police originally on
12 the 9th, none of it can be corroborated. The police went
13 to Labor Finders. They took Mr. Hayes' picture. They
14 asked the regular employees, the stable employees of
15 Labor Finders, have you seen Mr. Hayes? Did you see a
16 man out there crying his eyes out and confessing? No.
17 No one's seen him. They went to the bus station. Has
18 anybody left with -- has anybody of this -- looking like
19 this left? No. Nobody's left. Nobody's left with this
20 description. They can't corroborate the story he told
21 the police because it never happened. The only place
22 that happened was in Mr. White's dreams. That's the only
23 place it happened.

24 After the police come by his shelter on the 18th, he
25 talks about the case. He talks about it with other

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1 people, other homeless people. News travels fast on the
2 street. He talks about it the next morning at the soup
3 kitchen. Talks about it with the people at the Labor
4 Finders, at the day labor place. Then, after he gets all
5 of his information, that's when Mr. White talks to the
6 police and makes a statement. Dates are hard to
7 remember. The State had to read Mr. White's statement
8 into the record. You've got it. We can hear it again.
9 Ten days, ladies and gentlemen. This is when he says he
10 talked to Mr. Hayes. None of that conversation can be
11 corroborated. Couldn't corroborate that Mr. Hayes had a
12 sister in Kentucky. Ten days. Has a second chance,
13 blows it off, gets more information, finally contacts
14 police. And conveniently, the police show him the same
15 picture that he's already seen the night before at the
16 shelter. He seemed happy that he only took three seconds
17 to pick it out. Of course, it only took him three
18 seconds. He saw a single photo of Mr. Hayes the very
19 night before. It doesn't take a rocket science to pick
20 that out.

21 Another thing, if you doubt at all -- another thing
22 that you need to know is that Mr. White's description of
23 the man he saw, that's in his statement too, which is in
24 the record. It was read into the record by the
25 government. Everything he described can be seen right on

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1 this picture. He describes a bald head, a little bit of
2 gray hair on the sides, a little bit of a gray beard.
3 Nothing about height, no description about weight, no
4 description about light-skinned, dark-skinned. No
5 description about eye color, no description about the
6 fullness or the thinness of the lips, nothing like that.
7 No, everything that Mr. White described can be seen right
8 from this picture, everything he described. He doesn't
9 need the person in front of him. It can all be gotten
10 from that picture.

11 You heard some talk about a reward. Mr. White sure
12 came to court all slicked up and ready to be part of his
13 fifteen minutes, you know. Maybe there was no money
14 reward, who knows? Maybe he just wanted to be part of
15 something that was bigger than himself. Maybe that's all
16 the reward he needed. The reality is, is that Mr. White
17 is the type of person who's going to cash his own
18 brother's check. Got his brother's check, signed his
19 name on it, took it to the bank, lied, got money.
20 Stealing from the bank and his brother. This is not a
21 person who cares about the Godly thing to do. This is a
22 person who cares about number one, himself. Don't let
23 him con you into believing that he had a conversation
24 with Mr. Hayes on the 9th. Don't let him con you into
25 believing that conversation really happened. And don't

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1 let him con you into believing that his testimony passes
2 for proof beyond a reasonable doubt, because it doesn't.
3 And that brings us to our next point, and that's Jo
4 Lynn Wood. She's the uncertain witness. And that's not
5 a criticism. Jo Lynn's just like the -- Jo Lynn or JoJo,
6 as the State called her, is just like everybody else,
7 just like the rest of us. You see your neighbors in
8 passing. Sometimes you say hello. Jo Lynn's not certain
9 about what day she saw Mr. Hayes. All she knows is that
10 she saw him at night, which is the same time she always
11 sees Mr. Hayes. And all she knows is that she saw him
12 taking the same path that he's always taken when she's
13 seen him in the past. That's all she knows. And that's
14 important.

15 We heard the medical examiner testify, the 13th was
16 the day that the body was found. And the medical
17 examiner testified that she passed away between three and
18 six days. On cross-examination, he actually said six
19 days. All right. It's very hot inside that apartment.
20 It's June. You all have a picture of the thermometer --
21 not thermometer, the thermostat. And the temperature was
22 up near eighty degrees, very hot. The medical examiner
23 testified she could have died three days prior to her
24 being found, which would put her death on the 10th. Ms.
25 Jo Lynn, she doesn't know when she saw Mr. Hayes during

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1 this week. If she saw him on the 8th, well, then that's
2 not proof that he's in and out of that apartment in the
3 days between the death and the finding of the body.
4 That's not proof beyond a reasonable doubt. And that's
5 not proof that leaves you firmly convinced. If JoJo is
6 not a hundred percent sure of when she saw Mr. Hayes, how
7 can you be firmly convinced that she saw him in and out
8 of this apartment, that he could be put in and out of
9 this apartment in the days between the death and the
10 finding of the body? You can't. You can't be firmly
11 convinced. And you must reject the State's argument that
12 Jo Lynn can put Mr. Hayes in that apartment during that
13 time.

14 And that brings us to the matter of the
15 fingerprints. Now, we heard the medical examiner testify
16 that these -- that he noticed some transfer blood to the
17 side of the shower curtain, and that the assailant, that
18 transfer blood may have come from blood on the
19 assailant's hands. Yet, we also heard from the
20 fingerprint expert and he said that he found Mr. Hayes'
21 fingerprints on the top of the toilet tank and on the
22 side of the tub, but that they were just regular old
23 fingerprints, there was no blood on them, no nothing.
24 Just plain old fingerprints. And we also heard that,
25 from the fingerprint examiner or the expert, that no age

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1 can be placed on a fingerprint. And the reasonable
2 inference from that is that they can't tell you when that
3 fingerprint was placed there. It could have been put
4 there anytime before this poor woman was attacked.
5 Anytime. Think about where your fingerprints are. Think
6 about your fingerprints. They could be at work. They
7 could be in the car. They could be at your home. It's
8 reasonable and natural and normal for your fingerprints
9 to be left in the place that you -- in the living place
10 that you reside at or that you share with somebody else.
11 There's nothing criminal about that. They cannot put an
12 age on that print. And that's not proof beyond a
13 reasonable doubt that puts Mr. Hayes in that bathroom at
14 the time of Ms. Alexander's death. And if they can't use
15 that print to show you one hundred percent that he was in
16 that bathroom at the time that she died, and that's when
17 those prints were left, how can you be firmly convinced
18 of guilt? You can't be. And you must reject that
19 theory.

20 Now, the State also wants us to believe that she
21 must have been -- Ms. Alexander must have been attacked
22 and killed by somebody that she knew. But that's not
23 necessarily true. And we go to Mr. Murdaugh's testimony.
24 Remember, he testified that Ms. Alexander left her door
25 open. She frequently -- she didn't shut that door. She

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1 keeps the door open. The only thing between Ms.
2 Alexander and the rest of the world is that storm door.
3 Anybody could have opened it. Anybody could have gone in
4 there. And strangely enough, you don't find Mr. Hayes'
5 prints on that door. They dusted it down. You don't see
6 his prints on the door at all. Anybody could have gone
7 in there. And, you know, we had -- there's some other
8 people that could definitely, easily have gone in and
9 done this crime. We asked the police about whether
10 there was any evidence of drug dealers, and whether they
11 were able to get those names, and show those pictures
12 around the community and the neighborhood. They weren't
13 able to do that. They weren't able to ask anybody on the
14 street, find out that information and use that
15 information to find out -- you know, show the pictures
16 and say, has this person been around your neighborhood?
17 They weren't able to find that. And we've heard
18 testimony that they weren't able to test the vaginal area
19 because of decomposition. Okay. Well, there were the
20 panties. Those were decomposed. Yet no testing was done
21 on those.

22 There's also a matter of Mr. Sammy Thompson. You'll
23 recall that he was in the jail and he filled out a
24 questionnaire. We don't know why he was in the jail, but
25 while he was there he filled out a questionnaire saying

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1 he had information about this case. Now, most of what he
2 told police was just designed to shift the blame to
3 somebody else. But he also said that he had dated Jackie
4 a few times in the past. No one asked him, when was the
5 last time you saw her? When was the last time you went
6 to her apartment? No one took his picture to the
7 neighbors and said, has this person been around the
8 apartment? No one took his picture to the soup kitchens.
9 Uh-uh. The focus was solely on Mr. Hayes right from the
10 beginning.

11 Now, the police are just people. I mean, they make
12 mistakes and do stuff that -- they do things too. But
13 the point is, you have the right to just ask and say, I
14 wish a little bit more had been done. I wish the
15 government had asked this witness or I wish the
16 government had shown this picture to the community or the
17 people with the soup kitchen or the neighbors. I just
18 wish they'd done it. You have that right to ask for
19 that.

20 And the State's led you to believe that this
21 relationship is a lot more serious than it was. They
22 want you to believe this is a five-year committed,
23 marriage-like relationship. How could he possibly leave
24 on the spur of the moment? How could he possibly leave
25 and not attend her funeral. Well, again, we turn to Mr.

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1 Murdaugh's testimony. He described Ms. Alexander as a
2 single lady living alone. He didn't describe her as
3 Jackie who has a serious five-year, long-term boyfriend.
4 He didn't describe her as Mr. Hayes' girlfriend. He said
5 she was a single lady living alone. And he said that
6 because of the way she lived her life. Her own family
7 said, she's got a drug problem. This is not a lady who
8 works. This is not a lady who has employment. She's not
9 able to afford a drug habit.

10 We heard testimony from JoJo that Ms. Alexander is
11 selling shampoo at one-thirty or two A.M. in the morning.
12 And the natural inference of that is that she's selling
13 the shampoo to get money to support her drug habit. Now,
14 you know, in relationships people have hobbies and things
15 in common with the one they are with. There's no
16 evidence that Mr. Hayes shared her drug habit or that he
17 participated in her drug habit. And we've heard some
18 testimony that maybe there was an argument ten days or
19 two weeks before she was found. Well, you know, it's
20 funny -- interesting that the family didn't mention that.
21 But, okay, maybe there was an argument. And as men and
22 women do when they argue, maybe there was a breakup. And
23 when men and women breakup, life goes on. Your paths
24 separate. You don't contact your ex. You don't contact
25 your ex's family. You don't come home for their wedding.

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1 You don't come home for their children's christening.
2 And, yes, you are going to miss their funeral. That is a
3 natural, normal consequence when couples argue and
4 there's a breakup. It doesn't mean that you're a
5 murderer. Just because you argue and you break up and
6 move on doesn't mean you are a murderer.

7 Ladies and gentlemen, there's very few things in
8 this world that we know for certainty. But we know for
9 certainty that there's absolutely none of Mr. Hayes' DNA
10 in that bathroom. And there's absolutely none of Mr.
11 Hayes' DNA on Ms. Alexander or her shirt or gown, as Dr.
12 Kandala likes to call it. We know for certainty how easy
13 it is to leave DNA. That's why these techs have to wear
14 these gloves and change their gloves, so that they don't
15 contaminate the samples that they're working on. We also
16 know for certainty that there's no murder weapon. And we
17 know for certainty that Mr. Hayes' prints are not on any
18 knives collected. We know for sure that the prints in
19 the bathroom, there's no connection to the day this lady
20 died. The State made a reference to CSI. This isn't
21 television. This is serious. And the defense takes this
22 case seriously because it matters to us and it matters to
23 Mr. Hayes and it sure matters to this lady's family.
24 There's no credible evidence to connect Mr. Hayes to Ms.
25 Alexander's death. There's no evidence putting a weapon

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Charge

1 in his hand. Ms. Alexander deserves our compassion. Her
2 family deserves our sympathy. But this government does
3 not deserve a guilty verdict. And we ask you to find Mr.
4 Hayes not guilty.

5 **CHARGE**

6 **BY THE COURT:**

7 Mr. Foreman, ladies and gentlemen, it's now my
8 responsibility to instruct you on the law of the case.
9 Let me remind you, the fact that the Defendant has been
10 arrested and charged and indicted, that's not evidence in
11 this case. It can't be considered by you as evidence in
12 the case. He's been indicted for the crime of murder.
13 That doesn't create any presumption or inference of his
14 guilt. The indictment that I read to you when we started
15 this trial, that's merely the formal, written instrument
16 by which the case is brought before this Court for
17 disposition.

18 Now, by entering a plea of not guilty, Mr. Hayes, to
19 this indictment, both counts of the indictment, the
20 murder charge and the possession of the weapon during the
21 commission of a violent crime, that not guilty plea
22 places the burden on the State of South Carolina to prove
23 his guilt. A person charged with committing a criminal
24 offense in South Carolina is never required to prove
25 himself innocent. That's an important rule of law. In a

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Charge

1 criminal trial, no matter how serious the charge may be,
2 that individual will always be presumed to be innocent of
3 the crime for which that indictment was issued, unless
4 guilt has been proven by evidence satisfying you of that
5 guilt beyond a reasonable doubt.

6 The presumption of innocence doesn't end when you
7 begin your deliberations. It accompanies the Defendant
8 throughout the trial until you've reached a verdict of
9 guilt based upon evidence satisfying you of that guilt
10 beyond a reasonable doubt. The presumption of innocence
11 has often been described as a robe of righteousness
12 that's placed about the shoulders of an individual and
13 remains with that defendant until it's been stripped from
14 him by evidence satisfying you of the defendant's guilt
15 beyond a reasonable doubt. Presumption of innocence
16 isn't a mere legal theory. It's not just a legal phrase
17 that's used. It is a substantial right to which every
18 defendant is entitled, unless you, the jury, are
19 satisfied from the evidence of the defendant's guilt
20 beyond a reasonable doubt.

21 You may ask yourself, what is a reasonable doubt in
22 the law? A reasonable doubt is the kind of doubt that
23 would cause a reasonable person to hesitate to act. Now,
24 some of you may, in the past, have had an opportunity to
25 serve as a juror in a civil case, a lawsuit between

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1 parties. And a judge may have told you that it was only
2 necessary to prove that a fact was more likely true than
3 not true, such as by the greater weight of the evidence
4 or the preponderance of the evidence. In criminal cases,
5 the State's proof is more powerful than that. It must be
6 beyond a reasonable doubt. That would be proof that
7 leaves you firmly convinced of the Defendant's guilt.

8 Now, while there's very few things in this world we
9 know with absolutely certainty, in criminal cases the law
10 doesn't require proof that overcomes every possible
11 doubt. If, ladies and gentlemen, based upon your
12 consideration of the evidence in the case you're firmly
13 convinced that the Defendant is guilty of the crimes
14 charged, then you must find the Defendant guilty. If, on
15 the other hand, you think there's a real possibility that
16 the Defendant is not guilty, you must give the Defendant
17 the benefit of that doubt and find him not guilty.

18 Now, I remind you that during the course of this
19 trial, you and I have had certain duties to perform. As
20 the Trial Judge, it's been my responsibility to preside
21 over the trial of the case, to rule on the admissibility
22 of evidence that's been offered during the trial. You're
23 to consider only the competent evidence that is before
24 you, that evidence that's been marked for identification
25 as Exhibits and entered into evidence, the testimony that

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1 you've heard from the witness stand.

2 I have also the job to charge you the law that's
3 applicable in this case. It's your duty as jurors to
4 accept the law and apply the law just as I stated to you.
5 You may have an opinion or a notion about what the law is
6 or an idea of what the law even should be in a case such
7 as this. If you have such an idea of what the law is or
8 should be and it's in conflict with what I now tell you
9 the law is, then you must abandon such an idea because
10 under your oath, you've sworn to accept the law and apply
11 the law just as I state it to you.

12 Every case that's tried in this courtroom before a
13 jury, that jury becomes the sole, exclusive judge of the
14 facts in the case. A Trial Judge can't intimate or state
15 or comment on, make any statement whatsoever to a trial
16 jury about the facts in the case. Since you, the jury,
17 are the sole judges of the facts, you're not to infer
18 from what I've said during the progress of the trial, any
19 rulings I've made on the admissibility of evidence or
20 otherwise, anything I say to you now in the course of
21 this instruction to you, that I have an opinion about the
22 facts in the case. I don't have an opinion about the
23 facts. The Law of South Carolina, the Constitution of
24 South Carolina prohibits a Trial Judge from having an
25 opinion about the facts. That's solely up to you, ladies

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1 and gentlemen, to determine the facts in this case and
2 you're to make that determination as to the effect and
3 the value, the weight and the truth of the evidence
4 presented during this trial.

5 Normally, there are two types of evidence. There's
6 direct evidence and there's circumstantial evidence.
7 Direct evidence is the testimony of a person who claims
8 to have actual knowledge of a fact, such as an
9 eyewitness. It's evidence which immediately establishes
10 the main fact to be proved. Circumstantial evidence is
11 proof of a chain of facts and circumstances that would
12 indicate the existence of a fact. It's evidence which
13 immediately establishes a collateral fact, from which the
14 main fact may be inferred. It's based on inference and
15 not upon personal knowledge or observation. The law
16 makes absolutely no distinction between the weight or the
17 value to be given either direct evidence or
18 circumstantial evidence, nor is a greater degree of
19 certainty required of circumstantial evidence than of
20 direct evidence. You should weigh all the evidence in
21 the case and after weighing all that evidence, if you're
22 not convinced of the guilt of the Defendant beyond a
23 reasonable doubt, then you must give the Defendant the
24 benefit of the doubt and find him not guilty.
25 Necessarily, in making your determination of the facts,

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1 you must decide the credibility of the witnesses who've
2 testified in the case. Credibility simply means
3 believability. It becomes your duty as jurors to analyze
4 and evaluate the evidence, determine which evidence
5 convinces you of its truth. In determining the
6 believability of witnesses who've testified, you can
7 believe one witness over several witnesses. You can
8 believe several witnesses over one witness. You can
9 believe part of the testimony of a witness and reject the
10 remaining part of the testimony of that very same
11 witness. You can believe the testimony of a witness in
12 its entirety. You can reject the testimony of a witness
13 in its entirety. You can consider whether any witness
14 has exhibited to you any interest or bias or prejudice or
15 other motive in the case. You can consider the
16 appearance, the manner of the witness while on the
17 witness stand. You can ask yourself, was that witness
18 straightforward or hesitant in answering questions? Was
19 the testimony of that witness consistent or inconsistent?
20 How did the witness come to know the facts to which he or
21 she testified to? The ability of that witness to know
22 the facts. Was the testimony of the witness strengthened
23 or weakened by other testimony or other evidence in the
24 case? It's totally up to you and you alone, ladies and
25 gentlemen, to determine the credibility of the witnesses.

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2 Now, I mention to you briefly, and I'll repeat, that
3 the rules of evidence ordinarily would not permit a
4 witness to testify to opinions or conclusions. But there
5 is an exception for witnesses that we call expert
6 witnesses. And a witness who, because of education and
7 experience, has become an expert in some field or science
8 or profession or calling, may state an opinion as to any
9 relevant and material matter to which that witness claims
10 to be an expert. He may state the reason for that
11 opinion. Now, you should consider any expert opinion
12 received into evidence in the case, and like other
13 evidence, give it the weight that you think it deserves.
14 If you decide the opinion of an expert is not based on
15 sufficient education and experience or you conclude that
16 the reasons given in support of that opinion are not
17 sound or the opinion is outweighed by other evidence, you
18 can disregard that opinion entirely. An expert witness'
19 testimony is to be given no greater weight than that of
20 any other witness, simply because that person is an
21 expert. Furthermore, you're not required to accept an
22 expert's opinion, even though it may be uncontradicted.

23 Now, in order to establish criminal liability,
24 criminal intent is required and must be proven by the
25 State beyond a reasonable doubt. Criminal intent is

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1 always a matter that must be determined by the jury from
2 the circumstances surrounding the situation. There's no
3 way to prove intent to a mathematical certainty and no
4 way, obviously, that medical science has devised that a
5 person's brain can be dissected and determine what that
6 person had in mind. So the law says that criminal intent
7 may be inferred from the circumstances shown to have
8 existed. It's not necessary to establish intent by
9 direct and positive evidence, but may be established by
10 inference in the same way as any other fact, taking into
11 consideration the actions of the parties and all the
12 facts and circumstances of the case. Criminal intent's a
13 mental state. It's a conscious wrong-doing. It's up to
14 you to determine what the Defendant intended, based upon
15 the circumstances shown to have existed.

16 Now, I instruct you, ladies and gentlemen, I
17 emphasize to you, the fact that the Defendant in this
18 case did not testify is not a factor to be considered by
19 you in any way in your deliberations and in your
20 consideration of the question of the guilt or the
21 innocence of the Defendant. It must not be considered by
22 you in any manner whatsoever. A defendant has a
23 Constitutional right to remain silent. The assertion of
24 that right may not be considered by you in your
25 deliberations. And I repeat, under your oath you're to

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1 draw no conclusions whatsoever from the fact that the
2 Defendant in this case did not testify. That should not
3 even be discussed by you in your jury room. The burden
4 of proof is on the State to prove the guilt. The
5 Defendant's not required to prove his innocence. That
6 burden remains on the State to prove guilt beyond a
7 reasonable doubt throughout the trial.

8 Now, the State must prove the identification of the
9 Defendant as the person who committed the crime charged
10 beyond a reasonable doubt. You must be satisfied beyond
11 a reasonable doubt of the accuracy of the identification
12 of the Defendant before you may convict him.
13 Identification testimony is an expression of belief or
14 impression by a witness. You must determine the accuracy
15 of the identification of the Defendant. You must
16 consider the believability of each identification witness
17 in the same way as any other witness. You may consider
18 whether the witness had an adequate opportunity to
19 observe the offender at the time of the offense. This
20 will be affected by things such as how long or short a
21 time was available. How far or close the witness was,
22 the lighting conditions, whether the witness had the
23 chance to see or know the person in the past. Once
24 again, I instruct you, the burden of proof on the State
25 extends to every element of the crime charged. And this

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1 specifically includes the burden of proving beyond a
2 reasonable doubt the identity of the Defendant as the
3 person who committed the crime. If, after examining the
4 testimony and other evidence, you have a reasonable doubt
5 as to the accuracy of the identification, you must find
6 the Defendant not guilty.

7 In this case the Defendant is charged with murder.
8 The State must prove beyond a reasonable doubt that the
9 Defendant killed another person with malice aforethought.
10 Malice is hatred or ill will or hostility towards another
11 person. It's the intentional doing of a wrongful act
12 without just cause or excuse, and with an intent to
13 inflict an injury or under circumstances that the law
14 will infer an evil intent. Malice aforethought does not
15 require that the malice exist for any particular time
16 before the act is committed. But malice must exist in
17 the mind of the Defendant just before and at the time of
18 the act being committed. Therefore, there must be a
19 combination of the previous evil intent and the act.
20 Malice aforethought may be expressed or inferred.

21 These terms, expressed and inferred, do not mean
22 different kinds of malice, but merely the manner in which
23 the malice may be shown to exist. That is either by
24 direct evidence or by inference from the facts and
25 circumstances which are proved. Expressed malice is

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1 shown when a person speaks words which express hatred or
2 ill will for another or when the person prepared
3 beforehand to do the act which was later accomplished.
4 Such as lying in wait for a person or any other act of
5 preparation going to show that deed was within the
6 Defendant's mind would be an example of expressed malice.
7 Malice may be inferred from conduct showing a total
8 disregard for human life. Inferred malice may also arise
9 when the deed is done with a deadly weapon. A
10 deadly weapon is any article or instrument or substance
11 which is likely to cause death or great bodily harm.
12 Examples would be a pistol or a rifle, a knife, a razor
13 blade, gasoline, those are just examples of what could be
14 considered a deadly weapon. Whether an instrument has
15 been used as a deadly weapon depends upon the facts and
16 the circumstances of each case.

17 And in this case, the Defendant is also charged with
18 possession of a weapon during the commission or attempted
19 to commit a violent crime. The State must prove beyond a
20 reasonable doubt that the Defendant visibly displayed a
21 knife during the commission of a violent crime. And a
22 knife means an instrument or a tool with a sharp cutting
23 blade, whether or not fastened to a handle, which can be
24 used to inflict a cut, a slash, or a wound. In order to
25 find the Defendant guilty of possession of a weapon

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1 during the commission of a violent crime, you must first
2 find the Defendant guilty of either committing a violent
3 crime or attempting to commit a violent crime. Murder is
4 considered a violent crime. The State must prove beyond
5 a reasonable doubt that the weapon furthered or advanced
6 or helped in the commission of the crime.

7 Now, ladies and gentlemen, there's two possible
8 verdicts you can find. Either you can find the State has
9 met its burden of proof beyond a reasonable doubt, then
10 the verdict would be guilty. If you find the State has
11 failed in any manner to meet that burden, your verdict
12 would be not guilty. I prepared a verdict form. I
13 believe it will be self-explanatory. Mr. Foreman,
14 there's no significance at all in the order in which the
15 choices are listed. One simply has to be listed before
16 the other. After you've deliberated and reached your
17 decision, you merely check the appropriate blank on the
18 form, sign your name as foreperson and date it on behalf
19 of your fellow jurors and we'll receive your verdict back
20 here in the courtroom as to the charge of both counts on
21 the indictment of the murder. Of course, if you were to
22 find guilt on that charge, then you would determine
23 whether or not there was possession of the weapon as I've
24 instructed you on the law of that as well. Your verdict
25 must be a unanimous one. All twelve of you must agree

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1 upon the verdict. Your verdict can't be based upon
2 sympathy or passion or prejudice or emotion or any other
3 consideration not in evidence in the case. When you have
4 reached a unanimous verdict, you can let the bailiffs
5 know by the appropriate signal that is provided for you
6 and we will receive your verdict back here.

7 I'm going to ask if you would now, ladies and
8 gentlemen, to go back to your jury room. Don't start
9 your discussions just yet. There's a final matter of law
10 that I need to discuss with the attorneys, after which,
11 hopefully, we can send the Exhibits back with the verdict
12 form, with instructions then to begin your deliberations.
13 But for right now, don't start your deliberations just
14 yet. You may retire to your jury room.

15 (WHEREUPON, the jury exited the open court at
16 approximately 11:06 A.M.)

17 THE COURT: Any exception to the charge, from
18 the State?

19 MS. MUNSON: No, sir, Your Honor.

20 THE COURT: From the Defense?

21 MS. HORLBECK: No, Your Honor.

22 THE COURT: All right. If y'all will make sure
23 all the Exhibits are assembled. I was looking over my
24 notes. I'd made some notes when we had taken a break on
25 the mistrial motion and I don't remember what I said, but

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1 reading my notes, I had five seconds at the most. I
2 might have said fifteen because I had a line I couldn't
3 read. So looking at the Copeland case and all that. The
4 record needs to reflect a five second, at most, display
5 of the photograph.

6 All right. The verdict form has been reviewed and
7 Exhibits. Then you can have the alternate come out.

8 THE BAILIFF: Yes, sir.

9 MS. MUNSON: If it please the Court, Your
10 Honor, I'd like to put something on the record?

11 THE COURT: Yes, ma'am.

12 MS. MUNSON: I had a conversation with the
13 court reporter yesterday that I completely
14 misinterpreted. She warned me that I had not introduced
15 the sketch into evidence. What she was referring to
16 properly was State's Exhibit Number 3, which is what Dr.
17 Ward testified from, that was projected on the, on the
18 presenter that the jury saw, the wounds. What I thought
19 in my mind was the sketch that it was at the end of the
20 Power Point. And I said to the court reporter, oh, I'm
21 not worried about that. I don't intend to put that in.
22 I absolutely did intend to put that in. So it's
23 completely within the Court's discretion. I think
24 there's no prejudice to the Defense. I would ask the
25 Court to allow me to reopen my case for the purpose of

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1 moving that into evidence.

2 THE COURT: Ms. Horlbeck?

3 MS. HORLBECK: Judge, the record's closed and
4 we just finished closing arguments and I would object to
5 that.

6 THE COURT: It's Exhibit 3?

7 MS. MUNSON: Yes, sir, Your Honor.

8 THE COURT: I certainly trust my court reporter
9 more than I trust my notes, but my notes show that it was
10 admitted without objection. This was one that I think
11 there was no objection on. For the benefit of both
12 attorneys, since I've been where you are and sometimes
13 Exhibits get misplaced and we're not sure particularly,
14 with as many Exhibits as we had in here, as I recall, I
15 deliberately broke before the State said we rest for the
16 purpose of getting all the Exhibits in order so that we
17 could then rest on the record and make sure we had them
18 all. I think the oversight or the miscommunication
19 between two sketches after the demonstrative piece, the
20 CD and the other one, was clearly an oversight. And I
21 don't believe there's prejudice to the Defense for
22 allowing this in, which again, I believe was not
23 objectionable, anyhow, based upon Dr. Ward's testimony.
24 So I'm going to allow the Exhibit 3 into evidence. I
25 think that's merely an oversight. I think everyone

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1 intended that it be in from the close of the State's case
2 yesterday. I'll grant your motion to have Exhibit 3 made
3 a part of the record.

4 (WHEREUPON, State Exhibit Number 3 was previously
5 admitted into evidence.)

6 THE COURT: All right. If you'll just take the
7 Exhibits with the verdict form back and have our
8 alternate come out. We'll be at ease until we hear from
9 our jury.

10 (WHEREUPON, the verdict forms and exhibits were
11 delivered to the jury at approximately 11:15 A.M.,
12 after which court stood at recess awaiting the
13 verdict of the jury.)

14 THE COURT: Thank you for serving with us.

15 THE JUROR: My pleasure.

16 THE COURT: We're not needing your services
17 now. You're welcome to stay, hang around a while. You
18 can come and go. If you want to leave, you're welcome to
19 do that. We don't need any jurors the rest of the week.

20 THE JUROR: Okay. Thank you.

21 THE COURT: You're welcome. Do you need a
22 statement for your employer?

23 THE JUROR: I have that already. Thank you.

24 THE COURT: Okay. Good. Thank you.

25 (WHEREUPON, the alternate juror was dismissed.)

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1 THE COURT: Okay. We've received a note from
2 the jury, which I'll have marked as Court Exhibit Number
3 2. I believe that's right.

4 (WHEREUPON, Court Exhibit Number 2 was marked for
5 identification.)

6 THE COURT: Their questions, Your Honor, number
7 one, was Mr. Hayes right-handed or left-handed? Question
8 number two, what level of murder is the Defendant being
9 charged? I didn't have a chance to share this with the
10 attorneys. If y'all need a little time to mull that
11 over. What I'm proposing to do is have the jury come
12 back out. Tell them that they have all the evidence, and
13 that every bit of evidence is before them in the record
14 as to the first one. And as to the second one that all
15 the law relating to the crime of murder in South Carolina
16 has been presented to them. And I'll be glad to review
17 the charge I gave them on murder. After that, to
18 continue their deliberations. Do either of you have any
19 input otherwise on that response?

20 MS. MUNSON: That's satisfactory to the State,
21 Your Honor.

22 MS. HORLBECK: That's fine, Judge.

23 THE COURT: Okay. All right. Let's have our
24 jury come out if they're ready.

25 (WHEREUPON, the jury entered the open court at

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1 approximately 1:01 P.M.)

2 THE COURT: Mr. Foreman, ladies and gentlemen,
3 you've made an inquiry as to a couple of matters. First
4 of all, you asked was Mr. Hayes right-handed or left-
5 handed. In response to that, that's a piece of evidence.
6 The evidence is before you, all the evidence is in the
7 case and that's the evidence that you will need to use to
8 decide what the facts are based on what the record is.
9 We can certainly play back any testimony that you need to
10 hear. But everything that's been presented is before you
11 now in the Exhibits and whatever testimony you have.

12 Also, you ask secondly what level of murder is the
13 Defendant being charged. I've give you the law of murder
14 in South Carolina, all the law that's applicable to this
15 case. I'll certainly be glad to re-instruct you on that
16 law as to the offense of murder. I'll be glad to do it
17 now. If you want to talk about it further and need us to
18 come back out, I'll certainly give you that charge. I'll
19 be glad to do that at any time.

20 Short of that, I'll just need you to continue your
21 deliberations. We've ordered lunch for you at your
22 request and we'll have that here before too long.

23 Mr. Foreman, do you feel like at this stage or if
24 you want to go back and have the jury talk more, I'll
25 certainly be glad to re-instruct you on murder if at any

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1 time you need that, now or later in your deliberation.

2 MR. FOREMAN: Yes, Your Honor, would you do
3 that.

4 THE COURT: All right. This is what I charged
5 you earlier and I'll be glad to explain it to you again.
6 For the offense of murder, the State must prove beyond a
7 reasonable doubt that the Defendant killed another person
8 with malice aforethought. I explained to you malice is
9 defined as hatred or ill-will or hostility toward another
10 person. It's the intentional doing of a wrongful act
11 without just cause or excuse and with an intent to
12 inflict an injury, or under circumstances that the law
13 will infer an evil intent. Malice aforethought does not
14 require that malice exist for any particular time before
15 the act is committed. But malice must exist in the mind
16 of the Defendant just before and at the time the act is
17 committed. Therefore, there must be a combination of
18 previous evil intent and the act.

19 And I also explained to you, ladies and gentlemen,
20 that malice aforethought can be either expressed or
21 inferred. And by using those terms it doesn't mean there
22 are different kinds of malice, but merely the manner in
23 which malice may be shown to exist. That can be either
24 by direct evidence or by inference from the facts and
25 circumstances which are proved. Express malice is shown

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1 when a person speaks words which are expressing hatred or
2 ill-will for another or when that person prepares
3 beforehand, such as I mentioned, as lying in wait to do
4 the act, which was later accomplished.

5 On the other hand, inferred malice, that can take
6 place from conduct, showing a total disregard for human
7 life. Inferred malice may also arise when the deed is
8 done with a deadly weapon, which I explained to you some
9 examples of deadly weapons would be handguns, rifles,
10 knives, razors, gasoline, lighter fluid, metal knuckles.
11 Those are examples of deadly weapons. Whether an
12 instrument has been used as a deadly weapon depends on
13 the facts and circumstances of each case.

14 I hope this definition of murder will assist you.
15 I'll ask now, that if you will, continue your
16 deliberations. If you will, go back to your jury room.
17 Thank you. You may retire at this time.

18 MR. FOREMAN: Thank you, Your Honor.

19 (WHEREUPON, the jury exited the open court at
20 approximately 1:07 P.M.)

21 THE COURT: Any exception to the charge, from
22 the State?

23 MS. MUNSON: Nothing from the State, Your
24 Honor.

25 THE COURT: From the Defense?

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1 MS. HORLBECK: Nothing from the Defense.

2 THE COURT: All right. We'll be at ease until
3 we hear from our jury. Y'all heard me say, if y'all want
4 to get a bite to eat, certainly just leave your cell
5 numbers. Hopefully, you wouldn't be too far away that we
6 could get you back here fairly soon. Leave them with Ms.
7 Jones.

8 (WHEREUPON, the court stood at recess awaiting the
9 verdict of the jury.)

10 THE COURT: All right. I understand the jury
11 has reached a verdict in the case. Are there any matters
12 we need to take care of before we receive the verdict?

13 MS. MUNSON: Nothing from the State, Your
14 Honor.

15 MS. HORLBECK: Nothing from the Defense.

16 THE COURT: Obviously, of the trials we have in
17 this courtroom, this is a very emotional one. And I'm
18 confident that when the jury comes back with their
19 verdict, there's going to be disappointment and there's
20 going to be elation. I want to make sure everyone in the
21 courtroom, lawyers, parties, victims, everyone else, we
22 need to make sure -- I've been emphasizing the process
23 and this jury has deliberated long and hard. We need to
24 visibly accept their verdict when they give it. They
25 won't be here very long. I'll dismiss them, whatever

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1 their verdict is. But if anyone feels like they can't
2 contain themselves with emotion -- I'm not trying to
3 damper any emotion. That's a natural thing to have,
4 emotion either way. But I want to make sure the jury
5 understands that we're going to have the right decorum to
6 respect whatever decision they make.

7 If there's anyone in the courtroom that feels they
8 just can't contain themselves when the verdict is
9 announced, I'd ask, if you would, to just excuse yourself
10 at this time. Because I want everyone to understand
11 we're going to not tolerate anything that disrespects the
12 jury and their function in this trial. So if you feel
13 you just can't contain your emotion, this would be a good
14 time to just step outside. You can come right back in
15 and we'll certainly proceed then. But I want everyone to
16 understand that I find that very important, that the
17 process has run its course. This will be the time for
18 you to leave if you feel like you need to.

19 All right. If the jury's ready, you can have them
20 come in, Mr. Morris.

21 (WHEREUPON, the jury entered the open court at
22 approximately 2:28 P.M.)

23 THE COURT: Mr. Foreman, I understand the jury
24 has reached a verdict. Is that correct?

25 MR. FOREMAN: Yes, Your Honor.

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1 THE COURT: Is it a unanimous verdict?

2 MR. FOREMAN: Yes, Your Honor.

3 THE COURT: If you would, please, hand the
4 verdict form to the bailiff.

5 All right. Madam Clerk, you may publish the
6 verdict.

7 THE CLERK: Your Honor, this is case number
8 2011-GS-23-7681, the State of South Carolina versus Ralph
9 Beverly Hayes, Sr. We, the jury, unanimously find the
10 Defendant, Ralph Beverly Hayes, Sr., as to the charge of
11 murder, guilty. As to the charge of possession of a
12 weapon during the commission of a violent crime, guilty.
13 Signed Todd Adcock. If this is your verdict so say you
14 all, please signify by raising your right hand. Thank
15 you.

16 (WHEREUPON, all jurors' right hands were raised.)

17 THE COURT: Thank you. Are there any other
18 matters that we need to take care of with this jury
19 before they're discharged in this case? Anything from
20 the State?

21 MS. MUNSON: No, sir.

22 THE COURT: From the Defense?

23 MS. HORLBECK: No, sir.

24 THE COURT: Ladies and gentlemen, thank you
25 very much for your service this week. We won't need your

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1 services for the rest of the week. You've been a
2 conscientious group. I consider it a treat to get to
3 work with you. You've been good participants. I've
4 noticed your observations and your -- I know it's not an
5 easy task being a fact-finder. And I'm honored to have
6 had the opportunity to work with you.

7 I'm confident that if ever you find yourself not
8 sitting in a jury box, but sitting at one of these
9 tables, either with a lawsuit that's been brought against
10 you on a contract or a car wreck or someone has accused
11 you of a criminal offense, you'll want good,
12 conscientious people such as yourselves sitting where you
13 are. So I hope that even though you might be technically
14 or legally exempted from jury service in the future, I
15 hope that you will not claim that exemption, as Judge
16 Verdin might have explained to you on Monday, that you'll
17 be willing to serve again. And, again, because we need
18 good solid jurors such as yourself to hear these cases.

19 You've directly participated in your government this
20 week. You may remember from your civics class back in
21 school there are three branches of government. And some
22 of you may have an opportunity one day to be a
23 legislator, or get elected to county council or city
24 council or the State Legislature or even Congress and get
25 to pass laws. Or you may be elected to mayor of your

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1 town or Governor of South Carolina, President of the
2 United States, to execute those laws, and get to carry
3 them out. Short of that, we can petition our elected
4 officials and we can ask them, let's pass this law, let's
5 repeal that law; or that law is no good or that law is
6 good. But we can't really execute the laws. We can't
7 really pass the laws.

8 But the third branch, the judicial branch, you've
9 been a direct participant in that. You have been judges
10 of the facts and I'm so grateful for your participation.
11 You're dismissed for the week. Some of you may need a
12 statement for your employer. If that's necessary, please
13 just stop by the Clerk's office or Ms. Olson downstairs
14 in the assembly room and they'll take care of that for
15 you. Thank you very much for your participation, ladies
16 and gentlemen. You're dismissed at this time.

17 Mr. Foreman, I would ask if you would remain just in
18 the hallway. There's another document I need to have you
19 sign. The rest of you are dismissed at this time. Thank
20 you very much, ladies and gentlemen.

21 (WHEREUPON, the jury exited the open court at
22 approximately 2:33 P.M.)

23 THE COURT: We'll wait just a moment until the
24 Clerk gets back.

25 All right. Any matters we need to take care of

State of South Carolina -vs- Ralph Hayes (2011-GS-23-07681)
Charge

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1 before sentence is imposed? Anything?

2 MS. MUNSON: Yes, Your Honor. I would ask you
3 to deny all the motions they're about to make, to renew
4 their previous motions.

5 THE COURT: Well, I'll ---

6 MS. HORLBECK: And that was going to be my next
7 step, Judge.

8 THE COURT: Okay.

9 MS. HORLBECK: I was going to renew all of my
10 previous motions.

11 THE COURT: All right. Well, I think the jury
12 has spoken on this case. As I said before, I think there
13 is -- certainly was sufficient direct evidence and
14 substantial circumstantial evidence for a jury to make
15 this determination, rather than I. I believe the jury
16 has spoken. I will deny your motion respectfully, Ms.
17 Horlbeck. Both lawyers, or all four lawyers, did an
18 excellent job presenting their cases for their respective
19 clients. And I appreciate having the opportunity to work
20 with you. The jury has spoken and I believe that legally
21 it's a sound verdict.

22 All right. Are you ready for the sentencing?

23 (WHEREUPON, Ms. Munson, Ms. Horlbeck and the
24 Defendant approached the bar.)

25 MS. MUNSON: At whatever time the Court deems

State of South Carolina -vs- Ralph Hayes (2011-GS-23-07681)
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1 appropriate, a couple of members of Jackie's family would
2 like to address the Court.

3 THE COURT: All right.

4 MS. MUNSON: As to the facts, I just don't have
5 anything to add, Your Honor. I will tell you about his
6 prior record. He has convictions for domestic violence
7 on March the 28th of 2006. October the 28th ---

8 THE COURT: Wait just a minute. Before you
9 start, I want to ... All right. I had an extra paper
10 from the Clerk's office. So I'm sorry. I didn't ...

11 MS. MUNSON: That's okay. Right.

12 THE COURT: Now, I will listen to you,
13 Solicitor.

14 MS. MUNSON: March 28th of 2006, domestic
15 violence; October the 24th of 2006, domestic violence;
16 May the 21st, 2008, aggravated assault and battery; and
17 March the 24th of 2009, domestic violence. Your Honor,
18 all four of these convictions were against Jackie
19 Alexander. He has breaking and entering in North
20 Carolina in 2003. Also, in 2000 another breaking and
21 entering. And in November of 2001, assault on a female.
22 And as I mentioned earlier, there's some stuff back in
23 the '70's that's probably not worth consideration.

24 THE COURT: The 2001 offense was in North
25 Carolina also?

State of South Carolina -vs- Ralph Hayes (2011-GS-23-07681)
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1 MS. MUNSON: Yes, sir.

2 THE COURT: Housebreak in '03. Assault in '01.
3 Was there anything in between?

4 MS. MUNSON: No, sir.

5 THE COURT: All right. What was the date in
6 '09 for the CDV?

7 MS. MUNSON: The CDV's were March of '09, May
8 of 2008.

9 THE COURT: Yeah. I've got the others.

10 MS. MUNSON: Okay.

11 THE COURT: March. All right. I'll be glad to
12 hear from anyone that wants to address me. And I'll hear
13 from the Defense last.

14 MS. MUNSON: Speak up so the court reporter can
15 hear you, sir.

16 THE COURT: If you would, state your name,
17 please, sir, for the record and make sure that you speak
18 loudly enough.

19 CASSIUS KINGSLEY: My name is Cassius Kingsley.
20 I am Jackie Alexander's child, only child. And I had
21 wrote some, prepared something, but I don't need it.
22 What this man has done to me and my family, we never can
23 get back. My mother was the only thing I had, and
24 really, I was the only thing she had, because I was her
25 only child. And I pray that you just take into

State of South Carolina -vs- Ralph Hayes (2011-GS-23-07681)

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Charge

1 consideration everything you've heard and my family's
2 emotions and everything we've been through and give Mr.
3 Hayes the maximum sentence. Because he don't need to be
4 out on the streets no more to do this to anybody else.

5 THE COURT: Okay. Thank you, sir.

6 JANIE ASHMORE: Your Honor.

7 THE COURT: Yes, ma'am. If you would state
8 your name please again, for the record.

9 JANIE ASHMORE: My name is Janie Ashmore. I'm
10 Jacquelyn Alexander's mother.

11 THE COURT: Yes, ma'am.

12 JANIE ASHMORE: On behalf of my family and
13 myself, I want to thank the Court for the justice that we
14 received today. Thank you so much. Because Ralph Hayes
15 need to be locked up forever. He don't need to be free
16 again, because he only going to hurt somebody else, Your
17 Honor. I'm serious about that.

18 THE COURT: Thank you, Ms. Ashmore. Anyone
19 else?

20 MS. MUNSON: No, sir, Your Honor. And based on
21 what the family has told you and the fact that his four
22 prior domestic violence convictions were against the
23 woman that he killed, we respectfully request that the
24 Court sentence him to life.

25 THE COURT: Before I hear from the Defense,

State of South Carolina -vs- Ralph Hayes (2011-GS-23-07681)
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1 were all of the CDVs pled as first offense?

2 MS. MUNSON: The one in '06 was actually a
3 first offense.

4 THE COURT: Well, there were two in '06, I
5 believe, right? March and October?

6 MS. MUNSON: March -- yes. No, the second one
7 was a second offense.

8 THE COURT: It was pled as a second?

9 MS. MUNSON: Yes. And then in 2008 he was
10 charged with domestic violence high and aggravated for
11 stabbing Jackie. And he was allowed to plead to
12 aggravated assault and battery. And then the 2009
13 domestic violence, he pled to a second and he got time
14 served of like a hundred and ninety-eight days, something
15 like that.

16 THE COURT: That was the second ---

17 MS. MUNSON: Yes, sir.

18 THE COURT: --- and pled to a second?

19 MS. MUNSON: Yes, sir.

20 THE COURT: Ms. Horlbeck or Ms. Johnson, be
21 glad to hear from you and certainly be glad to hear from
22 your client or anyone else that would like to address the
23 court.

24 MS. HORLBECK: May it please the Court. Your
25 Honor, I've advised Mr. Hayes just to respectfully keep

State of South Carolina -vs- Ralph Hayes (2011-GS-23-07681)

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1 his silence, just so if Your Honor asks and gives him the
2 chance to speak and he doesn't, I've just advised him so
3 that he can think about whether or not he wants to
4 exercise his right to an appeal.

5 Judge, he is fifty-four years old. He was arrested
6 on this incident in 2010. I don't have the exact date in
7 front of me. I will defer to the State on that. I'm
8 sure they'll tell us. But he has been incarcerated on
9 this matter since 2010. He was living in New York. I
10 believe he was in an apartment with his son.

11 And just respectfully, Your Honor, I obtained a
12 transcript of the assault and battery high and aggravated
13 nature charge. And I don't mean any disrespect to the
14 State, but the facts that were read out during that plea,
15 I don't think, I don't think that there was a stab wound
16 involved. I think there were some scratches. They are
17 correct that there was a knife involved. I just wanted
18 to correct that for the record so that Your Honor would
19 have a full understanding.

20 While we were trying to negotiate, work something
21 out on this case, we had a voluntary manslaughter offer
22 on the table. Judge, as I told you, he is fifty-four
23 years old. A thirty-year minimum sentence is essentially
24 going to be a life sentence for Mr. Hayes. Quite
25 frankly, I have had -- Mr. Hayes has been a model client.

State of South Carolina -vs- Ralph Hayes (2011-GS-23-07681)
Charge

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1 I haven't had any trouble with him. He's been respectful
2 to me. And I would just ask Your Honor to take all of
3 that into consideration as you sentence him today. We
4 are asking for the minimum sentence. I don't know if Ms.
5 Johnson has anything she'd like to add. That's all we
6 have, Your Honor.

7 THE COURT: Thank you. Could you share with me
8 his education background?

9 MS. HORLBECK: Judge, if you'd give me just a
10 second.

11 THE COURT: Yes, ma'am. I'd like to know a
12 little bit about him.

13 MS. MUNSON: And while she's covering that,
14 Judge, I can tell you that he was arrested on September
15 the 20th, 2010. By my calculation, today he has seven
16 hundred and fifty-seven days.

17 THE COURT: Yes, ma'am.

18 MS. HORLBECK: Your Honor, he graduated from
19 high school. He attended high school in Danville,
20 Virginia. And his work history, he's been working as a
21 chef. And I believe he maintained that same occupation
22 while he was in New York.

23 THE COURT: Thank you.

24 Mr. Hayes, you've had an opportunity to serve some
25 time in jail already. And I know that in life, as long

State of South Carolina -vs- Ralph Hayes (2011-GS-23-07681)
Charge

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1 as you've lived, you've realized, even as many of us
2 have, sometimes we live in prisons of our own making that
3 aren't there with cell blocks. I don't know all of your
4 background and whether you've been in a self-imposed
5 prison for much of your life. So many folks find that.
6 But I hope that with the sentence imposed that you'll
7 find that there is a hope for freedom that, while you
8 might not be free to walk the streets, but I hope that
9 you can find the freedom we all need from a spiritual
10 nature.

11 This is case 2011-GS-23-7681. The sentence of the
12 Court is the Defendant be committed to the State
13 Department of Corrections for the term of his natural
14 life.

15 Case 2011-7681, the companion case with the
16 indictment, a five year sentence for possession of a
17 weapon.

18 Our condolences are certainly to the family. I
19 trust they'll be able to find some relief as well.

20 All right. Court's adjourned.

21

22 [END OF REQUESTED TRANSCRIPT OF RECORD]

State of South Carolina -vs- Ralph Hayes (2011-GS-23-07681)
Certificate of Reporter

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1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing
6 is a true, accurate, and complete transcript of record of
7 all the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal,
9 in the Circuit Court for Greenville County, South
10 Carolina, on the 16th day of October, 2012.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15 January 2, 2013

16

17

18

19

20

21



Circuit Court Reporter

WITNESSES

C.T. Miller

Greenville County Sheriffs Office

9/22/2010

ARREST WARRANT NUMBER

1478480

1478481

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

GUilty

Foreperson of Petit Jury

Date: 10-17-12

DOCKET NO. 2011-GS-23-

JMM

007681

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

October

TERM 2011

THE STATE

vs.

RALPH BEVERLY HAYES SR

Indictment for

0116
0549

MURDER

VIOLATION § 16-03-0010
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME
VIOLATION § 16-23-0490

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 COUNT ONE - MURDER
 COUNT TWO - POSSESSION OF A WEAPON DURING THE
 COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on

OCT 04 2011

the Grand Jurors of Greenville

County present upon their oath:

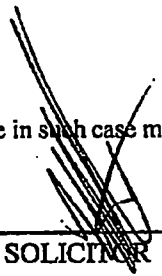
COUNT ONE - MURDER

That RALPH BEVERLY HAYES SR did in Greenville County, on or about the 7th day of June, 2009, unlawfully and with malice aforethought kill JACQUELINE DORETHA ALEXANDER by means of stabbing her, and that JACQUELINE DORETHA ALEXANDER died as a proximate result thereof. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
 CRIME

That RALPH BEVERLY HAYES SR did in Greenville County, on or about the 7th day of June, 2009, possess or visibly display a knife or sharp edged object during the commission or attempted commission of a violent crime, to wit: Murder. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Ralph Beverly Hayes Sr

AKA:

Race: BLACK Sex: M Age: 54DOB: -1958 SS#: Address: TransientCity, State, Zip: Greenville, SC 29601DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2307681A/W#: 1478480Date of Offense: 6/7/2009S.C. Code § : 16-03-0010, 0020CDR Code #: 0116

SENTENCE SHEET

30 - life

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charges: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: 64640 Defendant Paul B. Wickens Attorney for Defendant 12100
Munson SC Bar# (available for back SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2137

10-17-12

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Ralph Beverly Hayes Sr

AKA:

Race: BLACK Sex: M Age: 54DOB: 1958 SS#: Address: TransientCity, State, Zip: Greenville, SC 29601DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or deathin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

MunichSC Bar#DefendantCaroline Hord12100Caroline HordSC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPSRecipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
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§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2307681A/W#: 1478481Date of Offense: 6/7/2009S.C. Code § : 16-23-0490CDR Code #: 0549SENTENCE SHEET 5 years☒ CONVICTED OF or ☐ PLEADSin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

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MunichSC Bar#DefendantCaroline Hord12100Caroline HordSC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPSRecipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
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Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther:
☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2139Sentence Date: 10-17-12

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Greenville)Ralph Beverly HAYES - 320369)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015-CP-23- 03426
APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENHIMER
2015 MAY 28 PM 3:41INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution - P.O. Box 205 - Ridgewood, SC.
2. Name and location of Court which imposed sentence General Sessions - 305 East North Street Greenville, SC. 29601
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011 - GS - 23 - 07681
 - (b) N/A
 - (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Oct. 17 2012 term of sentence of life and five years
 - (b) N/A

- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty JURY TRIAL - Guilty Verdict
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT of Appeals - Case No. 2012-213261
- ii. THE SUPREME COURT of South Carolina Case No. 2015-004081
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. Court of Appeals Affirming my conviction
- ii. Supreme Court denying my petition for writ of CERTIORARI
- iii. N/A
- (c) the date of each such result:
- i. November 5, 2014
- ii. MARCH 18, 2015
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2014-Up-385
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) My Sixth - Fourteenth Amendment have been clearly been denied
 (b) Detail Answer to Question No. 10 is Attached on back of Application
 (c) N/A

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) My conviction and sentence was clearly in violation
 (b) of my Sixth Amendment which in the setting constitutes A
 (c) denial of fundamental fairness shocking to the universal sense of justice.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? South Carolina State Supreme Court
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Petition for a Writ of Certiorari in the Court of Appeals
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Appeal
 ii. Petition for Writ in Court of Appeals
 iii. Post-Conviction - Relief
 iv. N/A

(b) the name and location of the Court in which each was filed:

- i. South Carolina Court of Appeal - Case No. 2012-213261
 ii. South Carolina Supreme Court - Case No. 2015-000081
 iii. N/A
 iv. N/A

(c) the disposition thereof:

- i. Assumed Unpublished Opinion
 ii. Petition for Writ was denied
 iii. N/A

- iv. N/A
- (d) the date of each such disposition:
- i. November 5, 2014
- ii. March 18, 2015
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. Unpublished Opinion Affirmed - 2014-up-385
- ii. N/A
- iii. N/A
- iv. N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N/A
- (b) N/A
- (c) N/A
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? From the Judgment of Conviction and the imposition sentence.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Court of Appeals - 2012-21361 - Petition of Writ of Certiorari - 2015-00081
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. CAROLINE HORLBECK AND TEAL JOHNSON - 305 E. North street - Suite 122 Greenville SC. 296
- ii. SUSAN B. HACKETT - 1330 Lady street, Suite 401 Columbia, South Carolina 29201
- iii. N/A
- (b) the proceedings at which each such attorney represented you:
- i. CAROLINE HORLBECK AND TEAL JOHNSON (TRIAL)
- ii. SUSAN B. HACKETT (Appellate Defender)
- iii. N/A
19. State clearly the relief you seek in filing this application:
Due to constitutional deprivations, I respectfully Request that the P.C.R. COURT REVERSE AND Remand for a new trial.
20. Are you now under sentence from any other court that you have not challenged?
NO

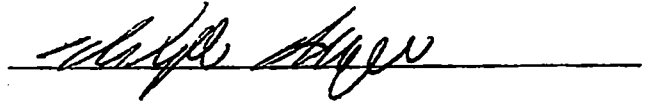
STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

Ralph Bevealy Hayes

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 20th
day of May, 215.

Luduan Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

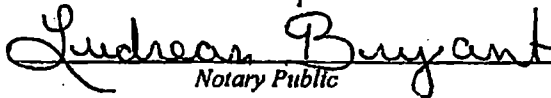
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
20th day of May, 2015.


Notary Public

My Commission Expires: May 26, 2020

Answer to Question (No. 10)

Sixth Amendment

Right to Speedy Trial Witnesses, etc.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district where, in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.

Fourteen Amendment

Citizenship Privileges and Immunities, Due Process; Equal Protection; Disqualification of Officers; Public Debt.

All person born or naturalized in the United States, and subject to the jurisdiction thereof, are citizen of the United States and of the state where in they reside.

No state shall make or enforce any law which shall abridge the privileges or the immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the Equal protection of law.

DEAR: CLARK of COURT

EN closed you will finds A copy of my P.C.R.
Applicates if you could please send me a copy,
When it is stamps and file in your court.
Thank you For your time in this matter.

Sincerely

Ralph Hayes

Ralph HAYES 320369

Ralph B. Hayes 320369
Lieber - Stone - A-8
P.O. Box 205
Ridgeville, SC, 29472

RECEIVED

MAY 20 2015

MAIL ROOM
LIEBER C.J.

2015-CP-23-03426

Paul B. Wickensimer
Greenville County Clerk of Court
305 East North Street
Greenville, South Carolina 29601

FOR LEGAL USE ONLY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2015-CP-23-3426
COUNTY OF GREENVILLE	)	
	)	
Ralph Beverly Hayes,	)	
S.C.D.C. No. 320369,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed May 28, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the October 2011 term of General Sessions for murder (2011-GS-23-7681, count 1) and possession of a weapon during commission of a violent crime (2011-GS-23-7681, count 2). Caroline Horlbeck, Esquire and Teal Johnson, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On October 17, 2012, the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of life imprisonment for murder and 5 years for possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Susan B. Hackett,

Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Hayes, Op. No. 2014-UP-385 (S.C. Ct. App. filed November 5, 2014). The South Carolina Supreme Court denied the Applicant's subsequent petition for writ of certiorari on March 18, 2015. The Remittitur was sent on March 20, 2015.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Denial of Sixth and Fourteenth Amendment.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation

within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

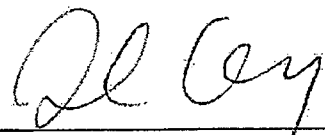
JOHN W. MCINTOSH
Deputy Attorney General



KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

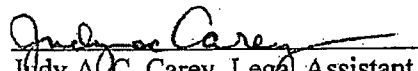
Nov. 30, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2015-CP-23-3426
	)	
RALPH BEVERLY HAYES, 320369	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Ralph Beverly Hayes, 320369
Lieber Correctional Institution
Post Office Box 205
Ridgeville SC 29472**

DATED this 30th day of November, 2015.


Judy A.C. Carey, Legal Assistant
For Respondent

State of South Carolina
County of Greenville

Court of Common Pleas

Ralph B. Hayes	)	
	)	
Applicant,	)	Transcript of Record
v.	)	2015-CP-23-3426
	)	
State of South Carolina	)	
	)	
<u>Defendant.</u>	)	

June 14, 2016
Greenville, South Carolina

B E F O R E:

The Honorable George James, Judge.

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

Brian Johnson, Esquire
Attorney for the Applicant

Patrick Schmeckpeper, Esquire
Attorney for the State

Lisa Scott
Circuit Court Reporter

I N D E X

<u>WITNESS</u>	<u>PAGE</u>
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Direct examination by Mr. Johnson.....	17
Cross-examination by Mr. Schmeckpeper...	33
CAROLINE HORLBECK	
Direct examination by Mr. Schmeckpeper..	37

- - -

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>

No Exhibits.

- - -

1 P R O C E E D I N G S

2 * * * * *

3 THE COURT: *State v. Hayes.*

4 MR. SCHMECKPEPER: Yes, Your Honor.

5 THE COURT: All right.

6 MR. JOHNSON: Thank you, Your Honor. May it
7 please the Court?

8 This is *Ralph Hayes v. The State of South*
9 *Carolina*, PCR Case No. 2015-CP-23-0 -- 03456 [sic].
10 Your Honor, is this -- this an appropriate time to
11 try to narrow the issues for the Court?

12 THE COURT: Yes, sir.

13 MR. JOHNSON: All right. Thank you.

14 The -- my client will essentially be using the
15 framework of the transcript, but we have narrowed
16 the page numbers down so we should be able to
17 pinpoint where we would like you to look -- look at,
18 Judge.

19 But the issues -- the first one -- and I'm
20 going kind of in order as they are encountered in
21 the transcript -- are my client complains he was
22 prejudiced. There are two jurors that were seated
23 that were victims of domestic violence. We believe
24 that those jurors should've been struck for cause.

25 THE COURT: For cause?

1 MR. JOHNSON: Yes, sir, Your Honor.

2 THE COURT: Was that -- was this -- was that
3 appealed or just not brought up?

4 MR. JOHNSON: It wasn't objected at all. There
5 was -- there was no objection made.

6 THE COURT: What was your client convicted of?

7 MR. JOHNSON: Murder. Sorry, Judge, he's
8 serving life.

9 THE COURT: And so two jurors were victims?

10 MR. JOHNSON: They had been -- I'm sorry,
11 Judge. I misspoke. They had family who -- who had
12 been involved in -- in instances of domestic
13 violence, and he felt that they should've been
14 struck for cause. Apologies, Your Honor.

15 THE COURT: Okay.

16 MR. JOHNSON: And page 50 of the -- of the
17 transcripts, one of the co-counsels for the
18 Applicant moved to have this witness -- the
19 witnesses sequestered. They were sequestered;
20 however, some testimony had already taken place in
21 their presence. He believed he was prejudiced by
22 that action.

23 THE COURT: How so?

24 MR. JOHNSON: Not making a timely objection.

25 THE COURT: I know, but what -- what was the --

1 you -- you -- are you prepared to do two things? To
2 give me specific instances where -- well, let me
3 back up.

4 Did the judge order the witnesses sequestered
5 from the beginning?

6 MR. JOHNSON: No, sir, Your Honor.

7 THE COURT: All right. So in the trial,
8 defense counsel moved to sequester the witnesses?

9 MR. JOHNSON: Yes, sir. And I believe it was a
10 pretrial motion. During the pretrial motion, there
11 was some witnesses present watching another witness
12 testify. And that begins ---

13 THE COURT: Pretrial?

14 MR. JOHNSON: Yeah, pretrial.

15 THE COURT: All right. So you got case law on
16 that, and you've got specific points that these
17 witnesses supposedly overheard that would've
18 prejudiced them?

19 MR. JOHNSON: I do not have case law, but my
20 client can testify as to the prejudice. I'm sorry,
21 Your Honor.

22 THE COURT: Well, what -- what I'm -- it would
23 seem -- it would seem -- and that's fine. He can do
24 that, but you can also argue. And what I'm trying
25 to find out is what was the prejudice? He's going

1 to testify to it, but I want to know beforehand so I
2 can be prepared when I hear that testimony.

3 MR. JOHNSON: Let me just get to that portion,
4 Your Honor.

5 THE COURT: So you're saying the witnesses were
6 sequestered by pretrial order?

7 MR. JOHNSON: Well, this is -- they were in
8 a -- discussing a preliminary matter. And while
9 they were in it, I believe one of the co-counsels
10 basically asked that the main witness, which is
11 Mr. White, and I'm sorry for cross-referencing --
12 but Mr. White was present during the testimony of
13 Detective Miller, which I think was the chief
14 detective.

15 THE COURT: So Mr. White was present during
16 Detective Miller's pretrial testimony?

17 MR. JOHNSON: Yeah, some of it. And then at
18 some point in time during that, it was -- it was
19 caught by one of the counselors for the -- the
20 Applicant, and she moved to sequester the witnesses,
21 and the judge did do that.

22 THE COURT: So that was the first motion for
23 sequestering right then?

24 MR. JOHNSON: Yes, sir. That was the first
25 time it was brought up, Judge.

1 THE COURT: Okay.

2 MR. JOHNSON: And, Your Honor, I apologize.
3 I -- I did not prepare any -- any specific case law
4 on that issue.

5 THE COURT: So a Mr. White was present during
6 Miller's pretrial testimony. A defense -- one of
7 the defense counsels saw that and didn't move to
8 sequester?

9 MR. JOHNSON: Yes, sir.

10 THE COURT: Okay.

11 MR. JOHNSON: Related, the same Mr. White on
12 page 128 of the transcript, the -- and let me just
13 go to it. Your Honor, when they were talking about
14 what his reference was to the date of the alleged
15 incident, they -- he related it to a certain day
16 when -- and we're talking about he was essentially a
17 homeless person who did -- worked for like labor
18 finders or something.

19 THE COURT: Who? Your client?

20 MR. JOHNSON: No. The -- Mr. White, who was
21 the -- the main witness in this matter, Judge.

22 And when they were trying to relate to how he
23 remembered the specific dates as far as when he
24 talked to my client because there were some
25 admissions from my client that were entered into

1 evidence, when they were trying to relate to those
2 dates and times, he initially said -- he said he
3 couldn't remember the date. And then ---

4 THE COURT: The date of what?

5 MR. JOHNSON: The date that they -- that they
6 were -- that he spoke with my client, Judge. Excuse
7 me. And I'm sorry, Judge.

8 THE COURT: The day he spoke ---

9 MR. JOHNSON: The day he spoke with my client,
10 my client was alleged to basically have made an
11 admission that -- that he said, "You ain't never
12 killed nobody before," or something of that nature.
13 So it was a pretty big statement that he's alleged
14 to have made.

15 THE COURT: And that was on what page?

16 MR. JOHNSON: This is on page 128.

17 THE COURT: Okay.

18 MR. JOHNSON: And the date that he said that he
19 encountered and spoke with him, he said he couldn't
20 remember, but it was suggested by the prosecutor in
21 a leading fashion that was it -- he said, "Maybe
22 June 9th. Does that sound about right?" and his
23 answer was yes.

24 And so he believed that the -- his counsel
25 should've objected to that line of questioning as

1 leading. And, obviously, if he couldn't -- he
2 couldn't remember the date, that tends to attack the
3 credibility of his story and that's another issue,
4 Judge.

5 THE COURT: Okay.

6 MR. JOHNSON: The other issue was, there was --
7 during the closing argument, there were pictures of
8 the victim, and I believe the pictures of the victim
9 were not entered into evidence.

10 There was some discussion about potential
11 objection, but, Your Honor, he doesn't believe that
12 that -- those objections were properly preserved for
13 review. And as such, it was not something that his
14 appellate attorneys brought up on appellate review.

15 THE COURT: So that's appellate PCR issue?

16 MR. JOHNSON: Yes.

17 THE COURT: Okay. So photos of the victim.
18 What kind of photos?

19 MR. JOHNSON: They were just of her alive, just
20 her smiling. And they weren't entered into
21 evidence, which is the problem that I have with
22 those photos.

23 THE COURT: What were the -- did trial counsel
24 object?

25 MR. JOHNSON: They weren't -- there was some

1 test -- there was some arguments made and a curative
2 instruction was given I believe, Judge, but she also
3 stated that the curative instruction was not -- she
4 didn't think that the curative instruction was
5 enough.

6 THE COURT: So what is the appellate PCR issue
7 on that?

8 MR. JOHNSON: The appellate PCR issue is that
9 it should've been alleged in the -- in his appeal.

10 MR. SCHMECKPEPER: And, Your Honor, if I may
11 just quite object to that allegation. The State's
12 had no notice of any of these allegations, but we do
13 have witnesses for most of them. However, we don't
14 have a witness to address the ineffectiveness of
15 appellate counsel issue because we weren't on notice
16 of this allegation.

17 THE COURT: All right. How about that,
18 Mr. Johnson?

19 MR. JOHNSON: That's accurate. That was not
20 alleged in my client's application. If we can't
21 move forward on that, Your Honor, if I may
22 respectfully ask for permission to pursue that one
23 issue at a later time.

24 THE COURT: Well, it would be -- it would have
25 to be in front of me. Who is appellate counsel? We

1 can't split it up between judges.

2 MR. SCHMECKPEPER: Your Honor, I believe it
3 was ---

4 THE APPLICANT: Susan B. Hackett.

5 THE COURT: Hackett?

6 MR. SCHMECKPEPER: And I may not need to call
7 her. I just -- I don't know what the allegation is
8 at this point.

9 You know, I think from the record from what I
10 remember, counsel made a motion for mistrial. The
11 judge denied that motion, gave a curative
12 instruction, counsel objected to that motion. I
13 think that's an abusive discretion standard.

14 THE COURT: I'm sorry. You're talking too
15 fast. She objected to what?

16 MR. SCHMECKPEPER: Counsel objected to the
17 introduction of certain pictures on closing argument
18 by the Solicitor. There weren't in evidence. She
19 also moved for a mistrial. The trial judge denied
20 that motion and then issued a curative instruction
21 over counsel's objection.

22 THE COURT: Oh, and counsel said that just
23 wasn't enough -- wasn't good enough?

24 MR. SCHMECKPEPER: Correct.

25 THE COURT: What were the pictures of? Are

1 they in the record?

2 MR. SCHMECKPEPER: The -- the pictures are --
3 they're not in the record.

4 THE COURT: Excuse me. In the PCR record.

5 MR. JOHNSON: No, sir.

6 THE COURT: So I don't know what they're
7 pictures of.

8 MR. JOHNSON: No, sir. I don't either.

9 THE COURT: I guess one of the defense lawyers
10 would be able to tell me?

11 MR. JOHNSON: I'm hoping so.

12 THE COURT: All right.

13 MR. SCHMECKPEPER: Your Honor, if it -- if we
14 could just leave the record open in the event that I
15 need to call appellate counsel to identify it, but I
16 might not even need to call them.

17 THE COURT: Okay. All right. That's four
18 issues that I count so far.

19 MR. JOHNSON: Yes, sir, Your Honor.

20 THE COURT: What page was the -- what page was
21 the closing argument on?

22 MR. SCHMECKPEPER: Your Honor, I believe it's
23 382.

24 MR. JOHNSON: Yeah, 382 is correct.

25 MR. SCHMECKPEPER: And the curative instruction.

1 is on page 385. They reference the curative
2 instruction on page 385.

3 THE COURT: All right. Any other grounds
4 before we continue?

5 MR. JOHNSON: Your Honor, one more. My
6 client -- on page 379 ---

7 THE COURT: Page what?

8 MR. JOHNSON: 379.

9 THE COURT: Okay.

10 MR. JOHNSON: --- lines 5 and 6. There was
11 suggest -- a suggestion made by the -- let me just
12 pull it up before I tell you something.

13 There was a suggestion where she says, "No.
14 There was no knife found because it's not there
15 because he took it with him." And my client thinks
16 that that ---

17 THE COURT: Well, who -- who's saying this?

18 MR. JOHNSON: This is the prosecutor. The
19 prosecutor is saying that, Judge, and he thinks
20 that's objectionable.

21 THE COURT: And what's your position on that?
22 You just going to want to let him testify to that?

23 MR. JOHNSON: Yes, please.

24 THE COURT: Because as an officer of the court,
25 you've got to -- I know you've got to put up his

1 grounds, but you've also got to explain to me why
2 you believe that they're valid because I'm not
3 going -- okay. All right. So that's number five?

4 MR. JOHNSON: Yes, sir, Your Honor?

5 THE COURT: Anything else?

6 MR. JOHNSON: No, sir, Your Honor.

7 THE COURT: So you want -- his objection is
8 that the Solicitor said, "No. There was no knife
9 found because it's not there because he took it with
10 him"?

11 MR. JOHNSON: That's correct, Your Honor.

12 THE COURT: Wouldn't that be an acceptable
13 argument on circumstantial evidence?

14 MR. JOHNSON: I believe so, Judge, but I
15 suppose if ---

16 THE COURT: Well, I'll be glad to listen to it.

17 MR. JOHNSON: Yes, sir, Your Honor.

18 THE COURT: Either through your argument or his
19 testimony.

20 MR. JOHNSON: Yes, sir, Your Honor. I
21 appreciate that.

22 THE COURT: Okay. Anything else before we
23 start?

24 MR. JOHNSON: No, sir. I'm ready to proceed.

25 THE COURT: All right. Anything the State

1 wants to put on the record before we begin?

2 MR. SCHMECKPEPER: Nothing from the State, Your
3 Honor.

4 THE COURT: All right. Call your first
5 witness.

6 MR. JOHNSON: Thank you, Your Honor. I'm going
7 to call Mr. Hayes.

8 THE APPLICANT: (Approaching.)

9 THE CLERK: Mr. Hayes, please place your left
10 hand on the Bible and raise your right hand.

11 THE APPLICANT: (Complying.)

12 THE CLERK: You do solemnly swear or affirm
13 that the testimony you're about to give in this case
14 will be the truth, the whole truth, and nothing but
15 the truth so help you God?

16 THE APPLICANT: I do.

17 THE COURT: Thank you. You may be seated.

18 THE APPLICANT: (Complying.)

19 THE CLERK: Please state your full name for the
20 record.

21 THE APPLICANT: Ralph Beverly Hayes.

22 MR. JOHNSON: Thank you, Your Honor.

23 RALPH BEVERLY HAYES,
24 having been produced and first duly sworn as a
25 witness on behalf of the Applicant, testified as

1 follows:

2 DIRECT EXAMINATION

3 BY MR. JOHNSON:

4 Q. Mr. Hayes, you're the Applicant in this matter;
5 is that correct?

6 A. Correct.

7 Q. Okay. Now, I ask you a little bit about the
8 background of your case. You're currently housed in
9 the South Carolina Department of Corrections; is
10 that correct?

11 A. That's correct.

12 Q. And what type of sentence are you serving?

13 A. Life sentence.

14 Q. What is the underlying charge for your life
15 sentence?

16 A. Murder.

17 Q. Okay. And can you please tell the Court
18 shortly what was alleged and what you were convicted
19 of, what crime? What were the facts that you were
20 alleged to -- what crime were you alleged to have
21 committed?

22 A. Murder with intent.

23 Q. Were you -- who -- what was the victim's name?

24 A. Jacquelyn Alexander.

25 Q. And you were accused of murdering her; is that

Direct examination of Mr. Hayes by Mr. Johnson

18

1 correct?

2 A. Yes.

3 Q. Okay. And that was the background for which
4 you were tried upon; is that correct?

5 A. Yes.

6 Q. All right. Now, you were represented by whom
7 at trial?

8 A. Ms. -- Ms. Horlbeck and Ms. Johnson.

9 Q. Okay. And they -- were they your only
10 attorneys, or did you have any other attorneys?

11 A. They were my only attorneys.

12 Q. And were you able to go over discovery and
13 everything with Ms. Horlbeck or Ms. Johnson?

14 A. I did.

15 Q. Okay. And you went up for trial and you feel
16 that you were prepared for trial?

17 A. Yes.

18 Q. Now, there's a number of issues, including the
19 ones that I just recited to the Court beforehand.
20 I'd like for you to get your materials and let's go
21 through them.

22 A. Okay.

23 Q. Are you prepared?

24 A. Yes.

25 Q. Okay. There was a first issue that had to do

1 with you felt that she should've moved to strike two
2 jurors. Let's go through the Court, and I believe
3 you have it organized by page numbers so everyone
4 can follow along. And let's go slowly so that
5 everyone can understand. Okay?

6 A. Okay.

7 Q. All right. So let's proceed.

8 A. Page 7, Todd Adcock, number one on the first
9 jury. He -- he stated that -- the Court asked him
10 was a complaining witness, a victim, or had been
11 accused or charged in any way with a crime of
12 violence against a person.

13 Q. Well, let me slow you down. So you said
14 Adcock. What's his name?

15 A. His name is Todd Adcock, A-d-c-o-c-k.

16 Q. And it was Juror No. 1; is that correct?

17 A. Juror No. 1.

18 Q. Okay. And he was seated on the jury, correct?

19 A. Yes.

20 Q. And so right now what we're talking about is
21 this was jury -- jury selection and that was the
22 part of your question asked by the judge?

23 A. Yes.

24 Q. All right. And what was the question that was
25 asked again?

1 A. The question was asked, complaining witness,
2 victim or has been accused or charged in any way
3 with a crime of violence against a person.

4 Q. And what was his answer?

5 A. His answer was on page -- his answer was on
6 page 22, line 13 through 22.

7 Q. What was his answer?

8 A. His answer was his father was charged with
9 criminal domestic violence.

10 Q. Did -- did he testify or did he state whether
11 or not that would affect his ability to be
12 impartial?

13 A. No. He said -- he said no. He said, no, it
14 wouldn't affect his -- his ability.

15 Q. Did your attorney question him any further
16 about the incident or his ability to be impartial?

17 A. No.

18 Q. Okay. Was there -- there was another juror
19 that was also seated who answered that her family
20 was the victim of a -- of a domestic violence; is
21 that correct?

22 A. That's correct.

23 Q. And who is that?

24 A. That was on -- that was Erica Redding --
25 Redding.

1 Q. So Erica N. Redding, is that the one?

2 A. Yes. She was number 164.

3 Q. Okay. And what did she say in answer to the
4 question? What was her situation?

5 A. She -- she stated the same thing, that she
6 was -- she was -- she was able.

7 Q. Oh, well, let me -- I'm going to need you to
8 answer the questions fully because we don't know
9 what you're thinking. Okay?

10 A. Okay.

11 Q. And so she -- what did she say to the judge as
12 far as the back -- the background of her -- her
13 familiarity with domestic violence?

14 A. I don't have that with me, but I have the -- it
15 was on line ---

16 THE COURT: 14 and 15.

17 THE APPLICANT: 14 and 15. 15 through 19.

18 BY MR. JOHNSON:

19 Q. Okay. So Erica Redding, you don't have the
20 transcript in front of you?

21 A. No, I don't.

22 Q. Okay. So if I showed it to you, would that
23 refresh your recollection?

24 A. Yes, it will.

25 Q. Okay. And you're talking about line 14 and 15

Direct examination of Mr. Hayes by Mr. Johnson

22

1 there?

2 A. Yes. Yes.

3 Q. And what did she say?

4 A. She just said, "I can't really tell you because
5 he had been in and out of trouble so much."

6 Q. Okay. Do you know whether or not she stated
7 that it would affect her ability to be impartial?

8 A. She said, "I don't think so."

9 Q. And was there any further voir dire by either
10 your client or the State or the Court or otherwise?

11 A. No.

12 Q. Okay. And she was eventually seated to the
13 jury as well?

14 A. Yes.

15 Q. Okay. Do you feel that your attorney should've
16 moved to strike these witnesses or these -- these
17 jurors for cause?

18 A. Yes.

19 Q. On what basis?

20 A. Because it's -- it's -- by any ---

21 Q. Take your time.

22 A. Because they were -- they was allowed to sit on
23 the jury, I believe that the past experience affect
24 their ability and impartial, remove to strike for
25 cause.

1 Q. Okay. And you believe that you were prejudiced
2 because they sat on the jury?

3 A. Yes.

4 Q. You believe that they could consider their past
5 experiences, that's essentially what you're trying
6 to say?

7 A. Yes, I am.

8 Q. All right. Now, you also made reference to the
9 closing statements of the prosecutor; is that
10 correct?

11 A. Correct.

12 Q. Are you ready for questioning there?

13 A. Yes, sir.

14 Q. Okay. What was the problem there in your
15 opinion?

16 A. There she's stating that there was no knife
17 found because it was not there because he took it
18 with him. But in trial, there -- there wasn't
19 nothing submitted or -- or conceded telling that,
20 you know, that I had a knife or I was with a knife.
21 You know, that was her opinion.

22 Q. So you basically -- you're saying that that was
23 a speculative thing to say?

24 A. Yes.

25 Q. And you believe that her speculation prejudiced

Direct examination of Mr. Hayes by Mr. Johnson

24

1 you because the jury -- she was allowed to say that
2 to the jury?

3 A. Yes.

4 Q. Now, you also alleged that there were certain
5 pictures of the victim -- and again -- excuse me,
6 Your Honor. Let me cut you off.

7 Did we decide and I had questioned him about
8 the attorney -- about the appellate defense issue.
9 Did we say -- I wasn't sure, Judge. I'm sorry.

10 THE COURT: I'm going to allow it, but I'm
11 going to leave the record open if that goes any
12 further past today.

13 MR. JOHNSON: Thank you, Your Honor. I'm
14 sorry.

15 BY MR. JOHNSON:

16 Q. So we questioned you, Mr. Hayes. Now, we're
17 talking about -- do you recall the situation where
18 an objection was made to photos being entered into
19 the closing argument of the victim?

20 A. Yes.

21 Q. Okay. And your counsel objected?

22 A. Yes, she did.

23 Q. Okay. And she asked for a mistrial?

24 A. Yes, she did.

25 Q. All right. And was a curative instruction

1 issued by the Court?

2 A. Yes, it was.

3 Q. Now, did your counsel at the time believe that
4 the curative instruction was appropriate or ---

5 A. No, she did not.

6 Q. Okay. And do you agree with that?

7 A. Yes, I do.

8 Q. And this is an issue that was not heard by the
9 Appellate Court?

10 A. I can't answer because I don't -- I can't
11 recall that.

12 Q. Okay. Now, would you like the Appellate Court
13 to review whether or not a mistrial should've been
14 granted and whether a curative instruction should've
15 been appropriate?

16 A. Yes.

17 Q. Okay. Now, you also allege that there were
18 some issues with Mr. White or -- or -- or witnesses
19 being sequestered.

20 A. Yes.

21 Q. Are you ready for questioning on that issue?

22 A. Yes.

23 Q. All right. Can you please portray to the Court
24 what the problem was? Take your time. Let us know
25 when you're ready.

Direct examination of Mr. Hayes by Mr. Johnson

26

1 A. Yes. During the time that Detective Miller was
2 being questioned, and a lot of things that dealing
3 with the case, he heard from Ms. -- during the time
4 of Ms. Adams' direct examination.

5 Q. So let me slow you down. Detective Miller is
6 who?

7 A. Oh, he's -- he was -- he said -- he said he's
8 the lead detective of the case.

9 Q. Okay. And, you know, what was the testimony
10 that was given? What were the concerns, if you
11 recall?

12 A. I can't think. Let's see. He was -- I can't
13 recall. I can't recall.

14 Q. Okay. Could he have been test -- giving
15 testimony regarding some of the background facts and
16 issues?

17 A. Yes, he was.

18 Q. And who was -- who was present that -- that you
19 think most prejudiced you?

20 A. You said who do I think was the most
21 prejudiced? It was -- it was Mr. White. He
22 shouldn't have been in the -- in the court at that
23 time.

24 Q. Who is Mr. White?

25 A. Mr. White was the prosecutor witness.

1 Q. Was he the main witness?

2 A. He was the main witness.

3 Q. And what -- what -- what was the -- what type
4 of testimony did he give?

5 A. He -- he gave the testimony that -- of me. He
6 gave testimony of me.

7 Q. And things that you said?

8 A. The things that I said.

9 Q. And Mr. White, when he gave testimony, I
10 believe you also alleged an issue that he was
11 allowed to be led by the prosecutor; is that
12 correct?

13 A. Correct.

14 Q. Are you prepared to testify on that currently?

15 A. Yeah, because -- yes, I am.

16 Q. Okay. What happened there?

17 A. Mr. White was stating that it was a Sunday and
18 that he couldn't remember the date, but he -- he
19 knew that it was Sunday because the church was
20 feeding, but ---

21 THE COURT: Because the church was feeding?

22 THE APPLICANT: The church was feeding. And
23 Mr. -- Ms. Adams told -- believed -- believed that
24 it was Tuesday, June the 9th, which I believe was a
25 credibility -- it was credibility.

Direct examination of Mr. Hayes by Mr. Johnson

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1 THE COURT: All right. What page was this on?

2 MR. JOHNSON: Your Honor, this was ---

3 THE APPLICANT: This was ---

4 MR. JOHNSON: Go ahead, sir.

5 THE APPLICANT: --- page 128, line 9 through

6 22.

7 BY MR. JOHNSON:

8 Q. And this is the date where he alleged to have
9 spoken with you; is that correct?

10 A. Yes. This is the day he supposedly alleged he
11 talked to me.

12 Q. Okay. And so that date you believe was
13 important if they believed that he actually spoke
14 with you on that date or another date. Based on
15 what you said to him, he could potentially have been
16 prejudicial to you? You believe that?

17 A. Yes, it was. Because a Sunday would've been on
18 a -- I mean, Sunday would've been the 7th of June,
19 not the 9th.

20 Q. Okay. What's the -- what -- what is the --
21 tell the Court ---

22 THE COURT: What year was this, 2010?

23 MR. JOHNSON: Yes, sir, Your Honor.

24 THE COURT: Okay.

25 BY MR. JOHNSON:

1 Q. And tell the Court why -- why that was
2 important.

3 A. Because he -- he stated -- he stated that it
4 was a Sunday, but he -- not only at that point -- at
5 that page right there or that line, but in other
6 parts of the transcript as well.

7 Q. Okay. And that would've been inconsistent ---

8 A. Yes.

9 Q. --- with Tuesday?

10 A. Yes.

11 Q. Okay. And you believe that distorts his
12 credibility?

13 A. Yes, sir. Yes, sir.

14 Q. All right. So the Court knows, what -- what is
15 it that he alleged that you said to him?

16 A. He -- he said -- he said that -- that I -- I
17 was talking to him in broad daylight. It had to be
18 a Sunday because he was -- you know, they was -- he
19 was -- they was feeding and that I was baldheaded.
20 But then in one statement he said that I was -- had
21 no hat on. I had a hat on.

22 Q. Let me rephrase my question. Did he -- did he
23 present to the Court that you gave some sort of
24 admission of guilt?

25 A. Yes.

Direct examination of Mr. Hayes by Mr. Johnson

30

1 Q. Okay. Do you remember what that was?

2 A. No, I do not.

3 Q. But he had portrayed to the Court that you gave
4 some sort of admission of guilt?

5 A. Yes.

6 Q. And so his believability would've been
7 important?

8 A. Yes.

9 MR. JOHNSON: Okay. Umm ---

10 THE COURT: So did -- did the witness just say
11 that -- the witness just said that he did talk to
12 Mr. White? Because he said he had -- he said he
13 didn't have a hat on, but he said, "Yeah, I did have
14 a hat on."

15 THE APPLICANT: The witness said that -- that I
16 had a hat on.

17 THE COURT: Well, somebody's going to ask him
18 at some point I guess if he did have a conversation
19 with Mr. White, but I'm a little unclear. I'm not
20 getting the context. That's not what I'm getting.

21 MR. JOHNSON: I know. I'm trying to get there,
22 Judge.

23 THE COURT: So Mr. White was led by the
24 prosecutor about the specific date that he claims to
25 have talked to -- to Mr. Hayes?

1 MR. JOHNSON: Correct.

2 THE COURT: Okay.

3 MR. JOHNSON: He initially said that it was a
4 Sunday in the transcript, but then prosecutor led
5 him that it was a different date.

6 THE COURT: And what -- is somebody -- are you
7 going to explain to me or the witness is why that
8 makes any difference?

9 MR. JOHNSON: Well, Judge, you know, if I may
10 go offhand?

11 THE COURT: Yes.

12 MR. JOHNSON: I suppose it goes towards his
13 credibility. Your Honor, to put it in a picture and
14 maybe if I could ask you to review his testimony,
15 but he was kind of a transient.

16 THE COURT: Who?

17 MR. JOHNSON: The -- the -- the star witness.

18 THE COURT: Not Mr. Hayes?

19 MR. JOHNSON: He was kind of one too.

20 THE COURT: Okay.

21 MR. JOHNSON: But the star witness was also a
22 transient. And he based -- said some inconsistent
23 testimony, was also kind of a -- for lack of a
24 better word, kind of a fireball, and so -- but in
25 any case, if you believe what he said, my client did

1 this because it was him who broke the case open. It
2 was him who was the -- the most important piece
3 tying my client to the victim in this matter.

4 THE COURT: And how did Mr. White do that?

5 MR. JOHNSON: He said that he and my client
6 spoke as my client was drinking a beer. And my
7 client said, "You've never killed someone before,"
8 because he said he looked down.

9 THE COURT: Who said that?

10 MR. JOHNSON: Mr. White said that my client --
11 he approached my client. My client was looking down
12 and was drinking a beer, and that they had a
13 conversation and then he said that "You ain't never
14 killed anybody before."

15 THE COURT: Who's "he"?

16 MR. JOHNSON: My client. Sorry, Judge.

17 THE COURT: The Applicant said, "You've never
18 killed anybody"?

19 MR. JOHNSON: Correct.

20 THE COURT: And what did Mr. White say to that?

21 MR. JOHNSON: He said he was kind of shocked.
22 He was surprised.

23 THE COURT: Okay. And that's in this
24 transcript?

25 MR. JOHNSON: Yes, sir.

1 THE COURT: All right.

2 MR. JOHNSON: Yes, sir. And that's what I was
3 trying -- trying to get him to go into, Judge. And
4 I'm sorry. I think he's probably mainly been
5 preparing on remembering the legal stuff that he
6 needs to say.

7 THE COURT: Well, you -- you've got the legal
8 stuff covered. He's -- he's got testimony.

9 MR. JOHNSON: Yes, sir.

10 THE COURT: I'll get legal stuff from the
11 lawyers.

12 MR. JOHNSON: Yes, sir, Judge.

13 THE COURT: Okay.

14 MR. JOHNSON: Okay. I believe -- I believe
15 that covers our grounds, Judge. You need to answer
16 any questions that the Mr. -- the Attorney General
17 has at this time.

18 THE COURT: All right. Cross-examination?

19 CROSS-EXAMINATION

20 BY MR. SCHMECKPEPER:

21 Q. Afternoon, Mr. Hayes.

22 A. Good afternoon.

23 Q. Just to be clear, you're alleging that during
24 the closing statement of the prosecutor, excuse me,
25 the solicitor said, "No knife was found because the

1 Applicant -- because you took it with you," correct?

2 A. Yes, sir.

3 Q. That's what she said. And you're also alleging
4 counsel -- or your co-counsel was ineffective for
5 failing to object to these pictures coming in during
6 closing arguments?

7 A. Yes, sir.

8 Q. What were those pictures?

9 A. There was -- they were hard file flicks.

10 Q. Excuse me?

11 A. Hard file image portals that was -- I objected
12 to, but that's on page 98, line 9 through 12.

13 Q. No. I'm talking about during the closing
14 argument.

15 A. You're talking about during the closing
16 argument?

17 Q. Uh-huh.

18 A. Those -- those were some pictures of the
19 deceased.

20 Q. Okay. Can you be a little more specific?

21 A. They were given to -- given it to -- it was a
22 family picture, I guess. I don't know. I wasn't
23 shown it.

24 Q. But did you see it during the trial?

25 A. No, I did not. It wasn't submitted into

1 evidence.

2 Q. But you didn't see it when they put it up on
3 the podium?

4 A. It wasn't in the folio.

5 MR. SCHMECKPEPER: Okay.

6 THE COURT: No. The question is: Did you see
7 the photo when the prosecutor showed it to the jury?

8 THE APPLICANT: I seen it in her hand, yes.

9 THE COURT: Did you see what it showed?

10 THE APPLICANT: No, I did not.

11 THE COURT: All right.

12 BY MR. SCHMECKPEPER:

13 Q. And you said the prosecutor or the solicitor
14 was allowed to lead Mr. White with -- with respect
15 to the date, right?

16 A. Yes.

17 Q. Did you actually talk to Mr. White?

18 A. Excuse me?

19 Q. Did you ever talk to Mr. White?

20 A. No, I did not.

21 Q. So you're saying you never talked to Mr. White
22 and that he made up the date?

23 A. That's what it is, he made up dates.

24 MR. SCHMECKPEPER: Your Honor, I have no
25 further questions.

1 THE COURT: Aren't you going to ask him about
2 the hat? He just said, "I had a hat on when I
3 talked to him."

4 MR. SCHMECKPEPER: Your Honor, I believe he was
5 referring to the testimony, but I could be wrong
6 about that.

7 THE COURT: All right. Then I'll leave it to
8 y'all. Any redirect?

9 MR. JOHNSON: No, sir, Your Honor.

10 THE COURT: Okay. You can step down.

11 THE APPLICANT: (Complying.)

12 THE COURT: Next witness.

13 MR. JOHNSON: Your Honor, that's the
14 Applicant's case.

15 THE COURT: All right. Witnesses for the
16 State?

17 MR. SCHMECKPEPER: Your Honor, the State calls
18 Caroline Horlbeck.

19 THE WITNESS: (Approaching.)

20 THE CLERK: Ms. Horlbeck, place your left hand
21 on the Bible and raise your right hand.

22 THE WITNESS: (Complying.)

23 THE CLERK: You do solemnly swear or affirm
24 that the testimony you're about to give in this case
25 would be the truth, the whole truth, and nothing but

1 the truth so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you. You may be seated.

4 THE WITNESS: (Complying.)

5 THE CLERK: Please state your full name for the
6 record.

7 THE WITNESS: Caroline Horlbeck.

8 CAROLINE HORLBECK,

9 having been produced and first duly sworn as a
10 witness on behalf of the State, testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. SCHMECKPEPER:

14 Q. Good afternoon, Ms. Horlbeck.

15 A.. Hi.

16 Q. Now, you were appointed in this case; is that
17 correct?

18 A. I was.

19 Q. You're a Public Defender?

20 A. Yes, I was. Yeah.

21 Q. Where were you working?

22 A. I was working with the Public Defender's Office
23 on a part-time basis.

24 Q. Did you represent Mr. Hayes through the
25 entire -- through the entire pendency of these

1 charges?

2 A. Yes, I did.

3 Q. Did you receive discovery in this case?

4 A. I did.

5 Q. Did you review that discovery with the
6 Applicant?

7 A. I did. And I've got some notes in the file
8 reflecting that Mr. Hayes requested a copy of
9 discovery, and I believe we provided that to him.

10 Q. I want you to take these issues one by one. As
11 far as -- and you heard the testimony there were two
12 jurors?

13 A. Yes, sir.

14 Q. Apparently, they have been -- have had family
15 members who were convicted of domestic violence?

16 A. Uh-huh.

17 Q. And you chose not to strike those jurors?

18 A. Well, I looked through my notes about the
19 jury -- my notes on the jury selection. And I'll
20 just -- I'll just start with Juror No. 1. I think
21 that's Mr. Adcock.

22 And I looked through the notes that I've got,
23 and I believe -- it looks like on page -- looks like
24 the Court asked on page 20 -- the Court was asking
25 if there's any member of the jury panel or a member

1 of your immediate family who has ever been a
2 complaining witness, a victim, or been accused or
3 charged in any way with a crime of violence against
4 a person. If you or a member of your immediate
5 family have had that, either being a victim, a
6 complaining witness, or an individual charge or
7 accused of such then would you please stand.

8 Looks like on page 22, Mr. Adcock stood. And I
9 believe that's Juror No. 1. And he stated starting
10 with line 14, "My father was charged with criminal
11 domestic violence."

12 And the Court said, "How long ago was that?"

13 And he said, "Two years ago."

14 I looked at my -- and this -- and I don't know
15 that I have great detailed information or great
16 detailed memory of exactly what I was thinking when
17 this witness was called, but just in talking with
18 co-counsel and sort of piecing together a little bit
19 of my notes and looking at what his explanation was,
20 it looks like this juror would've been about 30
21 years old, 29 or 30 years old.

22 He did not indicate that he was a victim of the
23 CDV, rather he was stating that his father had been
24 charged with CDV. And I wonder if -- and I'm
25 thinking that I thought that that might be a good

Direct examination of Ms. Horlbeck by Mr. Schmeckpeper

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1 thing for us, that someone's father had actually
2 been charged with this. Sometimes that can be a
3 good thing, especially if -- if it -- someone feels
4 like they were not fairly charged or not fairly
5 convicted. That could actually be a bonus for us.

6 And in -- in looking back at that, I would make
7 that kind of call in looking at someone's demeanor
8 and listening to them speak as they explained why
9 they'd be standing up to the judge.

10 Q. Would you say the thing largely applies to
11 Mr. Adcock?

12 A. No. That's a little bit different. Counting
13 up my strikes, at that point it was ---

14 THE COURT: This was Mr. Adcock.

15 MR. SCHMECKPEPER: I misspoke, Your Honor.

16 It's Ms. Redding.

17 THE COURT: Okay.

18 THE WITNESS: I think that's Juror 87, I think.
19 At that point when her number was called, we had ten
20 strikes. And in counting, looks like we'd exercised
21 one, two, three, four, five, six, seven, eight,
22 nine, ten, so we had to take her.

23 And I looked at my notes. I do have where she
24 says that her -- in my notes I have -- I wrote down
25 -- and I don't think that -- that's not this. Is it

1 164? Do you know her juror number? Was it number

2 164?

3 THE COURT: Yeah.

4 THE WITNESS: Okay. On my notes with that one,
5 we do have -- we -- we made a note of that, but we
6 just had to take her. We exercised all of our
7 strikes at that point.

8 BY MR. SCHMECKPEPER:

9 Q. And you didn't feel it would be necessary to
10 make that strike for cause?

11 A. You know, looking back, perhaps I should've
12 done that. Yes. Perhaps I should've done that, but
13 I think she had ---

14 THE COURT: You mean a motion to strike for
15 cause, not a -- there is no such thing as a strike
16 for cause.

17 MR. SCHMECKPEPER: I apologize, Your Honor.

18 THE COURT: Move to strike for cause?

19 MR. SCHMECKPEPER: Yes, Your Honor.

20 THE WITNESS: It may -- it may -- and -- yes.
21 I probably should've done that looking back and I
22 didn't.

23 MR. SCHMECKPEPER: And I think Ms. Johnson's
24 already made the motion to sequester witnesses; is
25 that correct?

Direct examination of Ms. Horlbeck by Mr. Schmeckpeper

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1 THE WITNESS: She did. Yes.

2 MR. SCHMECKPEPER: So I'll ask her about that
3 allegation.

4 THE COURT: Let me ask you, at what point would
5 you have moved to strike for cause?

6 THE WITNESS: I think that I probably should've
7 moved to strike for cause once her name was called.
8 Once she was actually stood up and -- and it became
9 obvious that she -- well...

10 THE COURT: When her name was called?

11 THE WITNESS: No. I think I would've backed
12 up, Judge. I think I should've struck her for cause
13 when she -- probably at the time that she stood up
14 and explained to the Court on page 23 that her
15 father was charged with criminal domestic violence.

16 And at that point, she -- you know, the -- the
17 judge asked her, "Would that affect your ability to
18 be a fair juror?"

19 And she said, "I don't think so."

20 And he questioned her further, "Do you believe
21 in any way that if -- that if that event happened in
22 your life with your family, would that affect your
23 ability to be a fair juror?"

24 And she said, "No, sir."

25 "You could be fair to both sides?"

1 "Yes, sir."

2 I think at that point, I don't know what the
3 judge would've done, but at that point, that
4 would've been the appropriate time to move to strike
5 for cause.

6 BY MR. SCHMECKPEPER:

7 Q. Now, her --- her father wasn't -- her father was
8 a perpetrator to domestic violence?

9 A. It says her father was charged with criminal
10 domestic violence.

11 Q. And that's the same thing that Todd Adcock; is
12 that correct?

13 THE COURT: I'm sorry. What?

14 BY MR. SCHMECKPEPER:

15 Q. That's the same charge that Todd Adcock's ---

16 A. Todd Adcock's father, yes, I believe so.

17 Q. During the closing statement of the prosecutor,
18 I think the prosecutor said, "No knife -- there was
19 no knife found because the Applicant took it with
20 him."

21 Can you turn your attention to page 364 -- I'm
22 sorry -- page 357 -- page 370. Do you remember the
23 judge ---

24 THE COURT: What page?

25 MR. SCHMECKPEPER: 370, Your Honor.

Direct examination of Ms. Horlbeck by Mr. Schmeckpeper

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1 BY MR. SCHMECKPEPER:

2 Q. Do you remember the judge telling the jury that
3 closing statements aren't evidence?

4 A. I do. I think that's generally -- the judge
5 generally makes those comments before the trial
6 starts and then during the jury instructions.

7 Q. Next, I want to ask you briefly about those
8 pictures that were admitted during the closing
9 argument or the Solicitor presented during closing
10 argument.

11 A. Uh-huh.

12 Q. Do you remember what those pictures were of?

13 A. I believe it was a picture of Ms. Jackie
14 Alexander who would've been the victim in this case.
15 And I believe it was a picture of her with her
16 family.

17 It was not something that had been submitted
18 into evidence, and they -- the State had not shown
19 me that picture at all. They just simply started
20 talking and showing this picture to the jury. And I
21 was probably writing notes at the time, but I
22 remember when I realized what was going on, I
23 remember thinking, oh, they had to have been looking
24 at this picture for quite a little bit of time.
25 More than time than I would've wanted them to.

1 And I -- I did my best. You know, I objected
2 as timely as I could, but I'm worried that -- I
3 remember thinking I was worried that they had looked
4 at that picture too long.

5 Q. And did you move for a mistrial?

6 A. I believe I did, yes.

7 Q. And did you then object to the sufficiency of a
8 curative instruction?

9 A. I did because I was concerned that the jury
10 had -- had too much time to look at that picture.

11 MR. SCHMECKPEPER: Beg the Court's indulgence.

12 BY MR. SCHMECKPEPER:

13 Q. Concerning Mr. White. Now, Mr. White I think
14 was one of the State's key witnesses?

15 A. Uh-huh.

16 Q. Let's talk about his credibility for a moment.
17 Did you attack his credibility?

18 A. I did my best and obviously it wasn't
19 successful, but, yeah, I did my best.

20 Q. But simply on cross-examination, what kind
21 of -- what kind of -- what was the crux of your
22 argument on Mr. White's testimony?

23 A. Well, I was trying to point out that he was
24 transient. Not that that's the end of the world
25 because I've represented a lot of people who were

1 transient, but sometimes you can appeal to someone
2 on the jury that might not understand that way of
3 life and may take that into consideration when
4 they're thinking -- when they're wondering whether
5 or not this witness is particularly credible.

6 He had had some -- a checkered past. He talked
7 in his statement about smoking up his check and that
8 kind of thing. And I certainly tried to bring that
9 out in his -- I tried to just handle it delicately
10 because you don't want to offend anybody. Everybody
11 lives their life differently, but I tried to bring
12 that out.

13 I also -- I did try to bring out the fact that
14 Mr. White was very unsure of the dates. And I did
15 that on 160 at the bottom, starting on line 22 and
16 into page 161.

17 And if I can just look at my notes. I've got a
18 lot of notes. I was also trying to focus on the
19 fact that he, Mr. White, had allow some time to pass
20 between discussing this -- this matter with my
21 client, Mr. Hayes, and reporting it to the police.
22 I thought that was very strange.

23 It just seemed odd to me that if someone had
24 insinuated or told you they found a deceased person
25 in their home and, you know, then sort of said,

1 "You've -- you haven't ever killed anybody." I just
2 was trying to make the jury wonder if this was
3 really said, why did you wait so long to tell
4 somebody. Those were probably the main points.

5 And I was also trying to hint on the -- the
6 issue of the -- the lineup. Because in Mr. White's
7 statement, he had clearly said that the police had
8 come to the shelter where he was staying, and they
9 had shown a picture of someone they were looking
10 for. Mr. White kept trying to say, "But I didn't
11 look at the picture. I didn't look at the picture."

12 We were convinced that that wasn't altogether
13 true. We -- we were convinced -- when I say "we," I
14 mean myself and my co-counsel. We suspected that
15 perhaps Mr. White had looked at the picture that the
16 police had shown when they arrived at his shelter
17 one evening.

18 And we wondered if -- if Mr. White had just
19 kind of said, "Oh," you know, and -- and kind of the
20 thought, well, maybe this is somebody that they're
21 looking for. Maybe this is the same guy. We have
22 no idea of the picture that the police actually
23 showed at the shelter, but we -- we just wondered --
24 we were trying to kind of discredit that as well,
25 discredit his photo identification.