

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Honorable J. Cordell Maddox, Circuit Court Judge

TIMMY ROGERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002100

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHNNY ELLIS JAMES, JR.
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

Copy

-VS-)

2008-GS-26-02450

TIMOTHY J. ROGERS)

DEFENDANTS.)

THE FOLLOWING PROCEEDINGS WERE HELD BEFORE THE HONORABLE

THE HONORABLE LARRY B. HYMAN, JR.;

IN THE CIRCUIT COURT OF HORRY COUNTY, BEGINNING AT 2:06
PM ON THE 11TH DAY OF OCTOBER, 2010, AT THE HORRY COUNTY
COURTHOUSE, 15TH JUDICIAL DISTRICT, HORRY COUNTY GENERAL
SESSIONS COURT, CONWAY, SOUTH CAROLINA.

REPORTED BY: H. EUGENE BUCKNER, CVR

COPY

H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT
PO BOX 1462, CONWAY, SC 29526-1462

**This transcript volume contains only
that portion reported by
H. Eugene Buckner.**

**(See Hattie Gordon for remainder
of these judicial proceedings.)**

APPEARANCES:

Jimmy A. Richardson, II, Esquire
15th Circuit Solicitor's Office
P.O. Box 1276
Conway, SC 29528

(843) 915-8610

.... ON BEHALF OF THE STATE

Kia T. Wilson, Esquire; and
James Cullen Galmore, Esquire
Horry County Public Defender's Office
P.O. Box 1666
Conway, SC 29528

(843) 915-5385

.... ON BEHALF OF DEFENDANT

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1 BAILIFF:

2 Order in the court. All Rise.

3 THE COURT:

4 All right. Thank you very much.

5 Glad to see you all. Please be seated.

6 All right.

7 Mr. Richardson.

8 MR. RICHARDSON:

9 Yes sir.

10 THE COURT:

11 Call your case.

12 MR. RICHARDSON:

13 Your Honor -- uh -- that State

14 would call State of South Carolina versus Timmy Rogers.

15 The indictment is for murder.

16 And -- uh -- it is my

17 understanding we're going to go through some pretrial

18 matters.

19 THE COURT:

20 All right.

21 Let's get Mr. Rogers in, then.

22 Is he incarcerated?

23 MR. RICHARDSON:

24 Yes sir.

25 THE COURT:

1 Very well. Let's bring him in.

2 MR. RICHARDSON:

3 And Your Honor -- uh -- of course
4 we'll go in whatever order you ask us.

5 Uh -- But -- uh -- I want to -- I
6 want to update The Court with regard to -- uh -- the AT&T
7 people.

8 We have -- uh -- finally, today,
9 gotten a name of a representative that would simply -- uh
10 -- certify the records and put them in at the -- at the
11 time.

12 He says that he's not going to be
13 here until tomorrow.

14 Uh --

15 THE COURT:

16 Well, did he ask you if that was
17 all right?

18 MR. RICHARDSON:

19 No sir.

20 Uh -- He asked -- Tony has been
21 talking to him a good bit. And he's under subpoena for
22 -- for today. But -- uh -- we told him that the case
23 would probably start tomorrow.

24 And AT&T was very apologetic. But
25 what they were saying is that they had tried to bring

1 someone from West Palm Beach, Florida.

2 When that didn't work out, they
3 got, what they are calling, a local person who is at
4 least four hours away.

5 Now, I -- I don't think that
6 that's going to be a hiccup; because what we are prepared
7 to do today is go through the process of how we got these
8 records.

9 And then, I could assure The
10 Court, he's ready to come and testify that:

11 Those are, in fact, our records.

12 That would just be the last deal.

13 Uh -- Now if there's any question,
14 the only thing that he would be able to answer is whether
15 or not those are his records.

16 But the police will be able to
17 tell what process they went through to get them, if
18 that's satisfactory with the Defense?

19 THE COURT:

20 Well, what do you say about that

21 Ms. -- uh -- Wilson?

22 MS. WILSON:

23 Your Honor, it would absolutely
24 not be satisfactory.

25 Uh -- Part and parcel of the

1 requirement under 803 is -- the test is that:

2 The records custodians be able to
3 come in, testify as to the -- the mode of preparation and
4 to the -- uh -- to the nature of the record -- I -- Right
5 -- to the trustworthiness of the record.

6 And with the absence of the actual
7 person who is going to provide the information to The
8 Court, I don't see how we could go forward on that --
9 THE COURT:

10 Well, I can have that issue heard
11 tomorrow, then.

12 MS. WILSON:

13 Yes sir.

14 THE COURT:

15 Okay?

16 All right, what else we got?

17 Don't we have a Jackson v Denno
18 Hearing this morning?

19 MS. WILSON:

20 Yes.

21 THE COURT:

22 This afternoon?

23 MR. RICHARDSON:

24 We do, Your Honor.

25 MS. WILSON:

1 Yes sir.

2 MR. RICHARDSON:

3 And the -- the only other thing:

4 I didn't run this by Ms. Wilson,
5 but I have -- uh -- asked crime scene to prepare -- uh --
6 a series of photographs through -- uh -- PowerPoint.

7 Uh -- At some point, I would ask
8 that we could get through those photographs to make sure
9 that there is not anything of any objection on the
10 PowerPoint.

11 And if so, we'll go ahead and mark
12 that.

13 And I've marked a good bit of the
14 evidence; but -- uh -- but that -- that will come in with
15 the same girl.

16 THE COURT:

17 All right.

18 Let's -- Let's step back to the --
19 to the -- uh -- We got a whole afternoon.

20 Let's -- Let's step back to the --
21 uh -- hearing on the admissibility of the record -- uh --
22 of the business record -- phone record.

23 MR. RICHARDSON:

24 Yes sir.

25 THE COURT:

1 Uh -- Can we -- Ms. Wilson, is
2 there some of that that we can do today?

3 MS. WILSON:

4 Uh -- Your Honor, I don't see how
5 we could.

6 THE COURT:

7 I mean, we're not doing it in
8 favor of a jury.

9 Uh -- And I can tell you:

10 It doesn't make any difference to
11 me in what order you do it.

12 But what -- what did you intend to
13 show, Mr. Richardson, by way of witnesses? How many
14 witnesses did you need to have on that issue.

15 MR. RICHARDSON:

16 I've got --

17 THE COURT:

18 Do you need to have more than the
19 one?

20 MR. RICHARDSON:

21 Yes sir. I've got the -- the
22 police officer -- uh --

23 THE COURT:

24 Good afternoon, Ms. Bailey.

25 (Attorney Amanda Bailey entered

1 the courtroom.)

2 THE COURT:

3 Yes sir.

4 MR. RICHARDSON:

5 -- that requested all of those.

6 He's -- He's here.

7 Uh -- The only other one would be
8 the person from AT&T that would look at them and say:

9 Yes, those are, in fact, our
10 records.

11 I can put up the police officer
12 that could give the -- give the report --

13 THE COURT:

14 I -- I mean, I'm not looking for
15 work.

16 MR. RICHARDSON:

17 I --

18 THE COURT:

19 I'm just saying:

20 If there's someone that we can put
21 up, even if it's out of order, that -- uh -- whose
22 testimony can be fully explored today.

23 Uh -- If not, we'll -- I'll be
24 happy to do it in the morning. That's fine.

25 MR. RICHARDSON:

1 Well, he'll be here at 8:30.

2 But we can -- we can put up the
3 police officer's part of it today, and -- and how it came
4 and --

5 THE COURT:

6 Ms. Wilson, do you see a problem
7 with that?

8 MS. WILSON:

9 Your Honor, again -- uh -- I would
10 prefer to have everyone in place, testifying in the
11 morning.

12 THE COURT:

13 All right.

14 Well, we'll do it that way.

15 Uh -- Mr. -- uh -- Richardson, do
16 you plan on calling that early in your case?

17 MR. RICHARDSON:

18 Yes sir. Uh -- The AT&T --

19 THE COURT:

20 How early?

21 MR. RICHARDSON:

22 -- rep would be the third -- third
23 or fourth witness.

24 THE COURT:

25 Okay.

1 Well, we can do it probably at the
2 -- uh -- midmorning break tomorrow, then.

3 MR. RICHARDSON:

4 Yes sir.

5 THE COURT:

6 We'll just -- We'll do that then;
7 okay.

8 I just don't want to waste anymore
9 time.

10 All right.

11 So what we've got for this
12 afternoon, then, is the Jackson v Denno hearing.

13 And did -- did you have something
14 Ms. Wilson that you wanted to explore on a pretrial
15 hearing.

16 MS. WILSON:

17 Uh -- Just the motion to
18 sequester, Your Honor.

19 THE COURT:

20 Okay.

21 And I -- I think that Mr.
22 Richardson's -- uh -- agreed or consented to that motion.

23 Is that right, Mr. Richardson?

24 MR. RICHARDSON:

25 Yes sir. We don't have any

1 problem with that, Your Honor.

2 THE COURT:

3 Okay; sequestration as to both
4 sides:

5 Is that right, Mr. Richardson?

6 MR. RICHARDSON:

7 Yes sir.

8 THE COURT:

9 You wanted to have her witnesses
10 sequestered, as well --

11 MR. RICHARDSON:

12 Yes sir.

13 THE COURT:

14 -- except for, of course, the
15 Defendant

16 All right.

17 Who's your lead, Mr. Richardson?

18 Who you want in here?

19 MR. RICHARDSON:

20 Joseph Hawes is the lead detective
21 on this case.

22 And -- uh -- of course, there is
23 no one from the victim's immediate family that's going to
24 testify.

25 But --

1 THE COURT:

2 Well, of course the victim's can
3 be here --

4 MR. RICHARDSON:

5 Yes sir.

6 THE COURT:

7 -- uh -- particularly -- you know.

8 What would they testify, to Ms. --

9 Ms. -- uh -- Wilson?

10 MS. WILSON:

11 Right.

12 THE COURT:

13 If they testified, it was only be
14 as to character something; wouldn't it?

15 MS. WILSON:

16 Right. I don't have any
17 objections to -- uh --

18 THE COURT:

19 Okay.

20 MS. WILSON:

21 -- to the victim's family.

22 THE COURT:

23 All right.

24 So your -- your -- uh -- your fact
25 witnesses, Mr. Richardson, we'll sequester, other than

1 your lead; okay.

2 WHEREUPON: The Defendant entered
3 the courtroom at 2:27 PM, October 11, 2010.

4 THE COURT:

5 All right.

6 The witness is in -- I mean, the
7 Defendant is in the courtroom. Let the record reflect
8 that.

9 I assume this is the Defendant.

10 MS. WILSON:

11 Yes, sir, Your Honor.

12 THE COURT:

13 All right.

14 Uh -- Let's -- uh -- go ahead and
15 -- and call your first witness, Mr. -- uh -- Richardson.

16 MR. RICHARDSON:

17 Yes sir.

18 The State would call -- uh --
19 okay.

20 The State would call Joseph Hawes.

21 THE COURT:

22 Good afternoon, Mr. Hawes.

23 WITNESS:

24 Good afternoon, sir.

25 THE COURT:

TESTIMONY OF JOSEPH HAWES IN PRETRIAL MATTERS

20

1 It's good to see you again.

2 WHEREUPON: JOSEPH HAWES WAS DULY
3 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

4 CLERK:

5 Thank you. Please be seated.

6 Okay. If you would, state your
7 full name; and spell your last name .

8 WITNESS:

9 Joseph Lee Hawes; H-a-w-e-s.

10 VOIR DIRE EXAMINATION BY MR. RICHARDSON:

11 Q. Officer Hawes, please tell -- uh -- The Court where
12 are you employed?

13 A. Uh -- With Horry County Police Department.

14 Q. And how long have you been with Horry County?

15 A. Uh -- Just over 7 years.

16 Q. Uh -- Were you working -- uh -- back in April of
17 2008 with Horry County?

18 A. I was.

19 Q. And what was your title --

20 A. I was -- uh --

21 Q. -- at that time?

22 A. -- a Detective assigned to the Violent Crimes
23 Investigations Division.

24 Q. Did you have an occasion to go out to -- uh -- the
25 Berkshire Forest Community on April 21st -- uh -- into

TESTIMONY OF JOSEPH HAWES IN PRETRIAL MATTERS

21

1 the early morning hours of April 22nd, 2008?

2 A. I did.

3 Q. What was the purpose of going out there?

4 A. I was summoned to that location in regard to an
5 initial call of someone who was missing.

6 A. All right. And did you later find out who the
7 missing person was?

8 A. I did; Mr. Frederick Engle.

9 Q. Frederick Engle? And at some point, were you able
10 to develop a suspect, or a pair of suspects, in this
11 case?

12 A. Yes sir; through an ongoing investigation.

13 Q. All right. And who were those suspects?

14 A. Mr. Timmy Rogers and Mrs. Sherry Engle.

15 Q. All right. Uh -- Where were Timmy Rogers and
16 Sherry Engle when you -- uh -- located them?

17 A. They were in Breckenridge County, Kentucky.

18 Q. And did you go up to Breckenridge County, Kentucky,
19 to -- uh -- to talk with -- uh -- Ms. Engle and Mr.
20 Rogers?

21 A. I did.

22 Q. All right. Let's talk specifically about your --
23 uh -- conversation with Mr. Timmy Rodgers.

24 First of all:

25 Is this is the same gentleman

1 that's here today?

2 A. Yes it is.

3 Q. All right. Tell Judge Hyman exactly where you saw
4 Mr. Rogers in Breckenridge County.

5 A. Uh -- The authorities from the Breckenridge County
6 Sheriff's Office had apprehended -- uh -- Mr. Rogers on
7 our behalf from an NCIC entry from the murder warrant
8 signed here in Horry County.

9 I came in contact with him in the
10 Breckenridge County Courthouse.

11 Uh -- And once there, myself and
12 Detective -- uh -- Neil Livingston began interviewing him
13 in one of their -- uh -- juryrooms.

14 Q. Was Mr. Rogers under arrest for the -- uh -- crime
15 of murder at that time?

16 A. He was.

17 Q. Uh -- Was he arrested by Horry County or by -- uh --
18 Breckenridge County?

19 A. Breckenridge County Sheriff's Office.

20 Q. All right. And -- uh -- do you remember the -- uh
21 -- officer that you dealt with Breckenridge County?

22 A. Uh -- Sheriff Todd Pate.

23 Q. Todd Page? All right. And when you say that you
24 met with -- uh -- Mr. Rogers at the courthouse,
25 specifically what part of the courthouse did you meet

TESTIMONY OF JOSEPH HAWES IN PRETRIAL MATTERS

23

1 with him at?

2 A. Uh -- They had a -- a jury -- or, I guess for lack
3 of a better term, deliberation room, off to the side of
4 the -- the main courthouse area.

5 Uh -- And we had that for
6 ourselves.

7 We had a restroom and all the
8 facilities we would need to -- to spend a little time
9 with Mr. Rogers.

10 Q. All right. Please -- uh -- tell Judge Hyman the
11 date and place of the statement given by Mr. Rogers.

12 A. Uh -- May the 5th, 2008 -- uh -- Breckenridge County
13 Sheriff's Office, Courthouse Building, which the -- the
14 Sheriff's Office and the courthouse is all in the same
15 building --

16 Q. Okay.

17 A. -- as it is here.

18 Q. And on May the 8th, I believe you said?

19 A. May the 5th.

20 Q. May the 5th; excuse me. About what time?

21 A. Around 5:40 in the afternoon -- 1740 hours.

22 Q. Okay. Who all was present for the questioning of
23 Mr. Rogers?

24 A. Uh -- Detective Neil Livingston and myself.

25 Q. All right. So Sheriff Pate wasn't in the room?

1 A. No sir.

2 Q. Uh -- Were you able to determine whether or not Mr.
3 Rogers was under the influence of any drugs or narcotics
4 at the time?

5 A. I asked him if he was. He advised he had taken --
6 uh -- one half of a Xanax tablet earlier in the day,
7 before lunch.

8 Q. Okay. Did -- uh -- Were you able to observe him?
9 Did it tend to effect his speech; his ability to reason
10 or anything like that?

11 A. I noticed -- uh -- nothing wrong with him at that
12 time.

13 THE COURT:

14 And this was what time?

15 WITNESS:

16 Uh -- 5:40 PM or 1740 in the
17 afternoon.

18 THE COURT:

19 Okay. All right.

20 MR. RICHARDSON:

21 Okay.

22 VOIR DIRE EXAMINATION BY MR. RICHARDSON CONTINUED:

23 Q. And he had taken only one half of a Xanax?

24 A. That's what he advised us.

25 Q. All right. Did he say he had drank any alcohol or

TESTIMONY OF JOSEPH HAWES IN PRETRIAL MATTERS

25

- 1 any other -- uh -- narcotics, legal or illegal?
- 2 A. No sir.
- 3 Q. Okay. Uh -- Were you able to -- uh -- talk with
- 4 him about his level of education?
- 5 A. I did. I asked him specifically.
- 6 Q. All right. And what was his level of education?
- 7 A. He advised he was a high school graduate..
- 8 Q. Okay. Did he seem to understand what you were
- 9 talking with him about?
- 10 A. Yes her.
- 11 Q. All right. Now, as far as -- uh -- his rights
- 12 afforded to him under the US versus Miranda ruling, were
- 13 you able to -- uh -- How did you -- Did you advise him of
- 14 those rights?
- 15 A. I did.
- 16 Q. And how did you advise him? From memory? Or did
- 17 you have some sort of sheet of paper?
- 18 A. I used the Horry County Police Department Advisement
- 19 of Miranda Rights Form.
- 20 Q. Okay. And -- uh -- Did you read off of that? Or
- 21 did you recite it from memory?
- 22 A. I read off of it.
- 23 Q. All right. Do you have that paperwork with you
- 24 here today?
- 25 A. I do. I have it in front of me.

1 Q. Please read -- uh -- what you read to Mr. Rogers --
2 uh -- on that May date around five o'clock?

3 A. Okay.

4 You have the right to remain
5 silent.

6 Anything you say can and will be
7 used against you in a court of law.

8 You have the right to talk with a
9 lawyer and have him present with you while you are being
10 questioned.

11 If you cannot afford to hire a
12 lawyer, one will be appointed to represent you before any
13 questioning, if you so desire.

14 If you make a statement or answer
15 any questions, you have the right to stop at any time.

16 Uh -- Then we have questions added
17 at that time:

18 Do you understand the rights as I
19 have read them to you?

20 And he initialed -- uh -- the box
21 stating he did.

22 And after that:

23 Understanding your rights, do you
24 wish to waive them and make a statement or answer
25 questions at this time?

TESTIMONY OF JOSEPH HAWES IN PRETRIAL MATTERS

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1 And he initialed under the box,
2 here.

3 Q. I know he -- uh -- initialed those, and signed on
4 that form.

5 But even when you were reading to
6 him and talking to him generally -- uh -- did he seem to
7 understand what you're talking about?

8 A. He did.

9 Q. Did he have any questions for you regarding those
10 rights?

11 A. No sir.

12 Q. Uh -- Now, after signing those rights -- uh -- that
13 advisement of rights form -- uh -- you say he signed and
14 asked to give a statement to you?

15 A. He agreed to speak -- to speak with us.

16 Q. And when he agreed to speak with you, approximately
17 how long was the interview between you and Mr. Livingston
18 -- or Detective Livingston and Mr. Rogers?

19 A. It lasted over an hour.

20 Q. Okay. Was it -- uh -- less than two hours?

21 A. It was in that neighborhood.

22 Q. Okay. During that -- uh -- 1 to 2 hour time frame,
23 did -- uh -- Mr. Rogers ever say that he wished to stop
24 any questioning?

25 A. No sir.

1 Q. Did he ever ask for an attorney?

2 A. No sir.

3 Q. Did he ever -- Did he ever ask for you to explain
4 those rights to him again?

5 A. No sir.

6 Q. Was there ever a time when he asked to go to the
7 restroom?

8 A. We did take a break and -- and allow him to -- got a
9 drink of water -- that kind of thing.

10 Whatever he needed -- you know --
11 we tried to provide for him.

12 Q. All right. And -- uh -- but there was no bathroom
13 breaks that he ever asked for and was -- uh -- unable to
14 have?

15 A. No sir.

16 Q. Or he never asked -- Did he ever ask for a drink or
17 some -- something else that was not provided for him?

18 A. No.

19 Q. Okay. Tell me about the conditions of the room.

20 Uh -- Were there chairs in the
21 room?

22 A. Yes sir. It was a -- uh -- a large rectangular
23 conference type table that had chairs all around it.

24 Q. Okay.

25 A. The rest of the room had -- uh -- basic office

TESTIMONY OF JOSEPH HAWES IN PRETRIAL MATTERS

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1 furniture.

2 I believe there were a couple of
3 tables, and maybe a file cabinet. Uh -- Just the
4 standard office type furniture.

5 Q. Uh -- Was he allowed to sit during this -- uh --
6 interview?

7 A. Yes sir.

8 Q. All right. Did you or Detective Livingston ever
9 tell him the reason that y'all were there to talk with
10 him?

11 A. We did.

12 Q. Did you tell him that was for a murder that was
13 committed in South Carolina?

14 A. Yes sir.

15 Q. All right. And even then, did he ask to -- uh --
16 stop talking or anything along those lines?

17 A. No sir.

18 Q. Did you, Detective Livingston, or anyone else in the
19 room -- uh -- coerce or force any answers from Mr.
20 Rogers?

21 A. No sir.

22 Q. Did you ever threaten him with any violence or hold
23 out any hope of reward for him?

24 A. No sir.

25 Q. Did you tell him that -- uh -- that you would reduce

1 his charges, or anything along those lines, if you would
2 talk with you?

3 A. No sir.

4 Q. And he never asked to speak to an attorney?

5 A. No sir.

6 Q. All right. The statement that we're talking
7 about, did you videotape, audiotape, or record this
8 statement in any way?

9 A. Video recorded.

10 Q. All right. And have you had a-- a chance to look
11 at the video recording -- uh -- today, or in preparation
12 for the trial?

13 A. Yes sir.

14 Q. Is that the same videotape that was taken -- uh --
15 back in May of 2008?

16 A. Yes sir.

17 MR. RICHARDSON:

18 Okay.

19 And, Your Honor, we have that
20 available if you -- if you wish to look at it.

21 The -- uh -- Miranda Rights, I
22 believe, are on the -- uh -- the tape -- uh -- and
23 available for viewing.

24 THE COURT:

25 Do you have a hardcopy --

TESTIMONY OF JOSEPH HAWES IN PRETRIAL MATTERS

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1 MR. RICHARDSON:

2 I do.

3 THE COURT:

4 -- of the -- uh -- of the Miranda
5 Warning?

6 MR. RICHARDSON:

7 Yes sir, I do.

8 THE COURT:

9 There's been some mention of
10 initialing -- uh -- the Miranda warning, signing the
11 Miranda warning.

12 Let's go ahead and make that a
13 part of the record.

14 MR. RICHARDSON:

15 Yes sir.

16 THE COURT:

17 Or -- Any -- Any objections to
18 that Ms. -- uh -- Wilson?

19 MS. WILSON:

20 No sir. It's okay.

21 THE COURT:

22 All right.

23 And could I see it, please?

24 MR. RICHARDSON:

25 You want it as a Court's Exhibit?

1 THE COURT:

2 Court's exhibit; subject to
3 reintroduction, if necessary, during the trial.

4 WHEREUPON: THE FIRST MIRANDA
5 ADVICE FORM WAS MARKED BY THE COURT REPORTER AS COURT'S
6 EXHIBIT NUMBER 1.

7 THE COURT:

8 All right, Mr. Richardson.

9 MR. RICHARDSON:

10 Your Honor -- uh -- After that --
11 uh -- that initial statement, his Miranda rights were re-
12 read to him again on 5/7/08; and that was in preparation
13 for the trip from Breckenridge County, Kentucky to Horry
14 County.

15 Uh -- If you would like, I will go
16 ahead into -- uh -- the Miranda --

17 THE COURT:

18 All right.

19 MR. RICHARDSON:

20 -- that -- that Miranda form.

21 THE COURT:

22 Okay.

23 MR. RICHARDSON:

24 We can cover them both at the same
25 time.

TESTIMONY OF JOSEPH HAWES IN PRETRIAL MATTERS

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1 THE COURT:

2 All right.

3 MR. RICHARDSON:

4 All right.

5 VOIR DIRE EXAMINATION BY MR. RICHARDSON CONTINUED:

6 Q. Detective Hawes, after the -- uh -- after he signed
7 that, did you ever have an occasion to talk with Mr.
8 Rogers again?

9 A. I did.

10 Q. And what was the date and time of the second
11 interview with him?

12 A. Uh -- It was May 7th, 2008 at 8:35 AM.

13 Q. All right. And where did that conversation take
14 place?

15 A. Uh -- We were in the Sallyport of the Breckenridge
16 County Jail.

17 Q. Tell -- uh -- Judge Hyman exactly what -- uh -- was
18 going on when the -- when the second statement was read
19 to him?

20 A. Uh -- We were preparing to bring -- uh -- Mr. Rogers
21 and the other Defendant back to Horry County from
22 extradition.

23 They had had their extradition
24 bond hearing there.

25 Uh -- And we wanted to remind him

1 of his Miranda rights -- uh -- in the event that a
2 discussion was struck up by the Defendant in regard to
3 the case -- uh -- so he would -- uh -- understand that
4 those rights were in -- in effect for the entire journey
5 home.

6 Q. All right. But there in the Sallyport, you didn't
7 -- uh -- did you question him in any way; or -- or ask
8 him any questions at that point?

9 A. No sir.

10 Q. All right. And -- uh -- did he seem to understand
11 the questions that were given to him on the seventh?

12 A. He did.

13 Q. Uh -- Which were basically the same as you had read
14 to him from -- from two day's earlier?

15 A. Yes sir.

16 Q. And did he sign that statement?

17 A. He did.

18 Q. Did he sign it in your presence?

19 A. He did.

20 Q. Who was there with you, Detective Hawes?

21 A. Uh -- Detective Livingston.

22 Q. Okay. And when he rode back, who did he ride back
23 with.

24 A. He rode in the vehicle with Detective Livingston and
25 I.

TESTIMONY OF JOSEPH HAWES IN PRETRIAL MATTERS

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1 Q. Okay. Just the three of you? You, Mr. Rogers and
2 Detective Livingston?

3 A. Yes sir.

4 MR. RICHARDSON:

5 Okay.

6 WHEREUPON: THE SECOND MIRANDA
7 RIGHTS FORM WAS MARKED BY THE COURT REPORTER AS COURT'S
8 EXHIBIT NUMBER 2.

9 MR. RICHARDSON:

10 Thank you.

11 Your Honor, I'll pass up the
12 Court's Exhibit Number 2, which is the second Miranda
13 form.

14 THE COURT:

15 All right.

16 VOIR DIRE EXAMINATION BY MR. RICHARDSON CONTINUED:

17 Q. During that time, did anybody threaten him -- uh --

18 THE COURT:

19 Any objection, Ms. --

20 MS. WILSON:

21 Oh; no objection, Your Honor.

22 THE COURT:

23 Okay.

24 MR. RICHARDSON:

25 Thank Your Honor.

1 VOIR DIRE EXAMINATION BY MR. RICHARDSON CONTINUED:

2 Q. Uh -- During the second time that you talked with
3 him about his Miranda rights, did you, or Detective
4 Livingston, or anyone else, threaten him or force him in
5 any way --

6 A. No sir.

7 Q. -- to get him to sign that?

8 A. No sir.

9 Q. Uh -- Approximately how long did it take to go
10 through those rights and talk with him on the 7th?

11 A. Just a few minutes.

12 Q. Okay. Less than five?

13 A. Around five, I would say.

14 Q. Okay. And at that point -- uh -- was he -- I guess
15 he was still under arrest?

16 A. Yes sir.

17 MR. RICHARDSON:

18 Uh -- All right.

19 I have no further questions. If
20 you will answer any questions Ms. Wilson or Mr. Galmore
21 have for you?

22 VOIR DIRE EXAMINATION BY MS. WILSON:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Detective Hawes -- uh -- how long was he with you

TESTIMONY OF JOSEPH HAWES IN PRETRIAL MATTERS

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1 that firs time. You are pretty vague. You said it was
2 between one and two hours.

3 A. I -- I believe it was around an hour and 45 minutes;
4 somewhere in that neighborhood.

5 I would have to go back and look
6 at the exact -- uh -- time counter on the video tape.

7 Q. And you said there were facilities there in the room
8 in which you were in.

9 Was this room the size of -- uh --
10 a small closet? Was it a courtroom type room?

11 A. No ma'am. It was -- It was a rectangular shaped
12 room that had a restroom and an alcove attached to it.

13 Uh -- Just a rough estimation of
14 size:

15 I would say 30 feet by 15 feet;
16 somewhere in that neighborhood.

17 But that's -- that's strictly and
18 purely a -- a guess, from memory.

19 Q. And what kind of chair was Mr. Rogers in?

20 Was he on like a little stool?

21 Was it like one of those office
22 chairs with a back with no arms?

23 A. I don't remember as far as the arms on the chair;
24 but it was just a -- a standard chair you would see
25 around a conference table.

1 Q. So you say it did have arms?

2 Q. I don't recall as far as the arms.

3 Q. Did he -- He's a pretty tall guy. Did he seem
4 comfortable?

5 A. He did.

6 Q. And -- uh -- who picked the rooms that you guys used
7 -- that you officers used in Breckenridge in the
8 courthouse?

9 A. I did.

10 Q. You chose that room?

11 A. Yes ma'am.

12 Q. Was there a specific reason that you chose that
13 room?

14 A. Only that -- uh -- there wouldn't be a lot of foot
15 traffic; people interrupting or over-hearing our
16 business.

17 Uh -- And it was in the back part
18 of the courtroom.

19 Uh -- And I believe it was a jury
20 prep room where the jury would retire to -- uh --
21 something like that.

22 Q. But you don't know that for sure, that that's what
23 it was?

24 A. No ma'am. No.

25 Q. Okay. And the -- uh -- facilities that you say

TESTIMONY OF JOSEPH HAWES IN PRETRIAL MATTERS 39

1 were available in an alcove, did you actually offer Mr.
2 Rogers use of those facilities?

3 A. Yes ma'am.

4 Q. And he said, no, he didn't want to use them?

5 A. I believe at one point he did use the restroom.

6 Q. Okay. Uh -- And -- And in an hour and 25 minutes
7 approximately, how many times did you offer him use of
8 the facility.

9 A. We took a break. I don't remember exact -- the
10 exact minute of the interview we took a break.

11 We took a break off that he did
12 use the facilities.

13 Uh -- We monitored him -- you know
14 -- from a security standpoint during that.

15 Q. So you're saying that was -- In an hour and 25
16 minutes, you offered him use of the facilities once?

17 A. Yes ma'am.

18 Q. Okay. And how often in that hour and 25 minutes
19 did you offer him a drink or a beverage?

20 A. Prior to the videotape beginning, I believe we
21 offered him whatever he liked.

22 And then, at another point during
23 the interview, again.

24 Q. So twice?

25 A. Yes.

1 Q. And -- Now, when you got in the room with Mr.
2 Rogers, did you serve the warrant on him immediately?

3 A. I believe that's on the tape. Uh -- All those
4 things -- other details were on the tape whenever I
5 watched it this morning.

6 But -- uh -- The warrant was
7 served on him.

8 Q. But you don't know when in the process of your
9 questioning him the warrant was served?

10 A. When?

11 Q. Yes. In other words, did you serve the warrant on
12 him prior to questioning him? Or did you serve the
13 warrant on him at the end of the interrogation?

14 A. I don't recall.

15 Q. Did you have Mr. Rogers cuffed during the
16 interrogation?

17 Q. He came in the room handcuffed. And we had a
18 security briefing with him; took the handcuffs off and
19 moved them to the front.

20 Q. So -- And I'm sorry. I want to backtrack just
21 slightly.

22 Even if you don't recall whether
23 or not the warrant was served on him, do you recall
24 telling him prior to the interrogation that he was under
25 arrest for murder?

TESTIMONY OF JOSEPH HAWES IN PRETRIAL MATTERS

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1 A. Yes ma'am.

2 Q. So you're saying you told him that at the beginning
3 of the interrogation?

4 A. The Breckenridge County officials notified him of it
5 whenever he was taken into custody.

6 Q. I'm sorry. You said what?

7 A. The Breckenridge County Sheriff's Office --

8 Q. Uh-huh.

9 Q. -- officials; they notified him that when he was
10 taken into custody.

11 Q. So you were there when he was taken into custody?

12 A. No ma'am.

13 Q. So then you don't know, from your personal
14 experience, that was actually notified?

15 A. I know what -- that's what the Sheriff's Office
16 advised me.

17 Q. So you don't know, from personal experience from
18 being there, that he was actually told that he was being
19 charged with murder?

20 A. No ma'am.

21 THE COURT:

22 Was he arrested on a Fugitive
23 Warrant?

24 WITNESS:

25 Yes sir.

1 THE COURT:

2 Okay.

3 VOIR DIRE EXAMINATION BY MS. WILSON CONTINUED:

4 Q. Uh -- Now to the May 7th conversation -- uh -- or
5 your conversation with Mr. Rogers, you say that you and
6 Detective Livingston Mirandized him?

7 A. Yes, we did.

8 Q. And you say it was approximately 5 minutes, correct,
9 that you were out there talking to him?

10 A. Yes ma'am.

11 Q. So that the Miranda takes what, 30 seconds?

12 A. No ma'am. Not whenever you read it word for word
13 and make sure he understands. You have to read along
14 with him.

15 It -- It takes a couple minutes.

16 Q. Okay. So if it takes a couple of minutes, what did
17 you talk about for the other three minutes.

18 A. We just went over the process. And we talked about
19 the security concerns as far as the travel back.

20 All that was taken care of at one
21 time.

22 Q. Okay. Uh -- Was he cuffed at this time?

23 A. Yes ma'am.

24 Q. And did you inquire of him again about any use of
25 any -- uh -- substances -- uh -- any alcoholic beverages

TESTIMONY OF JOSEPH HAWES IN PRETRIAL MATTERS

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1 he may have consumed or anything of that nature?

2 A. No ma'am; we didn't.

3 Q. So he very possibly could not have understood what
4 you said that day?

5 A. That's a possibility.

6 Q. Okay. Uh -- And what about questions? Did you
7 intend to interview him during the trip home?

8 A. No ma'am; not at all.

9 Q. It was just in case --

10 A. In case he struck up a conversation about the case.

11 MS. WILSON:

12 Okay. Thank you.

13 No further questions.

14 THE COURT:

15 Anything further, Mr. Richardson?

16 MR. RICHARDSON:

17 No sir.

18 Uh -- Detective Livingston was
19 there also. I can call him.

20 THE COURT:

21 All right.

22 Let me ask the officer, were you
23 armed?

24 WITNESS:

25 Yes sir.

1 THE COURT:

2

3 They allowed you to be armed in
4 the courthouse?

5 WITNESS:

6 Yes sir.

7 THE COURT:

8 Uh -- Did this room -- uh -- bear
9 the trappings of a cell.

10 I mean, you said it was something
11 like a jury assembly or prep room.

12 Uh -- Did it have -- uh -- caged
13 doors or bars on the windows? Anything like that?

14 WITNESS:

15 No sir.

16 THE COURT:

17 Okay.

18 How long had he been under arrest
19 when you had an opportunity to speak to him?

20 WITNESS:

21 He was the first interview we
22 conducted. So he had not been under arrest very long.

23 They --

24 THE COURT:

25 That same day?

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1 WITNESS:

2 Yes sir. They arrested him and
3 -- and brought him to the Sheriff's Office for us to
4 begin interview.

5 WITNESS:

6 Okay. All right.

7 You may step down.

8 MR. RICHARDSON:

9 Your Honor, The State would call
10 Detective Neil Livingston.

11 WHEREUPON: NEIL LIVINGSTON WAS
12 DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

13 CLERK:

14 Thank you. Please be seated.

15 Okay. If you would state your
16 full name and spell your last name?

17 WITNESS:

18 Neil Livingston; L-i-v-i-n-g-s-t-
19 o-n.

20 VOIR DIRE EXAMINATION BY MR. RICHARDSON:

21 Q. Detective Livingston -- uh -- where are you
22 employed?

23 A. With the Horry County Police Department.

24 Q. And were you employed with Horry County Police
25 Department back in April of 2008?

1 Q. Yes sir, I was.

2 Q. Did you have an occasion to go out to the Berkshire
3 Forest Community on that date -- uh -- or into the early
4 morning of the 22nd, 2008?

5 A. Yes sir.

6 Q. And what was the purpose of you going out there?

7 A. Uh -- Officers had already responded. And then I
8 was called out as additional people were called for the
9 -- being called for -- uh -- Mr. Engle being found
10 deceased.

11 Q. Okay. And -- uh -- did you have -- did you meet
12 with -- uh -- Detective Hawes at that time?

13 A. Yes sir I did. He had already been on the scene by
14 the time I got there.

15 Q. All right. Now, when you met with -- uh --
16 Detective Hawes, who else -- who were you talking to at
17 that point?

18 A. Uh -- We canvassed a couple of doors prior to that
19 we went to Ms. Engle's residence.

20 Q. And that is Sherry Engle?

21 A. Yes sir.

22 Q. Okay. And -- uh -- at some point -- uh -- Ms.
23 Engle became a suspect in this case?

24 A. Yes sir.

25 Q. And Mr. Rogers became a suspect?

TESTIMONY OF NEIL LIVINGSTON IN PRETRIAL MATTERS 47

1 A. Yes sir.

2 Q. Where was the first time that you met with Mr.
3 Rogers?

4 A. In Kentucky.

5 Q. Breckenridge County?

6 A. Yes sir.

7 Q. And who else was -- was with you, Detective
8 Livingston?

9 A. Uh -- Detective Hawes.

10 Q. All right. And tell -- uh -- Judge Hyman where the
11 two of y'all met with Mr. Rogers?

12 A. The Sheriff's Department has a courthouse at the
13 same facility. And we were allowed to use part of their
14 building.

15 They had brought him to us.

16 Q. Okay. And who all -- Now, it's been described as a
17 rectangular room.

18 Uh -- In relationship to -- to the
19 courthouse -- uh -- for this courtroom, could you tell us
20 about the size of the room?

21 Was it half as large?

22 A third as large?

23 A. Probably the size of the jury box.

24 Q. Okay. And who was in that room?

25 A. The three of us; Mr. Rogers and Detective Hawes and

1 myself.

2 Q. Were you there when the -- uh -- Miranda rights were
3 read to Mr. Rogers?

4 A. Yes sir. I witnessed the document.

5 Q. All right. Did you actually read them to him? Or
6 did Detective Hawes read those?

7 A. No sir. Detective Hawes did.

8 Q. All right. But they were read during your
9 presence?

10 A. Yes sir.

11 Q. Uh -- Again, did you have -- uh -- a gun on at the
12 time that the -- the questioning of Timmy Rogers?

13 A. Yes sir, I believe I did.

14 Q. All right. Did either you or Detective Hawes ever
15 pull your weapon, or offer to -- uh -- present that
16 weapon to Mr. Rogers?

17 A. No sir.

18 Q. Never a need to?

19 A. No sir.

20 Q. Did Mr. Rogers seem to understand what -- uh -- you
21 and Detective Hawes was talking to him about?

22 A. Yes sir.

23 Q. Uh -- More specifically, the rights afforded to him
24 under Miranda?

25 A. Yes sir.

TESTIMONY OF NEIL LIVINGSTON IN PRETRIAL MATTERS 49

1 Q. Did he ever ask any questions about those rights?

2 A. No sir.

3 Q. Did he ever become agitated or -- uh -- upset in any
4 way?

5 A. No sir.

6 Q. Uh -- Never show-out or anything like that would
7 have -- you would have felt threatened?

8 A. No sir.

9 Q. And at the time that the -- uh -- questions --
10 excuse me -- that the -- uh -- rights were read to him
11 afforded by Miranda, did -- uh -- was he under arrest?

12 Was he handcuffed?

13 A. Yes sir. He was handcuffed in the front.

14 Q. Okay. Do you remember if anybody ever told him the
15 reason that he was under arrest?

16 A. I don't recall that. I mean, we discussed what it
17 was about. But to formally tell him; I don't know.

18 Q. I understand. Did he know that he was a suspect in
19 a murder that occurred in Horry County?

20 A. Yes sir.

21 Q. All right. And knowing this, did -- uh -- did he
22 -- did you see him sign that paperwork stating that he
23 understood those rights?

24 A. Yes sir, I did.

25 Q. Did you ever hear him ask any questions about the

1 rights?

2 A. No sir.

3 Q. Did you hear him talk about -- uh -- having taken
4 the one Xanax --

5 A. Yes sir.

6 Q. -- or one-half Xanax --

7 A. Yes sir.

8 Q. -- earlier?

9 A. (Nods in the affirmative.)

10 Q. Did he seem to you to be impaired in any way?

11 A. No sir, he didn't.

12 Q. He seemed to understand what was being asked of him?

13 A. Yes sir.

14 Q. All right. And do you recall about how long the --
15 uh -- interview took?

16 A. I believe an hour and a half -- maybe a little bit
17 longer.

18 Q. Okay. And during that time, did he ever ask to go
19 to the restroom or get a swallow of water, or something
20 to drink, or anything like that?

21 A. I believe we did take a break for that.

22 Q. Okay. But did he ever ask and -- uh -- either you
23 or Detective Hawes deny him the opportunity to get a
24 drink of water or go to the bathroom?

25 A. No sir.

TESTIMONY OF NEIL LIVINGSTON IN PRETRIAL MATTERS 51

1 Q. Was he able to be seated -- uh -- during the course
2 of the interview?

3 A. Yes sir. We were all seated. He sat directly
4 across -- the same chairs -- in front of the conference
5 table.

6 Q. Okay. Did anybody else -- uh -- besides you and
7 Detective Hawes come in and question him?

8 A. No sir.

9 Q. In your presence, nobody threatened him in any way?

10 A. No sir.

11 Q. Coerced him in any way?

12 A. No sir.

13 Q. Did you, or Detective Hawes in your -- uh -- in your
14 view, ever promise him anything to get him to talk with
15 you?

16 A. No sir.

17 Q. Ever tell him that there would be some sort of
18 reduction of charges or anything along those lines?

19 A. No sir.

20 Q. During the course of the interview, did Mr. Rogers
21 ever ask to cease the interview, or to speak to an
22 attorney, or anything like that?

23 A. No sir. He didn't.

24 Q. Okay. And do you know if the -- uh -- interview
25 was audiotaped, videotaped, or -- uh -- handwritten?

1 Q. There was a device that sat on the conference table
2 that captured both audio and video.

3 Q. All right. And have you had an opportunity -- uh --
4 - in preparation for today's Jackson v Denno hearing to
5 view parts of that -- uh -- interview?

6 A. Yes sir, I did.

7 Q. And -- uh -- does that fairly and accurately depict
8 what went on, on that -- uh -- I think it was May 5th
9 date?

10 A. I believe so. Yes sir, it was reflected accurately.

11 Q. Okay. Now, on to the May 7th date in the
12 sallyport, do you remember that date?

13 A. Yes sir.

14 Q. Do you remember -- uh -- Well, was it you or
15 Detective Hawes that went through his -- uh -- rights
16 afforded him under Miranda at the sallyport?

17 A. I believe it was Detective Hawes that did.

18 Q. Okay. Anybody question him; threaten him in any
19 way at that point?

20 A. No sir.

21 Q. As a matter of fact, was there any questioning going
22 on, other than:

23 Do you understand these rights?

24 A. No sir, there wasn't.

25 Q. So that second date, there was no interview.

1 Uh -- Tell Judge Hyman why -- uh
2 -- you and Detective Hawes chose to -- uh -- re-Mirandize
3 him?

4 A. It wasn't our intention to conduct any interviews or
5 discuss the case on the way back.

6 But in the event that he struck up
7 a conversation, we'd already have it covered. And he'd
8 be aware that whatever he said during that duration of
9 the ride, that it could be used.

10 Q. All right. And did you specifically tell him that:
11 This is for the ride back?

12 A. Yes sir, we did.

13 Q. Okay. Did y'all audio or videotape the ride back?

14 A. No sir, we didn't.

15 Q. Did y'all ever question him during the ride back?

16 A. No sir.

17 Q. All right. In conversation, did he ever say
18 anything to you, or you to him, during the ride back?

19 A. Not in detail about that crime; no. I mean, we had
20 general conversations.

21 MR. RICHARDSON:

22

23 Okay.

24 Your Honor, I -- I think that's
25 all the questions that I have.

1 If you would answer any questions
2 that Ms. Wilson or Mr. Galtore might have for you?

3 WITNESS:

4 Yes sir.

5 THE COURT:

6 All right.

7 Counsel?

8 MS. WILSON:

9 Thank Your Honor.

10 VOIR DIRE EXAMINATION BY MS. WILSON:

11 Q. Did you serve the warrant before, during, or after
12 his interview?

13 A. I don't recall.

14 Q. Do you recall whether or not Detective Hawes did it?

15 A. No ma'am, I don't.

16 Q. Do you recall telling him specifically what he would
17 be charged with, before the interview.

18 A. Before the interview, we discussed what we were
19 there for. But as to when the warrant was served, I
20 don't recall.

21 Q. So, in fact, you told him you were there to question
22 him; but you didn't tell him that he was a potential
23 suspect?

24 A. He'd already been brought in based on our NCIC
25 entry, and those charges.

1 Q. So, in other words, you didn't tell him anything
2 about the fact that he was a suspect to this murder?

3 A. I don't recall directly saying that; no.

4 Q. Now, when he was arrested, you said he was taken
5 straight -- Was he taken straight to the courthouse --
6 Breckenridge County Courthouse? Or was he taken to jail
7 first?

8 A. I didn't say he was taken directly there.

9 Q. Do you know the answer to the question?

10 A. No ma'am, I don't. My understanding is that he was
11 brought there straight from where he was arrested.

12 Q. Okay. Uh -- Now, when you're here in Horry County,
13 you don't interview people at the courthouse; do you?

14 A. I interview people all sorts of places --

15 Q. Suspects --

16 A. -- various -- uh -- various places. We interview
17 them in cars, homes, maybe wherever we are at.

18 Q. Did you have occasion to bring them to the
19 courthouse for an interview?

20 A. If they were here, I'd interview them here.

21 I've interviewed people in the
22 back seat a the patrol car at a crime scene.

23 It depends on what the situation
24 is.

25 Q. Okay. So, in this particular situation, you all

1 chose the location for the interview; correct?

2 A. We weren't in our area that we were familiar with.
3 We were offered that building; and then allowed to pick
4 an area that would be suitable.

5 Q. Okay. Uh -- Now, did you actually offer Mr. Rogers
6 a bathroom break?

7 A. Yes, we did.

8 Q. Okay. And you specifically?

9 A. I think he was offered one.

10 Q. Okay. And -- uh -- And again, in that -- you say
11 -- your time is slightly different. You say a hour and
12 thirty minutes; maybe slightly more -- uh -- for the
13 interview process; correct?

14 A. It -- It was an hour and 30 minutes or more; yes.
15 I'm not sure how much more.

16 Q. Okay. And in that timeframe, he was offered
17 bathroom facilities once?

18 A. Before we even sat down, we asked him if there was
19 anything that he needed; so a couple of occasions.

20 Q. That's right. And when you say anything, do you
21 believe that he understood that to include bathroom,
22 drink, smoke break?

23 A. I think it was brought up; I mean, bathroom, drinks;
24 whatever you need; let us know.

25 Q. Uh -- And did he request a smoke break?

TESTIMONY OF NEIL LIVINGSTON IN PRETRIAL MATTERS

57

1 A. I don't remember if he had one.

2 Q. Did you offer one to him?

3 A. I don't know that we offered a smoke break.

4 Q. Right. Uh -- Now, didn't he tell you repeatedly
5 during the interview that he didn't understand the
6 questions -- some of the things -- or the answers?

7 A. I don't know that's the case.

8 Q. You did tell Mr. Richardson just a second ago that
9 you reviewed parts of the tape; correct?

10 A. Correct; parts of it.

11 Q. So, the part where he's speaking, you didn't review
12 those parts?

13 A. No ma'am.

14 Q. Okay.

15 A. I was working on a case this morning. And I
16 reviewed parts of it. I don't know, 15 -- 20 minutes
17 into it to make sure I was looking at the same tape.

18 I didn't see it in its entirety.

19 MS. WILSON:

20 Okay.

21 One second. One second.

22 The Court's indulgence?

23 VOIR DIRE EXAMINATION BY MS. WILSON:

24 Q. Oh; a final question. Uh -- You were present when
25 Mr. Rogers was questioned about whether or not he was

1 under the influence of any substance; correct?

2 A. Correct.

3 Q. And what did he tell you he was under the influence
4 of?

5 A. Well, he'd half a Xanax.

6 Q. Okay. Uh -- Is it normal procedure or process to
7 continue an interview with someone who tells you they're
8 under the influence of an illegal substance -- of any
9 substance?

10 A. Well, one:

11 You -- You weigh that on how
12 they're acting; plus you certainly ask if it affects
13 their decision-making.

14 And both those situations didn't
15 make us stop that interview.

16 Q. Okay. Uh -- And I know I said that was the final
17 question. Actually that caused me to have another one.

18 So, did you know Mr. Rogers before
19 the date?

20 A. No I didn't.

21 Q. So you wouldn't have anything to base his behavior
22 on that day as to whether or not it was -- as to whether
23 or not it was a strange or unusual behavior for him;
24 would you?

25 A. That was my first dealings with him.

TESTIMONY OF NEIL LIVINGSTON IN PRETRIAL MATTERS 59

1 MS. WILSON:

2 Okay. Thank you. No further
3 questions.

4 MR. RICHARDSON:

5 No further questions, Your Honor.

6 THE COURT:

7 All right.

8 You may step down, Mr. Livingston.

9 Thank you.

10 WITNESS:

11 Thank you.

12 MR. RICHARDSON:

13 And Your Honor, that would be the
14 State's showing of -- of proof of voluntariness as to the
15 -- uh -- statement.

16 THE COURT:

17 All right.

18 Ms. Wilson? Mr. Galmore?

19 MS. WILSON:

20 Thank Your Honor.

21 Your Honor, just basically:

22 It seems to me that certainly
23 there is -- uh -- that the circumstances of this
24 particular situation would induce Mr. Rogers to believe
25 that there might be some hope of reward possibly -- uh --

1 for his cooperating or telling a certain story.

2 Certainly, he is -- uh --
3 arrested.

4 The officers are armed.

5 He's brought in.

6 He's not taken to the jail.

7 He's not -- uh -- you know --
8 walking around free.

9 He's handcuffed when he comes in
10 there.

11 He gets into the courthouse, which
12 is not your normal venue -- uh -- for interrogations of
13 murder suspects.

14 Uh -- He is not even exactly sure
15 why he's there.

16 From what I've be able to glean
17 from the officers -- uh -- certainly that he -- he
18 wouldn't believe he was a suspect necessarily,
19 immediately, in a murder.

20 Uh -- He's then taken into the
21 room, where he sits for an hour and a half, or an hour
22 and twenty minutes up to just over an hour and a half,
23 according to the officers testimony.

24 He's offered a chance to basically
25 do anything he needs to do.

1 He's un-handcuffed.

2 Uh -- They take the handcuffs off.

3 But he's sitting there -- uh -- you know -- basically
4 thinking that:

5 You know, this is more of a
6 conversation than an interrogation.

7 Certainly all of these things, I
8 think -- uh -- that -- the warrant:

9 There's no real explanation for
10 when he's actually served with the warrant.

11 Certainly it appears that he
12 wasn't served the warrant prior to being questioned.
13 Because I think they would definitely be able to say:

14 He received the warrant at this
15 particular juncture. He knew exactly what was going on.

16 I believe he was served the
17 warrant at the end of the interrogation process, after
18 his -- uh -- the line of questions that they had for him
19 weren't fruitful -- uh -- which further, I think,
20 exacerbates the situation, and further hi-lites my point
21 here, which is that:

22 He felt that there was some
23 possibility of a reward in this situation by cooperating;
24 and therefore, his statement should be suppressed.

25 I -- I don't believe it should

1 come in on this basis.

2 THE COURT:

3 All right.

4 Mr. Richardson?

5 MR. RICHARDSON:

6 Your Honor, I -- I have got some
7 clarification on that.

8 Of course, they couldn't serve --
9 There was a fugitive warrant on him in -- uh -- Kentucky.

10 But they couldn't serve South
11 Carolina's warrant until they got in the jurisdiction of
12 South Carolina.

13 So, even though, just like they
14 said, he was advised that he was a suspect in the -- uh
15 -- death of Fred Engle.

16 THE COURT:

17 That's all I've heard.

18 MR. RICHARDSON:

19 He was -- He was never served any
20 sort of warrant in Kentucky.

21 Uh -- But he should -- he knew or
22 should've known that he was a suspect if they told him
23 that.

24 And -- uh -- in addition to that,
25 he did have -- uh -- up in Kentucky -- uh -- extradition

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1 rights, and he waived those rights and came back -- uh --
2 to South Carolina.

3 So -- uh -- Your Honor, as far as
4 -- uh -- the State is concerned, it appears from
5 everything that I've heard, that -- uh -- they didn't
6 coerce any statement out of him.

7 They said they never promised him
8 anything, or threatened him in any manner.

9 They were the only two there. And
10 they've been provided for The Court.

11 Uh -- Absent some showing
12 otherwise, I believe that his -- uh -- statement was
13 freely and voluntarily given -- uh -- and should be used
14 against him as -- uh -- the Miranda rights indicate.

15 THE COURT:

16 All right.

17 In a Jackson v Denno hearing, The
18 Court has several things that it must first do.

19 Uh -- As a threshold matter, I
20 find that:

21 This was a custodial
22 interrogation.

23 I don't think there was any doubt
24 that he was in custody, or would have perceived himself
25 to be in custody at the time of the police interrogation.

1 Uh -- Having made that finding, I
2 am compelled, under the Davis case, to make a finding as
3 to whether or not law enforcement complied with the
4 requirements of Miranda versus Arizona.

5 That's not for a jury. That is
6 for The Court to determine.

7 Uh -- I determine that the -- uh
8 -- and find that:

9 The -- uh -- law enforcement in
10 this -- uh -- case, viewing the matter in the -- uh --
11 from the totality of the circumstances, did comply with
12 the requirements of Miranda versus -- uh -- versus
13 Arizona.

14 That raises the question as to
15 whether or not -- uh -- the waiver of Miranda rights was
16 -- uh -- knowingly and -- uh -- intelligently made.

17 Uh -- Based on this Defendant's --
18 uh -- or the -- the evidence that I have heard -- uh --
19 there was -- uh -- a -- some testimony about the
20 Defendant having taken a half of Xanax some -- midmorning
21 -- and this was at five o'clock -- uh -- seven or so
22 hours by my calculation, or most likely -- uh -- before
23 the interrogation.

24 Uh -- I don't think that any of
25 the other evidence would support the fact that he was

1 impaired in any way.

2 Both officers testified that he
3 was lucent; that he -- uh -- uh -- answered their
4 questions.

5 Uh -- He -- They -- I believe they
6 told me that they asked him if he was in any way affected
7 by that.

8 Uh -- I don't think there's been a
9 showing -- uh -- uh -- in that regard.

10 I also -- uh -- look at the fact
11 that this off -- uh -- Defendant has a -- a high school
12 -- uh -- education.

13 There's nothing that would alert
14 me -- uh -- to the fact that this waiver was anything but
15 intelligently and knowingly made.

16 I do not doubt that he, in fact,
17 knew why the officers were there; what they were talking
18 with him about.

19 Uh -- He was arrested on a
20 fugitive warrant from another state -- uh -- South
21 Carolina.

22 Uh -- I just -- uh -- cannot -- uh
23 -- believe that he would not have understood -- uh -- why
24 he was arrested.

25 Now, aside from the matter of

1 voluntariness or -- or whether or not the Miranda
2 warnings knowingly, intelligently, waived; The Court has
3 to make a decision -- uh -- as to whether or not -- uh --
4 the statement itself was made voluntarily.

5 Uh -- I think these South Carolina
6 cases, Von Dollan -- uh -- in Von Dollan, The Court said
7 that:

8 The judge's responsibility is to
9 make a determination based on the totality of the
10 circumstances, as to whether or not the State has made a
11 showing by and preponderance of the evidence; not a -- a
12 -- uh -- uh -- beyond a reasonable doubt standard; but by
13 a preponderance of the evidence -- uh -- as to whether or
14 not the statement was voluntary.

15 Uh -- I believe that under the
16 circumstances of this interrogation -- uh -- he was in a
17 jury assembly room, or something similar to that.

18 There were no -- uh -- cages or --
19 or -- or locked doors.

20 Uh -- It seemed to have been a
21 very cordial -- uh -- situation.

22 He was -- uh -- permitted to -- uh
23 -- use the restroom at will.

24 He was offered something to drink.

25 Uh -- I do not see where there is

1 any circumstance that would suggest that this was not a
2 voluntary statement.

3 Uh -- The test of voluntariness,
4 of course, in this State, is:

5 Whether or not the Defendant's
6 will was overridden by the circumstances surrounding the
7 confession.

8 I find nothing to suggest that the
9 Defendant was overborne -- his will was overborne or
10 overridden by the action of the police officers.

11 Therefore, I make a finding, that:

12 Based upon a -- uh --
13 preponderance of the evidence standard, that:

14 In this case -- uh -- the
15 statement was voluntary; and made after a knowing and
16 intelligent waiver of his Miranda rights.

17 Of course, Ms. Wilson, you're
18 entitled to a charge that would tell the jury that they
19 must make a finding -- before they use any such
20 statement, they must find that it was voluntary beyond a
21 reasonable doubt; okay.

22 And I will give that charge at the
23 end of the case, if the statement comes in; okay.

24 MR. RICHARDSON:

25 Yes sir.

1 THE COURT:

2 Thank you.

3 MR. RICHARDSON:

4 Thank Your Honor.

5 MS. WILSON:

6 Thank Your Honor.

7 MR. RICHARDSON:

8 Uh -- Your Honor, if -- if The
9 Court will, I -- I want to check on where Heather -- uh
10 -- Brummett is.

11 She's prepared -- She's CSI.

12 And she's prepared a slideshow.

13 I just want her to go through that
14 and make sure there was no --

15 THE COURT:

16 All right. Let's go through it.

17 MR. RICHARDSON:

18 -- problem.

19 THE COURT:

20 Uh -- Have -- Have you had a
21 conferences as to your exhibits?

22 Have you -- uh -- looked at your
23 other exhibits to see whether or not there's any
24 objections to them; get them pre-marked or anything.

25 You know, I hate to waste the

1 whole afternoon.

2 If we've got an opportunity this
3 afternoon to mark some evidence.

4 Uh -- If you've got some exhibits
5 that you don't mind showing your hand on now, let's try
6 to get them marked -- uh -- for identification anyway.

7 Uh -- And you're rounding up
8 someone who's going to show -- uh -- some photo --
9 photographic evidence that you have?

10 MR. RICHARDSON:

11 Yes, sir, Your Honor.

12 THE COURT:

13 Okay.

14 MR. RICHARDSON:

15 If she would just --

16 THE COURT:

17 Have you shown the hardcopy to Ms.
18 Wilson yet?

19 MR. RICHARDSON:

20 Well, I haven't seen them.

21 I've given her --

22 THE COURT:

23 It's about time you saw them.

24 MR. RICHARDSON:

25 Well, I've given her every

1 photograph that's in evidence.

2 But the paring down that -- that

3 Heather would -- uh --

4 THE COURT:

5 Okay.

6 MR. RICHARDSON:

7 -- rely on, I -- I haven't shown

8 her that, or the order.

9 Uh -- But I haven't -- I haven't
10 seen that -- uh -- at this point.

11 But it would be the blood droplets

12 -- uh -- and the crime scene.

13 THE COURT:

14 Okay.

15 MR. RICHARDSON:

16 She's got copies of all that.

17 THE COURT:

18 Well, let's find her then.

19 Uh --

20 MR. RICHARDSON:

21 Give me two minutes to -- uh --

22 THE COURT:

23 All right.

24 MR. RICHARDSON:

25 -- try and find her.

1 THE COURT:

2 We'll take a little quick break.

3 MS. WILSON:

4 Thank Your Honor.

5 (WHEREUPON: The court was
6 declared in recess at 2:59 PM, October 11, 2010.)

7 (WHEREUPON: The court reporter
8 marked exhibits for identification for the State, as
9 presented by the Solicitor.)

10 (WHEREUPON: There were no further
11 proceedings on October 11, 2010, regarding the case.
12 And therefore, the in-court record was closed for the day
13 at 2:59 PM, October 11, 2010.)

14 REPORTER'S NOTE:

15
16 This reporter was on leave for a Doctor's appointment at
17 MUSC on October 12th, 2010; and State Court Reporter
18 Hattie Gordon reported those proceedings. Please see
19 Hattie Gordon for a transcript of her portion of these
20 proceedings, which would be the full day of October 12th,
21 2010.

22 PLEASE SEE FOLLOWING PAGE FOR A
23 CONTINUATION OF THAT PORTION OF THIS TRIAL REPORTED BY H.
24 EUGENE BUCKNER, BEGINNING AGAIN WITH THE MORNING OF
25 OCTOBER 13, 2010.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
COUNTY OF HORRY	)	2008-GS-26-2450

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
TIMMY J. ROGERS	)	
DEFENDANT	)	

October 12, 2010
Conway, South Carolina

B E F O R E:

THE HONORABLE LARRY HYMAN, JUDGE; and a jury.

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

JIMMY RICHARDSON, ASSISTANT SOLICITOR
Attorney for the State

KIA WILSON, PUBLIC DEFENDER
Attorney for the Defendant

JAMES C. GALMORE, PUBLIC DEFENDER
Attorney for the Defendant

RODERICK FREEMAN, A.T.&T. Representative
KIMBERLY MALUDA,
TOM RICKERSON,
KARLA GREEN,
HEATHER BRUMMETT , HORRY COUNTY POLICE DEPT.
SHERRY ENGLE,

HATTIE O. GORDON
Circuit Court Reporter

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1

COLLOQUY

2

THE COURT: All right. Mr. Richardson, are we ready to move along today?

4

MR. RICHARDSON: All right.

5

THE COURT: I understand that we have two more motions. I have a jury panel downstairs. I understand that Judge Seals is going to be needing a jury as well which means since we only have 50 left in the panel or 54 and I've got 50 coming up I need to get that done as quickly as possible. What I'd like to do is go ahead and try to get that jury pulled. We'll put the 14 in the jury room and then we will send the balance down to Judge Seals. And we'll do your remaining two motions, okay?

14

MS. WILSON: Yes, sir.

15

MR. RICHARDSON: Yes, sir.

16

THE COURT: Any problem with that?

17

MR. RICHARDSON: And, Your Honor, I know one of the motions was with regard to the Power Point presentation.

19

THE COURT: Have you resolved that?

20

MR. RICHARDSON: We have. We've actually marked it and given Kia a copy.

22

THE COURT: Okay.

23

MR. RICHARDSON: And we've agreed.

24

THE COURT: Ms. Wilson, you agree with the photos that he proposes to introduce?

25

Colloquy

8

1 MS. WILSON: Through the Power Point, yes, sir.

2 THE COURT: All right. Okay. That leaves
3 Ms. Wilson's motion concerning the business records, the
4 telephone records I think; is that correct?

5 MS. WILSON: Yes, sir.

6 MR. RICHARDSON: Yes, sir. The A.T. & T. records here
7 we'll ---

8 THE COURT: What's Ms. Fine doing back there standing
9 up.

10 MS. FINE: Admiring the Judge.

11 THE COURT: Okay, well thought. Did you needed
12 something, Ms. Fine, or are you just standing up?

13 MS. FINE: I'm waiting to get them out.

14 THE COURT: Okay. Very well. I thought perhaps you
15 needed something. Okay. Mr. Rock, why don't you go down
16 and get this jury panel for me. Get them up here and
17 let's see what we can do. Let the record reflect that the
18 Defendant is in the courtroom with his attorneys,
19 Mr. Galmore and Miss Wilson.

20 Okay, Miss Fine, we've got 50 jurors coming in, and
21 we're really going to be packed up. Anybody but
22 non-essential persons -- bring the victim around, please.
23 Can you do something with that, Mr. Richardson? We are
24 going to need just about all the room for me to get my
25 jury around here. See if we can accommodate everyone if

1 we can, and I believe I asked counsel earlier if there
2 would be any specific requests for voir dire. Both of you
3 informed me that the standard voir dire would be
4 sufficient. Is that still your position, Miss Wilson?
5 Mr. Galmore?

6 MS. WILSON: Yes, sir, it is.

7 THE COURT: Mr. Richardson?

8 MR. RICHARDSON: Yes, sir.

9 THE COURT: All right.

10 (WHEREUPON, State's Exhibit Nos. 1 THROUGH 37 were
11 marked for identification only.)

12 (WHEREUPON, the jury pool enters the courtroom at
13 9:32 a.m.)

14 THE COURT: All right, ladies and gentlemen, my name
15 is Larry Hymen. I am a circuit judge here in South
16 Carolina. I'm a judge that is assigned generally to Horry
17 County, but like all circuit judges I have to travel about
18 the State and hold court in other counties throughout the
19 State as well.

20 Due to the lack of funding or the economic crunch
21 that we had I'd had the privilege of sitting here in Horry
22 County for about the last year and that suits me just
23 fine. I practice law here for 32 years before I became a
24 circuit judge, and this has been my home and I certainly
25 enjoy the opportunity to be here.

1 Now, you have all been chosen this week to serve as
2 jurors, and when you were qualified on Monday, I think
3 Judge Culvertson did the actual qualifying, he probably
4 explained to you that we have what is called a dual term.
5 Horry County has a substantial amount of Court. It's not
6 unusual for us to have four to six, seven sometimes judges
7 here in Horry County. We have court almost every week and
8 it's always multiple terms.

9 By multiple terms I mean we have civil cases and we
10 have criminal cases. The Court is divided into what we
11 call General Sessions, which is criminal court. And
12 Common Pleas, which is civil court. I'm holding General
13 Sessions Court or criminal court this week. Those of you
14 who are not picked on my jury will probably go down and
15 see Judge Seals who is here. Judge Seals is a new judge
16 that we have from -- he actually lives over in Marion
17 County. Very nice judge.

18 And he will be trying a civil case and my
19 understanding is that he needs a jury as well. So you
20 will be probably going down there. Let me tell you a
21 little bit about the process that we're going to follow
22 this morning in selecting a juror -- jury and why we have
23 so many of you up here. On yesterday Judge Culvertson
24 conducted what's called the jury qualification and during
25 that he determined whether or not you met the statutory

1 requirements or qualifications to serve as jurors in the
2 Court of Common Pleas and the Court of General Sessions.
3 That's a general qualification that he did.

4 And as far as any case goes I have to re-qualify you
5 to determine whether you know anything about this
6 particular case that I am going to try. And we'll be
7 talking in a few moments about that. The reason we're so
8 careful in selecting a jury is that every person who comes
9 before this Court, whether you are a defendant, a victim
10 or a plaintiff or a defendant in a civil case, you are
11 entitled and it's your civil right to have a jury of your
12 peers a fair and unbiased jury.

13 And we want to make sure that each juror that we seat
14 is a fair and unbiased juror. So I bring up a large jury
15 panel, and I'm going to ask you some questions about
16 whether or not you know anything about this case or you're
17 related to any of the witnesses or you know them and
18 things of that nature.

19 Now, the jury selection process in the civil court is
20 different that the jury selection process in the criminal
21 court. In the civil court we have a very nice way of
22 doing it. We put your names on a list. We give you new
23 numbers, and the attorneys just strike by these new
24 numbers that we are given; that you don't even know are
25 your numbers. So you don't have a clue whether somebody

1 struck you or didn't strike you. It's so nice the way we
2 do it.

3 But on the criminal side or the General Sessions side
4 we do it the way our constitution requires; that is your
5 name will be called and you will be required to come
6 forward right up here and turn around and face the
7 attorneys and the rest of the jury panel. And the
8 selection process begins there. Now, that's intimidating
9 to some folks, and some folks for some reason feel that
10 they have failed in their service if they're not selected
11 or maybe it's a reflection on them personally if either
12 side excuses them.

13 Let me say this about the jury selection process.
14 Told you a moment ago I practiced law for 32 years. Did a
15 lot of trial work, and one thing I learned is this. These
16 attorneys don't know what they're doing when it comes to
17 selecting a jury. They don't know why they excuse you or
18 why they accept you. It is basically just a gut feeling.
19 They have such limited information about you. They may
20 strike you because you part your hair on the left or you
21 part it on the right or you're like me. You don't have
22 much hair. That might be why they struck you.

23 I'm telling you all this, and I bet most of you out
24 there are thinking, 'Man, I hope they don't pick me. I
25 don't want to be on the jury'. But let me say. Do not be

1 offended by the fact that you may be struck by either
2 side. That same attorney may be happy to have you on the
3 next case that he has. And many times it's nothing more
4 than that attorney, whether he's from the prosecution or
5 the defense, is just looking at the panel generally. And
6 he sees some juror out there that he thinks, 'I believe
7 that this person may be sympathetic because of the limited
8 background information I have this person might be
9 sympathetic to my case and I'm trying to get to that one.
10 And it could be nothing more than that.

11 So don't feel bad if you're struck. The process of
12 selection goes like this. Once you come forward the State
13 goes first, and Mr. Richardson, who represents the State
14 in this case will say, "Your Honor, present the juror," or
15 "Excuse the juror." If he says, "Excuse the juror" you
16 may return to your seat. That ends it right there.

17 If he says, "Present the juror" then Ms. Wilson,
18 Mr. Galmore who represent the Defense in this case have an
19 opportunity. If Ms. Wilson -- who will be striking
20 Ms. Wilson, will it be you or Mr. Galmore?

21 MS. WILSON: It will be myself, Your Honor.

22 THE COURT: All right. If Miss Wilson says, "Your
23 Honor, swear the juror" then we will bring you around and
24 have you seated in the box. If Ms. Wilson, on the other
25 hand, says, "Your Honor, excuse the juror" you will return

Voir Dire of the Jury

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1 to your seat. That's essentially how the process works.
2 Once we have selected 12 jurors then we will select two
3 alternates in this case.

4 The alternates will be here throughout the trial.
5 The alternates will participate until the case is actually
6 is submitted for deliberations. At that time I withdraw
7 the alternates and the alternates then are free to go
8 about their business and leave. They will have fulfilled
9 their obligations as jurors.

10 I don't take an alternate and stick him back in a
11 jury panel once that panel has been deliberating for
12 several hours. I don't think that's fair to either side,
13 so I don't do that. You may see that on t.v, but I don't
14 think it's appropriate and I certainly don't do it. Well,
15 having said that let me tell you a little bit about this
16 case before I begin the qualifications, okay.

17 VOIR DIRE OF THE JURY

18 This is a case of the State of South Carolina v.
19 Timmy J. Rogers. Mr. Rogers is seated here with
20 Mr. Galmore and Ms. Wilson. Mr. Rogers, stand if you
21 would and let the jury see you. This is Ms. Rogers. He
22 is the defendant in this case. Thank you, Mr. Rogers.
23 You may be seated. Mr. Rogers is charged -- and let me
24 make something very clear. He is charged with the offense
25 of murder.

1 In this State every defendant begins every trial with
2 a presumption of innocence which follows him throughout
3 the trial. You will draw no conclusion from the fact that
4 he has been charged nor will you place any significance on
5 the fact that he has been indicted. I have an indictment
6 here that explains briefly what this case is about.

7 The indictment against Mr. Rogers says, "That on or
8 about the 21st day of April of 2008 he did willfully,
9 feloniously and intentionally kill the victim, Frederick
10 Nichols Engel; is the correct, Mr. Richardson, Engel?

11 MR. RICHARDSON: Yes, sir.

12 THE COURT: Engel. With malice aforethought either
13 express or implied by means of strangling the victim with
14 a ligature and the victim did die as a proximate result of
15 on April 21st of 2008 in the Horry County in violation of
16 the laws of this State."

17 Now, once again, let me express upon you that an
18 indictment is not evidence. An indictment is the document
19 by which a case is brought to Court. Unless I have an
20 indictment I have no authority as a judge to try a case.
21 But that indictment is nothing more than a formal
22 indictment. It is not evidence and should not be
23 considered by you as evidence in this case. And I want to
24 make that very clear.

25 Now, this event as I understand it occurred over in

1 the Forest Brook area?

2 MR. RICHARDSON: No, sir. Over at Carolina Forest.

3 THE COURT: Carolina Forest. The Carolina Forest
4 area. I want to ask you some questions about that to
5 determine whether or not you have any knowledge at all
6 about it. Now, it's so important over the selection
7 process. It's so important over the qualification
8 process. So important that I'm going to ask you to all
9 stand, and I'm going to have the Clerk swear you or give
10 you an oath that you will answer my questions truthfully.

11 There is a lot of swearing that goes on in the
12 courtroom, and the jury goes through about three
13 swearings, so bear with us. If you would, Madam Clerk.

14 (WHEREUPON, the jury panel was sworn in at 9:45 a.m.)

15 THE COURT: All right. Now, let me -- please be
16 seated. And let me ask you this. Was there anyone of you
17 on this respective jury panel who did not affirm or swear
18 to that oath? Was there anyone who did not? All right.
19 Then they have all done so. There is no response.

20 Now, let me pose these questions to you. Has anyone
21 ever been related by blood or marriage either to the
22 Defendant, who is Mr. Rogers, and I've had Mr. Rogers
23 stand so you could see him or the victim in this case, who
24 is Frederick Nicholas Engel?

25 Are you related by blood or marriage or were you

1 related by marriage to either the defendant or the victim
2 in this case? And there is no response. I say there is
3 no response because Ms. Gordon, who is my court reporter
4 here today, has to record everything, and if you get on
5 jury you will notice during the trial of the case if
6 someone does not answer verbally I will ask them, if they
7 nod their head or whatever, I'll ask them to put it on the
8 record because she can't take down anything but verbal
9 response. So I have to put on the record what you have
10 told me when I ask you these questions.

11 Has anyone ever had a close personal or social
12 relationship either with the Defendant, Mr. Rogers, or the
13 Victim, Mr. Engel? And, again, there is no response.
14 Now, I have a list of potential witnesses in this case.
15 Now, let me say this about the witness list. You will
16 draw no conclusions from the fact that a person that you
17 hear -- whose name you hear at this point in this trial is
18 not called by either side.

19 I require the attorneys to give me a list that would
20 have every potential witness. Some do that so that there
21 are no surprises in the trial. So I'm going to read you a
22 list of potential witnesses who may be called in this
23 case. Now, if you have ever had a close personal or
24 social relationship with any of these witnesses or you're
25 related by blood or marriage to any of these witnesses

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1 what I want you to do, when I have finished with the list,
2 is to please stand. We have an A.T. & T. representative
3 coming and his name is?

4 MR. RICHARDSON: It's Roderick Freeman, and he's from
5 Fayetteville.

6 THE COURT: Roderick Freeman from Fayetteville, North
7 Carolina. We had Heather Brummett who is from the Horry
8 County Police Department. Bobby Carman of the State of
9 Kentucky. Chris Carman, State of Kentucky. Robbie
10 Caulder, Horry County Police Department. Peter Cestare,
11 Horry County Police Department. Investigator Tony
12 Collins. Stuart Cottingham with the U.S. Marshall's
13 Office. Colin Duncan with S.L.E.D. Sherry Engel.
14 Officer Randal Gent of the Horry County Police Department.
15 Ryan Graham who is employed by Horry Telephone
16 Cooperative. Karla Green. Detective Joseph Hawes with
17 the Horry County Police Department. Russell Jordan with
18 the Horry County Telephone Cooperative. Detective Neil
19 Livingston with the Horry County Police Department.
20 Kimberly Maluda. Is that correct, Mr. Richardson?

21 MR. RICHARDSON: Yes, sir.

22 THE COURT: Kimberly Maluda. Sheriff Todd Pate,
23 Breckenridge County, Kentucky. Dr. Edward L. Proctor.
24 Karen Rickerson. Tom Rickerson. John Sweatt of the State
25 of Kentucky. The defendant, Timmy Rogers. And Debbie

1 Parish.

2 Now, that was a long list. If you need for me to
3 revisit it I will certainly do so, but if you have ever
4 been related by blood or marriage to any of those persons
5 that I have called or you have a close personal or social
6 relationship with any of those people I would like for you
7 to stand. The reason we ask this is we would not want you
8 to be unduly influenced by any special relationship you
9 might have with anyone who is testifying in this case.

10 Yes, ma'am?

11 PROSPECTIVE JUROR: Ryan Graham of H.T.C, he's my
12 brother.

13 THE COURT: He's your brother. I bet you know him
14 then, don't you?

15 PROSPECTIVE JUROR: I do.

16 THE COURT: Would you hold that against Mr. Graham?

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: Could you be a fair and impartial juror?

19 PROSPECTIVE JUROR: I believe so.

20 THE COURT: In spite of the fact that Mr. Graham is
21 your brother?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Okay. And your name.

24 PROSPECTIVE JUROR: My name is Ashley Work.

25 THE COURT: And, Ms. Work, what was your number?

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1 PROSPECTIVE JUROR: 132.

2 THE COURT: Thank you very much.

3 PROSPECTIVE JUROR: You're welcomed.

4 THE COURT: Yes, sir.

5 PROSPECTIVE JUROR: I work for H.T.C. I don't know
6 any of them personally.

7 THE COURT: All right.

8 PROSPECTIVE JUROR: In one of the offices. I don't
9 know him personally, but I have in the past just talked to
10 him.

11 THE COURT: And who would that be?

12 PROSPECTIVE JUROR: Randy Gent.

13 THE COURT: All right. And these two gentlemen of
14 the Horry Telephone you say you don't know them
15 personally, but they work for the same company as you work
16 for. Would the fact that you are employed by Horry
17 Telephone or that you have -- you say you've just had
18 occasion to speak to Mr. Gent before but you have no
19 personal relationship with him?

20 PROSPECTIVE JUROR: No, sir, there is no personal
21 relationship with any of the people that you named.
22 Jordan or Ryan Graham is just a how you doing today kind
23 of relationship with him.

24 THE COURT: Would your knowledge of these people in
25 any way affect by ability to be a fair and impartial

1 juror?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: Could you give both the State and the
4 Defense a fair trial?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: All right. And your name was?

7 PROSPECTIVE JUROR: Randall Spivy.

8 THE COURT: All right, Mr. Spivy. And you remember
9 your jury number?

10 PROSPECTIVE JUROR: 353.

11 THE COURT: 353. Thank you, Mr. Spivy. I appreciate
12 that. Anyone else? Okay. Now, the attorneys in this
13 case -- Mr. Richardson, you're a little apace there.

14 MR. RICHARDSON: Yes, sir.

15 (WHEREUPON, a bench conference was held off the
16 record in the presence of the jury pool, but out of
17 the hearing of the jury pool.)

18 THE COURT: Is Ms. Boyd here? Ms. Boyd, I understand
19 you work for the McNair Law Firm.

20 PROSPECTIVE JUROR: Yes, sir, and we represent the
21 State. I was waiting for you to ---

22 THE COURT: All right. And in that regard do you
23 have personal knowledge concerning this case?

24 PROSPECTIVE JUROR: I have a lot of personal
25 knowledge.

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1 THE COURT: All right then, Ms. Boyd, what I'm going
2 to do is I'm going to excuse you then. I would not put
3 you in that position then. Okay.

4 PROSPECTIVE JUROR: Do I need to go to Judge Seal's
5 court?

6 THE COURT: You certain will. You thought you were
7 going to skate by, didn't you?

8 PROSPECTIVE JUROR: I was going to go back to work.

9 THE COURT: All right. You can wait out in the hall
10 that they will be looking for you later, okay.

11 PROSPECTIVE JUROR: Thank you.

12 THE COURT: All right. Now, I have introduced the
13 attorneys at least casually to you. Mr. Jimmy Richardson.
14 Mr. Richardson, stand up. Mr. Richardson works for the
15 Horry County Solicitor's Office. It's my understanding
16 that he generally works there most of his career. He is
17 an assistant. In fact I believe he's the Deputy Solicitor
18 now here in Horry County.

19 He works for Mr. Hembry. Mr. Hembry, obviously is
20 the Solicitor for the 15th Circuit which is Horry and
21 Georgetown County, but Mr. Richardson, I believe your
22 duties are generally here in Horry County, is that
23 correct?

24 MR. RICHARDSON: Yes, sir.

25 THE COURT: All right. Thank you, Mr. Richardson.

1 We have at the defense table Ms. Kia Wilson. Ms. Wilson
2 works for the 15th Circuit Public Defender. She has been
3 there for a number of years, and like Mr. Hembry,
4 Ms. West, who is her boss also is the Public Defender for
5 Georgetown. Ms. Wilson, I think like Mr. Richardson most
6 of your duties are the confined to Horry County or
7 generally speaking; is that correct?

8 MS. WILSON: Yes, sir, they are.

9 THE COURT: Ms. Wilson is from here in Conway. Have
10 a seat. Now, as by Ms. Wilson we have Mr. Galmore. Mr.
11 Galmore is also employed by Ms. West as the -- she is the
12 Public Defender for the 15th Judicial Circuit. He's been
13 there quite a number of years, and like Ms. Wilson I
14 believe most of his duties are here in Horry County; is
15 that right, Mr. Galmore?

16 MR. GALMORE: Yes, sir.

17 THE COURT: And, Mr. Galmore, he lives here in Horry
18 County, but he's been for some time, but I believe he's
19 originally from Sumter?

20 MR. GALMORE: Florence.

21 THE COURT: Florence. Okay, we're not going to hold
22 that against you. Go ahead and have a seat, Mr. Galmore.
23 Is any member of the panel or has any member of the panel,
24 and as I've said most of these attorneys have been public
25 servants all their careers as I've known them. But have

1 you ever been represented by either of the attorneys
2 involved in the case or any law firm that they may have
3 been involved in? Do you know anything about these
4 attorneys or do you have a close personal or social
5 relationship with any of those attorneys or are you
6 related by blood or marriage to any of these attorneys?

7 Basically, what I'm looking for is any connection
8 with the attorneys that's might put you in a difficult
9 position or might have some doubt on your impartiality in
10 this case? Anyone? And, again, there is not response.

11 Okay, now, has anyone on the jury panel formed an
12 opinion about any issue or matter involved in this case?
13 What do I mean by asking you that? As I told you this
14 event occurred back in 2008. As you might imagine, it
15 being a murder charge, there was probably some sort of
16 newspaper reporting or press reporting that took place.

17 Do any of you recall anything of that nature? Do
18 you -- do any of you know anything about this case? Were
19 you a witness to it? Have you talked with witnesses about
20 it? Is there anything that you know about this case that
21 you feel should be brought to the Court's attention? Yes,
22 sir?

23 PROSPECTIVE JUROR: I believe it happened in the
24 neighborhood where I live, but I wasn't living there at
25 that time.

1 THE COURT: All right. Would the fact -- have you
2 discussed it with people that have any personal knowledge
3 about it?

4 PROSPECTIVE JUROR: No, sir, other than the location
5 itself.

6 THE COURT: Would the fact that you now reside in
7 that neighborhood affect your ability to be a fair and
8 impartial juror?

9 PROSPECTIVE JUROR: No, sir.

10 THE COURT: Could you be fair to both sides?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: And your name, sir.

13 PROSPECTIVE JUROR: Barry Wyels.

14 THE COURT: And your number?

15 PROSPECTIVE JUROR: 409. I believe that my brother
16 in law may have been a paramedic who was at the scene.

17 THE COURT: Would that affect your ability to be fair
18 and impartial?

19 PROSPECTIVE JUROR: No, sir.

20 THE COURT: All right, sir. Yes, ma'am.

21 PROSPECTIVE JUROR: I was working in a school, and
22 there was a substitute there that had mentioned what had
23 happened. And I briefly saw a news clip on the news.

24 THE COURT: Was it just general knowledge that you
25 received?

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1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Or did this sub have special knowledge
3 about it or anything of that nature?

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: Would the fact that you have generally
6 been exposed to knowledge of this event affect your
7 ability to be a fair and impartial juror?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: Could you give both parties a fair trial?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: And your name.

12 PROSPECTIVE JUROR: Dawn Fitzgerald.

13 THE COURT: All right, Ms. Fitzgerald. And what was
14 your number?

15 PROSPECTIVE JUROR: 111.

16 THE COURT: 111. Okay, thank you very much. Yes,
17 ma'am.

18 PROSPECTIVE JUROR: Just similarly, I have a
19 recollection of reading about the account in the
20 newspaper.

21 THE COURT: Have you formed any opinions about this
22 case?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: Would the fact that you generally recall
25 reading something about it would that affect your ability

1 to be fair and impartial?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: Could you give both sides a fair trial?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: Thank you very much. And your number?

6 PROSPECTIVE JUROR: Number 14.

7 THE COURT: Thank you very much. Okay, anyone else.

8 All right.

9 PROSPECTIVE JUROR: Your Honor.

10 THE COURT: Yes, sir.

11 PROSPECTIVE JUROR: Henry Jones, Number 188.

12 THE COURT: All right, Mr. Jones.

13 PROSPECTIVE JUROR: I just briefly heard about it,
14 you know, in the news like everybody else. I really
15 haven't formed any kind of opinion. I really don't even
16 remember the whole story or anything about it.

17 THE COURT: But that's all.

18 PROSPECTIVE JUROR: I just want to let you know that
19 I heard about it.

20 THE COURT: All right. But could you give both sides
21 a fair trial?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Have you formed any opinions about it?

24 PROSPECTIVE JUROR: No, sir, I haven't thought any
25 more about it.

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1 THE COURT: All right. Thank you, sir, very much.
2 All right. I'm sorry. Mr. Jones, give us your name and
3 number again. The Court Reporter didn't get it.

4 PROSPECTIVE JUROR: Henry Jones, Number 188.

5 THE COURT: Okay. All right. Is any member of the
6 jury panel aware of any bias or prejudice towards either
7 the State or the Defendant in this case? And there is no
8 response. Is any member of the jury panel or was any
9 member of the jury panel a member of the grand jury which
10 issued the indictment that I spoke of earlier? And there
11 is no response.

12 Is there any member of the jury panel who is a member
13 or contributor to any group which as its primary concern
14 is the promotion of law enforcement or victim's rights,
15 and these groups would include but not be limited to
16 something like M.A.D.D, S.A.D.D, C.A.V.E, Citizens Against
17 Violent Crime, anything like that? Yes, ma'am?

18 PROSPECTIVE JUROR: I'm a contributor to M.A.D.D.

19 THE COURT: All right. Would that in any way affect
20 your ability to be a fair and impartial juror?

21 PROSPECTIVE JUROR: No, it would not.

22 THE COURT: Could you give both sides a fair trial?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: And your name?

25 PROSPECTIVE JUROR: Nancy Naismith.

1 THE COURT: All right, Ms. Naismith, and you're which
2 number?

3 PROSPECTIVE JUROR: 262.

4 THE COURT: Thank you, Ms. Naismith. I appreciate
5 that, okay. All right. Now, does -- finally, does any
6 member of this jury panel know any reason whatsoever why
7 you should not serve as a juror in this case with
8 particular emphasis being placed on your ability to be
9 fair and impartial to both the State and the Defendant?
10 And there is no response. State have any other questions?

11 MR. RICHARDSON: No, sir.

12 THE COURT: The Defense?

13 MS. WILSON: Your Honor, could we approach briefly.

14 THE COURT: Certainly.

15 (WHEREUPON, a bench conference was held off the
16 record in the presence of the jury, but out of the
17 hearing of the jury.)

18 SELECTION OF THE JURY

19 THE COURT: All right. I find that the jury panel is
20 qualified with the exception of the lady who I have
21 previously excused. So, Madam Clerk, if you would please
22 call the first juror, and again, let me remind you. If
23 you come up or as you come up just come right up here.
24 Turn around and face the music. If you are seated come
25 over and have a seat by Mr. Roth. I hope all of you have

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1 met Mr. Roth. It you haven't you will know him by the end
2 of the day. He's been my bailiff the whole time I've been
3 on the bench, and his job is to make sure that you are
4 comfortable and are provided with everything you need.
5 And if that doesn't happen you let me know. We'll make
6 sure you get everything that you need, but Mr. Roth is
7 real good about that, okay.

8 CLERK OF COURT: Number 298, Janet Reams. What say
9 the State.

10 MR. RICHARDSON: Please present the juror.

11 CLERK OF COURT: What say the Defense.

12 MS. WILSON: Please seat the juror.

13 CLERK OF COURT: Have a seat in the jury box, please.
14 Seventy-one, Cory Cooper. Seventy-one, Cory Cooper.

15 THE COURT: Was he on the list up here this morning?
16 The deputies will find him. All right.

17 CLERK OF COURT: Ninety-five, Susan Eddy. What say
18 the State.

19 MR. RICHARDSON: Please present the juror.

20 CLERK OF COURT: Defense.

21 MS. WILSON: Please seat the juror.

22 CLERK OF COURT: Have a seat in the jury box, please.
23 Seventy-four, Brandon Crick. What say the State.

24 MR. RICHARDSON: Please present the juror.

25 CLERK OF COURT: Defense.

1 MS. WILSON: Please seat the juror.

2 CLERK OF COURT: Have a seat in the jury box, please.

3 188, Henry Jones. What say the State.

4 MR. RICHARDSON: Please present Mr. Jones.

5 CLERK OF COURT: Defense.

6 MS. WILSON: Please excuse the juror.

7 CLERK OF COURT: You're excused from this particular
8 case. Seven, Myriam Alonso. What say the State.

9 MR. RICHARDSON: Please present the juror.

10 CLERK OF COURT: What say the Defense.

11 MS. WILSON: Please seat the juror.

12 CLERK OF COURT: Have a seat in the jury box, please.

13 108, Robert Ferrell. What say the State.

14 MR. RICHARDSON: Please present the juror.

15 CLERK OF COURT: Defense.

16 MS. WILSON: Please excuse the juror.

17 CLERK OF COURT: You're excused from this particular
18 case. 247, Wanda Miller. What say the State.

19 MR. RICHARDSON: Your Honor. I didn't have her on my
20 list. Might I inquire about her employment and her
21 spouse.

22 THE COURT: All right. Miss Miller, could you tell
23 us where you work or what work you last did.

24 PROSPECTIVE JUROR: I'm now still employed with the
25 Sell Company, and I work in sales operations and cleaning

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1 and cooking and other work catering to our needs.

2 THE COURT: Okay. And what area of the county are
3 you from?

4 PROSPECTIVE JUROR: Horry.

5 THE COURT: I mean what area of the County.

6 PROSPECTIVE JUROR: Loris.

7 THE COURT: The Loris area. Okay. Anything further
8 you need to know?

9 MR. RICHARDSON: No, sir.

10 THE COURT: All right. Okay.

11 MR. RICHARDSON: Please present the juror.

12 MS. WILSON: Please seat the juror.

13 CLERK OF COURT: Have a seat in the jury box, please.
14 388, David Wayt. What say the State.

15 MR. RICHARDSON: Please present the juror.

16 CLERK OF COURT: Defense.

17 MS. WILSON: Meet seat the juror.

18 CLERK OF COURT: Have a seat in the jury box, please.
19 353, Randall Spivey. What say the State.

20 MR. RICHARDSON: Please present Mr. Spivey.

21 CLERK OF COURT: Defense.

22 MS. WILSON: Please excuse this juror.

23 CLERK OF COURT: You're excused from this particular
24 case. Forty-eight, Cheryl Burt. What say the State.

25 MR. RICHARDSON: Please excuse Ms. Burt.

1 CLERK OF COURT: You're excused from this particular
2 case. 132, Ashley Work. What say the State.

3 MR. RICHARDSON: Please present Ms. Work.

4 CLERK OF COURT: What say Defense.

5 MS. WILSON: Please excuse this juror.

6 CLERK OF COURT: You're excused from this particular
7 case. 262, Nancy Smith. What say the State.

8 MR. RICHARDSON: Please present the juror.

9 CLERK OF COURT: What say Defense.

10 MS. WILSON: Please excuse this juror.

11 CLERK OF COURT: You're excused from this particular
12 case. 111, Dawn Fitzgerald. What say the State.

13 MR. RICHARDSON: Please present the juror.

14 CLERK OF COURT: What say Defense.

15 MS. WILSON: Please excuse this juror.

16 CLERK OF COURT: You're excused from this particular
17 case. 351, Joan Spellman. What says the State.

18 MR. RICHARDSON: Please excuse Ms. Spellman.

19 CLERK OF COURT: You're excused from this particular
20 case. 103, David Estridge. What say the State.

21 MR. RICHARDSON: Please present the juror.

22 CLERK OF COURT: Defense.

23 MS. WILSON: Please excuse this juror.

24 CLERK OF COURT: You're excused from this particular
25 case. 127, William Gibney. What say the State.

Selection of the Jury

34

1 MR. RICHARDSON: Please present the juror.

2 CLERK OF COURT: Defense.

3 MS. WILSON: Please excuse this juror.

4 CLERK OF COURT: You're excused from this particular
5 case. Ninety-nine, Katherine Eichholz. What say the
6 State.

7 MR. RICHARDSON: Please present this juror.

8 CLERK OF COURT: Defense.

9 MS. WILSON: Please seat this juror.

10 CLERK OF COURT: Have a seat in the jury box, please.
11 Forty-one, Louise Brown. What say the State.

12 MR. RICHARDSON: Please present Ms. Brown.

13 CLERK OF COURT: Defense.

14 MS. WILSON: Please seat this juror.

15 CLERK OF COURT: Have a seat in the jury box, please.
16 130, Paul Giordano. What say the State.

17 MR. RICHARDSON: Please present the juror.

18 CLERK OF COURT: Defense.

19 MS. WILSON: Please seat this juror.

20 CLERK OF COURT: Have a seat in the jury box, please.
21 Ninety-four, Christina Eafрати. What say the State.

22 MR. RICHARDSON: Please present the juror.

23 CLERK OF COURT: Defense.

24 MS. WILSON: Please excuse this juror.

25 CLERK OF COURT: You're excused from this particular

1 case. 230, Jerri McArthur. What say the State.

2 MR. RICHARDSON: Please present the juror.

3 CLERK OF COURT: Defense.

4 MS. WILSON: Please seat this juror.

5 CLERK OF COURT: Have a seat in the jury box, please.

6 325, Angela Saiani. What say the State.

7 MR. RICHARDSON: Please present the juror.

8 CLERK OF COURT: Defense.

9 MS. WILSON: Please seat this juror.

10 CLERK OF COURT: Have a seat in the jury box, please.

11 319, Lillie Rouse. What say the State.

12 MR. RICHARDSON: Please excuse Ms. Rouse.

13 CLERK OF COURT: You're excused from this particular

14 case. 245, Dennis Miller. What say the State.

15 MR. RICHARDSON: Please excuse Mr. Miller.

16 CLERK OF COURT: You're excused from this particular

17 case. 222, Barry Marion. What say the State.

18 MR. RICHARDSON: Please present the juror.

19 CLERK OF COURT: Defense.

20 MS. WILSON: Please excuse this juror.

21 CLERK OF COURT: You're excused from this particular

22 case. 199, Bruce Kligman. What say the State.

23 MR. RICHARDSON: Please excuse this juror.

24 CLERK OF COURT: You're excuse from this particular

25 case. 195, Nina Kemp. What say the State.

Selection of the Jury

36

1 MR. RICHARDSON: Please present this juror.

2 CLERK OF COURT: Defense.

3 MS. WILSON: Please seat this juror.

4 CLERK OF COURT: Have a seat in the jury box, please.

5 THE COURT: All right, gentlemen, ladies, I believe
6 that we would need two alternates. You see the necessity
7 of any further, Mr. Richardson, Ms. Wilson, Mr. Galmore?

8 MR. RICHARDSON: No, sir.

9 MS. WILSON: No, sir.

10 THE COURT: All right. We're going to proceed. Two
11 and one. Okay, and we'll select them one at a time. All
12 right.

13 CLERK OF COURT: 302, John Resch. What say the
14 State.

15 MR. RICHARDSON: Please present this juror.

16 CLERK OF COURT: Defense.

17 MS. WILSON: Please excuse this juror.

18 CLERK OF COURT: You're excused from this particular
19 case. 224, Russell Martin. What say the State.

20 MR. RICHARDSON: Please present this juror.

21 CLERK OF COURT: Defense.

22 MS. WILSON: I'm sorry. Repeat the number.

23 CLERK OF COURT: 224.

24 MS. WILSON: Please seat this juror.

25 CLERK OF COURT: Have a seat in the jury box, please.

1 311, David Risner. What say the State.

2 MR. RICHARDSON: Please present this juror.

3 CLERK OF COURT: Defense.

4 MS. WILSON: Please seat this juror.

5 CLERK OF COURT: Have a seat in the jury box, please.

6 THE COURT: All right. Ms. Wilson, Mr. Galmore, you
7 anticipate any challenges to the panel?

8 MS. WILSON: No, sir, we do not.

9 THE COURT: All right. Mr. Richardson?

10 MR. RICHARDSON: No, sir.

11 THE COURT: All right. Very well. All right, ladies
12 and gentlemen of the jury, you're going to serve as our
13 jurors. Ms. Saiani, am I saying that right?

14 JUROR: Saiani.

15 THE COURT: Saiani. Guess what?

16 JUROR: What.

17 THE COURT: You should occupy that seat for the
18 balance of this trial because you're going to be our
19 forelady. Mr. Martin and Mr. Risner.

20 JUROR: Risner.

21 THE COURT: Risner, I will ask you two to occupy
22 these seats, the one's you're in, during the trial. Those
23 are the alternate seats. So always sit there. The rest
24 of you may sit where you will. I'm going to give you some
25 preliminary instructions when I bring you back. For right

Selection of the Jury

38

1 now I'm going to let you go to your jury room with
2 Mr. Roth. Mr. Roth has some refreshments back there for
3 you. See what a good job he does.

4 You find that Horry County has provided us with
5 absolutely the nicest courthouse in the State. I go
6 everywhere and we try to make a comfortable place for
7 jurors. Some of the places I go they stick them in
8 closets or out under an oak tree in the yard or what have
9 you. But here in Horry County you're going to find a very
10 comfortable place to be. Great view of the marina and the
11 tennis court.

12 I want to get you back there where you will be
13 comfortable. I've got a few things that I have to do in
14 reference to this case before we get started. So, Mr.
15 Roth, if you would take your jury back to the jury room.
16 Get them back there, and I'll call for them in a few
17 minutes. All right. The balance of this jury panel is
18 excused. Ms. Moore, do you know what Mr. I mean what
19 Judge Seals needs?

20 POLICE OFFICER: I'm not sure.

21 CLERK OF COURT: I think they're talking about
22 pulling another jury this morning.

23 THE COURT: Do you know where i can send this jury?
24 Do I sent the back downstairs to the jury poolroom. Okay.
25 I'm going to ask you all to go back downstairs to the jury

1 poolroom. You know where that is. The jury assembly
2 room. You should all know where that is by now, and maybe
3 I'll see you again later in the week. Thank you.

4 (WHEREUPON, the jury pool and the jury panel were
5 excused from the courtroom at 10:20 a.m.)

6 COLLOQUY

7 THE COURT: All right. Are we ready?

8 MR. RICHARDSON: Yes, sir. Do you want to go forward
9 with that motion on A.T. & T?

10 THE COURT: Well, it's what you folks want to go
11 forward on. I'm ready.

12 MR. RICHARDSON: I'd like to have at least
13 preliminary answers so that I will know what to talk about
14 in opening, if that's okay.

15 THE COURT: Well, we can do that if you're prepared
16 to go forward with that issue. I understand that it's
17 actually Ms. Wilson's motion; is that correct?

18 MS. WILSON: Yes, sir, it is.

19 THE COURT: All right. Ms. Wilson, we're ready.

20 MS. WILSON: Thank you, Your Honor.

21 RODERICK FREEMAN, after being duly sworn,
22 testified as follows:

23 CLERK OF COURT: Thank you. Please be seated and
24 state your full name. Spell your last name for the Court.

25 THE WITNESS: Roderick Freeman. F-R-E-E-M-A-N.

DIRECT EXAMINATION

BY MS. WILSON:

Q. Mr. Freeman, you are here from what company?

A. A.T. & T.

Q. And A.T. & T. in it's -- in the normal course of business for A.T. & T. do you have data about phone records?

A. Yes, ma'am.

Q. And what date exactly is it that you keep?

A. We keep phone records as far as calls that are placed from the phone, calls that are received to the phones.

Q. Is that all that you keep?

A. We keep billing records if that's what you're asking.

Q. Okay. And do you keep any information about towers?

A. We do keep information about tower so far as there;s a problem with a tower so far as congestion and -- excuse me. A degraded signal or if there are issues with dropped calls on a particular tower.

Q. Okay. So what information specifically do you keep about the towers? Is it the number of the tower? The name of the tower?

A. That information I wouldn't be able to provide. I'm not an engineer.

Q. Okay. And if a tower does not have any problems, if it's not dropping calls, would you keep tower information

1 under those circumstances?

2 A. Yes, ma'am.

3 Q. So any time a call is made A.T.&T. documents the
4 tower ---

5 A. Yes, ma'am.

6 Q. --- that is used?

7 A. Yes, ma'am.

8 Q. Is it one tower used or is it two towers used?

9 A. I'm sorry.

10 Q. When a call, is it between two towers or is it one
11 tower?

12 A. It can be between a number of towers. It just
13 depends upon the situation.

14 Q. Okay. And once the information -- once a call is
15 made, for example, and a call goes through the system that
16 information is stored in what format?

17 A. Again, I can't speak to that because I'm not an
18 engineer.

19 Q. What exactly is your position at A.T.&T?

20 A. I am a Customer Service Manager.

21 Q. So then you're not actually a custodian of records
22 for A.T.&T?

23 A. Actually, I am an a custodian of the records. I keep
24 billing information, but I don't deal with the technical
25 aspect of it.

1 Q. So then you're telling me that you're unable to give
2 me any information about the mode of containment for these
3 records or the procedure by which you maintain these
4 records?

5 A. Actually, we do keep the billing records on file so
6 far as I stated earlier. Any calls that are made and
7 received from the phones we keep that for auditing
8 records. We keep that for billing purposes. Now,
9 information that concern the towers, I don't have that
10 information.

11 We don't keep that on record for our customers to
12 see. That is more along the lines of our technical
13 department or our engineering department.

14 Q. Okay. So then the phone records themselves would be
15 available just as a matter of course? Anything about
16 billing? Anything about when a call was made?

17 A. Yes, ma'am.

18 Q. Correct?

19 A. Yes, ma'am.

20 Q. But information specifically for the purpose of let's
21 say this litigation would be something additional? It
22 would require something extra, correct?

23 A. It would require some technical information, yes,
24 ma'am.

25 Q. What about for the pulling of that information for

1 our purposes today? Would that have required something
2 additional or would that be something you would just have
3 in the normal course?

4 A. That would actually require information being pulled
5 from the towers. As far as my job description, again, I
6 go over billing practices on the account. But so far as
7 information from the tower that's not my area of
8 expertise.

9 Q. So, and again, I want to make sure I'm being clear so
10 forgive me if I repeat myself.

11 A. Okay.

12 Q. If I ask you the same question. You're telling me
13 and you're telling this Court today that tower
14 information, anything about the tower would not be in the
15 normal course of your business for what you -- what you
16 ---

17 A. For what I do.

18 Q. Right?

19 A. That is correct.

20 Q. And if, and in this instance, any information that
21 would normally be available to anyone who would have come
22 to A.T.&T. wanted to know that information the tower
23 information would not be included with that, would it?

24 A. I'm not exactly sure I understand the question,
25 ma'am.

1 Q. Would tower information be available to me as an
2 A.T.&T. customer if I called in and asked you about it?

3 A. Are you asking if there is a problem with the tower
4 would we provide the customer with that particular
5 information because in the course -- I'm sorry. Go ahead.

6 Q. I'm sorry to interrupt you. No, sir. My question to
7 us is would as an A.T.&T. customer, if I were to call in,
8 would the information about the tower, problem or not, be
9 available to me as an A.T.&T. customer just randomly?

10 A. Just for you to call up and say, "Okay. What towers
11 are in my area?" Is that my understanding?

12 Q. Yes, sir.

13 A. Again, that's not normal, but I wouldn't necessarily
14 say in my course of business I wouldn't necessarily say,
15 "Okay. Well, hey, we have such and such tower in your
16 area." I can pull and see what type of coverage that you
17 have, but I couldn't state specifically whether or not
18 Tower X, for example, is approximately five miles from you
19 or something to that effect.

20 Q. Okay. So in order for me as a random A.T.&T.
21 customer to come in and get that information, even about
22 the location of a specific tower, that would require
23 something additional, correct? It would require something
24 more than me just calling in? You wouldn't have that at
25 your fingertips, would you?

1 A. No, ma'am.

2 Q. And what would you actually have to do in order to
3 get that information?

4 A. In order to get the tower information?

5 Q. Yes, sir.

6 A. Generally, if the call were to come into to my center
7 and there was additional information needed about a tower
8 I would refer the customer to our technical support
9 department. Because, again, with them being technicians
10 and engineers they would be better suited to answer that
11 question than I would be able to.

12 Q. Okay. So today do you have a copy of the records
13 that were supposed to have been taken from Mr. Timmy
14 Rogers' phone?

15 A. Yes, I do.

16 Q. And how did you actually come into possession of that
17 record?

18 A. There was a subpoena that was issued through to my
19 company. There was a request that was placed to have
20 records from the tower and they were provided to me before
21 I came down today.

22 Q. Okay. So you're telling me that you're not the
23 person that actually pulled that record?

24 A. No, ma'am, I am not.

25 Q. Do you know who pulled that record?

1 A. No ma'am, I do not.

2 Q. Do you know the procedure or the process by which
3 they would have pulled it?

4 A. Again, that's not my area of expertise so far as how
5 they collect the information because I'm not an engineer.

6 Q. Prior to this day have you seen those records?

7 A. No, ma'am. Excuse me. Let me -- I'm sorry. I
8 received documentation yesterday when I was asked to
9 attend. Now, if that answers your question I looked over
10 the information yesterday and this morning, but prior to
11 that, no, ma'am.

12 Q. And is this document that you have, is this document
13 the original that your company would have had around or is
14 this a copy of something that was given to you?

15 A. I'm not quite sure I understand the question.

16 Q. Is the document that you have the original as in the
17 document that would have been stored or filed somewhere?

18 A. I, again, can't speak to that so far as how it was
19 pulled. I know it was collected from our database or from
20 our records. Now, whether or not it is the original or a
21 copy, that's outside my area of knowledge.

22 Q. Okay. Who would determine, in your company, who
23 would determine what information would become available to
24 someone and under what circumstances?

25 A. So far as call detail or? I'm not understanding the

1 reference of the question.

2 Q. Well, we've already established a -- certain
3 information would be available to me as a customer if I
4 were to call in?

5 A. That is correct.

6 Q. Beyond -- any information beyond the call date, the
7 length of the call, you know, who was called. There would
8 not be any other information available to me, correct, as
9 a caller if I were to call in?

10 A. Just for basic information ---

11 Q. Right?

12 A. --- you would have the items you described, yes,
13 ma'am.

14 Q. And as a customer service rep you would be able to
15 tell me that information when I called in?

16 A. Yes, ma'am.

17 Q. All right. So let's say information beyond the scope
18 of what I just covered. There would be more involved in
19 getting that information, would it not?

20 A. Yes, ma'am.

21 Q. And so it's fair enough to say that normally that
22 information would not be available to a customer who
23 called in, would it?

24 A. That would be fair to say.

25 Q. And ---

1 THE COURT: Ms. Wilson, let me ask you a question.

2 MS. WILSON: Yes, sir.

3 THE COURT: My understanding is you are a customer
4 service representative?

5 THE WITNESS: No, sir. I'm a customer service
6 manager.

7 THE COURT: Manager. All right, sir. And you have
8 at your disposal records concerning where calls were
9 made -- I mean what calls were made, on what phones and to
10 where and things of that nature, billing and things like
11 that?

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay. But you have today some other
14 information that's not normally within your area of
15 expertise?

16 THE WITNESS: That is correct.

17 THE COURT: And that involves technical information
18 concerning the towers and things of that nature?

19 THE WITNESS: Yes, sir.

20 THE COURT: So that is not even information that
21 would normally be at your disposal?

22 THE WITNESS: That is correct.

23 THE COURT: And you do not know how it was compiled,
24 who compiled it or how it was compiled?

25 THE WITNESS: That is correct.

1 THE COURT: All right, sir. So you're not the
2 custodian of those records?

3 THE WITNESS: I'm not the custodian of the technical
4 records.

5 THE COURT: Right.

6 THE WITNESS: Anything consisting -- excuse me.
7 Anything consisting of the actual billing or the call
8 details I would be the custodian of those records.

9 THE COURT: I just wanted to. So there are two
10 different things that we're talking about.

11 THE WITNESS: Okay.

12 THE COURT: All right. Is that correct?

13 THE WITNESS: Yes, sir.

14 THE COURT: Is that -- do I categorize it?

15 THE WITNESS: Yes, sir.

16 THE COURT: If I say ---

17 THE WITNESS: So far as ---

18 THE COURT: Two different areas?

19 THE WITNESS: Yes, the tower and the billing, if I'm
20 understanding you correctly, yes, sir.

21 THE COURT: All right. Okay. All right.

22 MS. WILSON: Your Honor, at this time I have no
23 further questions for this witness.

24 THE COURT: All right, Mr. Richardson.

25 MR. RICHARDSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. RICHARDSON:

Q. Mr. Freeman, now, you are custody service manager; is that correct?

A. Yes, sir.

Q. And you work for A.T.&T?

A. Yes, sir.

Q. All right. Did you receive a subpoena to be here today?

A. Yes, sir.

Q. And what records did you bring with you?

A. What I have is the call detail from -- I'm sorry. From April 2008 on through April 25th of 2008.

Q. Okay. And what phone number is those call records for?

A. These are call records for the mobile number, area code, [REDACTED]-4731.

Q. Okay. And let's go through these records. Not each individual, but starting with the left furthest to my right, your left, column. Tell the Court what that column details?

A. The first column indicates the date and the time that a call would have been made or received on the phone.

Q. Okay, date and time. How about the second column?

A. The second column is the record type.

1 Q. Which would mean who called who, ingoing, outgoing?

2 A. Yes, sir.

3 Q. Okay. And the third column?

4 A. The third column -- excuse me. The third column is
5 the mobile number that is calling.

6 Q. All right. And what's the fourth column?

7 A. The fourth column is the number that's actually
8 calling.

9 Q. All right. What does I.M.E.I. stand for?

10 A. Actually, I don't have the complete breakdown, but
11 what the I.M.E.I. Number is is basically the serial number
12 for a particular phone.

13 Q. Okay. So this particular phone would have an
14 I.M.E.I. number?

15 A. Yes, sir.

16 Q. And if this was an A.T.&T. phone you would be able to
17 look up the serial number by the phone number?

18 A. I would be able to look up -- yes, sir. If it's
19 something that's in our system I could pull that
20 information up. I could tell you what type of phone it
21 was.

22 Q. And is that I.M.E.I. number in your system?

23 A. Yes, sir.

24 Q. And is that the sort of records that A.T.&T. would
25 normally keep in the ordinary course of business?

1 A. Yes, sir.

2 Q. All right. What is the I.M.S.I? What is that
3 referring to?

4 A. That would be the SIM card number on the account.
5 That is your heart or your brain, for lack of the better
6 term, for the particular phone. Without the SIM card the
7 phone would not actually be able to make or receive any
8 calls other than a 911 call. It wouldn't be able to do
9 any type of text messaging, multimedia messaging, things
10 of that nature. He would just have a call or -- excuse
11 me. A phone, basically, for emergency purposes making the
12 911 call.

13 Q. So if I called into A.T.&T. and went through two or
14 three people and got to you would you be able, if I gave
15 you the phone number, to give me the SIM card I.D?

16 A. Yes, sir.

17 Q. Okay. And is that ordinarily kept in the course of
18 business at A.T.&T?

19 A. Yes, sir.

20 Q. What is that next column talk about?

21 A. The next column is the duration or how long the call
22 lasted. In generally it's listed in seconds.

23 Q. Okay. Good. And that is the call from the calling
24 number to the called number?

25 A. Yes, sir.

1 Q. The duration of each one of those calls?

2 A. Yes, sir.

3 Q. Some of them show zero. Some of them -- but all of
4 them show up in seconds?

5 A. Yes, sir.

6 Q. So even you track the attempted calls made?

7 A. Yes, sir.

8 Q. And are you able -- do you keep the duration of calls
9 in the ordinary course of business through A.T.&T?

10 A. Yes, sir.

11 Q. Now, how about this L.A.C.C.I.D. Number? What is
12 that referring to?

13 A. From what I understand the L.A.C.C.I.D. has something
14 to do with the towers, but then again, in my day to day
15 business I don't deal with that particular aspect of that.
16 That would require a technician or engineer.

17 Q. Okay. Now ---

18 MS. WILSON: I'm sorry, Your Honor. I didn't catch
19 all of that answer.

20 THE WITNESS: The L.A.C.C.I.D. generally deals with,
21 from my understanding, tower information. This is not
22 information that I deal with in my day to day operations.
23 So I wouldn't be able to accurately give you a description
24 of what that is.

25 BY MR. RICHARDSON:

1 Q. But that, basically, is the serial number for the
2 tower?

3 A. From my understanding.

4 Q. Okay. And do y'all keep up with the towers, the
5 information about the individual towers in the ordinary
6 course of business at A.T. & T.?

7 A. Yes, sir.

8 Q. And if I called you and I got through to you and I
9 asked you, suppose on 4/1/2008 at 1800 hours I made a call
10 to my girlfriend or my mom. Could you go through your
11 database and tell me what tower that hit on? Is there a
12 database that contains that sort of information at A.T. & T.?

13 A. Our technical department would probably be able to
14 narrow it down for you. But, again, that's not
15 information that I would have direct access to.

16 Q. Not specifically to the tower itself, but is that
17 information kept through A.T. & T.?

18 A. Yes, sir.

19 Q. Okay. And are you familiar with the records at A.T. &
20 T.?

21 A. Yes, sir.

22 Q. Are you familiar with how that is held? Is that held
23 in a database or that held on hard copy?

24 A. That is held in a database.

25 Q. Okay. So it's a computer system that keeps up from

1 the individual tower?

2 A. Yes, sir.

3 Q. Okay. And even though you don't usually give out
4 that information that information is held in the ordinary
5 course of business at A.T. & T?

6 A. Yes, sir.

7 Q. And do you know why they would keep up with towers
8 and what's -- why would they keep up with such a system?

9 A. Well, in the event that we have a coverage area that
10 needed more towers, we keep up with that information. In
11 order to make sure that the towers are up and running
12 properly; that we don't have too much congestion on any
13 one particular tower. Like I said earlier, with any
14 signal degradation, dropped calls, things of that nature,
15 we actually keep track of the particular towers.

16 Q. So you're familiar that A.T. & T. keeps that for
17 marketing purposes if no other purpose?

18 A. Yes, sir.

19 Q. To see what towers are getting the most hits, where
20 other towers may need to become available?

21 A. Yes, sir.

22 Q. All right. And tell me about this next column, LAT.
23 What's that?

24 A. For my understanding that would be Latitude.

25 Q. Latitude for what?

1 A. For where the tower is actually at or where the phone
2 call came in. But, again, that's out of my area of
3 expertise.

4 Q. And nobody here, the Defense or the State, is asking
5 you to go into expertise about how far away things are.
6 We're just asking about these records.

7 A. Okay.

8 Q. Okay. That latitude, is that kept in the normal and
9 ordinary course of business through A.T.&T?

10 A. Yes, sir.

11 Q. And you're familiar with that?

12 A. Yes, sir.

13 Q. All right. And how about longitude?

14 A. Again, it helps to narrow down the position of the
15 towers or the position that the actual call was taken
16 place, where the tower received it from.

17 Q. So if I punched in that longitude and that latitude
18 are you telling me that that would show me a particular
19 tower?

20 A. It would show you a particular tower or a particular
21 area close to a tower.

22 Q. Okay.

23 A. Where a tower actually pulled it off of.

24 Q. All right. And that L.A.C.C.I.D. actually represents
25 the serial number of the tower?

1 A. Yes, sir.

2 Q. Okay. Now, with regard to these records, which are
3 for the phone number of [REDACTED]-4731, these calls, are
4 they latitude, longitude, duration? I mean are they
5 particular to that number?

6 A. They are unique to that particular number. These are
7 any type of calls that would have been made from that
8 phone line or made to that line.

9 Q. Okay. If and what is that file number up there at
10 the top left hand corner? What is that talking about?

11 A. Right here?

12 Q. This file number. Yes, sir.

13 A. That would be -- to be quite honest I'm not sure.

14 Q. Okay. But no doubt that phone number is unique to
15 all of these figures?

16 A. Yes, sir.

17 Q. All right. So -- and even though you don't generally
18 deal with this this is something that A.T.&T. deals with
19 on an everyday basis?

20 A. Yes, sir.

21 Q. And they keep up with that information on a day to
22 day basis?

23 A. Yes, sir.

24 Q. And if somebody like me asked you to bring that
25 information in you could retrieve it from a database?

1 A. Yes, sir.

2 Q. Or you could go to someone at A.T.&T. and say, "This
3 request has been made. Please produce these documents?"

4 A. Yes, sir.

5 Q. And are you sure that these are actually your
6 records?

7 A. Yes, sir.

8 Q. All right. And when you talk about a original, well,
9 that would be hard to talk about if it was in a data
10 storage system, wouldn't it?

11 A. Yes, sir.

12 Q. You're not saying that this is the first time that
13 this has ever been printed?

14 A. Exactly.

15 Q. And that way being an original?

16 A. Original. Yes, sir.

17 Q. But that is in fact on your paper. You brought that
18 in, didn't you?

19 A. Yes, sir.

20 Q. Didn't you. And it's got your A.T.&T. logo in color?

21 A. Yes, sir.

22 Q. Correct?

23 A. Yes, sir.

24 Q. And it was provided to you by A.T.&T. employees?

25 A. Yes, sir.

1 Q. And you are familiar with the billing practices of
2 A.T.&T.

3 A. Yes, sir.

4 Q. And you're familiar with even -- even though this
5 isn't your area of expertise, you realize that A.T.&T.
6 keeps up with the L.A.C.C.I.D., the latitude, the
7 longitude? They keep up with all of that?

8 A. Yes, sir.

9 Q. And you even said the purposes for that is to make
10 sure that we don't need other towers in that area to see
11 what towers are getting hit more often than other ones?

12 A. Yes, sir.

13 Q. Marketing things like how often does this tower drop
14 calls as opposed to some other tower.

15 A. Yes, sir.

16 Q. Maybe to reduce some towers. I doubt that happens
17 very often, but ---

18 A. Very seldom.

19 Q. So it's going up all the time?

20 A. Yes, sir.

21 Q. And this is intrical to A.T.&T. system?

22 A. Yes, sir.

23 Q. And you're aware of all this?

24 A. Yes, sir.

25 Q. Okay. Now, and you brought this as part of a Court

1 order, correct?

2 A. Yes, sir.

3 Q. And you're not -- you know Timmy Rogers?

4 A. No, sir.

5 Q. Never met him before in your life?

6 A. No, sir.

7 Q. But you're saying that these records to -- you're
8 saying that these phone calls were made to or from

9 [REDACTED]-4731, correct?

10 A. Yes, sir.

11 Q. And you can tell the time ---

12 A. Yes, sir.

13 Q. --- that they were made? You can tell how long
14 somebody using that phone stayed on the phone?

15 A. Yes, sir.

16 Q. You can tell the actual Social Security number for
17 the phone?

18 A. Yes, sir.

19 Q. And even the SIM card particular to that phone?

20 A. Yes, sir.

21 Q. Let me ask you this. If I was to borrow Ms. Wilson's
22 SIM card and put it in this phone. She's got a
23 Blackberry. I've got a Blackberry. Could you tell by
24 looking at this that the SIM card had been changed?

25 A. Yes, sir.

1 Q. Okay. You can even tell that?

2 A. Yes, sir.

3 Q. All right. Because with this I.D. change over here
4 and the I.M.S.I?

5 A. Yes, sir. What will happen is if -- and I'm sorry.
6 I didn't catch your name.

7 Q. Miss Wilson.

8 A. If Ms. Wilson and yourself swapped SIMs what would
9 happen is your I.V.I. number would change under your
10 particular account. It will still have the same number.
11 It's just the serial number for the phone changes. If you
12 have a different model of Blackberry on my system I would
13 be able to tell whether or not you're using a Curve or a
14 Boll, or whatever the case maybe.

15 Q. Okay. So you can tell all that. And you're familiar
16 with that part of it?

17 A. Yes, sir.

18 Q. Okay. And you are familiar, there is no doubt about
19 it. That A.T.&T. does keep these records?

20 A. Yes, sir.

21 Q. And that you are a custodian of those records?

22 A. Yes, sir.

23 Q. All right. And all it takes, if you couldn't pull it
24 up yourself, you know the person to call and say, 'get me
25 the lat/long?

1 A. Yes, sir.

2 Q. And you're not saying that these -- you're not
3 verifying that these are -- you can't say that you could
4 drive to that area and see that particular tower, but the
5 records are what they are?

6 A. Yes, sir.

7 Q. No doubt about that?

8 A. No doubt about it.

9 Q. They hadn't been forged or changed or anything since
10 they were given to you?

11 A. No, sir, it has not.

12 Q. You believe in those records?

13 A. Yes, sir, I do.

14 Q. Because you know those records?

15 A. Yes, sir.

16 Q. Okay.

17 MR. RICHARDSON: Now, I'd like to have these marked
18 as Court's Exhibit Three.

19 THE COURT: Ms. Wilson.

20 MS. WILSON: No objection, Your Honor.

21 THE COURT: All right. Court's Three.

22 (WHEREUPON, Court's Exhibit No. 3 was marked for
23 identification and received into evidence.)

24 BY MR. RICHARDSON:

25 Q. All right. Now, with regards to the telephone

1 number, 28 -- area code (843)283-6553. Are you familiar
2 with those phone records?

3 A. Yes, sir.

4 Q. And do you know Sherry Engel?

5 A. No, sir.

6 Q. Does Sherry Engle's name appear on that in any way?

7 A. No, sir.

8 Q. Whose records are those?

9 A. These are the records of A.T. & T.

10 Q. Okay. And you are familiar, again, with -- and in
11 this case it shows calls to and from?

12 A. Yes, sir.

13 Q. The city?

14 A. Um hum.

15 Q. And it shows the duration?

16 A. Yes, sir.

17 Q. And this isn't -- they don't have the same
18 information on these records as do the records that you
19 turned in from the 502 number?

20 A. Correct.

21 Q. Correct?

22 A. Correct.

23 Q. That particular set of records leaves off the
24 latitude and the longitude and tower information?

25 A. Yes, sir.

1 Q. But are these records correct none the less?

2 A. Yes, sir.

3 Q. Just for less information?

4 A. Yes, sir.

5 Q. Okay. And you're familiar with these and you know
6 those to be A.T.&T's phone records?

7 A. Yes, sir.

8 Q. All right. And you can verify those as being from
9 your company?

10 A. Yes, sir.

11 Q. Okay.

12 MR. RICHARDSON: Your Honor, I would like to mark
13 this as Court's Exhibit Number Four.

14 THE COURT: Okay, Court's Four.

15 (WHEREUPON, Court's Exhibit No. 4 was marked for
16 identification and received into evidence.)

17 MR. RICHARDSON: Court's Exhibit Number Four. And
18 that's the first page on that. I should have stamped
19 that.

20 BY MR. RICHARDSON:

21 Q. All right. But just because Sherry's records are
22 different than -- the 843 records are different from the
23 502 records didn't necessarily mean that one right and one
24 wrong, does it?

25 A. No, sir, it doesn't.

1 Q. One has got more specific information?

2 A. Correct.

3 Q. And that, again, that information, the lat/long would
4 be available to you? It's kept in the ordinary course of
5 business?

6 A. Yes, sir.

7 Q. Something that A.T.&T. relies on every day?

8 A. Yes, sir.

9 Q. For marketing purposes. No doubt about that, is
10 there?

11 A. No doubt.

12 Q. Now, you're just saying, "I don't know the technical
13 aspects of it?"

14 A. That is correct.

15 Q. I don't know if this tower puts off for ten miles,
16 five miles, what cone it's in. I don't know anything
17 about that?

18 A. That's correct.

19 Q. That's beyond any expertise?

20 A. Yes, sir.

21 Q. But within your expertise is that those records are
22 A.T.&T's records?

23 A. Yes, sir.

24 Q. And whether they're true, false or indifferent
25 they're at least indifferent?

1 A. Yes, sir.

2 Q. No -- the records speak for themselves?

3 A. Yes, sir.

4 Q. And they're kept by A.T.&T?

5 A. Yes, sir.

6 MR. RICHARDSON: I have no further questions.

7 THE COURT: All right. Let me ask the witness a
8 couple of questions. Now, I want to make sure that I
9 understand. No question that A.T.&T. is a regularly
10 conducted business?

11 THE WITNESS: Yes, sir, that is correct.

12 THE COURT: Is there any question that it is the
13 regular practice of A.T. & T -- can you say it's the
14 regular practice of A.T. & T. to keep these records?

15 THE WITNESS: Yes, sir.

16 THE COURT: Including the lat/long?

17 THE WITNESS: Yes, sir.

18 THE COURT: Even though you don't know about them?

19 THE WITNESS: Yes, sir.

20 THE COURT: You know that it's their
21 regular activity?

22 THE WITNESS: Yes, sir, it is a regular activity.

23 Again, for ---

24 THE COURT: Routine records?

25 THE WITNESS: Yes, sir.

1 THE COURT: And tell me about the time that these
2 entries are made. Would it be contemporaneous with then a
3 call the made?

4 THE WITNESS: Yes, sir.

5 THE COURT: So that the record would be
6 contemporaneous.

7 THE WITNESS: Yes, sir.

8 THE COURT: With the call being made, okay.

9 THE WITNESS: Yes, sir.

10 THE COURT: And although you don't have personal
11 information about the computation of the lat/long --
12 lat/longe information the other information concerning
13 billing, time, who the calls were made and all, you are
14 the direct custodian of those records?

15 THE WITNESS: Yes, sir.

16 THE COURT: Is that correct?

17 THE WITNESS: Yes, sir.

18 THE COURT: And can you testify from your own
19 personal knowledge that although you don't know the
20 circumstances under which the lat/long information is
21 provided you do know that the person who prepared that did
22 so in the normal course of business and had a duty to make
23 these entries?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. Thank you.

1 MS. WILSON: Your Honor, if I could just quickly.

2 THE COURT: Yes, ma'am.

3 REDIRECT EXAMINATION

4 BY MS. WILSON:

5 Q. Mr. Freedman. Freeman?

6 A. Freeman.

7 Q. You said that you did not know who it was that
8 prepared this document for Court, correct?

9 A. So far as who printed off the information; that is.
10 correct.

11 Q. And so you can't tell this Court anything about the
12 mode of preparation for this document?

13 A. So far as how the information was pulled, what server
14 it was pulled off? Is that what I'm understanding?

15 Q. Sure. Yes.

16 A. That is correct.

17 Q. So and in addition you also can't tell this Court
18 anything specific about how you came to have it? You just
19 know that it was given to you yesterday, correct?

20 A. It was given to me by my manager asking if I could
21 come and testify on behalf of the billing category if that
22 answers your question in so far as me.

23 Q. I believe it does. And you also can't tell us
24 anything specific about some of the information that's
25 actually on the face of the records that you brought with

1 you, correct?

2 A. So far as the technical aspects of it, the latitude
3 and longitude, yes, ma'am, that is correct.

4 Q. And, now, another question for you. You said that
5 you actually have a record that you brought for Ms. Engel
6 that does not have the lat/long information on it,
7 correct?

8 A. Yes, sir.

9 Q. And under what circumstances would you all at A.T.&T.
10 actually print up the record that does not have the
11 latitude/longitude on it?

12 A. Again, for normal billing questions so far as calls
13 that are made from the phone, calls that are made to the
14 phone, how long the actual calls last.

15 Q. And therefore in order for you to print up a with the
16 latitude/longitude information it would have to be a
17 special request?

18 A. It would have to go through our technical department.

19 Q. So then normally you would not print up something
20 for -- on request with the latitude and longitude
21 information, would you?

22 A. That is correct.

23 Q. One final question. On the phone records there is a
24 category, 'E-164', correct?

25 A. If I remember correctly, yes, sir.

1 MS. WILSON: Is it possible for us to allow him to
2 have another look at that State's Exhibit? Thank you very
3 much, your Honor.

4 BY MS. WILSON:

5 Q. And this would be State's Exhibit -- Court's Exhibit
6 Three. This category here. What is E-164?

7 A. That information I don't know.

8 Q. So in effect -- is there any other information on the
9 face of this document that you don't recognize or don't
10 know?

11 A. Aside from the L.A.C.C.I.D, the latitude and
12 longitude, and the E-164, no, ma'am. Those are the only
13 bits of information that I'm unfamiliar with.

14 Q. Okay.

15 A. Or that I don't have expertise in. I'd say it like
16 that.

17 Q. Okay.

18 A. As it pertains to technical knowledge.

19 Q. Well, apart from having expertise is there
20 information that you just don't know? Just in the course
21 of your role as a billing manager?

22 A. The technical aspect of it, again, which would be the
23 lat/long, the E0164 and the L.A.C.C.I.D.

24 Q. Okay. Thank you.

25 MR. RICHARDSON: Court's indulgence just one second,

1 Your Honor.

2 BY MS. WILSON:

3 Q. If a cell phone is being used and it is -- there is a
4 transmission being received by a tower and I don't -- and,
5 again, perhaps this is within your expertise as a billing
6 manager. If the tower -- if the transmission goes to a
7 tower and the tower is full. Let's say it can't take
8 another signal. I'm assuming that happens, correct?
9 Could it be bounced to another tower without actually
10 being in that area so that the call can be picked up? Is
11 that a question you can answer?

12 A. Not with any certainty, no, ma'am.

13 Q. Thank you.

14 MS. WILSON: Your Honor, no further questions.

15 THE COURT: All right. Mr. Richardson, any further
16 questions?

17 MR. RICHARDSON: No, sir.

18 COLLOQUY

19 THE COURT: All right. I have heard the testimony of
20 this witness. The objection is that it's offensive to
21 Rule 803.6, which is an exception to the hearsay rule, is
22 that correct?

23 MS. WILSON: Yes, sir.

24 THE COURT: And you propose to enter this evidence
25 around 803.6, is that correct?

1 MR. RICHARDSON: Yes, sir.

2 THE COURT: All right. 803.6 is generally considered
3 to be the exception that allows the custodian of a
4 business record to enter that record as an exception to
5 hearsay if it meets the criteria of 803.6. However. The
6 rule also provides, I believe, for other qualified
7 witnesses other than the custodian, other qualified
8 witnesses to introduce the evidence.

9 Now, in U.S. v. Council, in the 3rd Circuit the
10 courts addressed what was meant by other qualified witness
11 in relation to Rule 803.6. And in that regard the Court
12 said that an 803 -- 803.6, other qualified witnesses is
13 anyone who can establish the elements of Rule 803.6. And
14 that those elements are, Number One, that the record was
15 made and kept in the course of a regularly conducted
16 business activity.

17 No question that A.T.&T. is a regularly conducted
18 business activity; that it was the regular practice of the
19 business activity to make the record. That has been made
20 abundantly clear by this witness. This witness said that
21 these records are kept, and I'm talking at the
22 latitude/longitude. I don't think there is a real issue
23 about the billing information. Certainly that would be
24 kept also in the regular course of business.

25 It is a routine record. Third, that the record was

1 made at or near the time of the event. Now, this witness
2 in response to my question has testified that these
3 entries, these data entries are made contemporaneously
4 with the phone calls being made. So they're introduced.

5 And, finally, that the record was made by or from
6 information that was transmitted by a person with
7 knowledge, and the person with knowledge must have acted
8 in the regular course of his business. Now, this witness
9 has testified that this information came from the
10 technical side of A.T.&T. Those people knew about the
11 towers, the location of the towers. He just testified
12 concerning the reason for gathering this information to
13 determine if a tower needs to be added or eliminated.

14 He has the reason for doing so. He knows that, and
15 that there must have been a duty to enter this data. And
16 he tells us, again, why it was entered, why he has those
17 people. Now, he has testified in my view, in my opinion,
18 as to the four requirements of 803.6. Having done so he
19 is qualified -- he is the other qualified witness as to
20 information that he may not be the custodian of.

21 Some of the this information I believe he is the
22 custodian of. Other information I believe he is the other
23 qualified witness who can testify and it comes in under
24 803.6.

25 MS. WILSON: Your Honor, if I could preserve some

1 objections.

2 THE COURT: I'll hear you.

3 MS. WILSON: Thank you very much. Your Honor, my
4 argument here is that this witness is not a custodian of
5 the technical records, which is first and foremost the
6 most important information I think that the State wants to
7 bring forth out of this document.

8 THE COURT: But isn't he an other qualified witness

9 ---

10 MS. WILSON: I have not ---

11 THE COURT: --- identify under the rule?

12 MS. WILSON: He is, Your Honor.

13 THE COURT: Under counsel?

14 MS. WILSON: But my problem is, Your Honor, and State
15 v. Rice goes into it a little bit. Clearly there are
16 certain things that are required for the witness to be
17 able to bring forth. Even though I think that this
18 witness can, to some degree, identify this document.
19 Clearly, there are things on this documentation that he
20 cannot identify; that he cannot explain; that he cannot
21 talk to this Court about; that he can't testify about.

22 In addition, Your Honor, I think that it's very clear
23 that he has no real concept of the mode of preparation for
24 this particular document. How it came to be in his
25 possession is -- there is no ---

1 THE COURT: Isn't there a whole line of cases,
2 though, that says that he doesn't have to have personal
3 knowledge of the entry?

4 MS. WILSON: Well, I'm not arguing that he needs to
5 have knowledge of the entry, Your Honor. He can't even
6 explain to us how he came to possess it, and I think that
7 that's required under Rice.

8 THE COURT: But he does. He says, "I got it from the
9 Technical," The technical folks from A.T.&T.

10 MS. WILSON: Well, he says he got it from his
11 supervisor who he says he believe got it from the
12 technical people. And I just think that that's extremely
13 vague and certainly not -- I believe it is not in
14 compliance with what the rule would require. Certainly I
15 understand the Court's decision. I'm just preserving my
16 objections for the record.

17 THE COURT: All right.

18 MS. WILSON: In addition, Your Honor, I don't believe
19 that -- I believe that because he does not -- is not able
20 to testify about the mode of preparation he can't vouch
21 for the authenticity of this record, which I think of
22 course would be tantamount to not knowing exactly what it
23 is that we've got in front of us.

24 He can't give any accurate information about the
25 tower information to this Court. Certainly that's

1 something that is clearly a part of this record, and I
2 think it's a part of the record that the State intends to
3 make use of. I would -- Certainly it would help if the
4 bought an expert who actually could talk to us about it.
5 But, again, I just feel that with the lack of information
6 about the mode of preparation this witness' inability to
7 testify in full about what is contained in this document I
8 believe that this does not come in under 806.

9 In addition, Your Honor, I would preserve my
10 objection that I feel that specifically this witness
11 doesn't have the background to bring this document
12 forward, and then disclose its contents fully to the jury
13 for them to understand.

14 THE COURT: And yet, Ms. Wilson, 803.6 is about
15 trustworthiness.

16 MS. WILSON: Yes, sir.

17 THE COURT: And our Court's have recognized that
18 business entries that are entered in the normal course of
19 business are generally exceptions to hearsay because they
20 have that element of trustworthiness. Now, 803.7 allows
21 you to attack it for lack of trustworthiness such as it
22 may be a self-serving document where its prepared in the
23 course -- ordinary course of business by a party.

24 And there is some self-serving motive for that record
25 not to be accurate. I'm going to allow it. I think it is

1 admissible under 803.6. I believe this witness is
2 certainly a custodian as to the general information
3 concerning length of calls, what calls are made to where,
4 things of that nature. He's testified these are -- I'm a
5 personal service manager. Personal services manage that
6 comes under me. That's what I deal with every day.

7 These are essentially my records as the manager.
8 Only thing at issue in my view is the latitude/longitude
9 entries. He has satisfied or he is that other qualified
10 witness that the rules permit to testify as to matters
11 that qualify that under Rule 803.6, and I'm going to allow
12 it. Okay.

13 MS. WILSON: Thank you, Your Honor.

14 THE COURT: Thank you very much.

15 MR. RICHARDSON: Thank you, Your Honor. He can step
16 down. I think he needs to remain sequestered.

17 THE COURT: Okay. What else do we have this morning
18 before we come in and give this jury a preliminary charge
19 to start with the evidence?

20 MR. RICHARDSON: Your Honor, we agreed on the Power
21 Point presentation.

22 THE COURT: Okay, you've reached an agreement
23 concerning that?

24 MR. RICHARDSON: And, Your Honor, also I'll point out
25 to the Court at a break, maybe at lunch, I have pre-marked

1 some exhibit. I don't think there will be any problem
2 with those. I've been very selective, but I'll go through
3 all of those.

4 THE COURT: Well, I'm going to take a break in just a
5 moment. And you can have anything else that you need
6 marked. Ms. Gordon will be happy to do that while we take
7 this break. All right. Anything further then. I want to
8 be able to roll when we bring that jury back in, okay?

9 MS. WILSON: Actually, Your Honor, there is one brief
10 matter.

11 THE COURT: So let's do it.

12 MS. WILSON: It's my understanding, and I want to
13 make sure. I know that there were some notes written by
14 some of the officers on the actual phone records. I want
15 to make sure that that's been cleared off or redacted.
16 It's on the copy that I received with my discovery.

17 THE COURT: Mr. Richardson, there are no notes on the
18 records?

19 MR. RICHARDSON: Your Honor, what we would plan on
20 doing ---

21 THE COURT: No comments on those.

22 MR. RICHARDSON: --- Is Actually the ones that are
23 Court's Exhibits now. So I don't think there will be any
24 changes on those.

25 MS. WILSON: Thank you.

1 THE COURT: All right. We're at ease.

2 (WHEREUPON, Court was in recess at 11:10 a.m. and
3 reconvenes at 11:23 a.m.)

4 THE COURT: All right. Let's bring the jury in.

5 (WHEREUPON, the jury panel enters the courtroom at
6 11:25 a.m.)

7 THE COURT: All right. I see we have all our jury.
8 If you would swear our jury in, Madam Clerk.

9 (WHEREUPON, the jury panel was sworn in at
10 11:26 a.m.)

11 THE COURT: Ladies and gentlemen, before we begin the
12 trial I want to make a few introductory remarks to you.
13 What I am about to tell you is certainly not a charge on
14 the law. I'm going to instruct you as the law after we
15 complete this case at the end of the trial and before you
16 consider your verdict.

17 This is merely an explanation of the procedures that
18 we're going to follow in the trial of this case so that
19 you will have a better understanding of what's going to
20 happen during the trial. I would ask you not to take any
21 notes during the course of the trial. The reason for that
22 is it is very distracting. It may cause you to miss
23 something. It may distract another juror, and we don't
24 want to have any special emphasis placed on any particular
25 juror's recollection of the testimony. Each of your

1 interpretations of the evidence is just as important as
2 any other jurors.

3 Now, as I told you a few moments ago the defendant in
4 this case, Mr. Timmy J. Rogers, is indicted or charged
5 with the offense of murder. As I explained earlier this
6 indictment is not evidence, and the matters contained in
7 this indictment are not evidence. This is simply a
8 document by which the Court is given jurisdiction to hear
9 this matter or it's brought before the Court.

10 The Defendant in this case has pled not guilty, and
11 in that regard the State now has the burden to prove to
12 you each and every element of the offense of murder
13 beyond a reasonable doubt. That is the burden upon the
14 State to prove beyond a reasonable doubt.

15 Please keep in mind that this defendant as with all
16 defendants begins his trial with a presumption of
17 innocence, and that presumption of innocence carries with
18 him throughout the trial. And the State must remove that
19 presumption or overcome that presumption by proof beyond a
20 reasonable doubt. It's your job as jurors or your purpose
21 as jurors to determine the facts of the case.

22 You are the sole judges of the facts in the case. If
23 at any time I make any comment regarding the facts of the
24 case or by express words or actions I transmit to you the
25 feeling that or convey to you the feeling that I have an

1 opinion about the facts in this case. It's done
2 unintentionally. I have no right to even have an opinion
3 about the facts in this case. You the jury are the sole
4 judges of the facts. Disregard any message that you may
5 receive from me indicating that I may have an opinion
6 about the facts in this case.

7 You're to determine the facts from the testimony and
8 other evidence and only the testimony and other evidence
9 which you hear from this witness stand during the trial of
10 this case. It's up to you to determine whether inferences
11 maybe drawn from or properly drawn from that evidence that
12 you are given. Now, it's especially important that you
13 perform your duty and determine the facts of this case
14 diligently and conscientiously because if I make a mistake
15 concerning the law in this case I instruct you as the law
16 improperly or I rule improperly on a matter concerning the
17 admissibility of evidence we have an appellate court which
18 can correct the error that I make.

19 But there is almost no way that an error in the
20 determination of facts by a jury can be corrected. There
21 is no appellate process by which we can approach that. On
22 the other hand and with equal emphasis let me say that I
23 am the judge of the law. That is I will give you the law
24 that you will be guided by during your deliberations. And
25 you must accept and follow the law as I give it to you

1 even though you may disagree with it. I cannot tell you
2 what the fact are, and you cannot disagree with me about
3 what the law is or should be. It's your job to take the
4 law as I give it to you and apply it to the facts as you
5 find them from the testimony and the witnesses and the
6 other evidence introduced.

7 In that regard the deliberation process is sort of a
8 three part process. You have to have the law. That's the
9 easy part. I will give you the law. You must make a
10 determination of the facts. That's your duty as a juror.
11 But then the law and facts must be brought together and to
12 determine whether or not the law and the facts fit in your
13 determination of whether or not the State has met its
14 burden of proving guilty beyond a reasonable doubt.

15 Please do not begin your deliberations or discussions
16 of this case, not only among yourselves but with anyone
17 including your family and your friend, and I know it's
18 difficult to go on and have your wife, your husband, your
19 boyfriend, your significant other say, "What did you do
20 today? What is the case about?" It's hard for you to
21 say, I can't discuss it at this time, and that's what you
22 must do.

23 And along the same vane, I advise you not to read any
24 newspaper reports, go on the internet, visit the scene.
25 Don't do any independent investigation or receive any

1 information that might unfairly influence you in your
2 deliberation process. You must wait until you have heard
3 all the evidence in this case. The State's evidence and
4 the Defense evidence, if the Defense chooses to put up a
5 defense, that you must wait until you have received all
6 the evidence. You must keep an open mind before you begin
7 that deliberation process.

8 Now, in a few moments the Solicitor is going to open
9 this case with what we call an opening statement. That
10 opening statement is not evidence. The Solicitor is
11 merely setting forth what he proposes to show to you or
12 prove to you through evidence and testimony during this
13 case. That is his position as to the case.

14 Following that the Defense may or may not, depending
15 on whether they choose to, also have an opening statement.
16 And, again, the Defense's opening statement is not
17 evidence. Evidence is what you hear from the witness
18 stand. But it will begin with that. Following that the
19 evidence will be presented by first the State, then the
20 Defense followed by what we call closing arguments. And
21 then I will charge you on the law.

22 Let me say that during that process where the
23 evidence is presented you may hear one of the lawyers say
24 something like, "Your Honor, we believe we have a question
25 of law or a matter of law to discuss with you outside the

1 presence of the jury," and in that case what I will do is
2 I will excuse you to your jury room. It's not that anyone
3 is trying to keep anything from you. It's just that there
4 is a question of law and in ruling on questions of law
5 sometimes I might have to express my opinion about a
6 particular piece of evidence or its credibility or whether
7 or not it is germane to the issues before you.

8 It's unfair or could be unfair to one side or the
9 other for me to share with you my thoughts about that
10 evidence. Cause like I said, I don't have the right to
11 have an opinion about the evidence. And your
12 deliberations or your conclusions about the evidence or
13 its credibility or believability is solely for you to
14 determine and not -- and free from the influences that I
15 may have on you.

16 Now, obviously in determining what the facts are in
17 this case you're going to have to determine whether or not
18 the testimony of a witness is believable or credible. In
19 doing so let me say this. You as jurors have different
20 backgrounds, different life experiences, but you can apply
21 the test that you have found in your life experiences to
22 be useful in determining what to believe and what not to
23 believe. Sometimes it's referred to as your common sense.

24 You can consider such things as whether or not the
25 witness really had an opportunity to see or hear what that

1 witness has testified about; that witness' ability to
2 recall things. The witness' interest, prejudice or bias
3 that he may have or she may have in the case. These are
4 all things that you may consider in determining whether or
5 not to believe or disbelieve a witness.

6 Let me say that you can believe all, part of or none
7 of what a witness says. You may believe one witness over
8 many or many over one. These are all things for you to
9 consider in your deliberations process. Now, Madam
10 Forelady, it's your duty to preside over deliberation
11 process in the jury room. You will also be the
12 spokesperson for your jury.

13 Should you have any questions for me, should you have
14 any concerns I want you to bring them to the attention of
15 Mr. Roth, who I've introduced to you, and he will get that
16 back to me and we will address them. It's my practice
17 during the trial of a case to do everything I can to make
18 sure my juries is comfortable and are not subject to any
19 distress during the trial of a case in that regard.

20 If at any time, although your forelady is your
21 spokesperson, if at any time you cannot hear or see what's
22 going on just raise your hand and we will address that.
23 If at any time you become uncomfortable during the trial
24 of this case, again, raise your hand. I promise you if
25 you need to refresh yourselves or if you need a break

1 we're going to take that brake. Just let me know.

2 I try not to go more than about an hour, hour and a
3 half at the time before I take a break. But if I get too
4 long or if I'm letting the attorneys go too long, again,
5 let me know cause you just can't pay attention when you're
6 sitting there uncomfortable. All right. Just let me
7 know, okay. Mr. Richardson, you ready?

8 MR. RICHARDSON: Yes, sir.

9 THE COURT: All right, sir.

10 OPENING STATEMENT BY MR. RICHARDSON

11 MR. RICHARDSON: Thank you, Your Honor. Ms. Wilson.
12 Y'all have heard it time and time again that there is a
13 very thin line between love and hate. And I believe that
14 over the course of the next two or three days y'all are
15 going to find that that line is just as thin or even
16 thinner between life around death. You already know that
17 death is a heart beat away, one breath away.

18 I want to show you how thin that line can be. I'm
19 not going to take it out of the packet. Shoe string, a
20 noose, a ligature, an instrument of death. Can be many
21 different things depending on what hand is holding it. On
22 April 21st you will hear that this was the instrument of
23 death. This in the hand of Timmy Rogers caused the death
24 of Fred Engel. Choked him to death.

25 Now, this case didn't start on April 21st 2008.

1 Never does. It started months before that. And you're
2 going to hear testimony that Fred Engel was an
3 international businessman. He lives in Holland, and his
4 company moved about consulting with other companies.
5 Everything going good. Fred met, over the internet, a
6 lady who later became Sherry Engel. They got married.

7 After a long courtship, I believe about five or six
8 years, long distance all the way. Back and forth, you
9 know, over the ocean and, finally, Fred got moved to
10 Myrtle Beach which is how we got jurisdiction of this.
11 Fred takes up residence in Myrtle Beach working for the
12 same company. He stays there for a while.

13 You will hear that after about a month, a very short
14 period of time, he moves up to marry Sherry Engel and
15 brings her back from Kentucky. And they set up residence
16 in Brookshire Forest, which is a part of Carolina Forest
17 or in that area. You will hear testimony that Sherry
18 apparently didn't like the sandy land around here, but was
19 always back and forth to Kentucky. Every month, back and
20 forth until finely one day she met Timmy Rogers seated
21 over here at the Defense table.

22 And shortly thereafter they struck up an affair. And
23 that affair went from Kentucky to Myrtle Beach, Kentucky
24 to Myrtle Beach over and over. A love triangle, and guess
25 who was the fifth wheel or the third wheel? It was Fred

1 Engel. Didn't start on April 21st. Started way back
2 before there when there was this elicited affair between
3 Sherry and Timmy Rogers. And you are going to have a ton
4 of proof showing that affair.

5 At some point over the course of time less than a
6 year they began making plans and preparations to do away
7 with Fred Engel. That's going to be brought up and y'all
8 can consider whether it was to do with money, whether it
9 was just wanting to get out of the marriage, whatever.
10 But you will hear testimony about that. And you're going
11 to hear it from Sherry Engel. A lot of this is going to
12 come from Sherry Engel who confessed when she was
13 confronted with it and told the police exactly what had
14 happened.

15 And I'll promise you at this point that you're not
16 going to like Sherry Engel because Sherry Engel has much
17 to do with his death as Timmy Rogers. Sherry Engel never
18 strangled him to death, but this isn't about -- this case
19 isn't about assigning a percentage of blame. It's not
20 60/40 or 50/50. This case is 100 percent, 100 percent.
21 If Sherry hadn't sent her husband to his death he would be
22 alive today.

23 If Timmy Rogers wasn't laying in wait in that wood
24 line with that string and choked him to death he would be
25 alive today. Or they would have found some other time to

1 do it, but it's 100 percent, 100 percent. Don't worry
2 about assigning fault. I'll tell you now you're not going
3 to like Sherry. But there is enough blame to go around,
4 and it certainly covers Timmy. Timmy Rogers' testimony
5 will tell you that he strangled Fred Engel at that the
6 mailbox at Carolina Forest.

7 Now, I'm going to bring in a series of witnesses, and
8 the purpose of an open opening statement is to give you
9 thumbnail account of what this whole case is about. I'm
10 not going to sit here and tell you in specificity what
11 each person is going to say. You will hear that from the
12 stand, and if they tell you something different than what
13 I tell you that's your evidence up there.

14 But I want you to at least be able to say that he
15 told me about that lady and he told me about that guy, and
16 this is where they fit into the puzzle. That's the reason
17 I'm telling you this. And I want to start you out by
18 showing you the chaos of the night of April 21st and into
19 the early morning hours of April 22nd 2008. So the first
20 person that you're going the hear from, and you can break
21 it down sort of like this: Free murder, murder, crime
22 scene, and cover up.

23 I'm going to try to keep this in as much in
24 chronological order as possible. So the first person
25 you're going to hear from, her name is Kimberly Maluda.

1 Kimberly Maluda will tell you that she works in factory
2 storage. She was coming home that night. She lives in
3 Brookshire Forest. She took the same way in she always
4 takes, and there was a truck that she described as a red
5 S10 pick up small size truck. Beat up old truck. She got
6 behind that truck and was going very, very slow.

7 She will tell you that I followed behind it until my
8 nerves were frazzled and then I pulled around him and I
9 actually cut him off just to show him I'm made at him.
10 She pulls off at her mailbox where she parks her car,
11 starts getting the packages out, and she will tell you, "I
12 saw that same truck. This time with the lights off back
13 in across from the mailboxes. And, oh my, this guy that I
14 have cut off is mad at me."

15 She described the truck. She said the guy never got
16 out, but you will hear from her. Then on a movie you will
17 hear from a neighbor of Sherry and Fred Engel, and his
18 name the Tom Rickerson. He will tell you that he knew
19 Fred before he got married. He knew Sherry once she got
20 moved in. He knew about they'd gone out to eat several
21 times. Knew them well. And Tom is the one that Sherry
22 went to that night about one o'clock beating on the door.

23 "Hey, Fred is missing. Would you help me find Fred.
24 Look at the mailboxes. Go to the mailbox. I didn't see
25 anything at the mailboxes. Go back to the mailboxes.

1 I'll go with you." You will hear from Tom Rickerson.
2 Those two people you will see something in common, total
3 disinterested. Don't know Timmy Rogers from Adam's house
4 cat. Do know Sherry. And both of them knew Fred. You
5 will hear from a lady that knew neither of them and her
6 name is Karla Green. Karla Green works at the Value Place
7 Motel. Positively identified Fred Engel.

8 Will be able to show you when he was staying there,
9 the driver's license that they put in that was provided by
10 the Defendant, the dates and times that correspond when
11 Fred Engel was killed, how it was paid, remember seeing
12 Sherry there with him. Even bringing a photograph of the
13 two of them together. Caught on the surveillance camera.

14 You're going to hear from the A.T.&T. representative.
15 When the police started investigating this pulled Sherry's
16 phone records and found numerous calls to this 502 number,
17 a Kentucky number, over and over and over again. And they
18 got A.T.&T. to give them the phone records from Sherry
19 Engel. When they saw that other number coming up time and
20 time again and you will hear that people up in Kentucky
21 was telling the same thing. Hey, something is going on.

22 The family members of Sherry Engel, hey, something is
23 going on. You need to look at this red haired guy. They
24 put that together, got a photograph, took it to Karla
25 Green so A.T.&T. will bring you the phone records of both

1 Sherry and Timmy Rogers. And it will show hundreds of
2 calls. Maybe not dollars, but at least over a hundred
3 calls over a four or five day period. Bam, bam, bam.
4 Hang up, call again. Much in love. Much in love. A
5 tight wound conspiracy.

6 A conspiracy that caused Fred Engel his life. Then
7 you're going to hear from crime scene people who come
8 around and say, "I showed up that night. I took
9 photographs of what was there. I took blood samples. I
10 found the body out there in the woods. We tagged
11 everything we know to tag." And she will show you some
12 photographs. They're not gruesome photographs. We backed
13 off, so don't worry about that, but you will see them by
14 way of projection.

15 That girl's name is Heather. That's her right there.
16 She's Crime Scene Horry County. You're going to hear from
17 Sherry, and Sherry saw all this against her. She was
18 arrested. She gave several statements the night they went
19 to her. Cover up. Talked with her again a little bit
20 later. On cover. And when they said, "Hey, guess what?
21 Look at these phone records. Who is this? Here is what
22 we've got. What do you say?" That guy is Timmy Rogers
23 was having an affair. She will go through that. She will
24 take the stand, and she will tell you her heart in it, and
25 I'll tell you right now she will minimize her part in it.

1 We've come to expect that. Your common every day
2 knowledge will tell you that I will get up there and tell
3 what you did and I'll cut back on some of the stuff I did.

4 You will hear from Sherry Engel also, and then the
5 follow up with her we will bring in Sherry Engle's family.
6 Her nephew and his wife from Kentucky. Oh, yeah, I can
7 tell you the first time I saw Timmy Rogers. I knew
8 something was going on then. That was way before Fred was
9 dead. And guess who moves in over there besides her when
10 they move back from Kentucky after the funeral within two
11 weeks?

12 You will hear from family members of Sherry that even
13 though they're blood relatives with Sherry will say Fred
14 Engel was a great guy. He was a great uncle, and we
15 needed to let somebody know. So we called the sheriff up
16 there in Kentucky. And he got word back to Horry County,
17 and you will hear from them.

18 You will hear from a detective, C.S.I. or crime scene
19 named Robbie Caulder. He went down to Kentucky and he
20 brings you back an interesting piece of evidence. This
21 evidence is that that red truck that Kimberly spotted;
22 that Karla Green spotted had magically in that two week
23 period turned to a primer color, gray. But he didn't
24 paint the door jams. You will see photographs of the
25 truck as it appears now, and you will see what color it

Opening Statement by Mr. Richardson

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1 used to be. And that's because Robbie took photographs
2 and will come in and testify about that.

3 And there will be some other stuff. I don't want to
4 get into it right now, but there will be some other stuff
5 about those phone records that I suggest you may very well
6 see. You will see some patterns. And finally you're
7 going to hear from Dr. Proctor. Not your ordinary doctor.
8 You don't want to see Dr. Proctor. He does autopsies, and
9 he will tell you the manner of death. And he will tell
10 you what all went into that death. Whether it was painful
11 or surreal. He will tell you the struggle, that sort of
12 stuff.

13 He will ultimately tell you Engel died as a result of
14 a homicide. This ain't what was it an accident. This
15 isn't how he died cause when Dr. Proctor -- Dr. Proctor
16 is the one that cut that off of his neck. And he will
17 tell you that. So you've got a lot to digest, and I
18 suggest that it will go rather quickly. But -- let's see.
19 It's Tuesday. At least by Thursday I would suggest that
20 you will have all the evidence before you. Maybe sooner
21 than that.

22 But just because it only takes two or three days this
23 is a murder. This means an awful lot to Timmy Rogers.
24 It's the date he's waited for. He pled not guilty, and I
25 would ask you to listen to all the evidence and don't jump

1 to any conclusion and say, "I'm mad at Timmy Rogers. I'm
2 mad at Sherry Engel. Let's find a tree and hang this
3 crowd." That's not how our system is set up. I want you
4 to listen to all the evidence, and give him every benefit
5 of the doubt. Listen to him. There is more than enough
6 evidence here.

7 It's important to Timmy Rogers, but it's important to
8 these two sons and this brother that lost a family member.
9 And it's important to justice itself. For us to reach the
10 only true verdict that is possible in this case, and
11 that's a verdict of guilty. Guilty of murder. The hands
12 that caused this murder are right over there at that table
13 owned by Mr. Rogers. This is the instrument of death and
14 ask you to hear from Ms. Wilson now.

15 Ask you to hear from each and every one of these
16 witnesses who are brought to tell you a specific fact or a
17 specific series of facts because they're important. And
18 then we'll come back and make a closing statement and
19 point out some of the details that you will have heard
20 from the stand. It's tremendously important and don't let
21 the fact that it's going to be a couple of days minimize
22 that.

23 This whole system rides on you making the right call.
24 I'd ask you to hear from Ms. Wilson, and the State will
25 start putting up direct testimony. Thank you.

1 THE COURT: Ms. Wilson.

2 OPENING STATEMENT BY MS. WILSON

3 MS. WILSON: Thank you, Your Honor. Ladies and
4 gentlemen, I wish that it were as easy as the State wants
5 you to believe that it is. To just say that this item
6 tells you who actually committed this murder. It tells
7 you nothing. Nothing. It is an item. It's not going to
8 tell you a story. It's not going to show you something.
9 It's going to tell you absolutely nothing about who
10 wielded it, how they used it, why that did it. It's not
11 going to give you any of those answers today.

12 You're not going to get that this week from the
13 State, and they can't begin to want to show you anything
14 of that nature from that item. What you are going to hear
15 is the testimony from some different witnesses. From
16 people that the State is going to put up; that I'm going
17 to put up. And the State is very hopeful that the
18 witnesses that they bring in front of you are going to
19 give you some information that's going to convince you
20 that my client, Timmy Rogers, is guilty of this crime.

21 But I'm going to tell you today that they don't have
22 that information. They don't have the things that you're
23 going to need to hear to convict him. Now, certainly,
24 they're telling you that they've got this witness you
25 they're bringing that witness in. And this person is

1 going to take the stand. And you may not like that
2 person. Then that person might minimize their testimony,
3 speaking of Sherry Engel.

4 Minimizing testimony, is that going to be believable?
5 Somebody who is protecting their own interest. I'm going
6 to tell you that it's not. And when somebody gets on the
7 stand and they -- it's up to you to decide. You can
8 actually take what this person is saying, and if you can
9 use that to convict someone who wears a cloak of
10 innocence. He's innocent here today.

11 Furthermore, the State is telling you that all of
12 these people are coming and all these things are going to
13 be presented to you. Well, quantity versus quality is
14 what I want you to keep in mind when you're considering
15 that evidence. Having lots of information, if it's not of
16 any good quality, again, that's something that you're
17 going to have to weigh as a jury.

18 Is having a lot of information going to help you make
19 a decision about whether or not Mr. Rogers committed this
20 crime or is having information that is actually useful;
21 that actually says that he did something wrong is that
22 going to help you decide if you could convict him. You
23 should not convict him because I'm telling you that you're
24 not going to have any quality-type of information or
25 evidence presented to you.

1 What you're going to have is lots of people taking
2 the stand talking about different things that the State
3 thinks are important that are going to throw up a smoke
4 screen and help you or try to convince you that this
5 information is useful to you. It's not going to be
6 useful.

7 Mr. Rogers is innocent until this Solicitor can prove
8 that he is guilty beyond a reasonable doubt. If you doubt
9 it you're going to have to find that Mr. Rogers is
10 innocent. If you can't believe it you're going to have to
11 find that he is innocent of this crime. If nobody can
12 prove he did it beyond a reasonable doubt you're going to
13 have to find that he is not guilty. And it's an important
14 verdict. It's a huge verdict the State has.

15 But it's huge for a reason. It's big for a reason
16 because innocent people shouldn't go to jail -- go to
17 prison for a crime that they did not commit. You are
18 people that get to listen to all the evidence; that get to
19 decide what is real and what isn't. And I am asking you
20 to listen with a critical ear and an active mind to all of
21 the evidence that get presented whether by the State or by
22 myself.

23 Listen to it. Think about it, and I'm asking you to
24 render a not guilty verdict for Mr. Rogers. Thank you.

25 THE COURT: All right, Mr. Richardson. Are we going

1 to sequester the witnesses at this time?

2 MR. RICHARDSON: Yes, sir, Your Honor. The State
3 would call Kimberly Maluda.

4 KIMBERLY MALUDA, after being duly sworn,
5 testified as follows:

6 CLERK OF COURT: Please state your full name and
7 spell your last for the Court. And speak right into the
8 microphone, okay.

9 THE WITNESS: Kimberly Maluda. M-A-L-U-D-A.

10 DIRECT EXAMINATION

11 BY MR. RICHARDSON:

12 Q. Kimberly, I'm going to stand back here so you keep
13 your voice up and face the jury, okay. Is that okay?

14 A. Um hum.

15 Q. Where are you from, please?

16 A. Berkshire Forest.

17 Q. Okay, how long have you lived out at Berkshire
18 Forest?

19 A. Four years.

20 Q. Were you living out there on April 21st 2008?

21 A. Yes, sir.

22 Q. All right. Where were you working around April of
23 2008?

24 A. Tanger Outlet on 17.

25 Q. On 17. The one up at North ---

- 1 A. Myrtle Beach?
- 2 Q. --- Myrtle Beach.
- 3 A. Yes, sir.
- 4 Q. And there is a Tanger closer ---
- 5 A. 501.
- 6 Q. ---by your house?
- 7 A. Um hum.
- 8 Q. But you work at the one at 17?
- 9 A. Yes, sir.
- 10 Q. You still work there?
- 11 A. No, sir.
- 12 Q. Okay. Were you working the night of April the 21st
- 13 of 2008?
- 14 A. Yes, sir.
- 15 Q. And about what time did you get off?
- 16 A. The store closes at 9:00.
- 17 Q. Okay?
- 18 A. So about 9:15 I left.
- 19 Q. Say about 9:15?
- 20 A. Yes, sir.
- 21 Q. Where did you go upon leaving work?
- 22 A. Straight home.
- 23 Q. Straight home. Tell the jury the route that you come
- 24 from Tanger at 17 back to your home in Birkshire Forest?
- 25 A. I take Route 22 to 31 South to International Drive.

1 From International to River Oaks.

2 Q. All right. And with regards to April 21st, do you
3 remember that night?

4 A. Yes, sir.

5 Q. Tell us about your trip home. More specifically when
6 you got into the community?

7 A. Well, I was driving on River Oaks Drive, and I
8 gave -- I had a truck in front of me that was driving
9 slow. So being from New Jersey I had a little road rage.
10 And I was getting aggravating. I started getting up to
11 Augusta Plantation where I would turn in to get into
12 Birkshire. And then there was an officer had somebody
13 pulled over and the truck went even slower.

14 And then he pulled into Augusta and so did I. And
15 when I passed him I cut him off, pass him, and went and
16 parked.

17 Q. Okay. Now, tell us about the truck. Was it a large
18 truck or a small truck?

19 A. No, sir, a small truck.

20 Q. All right. Can you describe it in any more detail
21 than that?

22 A. It was a red Chevy S10.

23 Q. And when you pulled back in front of that vehicle how
24 much further did it take you to get home?

25 A. Not much.

- 1 Q. Okay.
- 2 A. Just down the road.
- 3 Q. All right. Okay, when you -- do you have a normal
- 4 place that you park?
- 5 A. I usually park by the mailboxes.
- 6 Q. Okay. Did you park by the mailboxes on the night of
- 7 the 21st?
- 8 A. Yes, sir.
- 9 Q. All right. Did you happen to see that truck again?
- 10 A. Yes, when I was gathering the bags out of any car.
- 11 The truck came around the corner, turned off its head
- 12 lights and then parked.
- 13 Q. And parked. Where did it park?
- 14 A. Well, there is a parking pad where I park and then
- 15 there is the street and there is another parking pad. He
- 16 backed in across from me.
- 17 Q. Okay. He backed in?
- 18 A. Yes, sir.
- 19 Q. And when he backed in was his lights still off?
- 20 A. Yes, sir.
- 21 Q. Had you ever seen that truck before?
- 22 A. Not.
- 23 Q. What did you think when he backed in with his lights
- 24 off?
- 25 A. I got a little nervous. I grabbed my bags and walked

1 down the street a little faster than normal.

2 Q. Okay.

3 A. Kept looking back.

4 Q. Would you mind if I gave you a piece of paper do you
5 think you could draw a diagram of around these mailboxes
6 and where you parked and where that truck parked?

7 A. I can try.

8 Q. Okay?

9 A. (Witness draws picture).

10 Q. Okay.

11 MR. RICHARDSON: Would you mark that as State Exhibit
12 38.

13 (WHEREUPON, State's Exhibit No. 38 was marked for
14 identification only.)

15 MR. RICHARDSON: Your Honor, I would introduce
16 State's Exhibit Number 38 into evidence and permission to
17 publish.

18 MS. WILSON: Without objection.

19 THE COURT: All right. Without objection, so
20 admitted.

21 (WHEREUPON, State's Exhibit No. 38 was admitted into
22 evidence.)

23 BY MR. RICHARDSON:

24 Q. Okay, let me also pass to you what has been premarked
25 as State's Exhibit Number 19. Tell me if you recognize

1 that photograph?

2 A. Yes, sir.

3 Q. What's that a photograph of?

4 A. The parking pad where I parked, and the mailboxes are
5 off to the side here.

6 Q. Back this way?

7 A. No. Back that way.

8 Q. Okay.

9 A. And the other park pad is right across.

10 Q. Right across. Back over in here?

11 A. Yes, sir.

12 Q. Okay. Does that fairly and accurately depict ---

13 A. Yeah, that's my car right there.

14 Q. Which one?

15 A. The white one.

16 Q. The white one. Second one down?

17 A. Um hum.

18 Q. Okay. And is that photograph fairly depict the scene
19 as it would have been on April 22nd?

20 A. Yes, sir.

21 MR. RICHARDSON: Your Honor, the State would move
22 State's Exhibit Number 19 in evidence. Without objection.

23 THE COURT: Without objection.

24 (WHEREUPON, State's Exhibit No. 19 was admitted into
25 evidence.)

1 BY MR. RICHARDSON:

2 Q. That's your car? The second one parked there?

3 A. Yes, sir.

4 Q. All right. Tell us about the next morning or did
5 anything else happen that night after you went inside?

6 A. I went inside, went to bed. My dogs were out
7 barking. Went downstairs. Looked around. Didn't see
8 anything. Went back upstairs. They barked some more. I
9 went back downstairs. Looked out the window. Saw a fire
10 truck in the front of the house and I just went back to
11 bed.

12 Q. Okay. Tell us about the next morning when you went
13 to get in your car?

14 A. The officer said that it was part of a crime scene
15 and I was not allowed to take it.

16 Q. Was the tape inside ---

17 A. It was taped inside. Yes, sir.

18 Q. And at some point did you have occasion to talk with
19 the officer about what you had seen the night before?

20 A. Yes, sir, that morning.

21 Q. You remember who the officer was?

22 A. No, sir.

23 Q. Okay. But you gave him a statement telling him I saw
24 a suspicious vehicle?

25 A. Yes, sir.

1 Q. And were you able to give him a description such as
2 an S10 and that sort of stuff?

3 A. Yes, sir, I did.

4 Q. Okay. Was that S10 still there the next morning?

5 A. No, sir.

6 Q. It was gone?

7 A. Yes, sir.

8 Q. All right. Did you know Fre Engel?

9 A. Yes, sir.

10 Q. Tell jury how you knew Fred?

11 A. He walked the dog. Come by, let the kids play. Talk
12 to us. Say hi, how are you. Just neighbors.

13 Q. Okay. Did you know Sherry Engel?

14 A. Yes, sir. Same. She'd walk.

15 Q. Just in passings?

16 A. Yes.

17 Q. Do you remember the last time you saw Fred alive?

18 A. No, sir. Don't remember.

19 Q. All right.

20 MR. RICHARDSON: I have no further questions. One
21 other question. Just as a jurisdictional matter.

22 BY MR. RICHARDSON:

23 Q. You live in Horry County?

24 A. Yes, sir.

25 Q. Mailboxes, are they in Horry County?

1 A. Yes, sir.

2 Q. And the crime scene in Horry?

3 A. Yes, sir.

4 MR. RICHARDSON: I have no further questions.

5 BY MR. RICHARDSON:

6 Q. If you will answer any questions Ms. Wilson may have.

7 THE COURT: Ms. Wilson.

8 MS. WILSON: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. WILSON:

11 Q. Now, were you afraid -- you weren't afraid when you
12 saw the car?

13 A. I was startled, yes.

14 Q. Startled?

15 A. Um hum.

16 Q. Did you call the police -- you didn't call the police
17 when you went in, did you?

18 A. No, ma'am.

19 Q. You didn't go back to the officer who had pulled the
20 car along side the road that you saw earlier?

21 A. No, ma'am.

22 Q. Okay. And you said that you parked beside the
23 mailboxes, correct?

24 A. Yes.

25 Q. Your car was parked there?

1 A. Yes.

2 Q. And that this car came around the corner with
3 headlights on, correct?

4 A. As it came around the corner he turned off his
5 headlights as he was rounding the corner.

6 Q. Okay. And once the truck rounded the corner, the
7 headlights were turned off and then this car parks,
8 correct? This truck?

9 A. Yes.

10 Q. And you don't know every car in the neighborhood, do
11 you?

12 A. No, ma'am.

13 Q. You don't even know every car of people who visit
14 people who live in the neighborhood, do you?

15 A. No, ma'am.

16 Q. There is no way for you to know that, is there?

17 A. Well, we really don't have too many people that live
18 in the neighborhood. There is only a couple people that
19 live there full time.

20 Q. So then you're saying ---

21 A. Yes, ma'am.

22 Q. I'm sorry. Now, you didn't see the driver of this
23 car, did you?

24 A. No, ma'am.

25 Q. Or truck?

1 A. No, ma'am.

2 Q. So it could have been Bill Bob driving her -- his car
3 into the neighborhood, right?

4 A. Yes, ma'am.

5 Q. Or so it could have been Susan driving her car into
6 the neighborhood, correct?

7 A. Yes.

8 Q. And just one further question. You can't actually --
9 are you sure about the color of the car?

10 A. Yes, ma'am.

11 Q. And was it a bright red?

12 A. It's like burgundy red.

13 Q. A burgundy red. Did you see any tags?

14 A. I was tailgating. No, ma'am.

15 Q. So you don't know if it was -- where the car was
16 from? You got no idea what State this truck may have been
17 from? Or you even sure -- you're not sure it was a Chevy
18 S10, are you?

19 A. Yes, ma'am.

20 Q. You're sure?

21 A. Yes, ma'am.

22 Q. You know trucks?

23 A. Yes.

24 Q. Okay. Okay. Thank you.

25 MS. WILSON: No further questions.

1 MR. RICHARDSON: Your Honor, I ask that she be
2 excused from her subpoena.

3 THE COURT: Any objection?

4 MS. WILSON: No objection, Your Honor.

5 THE COURT: You're excused and released from your
6 subpoena.

7 THE WITNESS: Thank you.

8 MR. RICHARDSON: Your Honor, the State would call Tom
9 Rickerson.

10 TOM RICKERSON, after being duly sworn, testified as
11 follows:

12 CLERK OF COURT: Please state your full name for the
13 Court spelling your last name.

14 THE WITNESS: Thomas Allen Rickerson, Jr.
15 R-I-C-K-E-R-S-O-N.

16 DIRECT EXAMINATION

17 BY MR. RICHARDSON:

18 Q. Tom, I'm going to stand over here so you can face the
19 jury, okay?

20 A. Yes, sir.

21 Q. Speak loud. Please tell the jury where you're from.
22 Where do you live now?

23 A. I live in Myrtle Beach, South Carolina.

24 Q. All right. How about -- how close did you live to
25 Fred Engel?

1 A. Next door.

2 Q. Next door neighbor. And you're not originally from
3 Myrtle Beach?

4 A. No, sir.

5 Q. Tell us where you're from?

6 A. New Orleans, Louisiana.

7 Q. All right. Were you there in Louisiana when Katrina
8 hit?

9 A. Yes.

10 Q. Was it bad as it looked on t.v.?

11 A. Worse.

12 Q. Even worse. How did you get from New Orleans to
13 Myrtle Beach?

14 A. Well, after the Hurricane Katrina we had evacuated
15 to -- during Hurricane Katrina we evacuated to Mobile,
16 Alabama. We had 37 people inside of the house, and the
17 hurricane was bad there, too. We lost electricity so we
18 brought 17 family members to Augusta, Georgia.

19 I work for Denny's and told them where i was at. And
20 they sent me to Greenville, Maryland to work and the wife
21 stayed in Augusta in order to take care of the affairs of
22 the house. Work there for four months. It snowed and I
23 said I can't stay here. So they said where do you want to
24 go and I said back south. And I knew I couldn't go back
25 home. So they asked me if I wanted to go to Myrtle Beach.

1 And we came over, looked at it, liked it and the wife seen
2 the Tanger Outlet on the way in. So she said this looks
3 like home and this is where we're at.

4 Q. Okay. We're glad to have you?

5 A. Thank you.

6 Q. But today you're flew back here from New Orleans?

7 A. That is correct, yes, sir.

8 Q. And tell the jury what you were doing back in New
9 Orleans?

10 A. Well, I have two brand new grandchildren. One is two
11 and a half months old and one is four days old. So my
12 wife had promised to be with my daughter because she had a
13 C section. They went ahead and took the baby a little bit
14 earlier because of her blood pressure. So we drove down
15 Friday night, and we've been in New Orleans for that to be
16 with my daughter who is, you know, struggling through this
17 whole C section thing.

18 And, of course, to take care of the baby and stuff.
19 I flew up this morning. Been up since three o'clock this
20 morning cause my flight was for 5:55 New Orleans time, and
21 here I am.

22 Q. When are you going back?

23 A. I'm going back today. Got to go see my
24 granddaughter.

25 Q. Yeah.

1 A. Kidding me.

2 Q. Well, how about Fred. Tell us a little something
3 about Fred. You were neighbors for how long?

4 A. Well, I've been here five years, and I guess the
5 first year, year and a half -- I'm not sure exactly of the
6 time. When we first moved to this subdivision where we're
7 at he was the only other person in a town home where we're
8 at. So we got to know Fred because he was the only one
9 there. I mean that was it. So that's how we got to know
10 him.

11 Q. When you say, 'we' you talking about you and your
12 wife?

13 A. Me and my wife, that is correct.

14 Q. Was Sherry living with Fred when you first met him?

15 A. No.

16 Q. All right. Did he ever talk about Sherry? Did you
17 ever hear anything about Sherry?

18 A. That she lived in Kentucky. They were going to get
19 married, and she would be there sometime. I think it was
20 like March or something like that.

21 Q. So at some point Sherry moved in and she became your
22 next door neighbor?

23 A. That is correct.

24 Q. Did y'all, you and your wife, and those two ever do
25 anything as far as going out to eat or anything like that?

1 A. Once in a great while. I think we went out one time.

2 Q. About how often did you see Fred?

3 A. Well, Fred was always out of town so I'd see him in
4 the afternoons when he got off of work or, you know,
5 walking the dog. Maybe go over there and have a drink
6 with him.

7 Q. When was the last time you saw Fred alive?

8 A. I don't remember. I mean I know it was right before
9 this all took place, but I think he was going out of town.
10 And I think we seen him a couple days before.

11 Q. All right. And on the night of April 21st, do you
12 remember that night?

13 A. If that's the night Sherry come knocking on my door,
14 yes, I remember it.

15 Q. Okay. And into the early morning hours of
16 April 22nd?

17 A. That's correct.

18 Q. All right. Tell the jury about Sherry knocking on
19 your door?

20 A. Well, it was about 11:30, quarter to 12:00, something
21 like that and I heard somebody beating on the door. So I
22 ran to answer it. And -- not to answer it but to see who
23 it was, and when I realized it was Sherry I called my wife
24 to come to the door because, to be honest, I was in my
25 underwear. So I went back into the room and put some

1 pants on came out, and she was telling my wife that she
2 couldn't find Fred.

3 And I said, "What do you mean you can't find him." I
4 can't find Fred. And I said, "Well, is he upstairs or do
5 you know." I don't know. I can't find him. So I went
6 inside the house, went upstairs and looked in the bathroom.
7 I thought maybe he might have fell in the bathroom or
8 something. Didn't see him. Went all through the house.
9 Didn't see him. So I went back downstairs and said,
10 "Listen. I'll get in the car and ride around the
11 neighborhood. Maybe he's walking."

12 So I rode around the neighborhood. I went to the
13 mailbox first. I didn't see him there. Of course, I
14 didn't get out or anything. I just drove past it and I
15 drove all around the neighborhood looking to see if I see
16 him and I didn't see him. So when I got back to the house
17 my wife and Sherry were in the front yard and Karen says,
18 who is my wife, said Sherry said he has the keys to the
19 mailbox. He's at the mailbox.

20 And I said, "I just came from there. He's not
21 there." Well, that's what Sherry said, and Sherry said,
22 "He took the key out of the car." I said, okay. So I
23 said, "You want to go?" And she goes, yes. So Sherry got
24 in the front seat with me. We drove to the mailbox. This
25 time I drove up to the mailbox where the lights -- where

1 you can see the whole area cause it was dark back there.
2 Didn't have lights. And I seen a pair of glasses on the
3 ground. So I got out the car and I looked down and it was
4 a pair of glasses and a lot of blood.

5 And Sherry comes out and she immediately goes toward
6 the glasses, and I said, "No. Get back in the car"
7 because I'm thinking that if somebody had robbed Fred that
8 maybe they were still there and they would, you know,
9 inflict harm on us. So I put her back in the car. Got
10 into the car and drive around to the house and told my
11 wife -- I said, "Listen. His glasses and they've got
12 blood where the mailboxes is at."

13 So I called 911 and explained to them that we thought
14 that there was something wrong because of the blood and
15 the glasses on the ground. So they sent the police out
16 and we checked the area. Well, not we, but I brought the
17 police to the area and they looked around and they didn't
18 see where he was at. You could see where somebody had
19 scuffled a little bit or drug him in the woods cause they
20 had a lot of brush and things around the mailboxes.

21 And the police went in into the woods and didn't see
22 anything, came back out and they taped the area off. And
23 they brought me back to the house, and that's when the
24 vigil started where we just waited. And the police came.
25 The dogs came, and they looked everywhere, and I guess

1 around five o'clock in the morning the detectives came up
2 the street and they asked me where Sherry was. And I said
3 she's inside with my wife and Carol. And they said you
4 may want to stay.

5 And I asked him them, "Did you find him," and they
6 wouldn't answer me, but they said, "Don't leave." So they
7 went inside and told Sherry that they had found the body;
8 that he was dead. And Sherry, you know, of course,
9 reacted the way you think a person would react if
10 something like this took place.

11 Q. Okay. And you -- so you and your wife stayed with
12 Sherry that entire night and into the early morning, say
13 five o'clock?

14 A. Yes, sir.

15 Q. All right?

16 A. And, actually, when my wife went to the hospital with
17 her and the policeman brought her back -- brought my wife
18 back.

19 Q. Okay. Did you ever hear that they had made an arrest
20 in the murder of Fred Engel?

21 A. Yeah, I heard that.

22 Q. All right. And was Sherry part of that arrest?

23 A. Yes.

24 Q. All right. And did she ever try to make contact with
25 you or your wife after her arrest?

1 A. Yes. She sent a letter to us from J Ruben Long, and
2 Karen and I where getting ready to go to New Orleans, and
3 I ran to the mailbox and I seen this and I said, "What the
4 heck is this," you know. So, anyway, I brought it home
5 and it was a letter where she said that she would like to
6 see us. And if that we didn't come she would understand.

7 Q. Okay. Do you know Timmy Rogers?

8 A. I imagine it's him right there.

9 Q. Do you know him?

10 A. No.

11 Q. Have you ever seen him before?

12 A. No.

13 Q. Okay. Have you ever heard that name before?

14 A. No.

15 Q. Nothing against Timmy Rogers?

16 A. I mean since it all took place I've heard of him, but
17 before then I don't know. I never heard anything about
18 him.

19 Q. About how far, time, are those mailboxes from your
20 and Fred's house?

21 A. About at block and a half.

22 Q. Okay. And, now, do you remember on the night of the
23 21st whether or not Fred's garage door was up or down?

24 A. It was up.

25 Q. Okay. Bear with me just a second.

1 (WHEREUPON, State's Exhibit No. 39 was marked for
2 identification only.)

3 BY MR. RICHARDSON:

4 Q. Pass to you what's been marked as State's Exhibit 39,
5 and tell the jury if you recognize that?

6 A. Yes, I do.

7 Q. And what is that?

8 A. That's the cement that's underneath the mailboxes
9 where his glasses and the blood were.

10 Q. So those are his glasses?

11 A. Yes, sir.

12 Q. Does that fairly and accurately depict the scene.
13 Say for the Number One there?

14 A. Exactly.

15 Q. As you would have seen it when you first arrived?

16 A. Exactly.

17 Q. Nobody has changed it or tampered with it in any way?

18 A. No, sir.

19 Q. All right.

20 MR. RICHARDSON: State would move State's Exhibit
21 Number 39 into evidence and ask for permission to publish.

22 MS. WILSON: No objection, Your Honor.

23 THE COURT: All right. Without objection. You may
24 publish.

25

1 (WHEREUPON, State's Exhibit No. 39 was admitted into
2 evidence.)

3 BY MR. RICHARDSON:

4 Q. All right, Mr. Tom. I appreciate you're coming back
5 today, and if you would answer any questions that
6 Miss Wilson has.

7 A. Yes, sir.

8 Q. Appreciate it.

9 THE COURT: All right, Ms. Wilson.

10 MS. WILSON: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. WILSON:

13 Q. Rick?

14 A. Hi.

15 Q. Now, Sherry came to your door at about midnight,
16 correct?

17 A. That is correct.

18 Q. And was she knocking on the door or did she beat on
19 the door?

20 A. She beat on the door.

21 Q. So it was definitely a very agitated sort of knocking
22 or beating?

23 A. Yes.

24 Q. And when you got downstairs in your house and you got
25 to the door what was she saying to you?

1 A. First off, I didn't go downstairs.

2 Q. Okay.

3 A. She said she couldn't find Fred.

4 Q. Okay. She was hysterical, wasn't she?

5 A. She appeared to be.

6 Q. And she did not know anything about Fred's

7 whereabouts completely? No idea, correct?

8 A. Correct.

9 Q. And you offered to go out to search for him? To help

10 her, correct?

11 A. That is correct.

12 Q. And did at any point did she tell you where she

13 thought he was, at least initially?

14 A. Not initially.

15 Q. And then after you came back saying you couldn't find

16 any evidence of Fred anywhere, Mr. Engel, she offered you

17 some information about where he might be, didn't she?

18 A. Well, she offered it before I even told her that I

19 didn't know where he was. I mean I didn't see him.

20 Q. Okay.

21 A. She said he went to the mailbox.

22 Q. Okay. So did you find it strange at that point that

23 she didn't tell you initially that she thought he had gone

24 to the mailbox?

25 A. No.

1 Q. Okay. And at that point you said that she insisted
2 on going back with you, correct, to the mailboxes?

3 A. That is correct.

4 Q. And at that point you get to the mailboxes and you
5 see that there is some evidence there on the ground?

6 A. Correct.

7 Q. And you get out the car first or does Ms. Engel get
8 out the car first?

9 A. I think we both got out at the same time.

10 Q. And Sherry runs straight over there, right?

11 A. Right.

12 Q. To whatever evidence is there?

13 A. Right.

14 Q. And she becomes hysterical again, correct?

15 A. Right.

16 Q. And at this point you have to force her back into the
17 car, right?

18 A. That is correct.

19 Q. And then you drive her back to your residence at
20 which point in time you call the police, correct?

21 A. That is correct.

22 Q. Did Sherry ever tell you that she called the police
23 before coming to your home?

24 A. No.

25 Q. She just came straight to your home? And she didn't

1 call you. She just came over beating on the door,
2 correct?

3 A. Initially, yes.

4 Q. Okay. Now, you say that the police -- you go back
5 down to the mailboxes with the police, correct?

6 A. That is correct.

7 Q. And then the police secure the scene, basically, and
8 then they take you back to your residence?

9 A. That is correct.

10 Q. Now, once you're back at your residence you use the
11 word, 'vigil,' correct? Saying that the vigil began?

12 A. Well, right.

13 Q. And how long did the vigil last?

14 A. Until 5:00 in the morning.

15 Q. Okay. So, basically, by vigil you mean that you all
16 kind of got together, sat with Sherry as a support of
17 sort, correct?

18 A. No.

19 Q. Well, what do you mean by vigil?

20 A. I'm talking about the waiting.

21 Q. Okay.

22 A. The waiting to find out where he was at.

23 Q. Okay. And so you all waited with Sherry for a number
24 of hours, correct?

25 A. I didn't. My wife did.

1 Q. Your wife did?

2 A. Right.

3 Q. And you say that Sherry actually wrote to you and you
4 wife once she was arrested, correct?

5 A. That is correct.

6 Q. And she wrote to you asking to see you and your wife?

7 A. That is correct.

8 Q. And you saw her at J Ruben Long ---

9 A. Pardon me?

10 Q. --- Detention Center?

11 A. Excuse me?

12 Q. And you saw her at J Ruben Long Detention Center,
13 correct?

14 A. I didn't go see her.

15 Q. All right.

16 A. We didn't go see her.

17 Q. Okay. Now, one final question. You never actually
18 saw Timmy Rogers kill Fred Engel, did you?

19 A. No.

20 MS. WILSON: Court's indulgence.

21 BY MS. WILSON:

22 Q. A couple more questions. You never saw Timmy Rogers
23 on the 21st at all, did you?

24 A. No.

25 Q. Okay. And Sherry Engel and her hysteria, clearly she

1 was acting as if she was completely just out of control
2 because her husband was missing, correct?

3 A. Yeah.

4 Q. And what if anything was done to assist her in --
5 with her hysteria?

6 A. My wife and Carol, our neighbor, tried to calm her.

7 Q. And did -- she ended up actually going to the
8 hospital, didn't she?

9 A. Yes.

10 Q. And where she was treated for her hysteria at that
11 point?

12 A. I don't know what she was treated for.

13 Q. All right. But she was actually at the hospital
14 correct?

15 A. That is correct.

16 Q. Thank you.

17 MS. WILSON: No further questions.

18 MR. RICHARDSON: Just a couple of follow up.

19 REDIRECT EXAMINATION

20 BY MR. RICHARDSON:

21 Q. You say very few people live over there in Birkshire
22 Forest or did back in 2008?

23 A. Well, to my knowledge -- I mean, you know, I didn't
24 know a lot of the people that lived there. But I mean it
25 wasn't a lot.

1 Q. All right. And with regard to your going to the
2 mailbox, either before you took Sherry or when you took
3 Sherry, did you ever see a red S10 parked across from the
4 mailbox?

5 A. No, sir.

6 Q. All right. Do you believe that you would have
7 recognized or remembered a vehicle parked over there?

8 A. I don't think I was looking for that. I was looking
9 for Fred.

10 Q. Okay. But you didn't see any of the -- any car
11 parked across the street?

12 A. No. I mine I couldn't describe a car. I'm sure they
13 were there, but I wasn't looking for the cars. I was
14 looking for Fred.

15 Q. Do you know what pad or parking lot that we're
16 talking about across from the mailbox?

17 A. Yes.

18 Q. People generally park over there?

19 A. Yes.

20 Q. Okay, but you don't remember any vehicle being over
21 there on that night?

22 A. No, sir.

23 Q. Okay?

24 MR. RICHARDSON: I have no further questions, and I'd
25 ask that Mr. Rickerson be excused from his subpoena?

1 THE COURT: Do you have any recross, Ms. Wilson?

2 MS. WILSON: No, Your Honor.

3 THE COURT: You have any objection to him being
4 released?

5 MS. WILSON: I certainly do not. Thank you.

6 THE COURT: Thank you, Mr. Rickerson. Thank you for
7 coming. You're released from your subpoena.

8 THE WITNESS: Thank you.

9 MR. RICHARDSON: Thank you. Karla Green. Your
10 Honor, I've got two fairly short witnesses. Just let me
11 know when you get ready.

12 THE COURT: Let's see. We've got another 20 minutes
13 to do what we can do. I want to break at 1:00.

14 KARLA GREEN, after being duly sworn, testified
15 as follows:

16 CLERK OF COURT: Please be seated and talk into that
17 microphone. State your last name for the Court spelling
18 your last.

19 THE WITNESS: Karla M. Green. G-R-E-E-N.

20 DIRECT EXAMINATION

21 BY MR. RICHARDSON:

22 Q. Hi, Ms. Green?

23 A. Hi.

24 Q. How are you?

25 A. I'm good.

1 Q. Ms. Green, please tell this jury where are you
2 employed?

3 A. At Value Place.

4 Q. And how long have you been at Value Place?

5 A. Just over two and a half years.

6 Q. Okay. Were you working there back in April of 2008?

7 A. Yes, sir.

8 Q. And during that 2008 April timeframe did you have
9 occasion to talk with Joseph Hawes?

10 A. Yes, sir.

11 Q. All right. And at that point were you shown some
12 sort of photograph?

13 A. I was.

14 Q. Do you know who was depicted in that photograph?

15 A. It would be Mr. Rogers.

16 Q. Timmy Rogers?

17 A. And Sherry Engel.

18 Q. Okay. Now, and did Detective Hawes ask you for any
19 documentation?

20 A. Yes, sir.

21 Q. Let me pass to you what has been premarked as State's
22 Exhibit Number Four and tell this jury if you recognize
23 that?

24 A. I do.

25 Q. All right. Now, Ms. Green, what is that?

1 A. This is our Folio Audit Trail. Any time a
2 transaction is done on our computer that has to do with
3 customers everything is documented in the computer.
4 Whether it be cash transactions, credit card transactions,
5 any taxes that are posted. And this would show any rooms
6 that were checked in during the day. It notes the room
7 number. It gives their folio number which would be why
8 it's called a Folio Audit Trail.

9 And it would show any payments. Also any of the
10 clerks that did the transaction along with the date that
11 the transactions were done.

12 Q. And if you would also flip through that, what's known
13 as State's Exhibit Number Four, Folio Audit Trail, tell
14 the jury how many pages are in that?

15 A. There is four.

16 Q. All right. In that is there ever a reference to
17 Timmy Rogers?

18 A. There is.

19 Q. All right. Tell the jury about that?

20 A. Okay. We have the second and third pages are what's
21 called our Occupancy Agreement. It's signed any time a
22 guest is signed into our hotel is clerked in. It tells
23 how much they paid. It also asks them or we ask them to
24 sign their name and print their name, which on here it
25 would show Timmy Rogers. And the date that he checked in,

1 and then also his registration card is the last page. And
2 it shows his name and then where he signed as being a
3 registered guest of our hotel on the 8th of April.

4 Q. April 8th 2008. Approximately what time did he check
5 in?

6 A. 5:15.

7 Q. That's p.m?

8 A. P.m, yes, sir.

9 Q. Now, on that last page, please, do you see a room
10 number or what room he was assigned?

11 A. It was Room [REDACTED].

12 Q. Room [REDACTED]?

13 A. Yes.

14 Q. And as far as the resident information please tell
15 the jury who the resident was and his specifics as far as
16 home town, address?

17 A. It's registered to Timmy Rogers, and the address was
18 P.O. Box [REDACTED]. Horage, Kentucky, 40144. And then it also
19 has his phone number which would be area code
20 [REDACTED]-4731.

21 Q. All right. And where would you have gotten that
22 information?

23 A. From the guest.

24 Q. So the guest gave you his phone number?

25 A. That is correct.

1 Q. All right. Now, go back to that page. Let's talk
2 about that ---

3 A. Okay.

4 Q. --- a little bit. That last page.

5 A. Oh, that last page. I'm sorry?

6 Q. Now, the next box there; that move in information.

7 All right. Tell the jury what's in that?

8 A. His arrival date was 4/8/2008. His estimated
9 departure date or it specifically says a departure date.
10 This was for a 28-day stay which is our monthly. That was
11 May 5th 2008 which it would be 27 nights checking out on
12 the 28th day.

13 One adult. The method of payment was cash. The
14 exact time and date was 4/8/2008 at 5:15 p.m. His
15 confirmation number would match his folio number which was
16 4832. His room type was a studio room with one full sized
17 bed. The room assigned to him [REDACTED]. And his room rate
18 before taxes would be \$629, and that also does not include
19 his deposit.

20 Q. Who check him in on that date?

21 A. I did.

22 Q. And would he have signed that in your presence?

23 A. Yes.

24 Q. Now?

25 A. All right.

1 Q. Back to Page One. What does the folio audit trail
2 tell you there about Room [REDACTED]?

3 A. He was the second one down under the cash listing.
4 The room was paid in cash. That's the account
5 description. Before that it's got a transaction number,
6 312824. That's assigned by the computer whenever we do a
7 transaction in the computer. It's under the Account
8 [REDACTED]. His room was [REDACTED]. It shows his folio number for
9 his room, 4832. Under the posting of the charges it's
10 zero, and under payment \$827.87. And that would include
11 his taxes along with his deposit and then the user I.D. is
12 mine, K. Green.

13 Q. K. Green? All right. Flip over to the second page
14 there, please. Does that show anything that we haven't
15 covered?

16 A. No. I don't think so. This is just a basic
17 description of when a guest checks into our hotel. It
18 basically states how much that they're going to pay and
19 including a deposit. Just different things as far as what
20 we allow in the room. You know, what time our check in
21 times are. What time our check out times are. This is
22 just general.

23 Q. Who wrote to [REDACTED] up here at the top of the page?

24 A. I did that also.

25 Q. That's your handwriting?

- 1 A. Yes, sir.
- 2 Q. Okay. Please flip to Page Three. Is there anything
3 there that we haven't covered?
- 4 A. It's just more of the same carrying on from the first
5 page. It also includes a fee schedule towards the bottom
6 that shows if anything was burned, broken, damaged in the
7 room. And then there is a fee for anything that might be
8 missing also in the room and how much it would cost.
9 There is also house rules.
- 10 Q. Whose signature is that on the bottom?
- 11 A. Mr. Rogers' signature.
- 12 Q. And whose printed name, Timmy Rogers?
- 13 A. Yes, sir.
- 14 Q. And the date?
- 15 A. Yes.
- 16 Q. 4/8/8?
- 17 A. That is correct.
- 18 Q. Okay. Can I hold that?
- 19 A. Sure.
- 20 Q. So there is no doubt -- do you -- does Value Place
21 keep these records in the ordinary course of business?
- 22 A. We do.
- 23 Q. And are you a record's custodian or is that part of
24 your job description?
- 25 A. I'm one of the two. Me and also our property

1 manager. Both of us have control.

2 Q. But in this case you actually checked him in and saw
3 all of this?

4 A. That is correct.

5 Q. Do you remember who paid for this room stay?

6 A. It was Sherry Engel that paid for his room.

7 Q. So he had a lady with him ---

8 A. Yes.

9 Q. --- when he checked in. And she paid in cash?

10 A. She did.

11 Q. Okay. When you were shown a photograph did it take
12 you any amount of thought to figure out who exactly
13 Detective Hawes was asking you about?

14 A. No, sir.

15 Q. And who was that?

16 A. That would be Timmy Rogers.

17 Q. Okay. Let me pass to you what has been marked as
18 State's Exhibit Number Two, and tell the jury what that
19 is?

20 A. There is a picture from our video surveillance from
21 the back door at our hotel. It's facing towards the front
22 door where they would have entered into the hallway going
23 to the elevator. And it shows them walking towards the
24 elevator in the middle of the hallway.

25 Q. And were you able to pull that up when asked for it

1 by Detective Hawes?

2 A. Yes, sir.

3 Q. Okay. Why do you keep a camera in the common areas?

4 A. We keep it for our guest's safety.

5 Q. Okay.

6 A. We have them all over the first floor.

7 Q. Okay. Do you have any independent knowledge that
8 would expand upon that particular photograph? Do you
9 remember that day that he checked in?

10 A. We do. He had stayed with us back in March and had
11 only been with us for a few weeks and then he left. And
12 he came back and when he checked in we -- well, me and my
13 manager, kind of looked at each other and said, "Oh, he
14 came back to stay with us." We get customers that come
15 and go regularly.

16 And we thought that it was interesting that he came
17 back and had a lady with him because we thought that maybe
18 he was definitely going to relocate to our area since he
19 found a lady friend. And we saw them enter into the
20 hallway together to go upstairs. And we did see them
21 embrace in the hallway by the elevator.

22 Q. Well, describe for the jury that embrace and the
23 actions before going up to the room.

24 A. When they embraced it looked like it could either
25 have been a kiss or a hug because they're heads were next

1 to each other. And, of course, you know, we were looking
2 at that and saw it on the security camera.

3 Q. So y'all were watching it on the camera?

4 A. Yes, sir.

5 Q. In real time?

6 A. Yes, sir.

7 Q. Okay. You make any comments or hear any comments
8 with regards to the embrace?

9 A. No, sir. Just basically, you know, just talking
10 amongst ourselves about that he must have found a lady
11 friend.

12 Q. Okay. Let me pass to you what has been marked as
13 State's Exhibit Number Three and tell me if you recognize
14 that?

15 A. This is his driver's license picture that was printed
16 off of our computer. When they print out they print out
17 rather large.

18 Q. Okay.

19 A. And this was the I.D. that was given to us at his
20 check in. His original clerk in back in March.

21 Q. Okay.

22 A. We can go in and retrieve information so that we
23 don't have to reenter it every time that they come to
24 clerk in.

25 Q. Okay. And does that appear to be the defendant

1 that's here in Court today?

2 A. Yes, sir, it is.

3 Q. And the name on that is Timmy J. Rogers?

4 A. Yes, sir.

5 Q. And it's from -- is that Litchfield, Kentucky?

6 A. Kentucky, yes, sir.

7 Q. In what county?

8 A. In Breckenridge County.

9 Q. Okay. and that would have been provided to you by
10 Timmy Rogers?

11 A. Yes, sir.

12 Q. Okay. Thank you. Now, you talked about a stay back
13 in March of 2008. And let me pass to you what has been
14 marked as State's Exhibit Number Five. Do you recognize
15 that document?

16 A. Again, it's also a folio audit trail about the same
17 day that he would have checked in back in March.

18 Q. What was his check in date and check out date back in
19 March?

20 A. That would be 3/3/2008 was his check in date, and his
21 check out date would have been -- well, on here we have
22 him through the 10th of 2008. His room deposit and his
23 payment was made also on the 3rd.

24 Q. So it was seven days, basically?

25 A. Yes, sir.

1 Q. Do you remember who checked him in at that time?

2 A. On this one it would have also been me.

3 Q. Do you remember seeing Sherry Engel back in March?

4 A. I did not.

5 Q. Do you know the specific date that he checked out
6 back in March?

7 A. I want to say it was two weeks is what he stayed with
8 us.

9 Q. Okay.

10 A. On that time because I think he was going to stay
11 with us for a month, but he ended up staying with us for
12 only two weeks.

13 Q. Do you know the check out date when he came back to
14 stay with you in April? April 8th?

15 A. It was not too long. Let me look at this real quick.
16 It was just a couple of weeks after he had checked in.
17 Maybe a week after he had checked in. We had it on the
18 paperwork that I had given the detective. Because it was
19 thete day -- it was right before the date that I had
20 printed the paperwork out on.

21 Q. Pass to you what has been marked as State's Exhibit
22 Number Six. Tell the jury what that is?

23 A. This is actually a copy of his receipt for his room
24 fees for April 8th that we had printed out, and it shows
25 his room deposit, his room fees that were paid for the

1 28-day stay. It also shows that he had either faxed or
2 received a fax, and the charges for it which shows that
3 that's what his balance due was at the time that this was
4 printed out.

5 And this was printed out on April 30th 2008. So I
6 would say that April 30th was when we knew he wasn't at
7 the hotel any longer. We still kept him in our system
8 until the May date because the guests are customers that
9 leave us early. Just to keep out occupancy.

10 Q. He had paid for 28 days and he checked out before 28
11 days?

12 A. Right.

13 Q. But somewhere around 4/30/08 is when he checked out?

14 A. That's correct.

15 Q. And you printed up that?

16 A. Yes, sir.

17 Q. And he was actually allowed to stay until 5/5/08?

18 A. Right.

19 Q. But he left somewhere by the end of April?

20 A. Is that correct.

21 Q. Okay. But you continue to rent out the room anyway?

22 A. Right.

23 Q. Okay.

24 A. We keep it for our occupancy purpose.

25 Q. Now, who did you prepare this document for?

1 A. That was for the detective.

2 Q. Okay. And, of course, this one doesn't have his
3 signature?

4 A. That is correct. It's just a duplicate copy.

5 Q. You printed a duplicate copy for Detective Hawes?

6 A. Yes, sir.

7 THE COURT: That's exhibit what, Mr. Richardson?

8 MR. RICHARDSON: Six, Your Honor.

9 THE COURT: All right.

10 BY MR. RICHARDSON:

11 Q. Exhibit Number Six is a duplicate copy for Joseph
12 Hawes?

13 A. That is correct.

14 Q. All right. And whose handwriting is that up at the
15 top?

16 A. That is also my handwriting. I wrote the detective
17 the phone number we had on final and also the description
18 of his vehicle that we had on file.

19 Q. And what is the description of the vehicle?

20 A. It's a '93 Chevy S10.

21 Q. Did you ever see that S10?

22 A. I did.

23 Q. What color was the S10?

24 A. It was red.

25 Q. Okay.

1 MR. RICHARDSON: Your Honor, the State would like to
2 enter State's Exhibit Two which is a photograph. Three,
3 Four ---

4 THE COURT: Let me see your photographs, please.

5 MR. RICHARDSON: --- Five and Six.

6 THE COURT: What do you say, Ms. Wilson?

7 MS. WILSON: Your Honor, we have no objection.

8 THE COURT: All right. Without objection. Two,
9 Three, Four, Five.

10 MR. RICHARDSON: Six, yes, sir.

11 THE COURT: And Six are admitted.

12 (WHEREUPON, State's Exhibit Nos. 2, 3, 4, 5 and 6
13 were admitted into evidence.)

14 MR. RICHARDSON: Thank you, Your Honor.

15 BY MR. RICHARDSON:

16 Q. Now, let's -- I know we covered this, but let's go
17 over it one more time to make sure. With regard to the
18 date of check in for the most recent time?

19 A. Right.

20 Q. That was 4/8/2008?

21 A. That is correct.

22 Q. And he has paid through March 5th 2008?

23 A. That is correct.

24 Q. And he checked out on or before 4/30/2008?

25 A. Yes, sir.

1 MR. RICHARDSON: Your Honor, I would ask for
2 permission to publish?

3 THE COURT: Certainly.

4 BY MR. RICHARDSON:

5 Q. Have you seen Timmy Rogers since his check out around
6 the end of April?

7 A. No, sir, I haven't seen him until today.

8 Q. Any doubt in your mind that that's the same Timmy
9 Rogers that checked in?

10 A. No, sir, there is to doubt.

11 Q. Do you know Fred Engel?

12 A. No, sir.

13 Q. You know Sherry Engel?

14 A. No, sir, other than the day that she checked him in.

15 Q. Okay, got you. And do you remember who paid for that
16 room?

17 A. She did.

18 Q. She did. And she paid in cash?

19 A. That is correct.

20 Q. I have no further questions. If you will answer any
21 questions Ms. Wilson may have.

22 THE COURT: All right, Ms. Wilson.

23 MS. WILSON: Thank you.

24 CROSS-EXAMINATION

25 BY MS. WILSON:

1 Q. Ms. Green?

2 A. Hi.

3 Q. Now, you have worked at Value Place for a pretty long
4 time?

5 A. Yes, ma'am.

6 Q. And it's been approximately four years?

7 A. No, ma'am.

8 Q. Since you've been there?

9 A. No, ma'am. I've been there just over two and a half
10 years.

11 Q. Just over two and a half?

12 A. Yes, ma'am.

13 Q. And you're pretty certain? You're actually
14 absolutely certain that Sherry Engel checked in Timmy
15 Rogers at that hotel?

16 A. Yes, ma'am.

17 Q. There is no doubt in your mind about that?

18 A. No, ma'am.

19 Q. And in effect you're saying that Sherry Engel came
20 with Mr. Rogers to the Value Place, checked him in and
21 paid for the entire stay?

22 A. That is correct.

23 Q. And Mr. Rogers provided you with his identifying
24 information without any issue?

25 A. Yes, ma'am.

1 Q. Correct. Are there other people, probably -- let me
2 rephrase that. Are you -- you're not normally in the
3 habit of noticing what the people drive, are you?

4 A. I am for people that stay with us for longer than
5 just one week. I get to know my customers because it's
6 where I work and I keep -- I pay attention to what's
7 around me. So I could say, yes, ma'am. I do.

8 Q. Okay. And you never saw Mr. Rogers committing this
9 crime of killing Mr. Engel, did you?

10 A. No, ma'am.

11 Q. And you never saw him come into the Value Place
12 covered in blood or in anything that would suggest that he
13 had been part of a crime such as this?

14 A. No, ma'am.

15 Q. Excuse me one second. It's not unusual for a
16 customer to check out early?

17 A. No, ma'am.

18 Q. It's par for the course if it happens?

19 A. Yes, ma'am.

20 Q. Okay. No further questions. Thank you

21 REDIRECT EXAMINATION

22 BY MR. RICHARDSON:

23 Q. Ms. Green, specifically, after April 21st do you
24 remember Mr. Rogers saying anything to you upon check out?

25 A. No, sir.

1 Q. After April 21st do you remember speaking to
2 Mr. Rogers?

3 A. No, sir.

4 MR. RICHARDSON: I have no further questions. You
5 have any?

6 MS. WILSON: Court's indulgence. One more final
7 follow up, Your Honor.

8 RE CROSS-EXAMINATION

9 BY MS. WILSON:

10 Q. Does the date April 21, it doesn't stand out for any
11 particular reason, does it?

12 A. No, ma'am.

13 Q. Okay.

14 MS. WILSON: No further questions.

15 THE COURT: Any further need of this witness?

16 MR. RICHARDSON: No, sir. I just ask that she be
17 excused.

18 MS. WILSON: Thank you.

19 THE COURT: All right. You're released from your
20 subpoena, Ms. Green. Thank you for coming. Ladies and
21 gentlemen of the jury, I'm going to let you go to lunch at
22 this time. Mr. Roth, please take them to their jury room.
23 Show them how to enter and exit the courtroom. Be back at
24 2:30, okay.

25 (WHEREUPON, the jury panel was excused from the

1 courtroom at 1:00 p.m.)

2 THE COURT: All right. Mr. Richardson, you need
3 anything over the lunch hour.

4 MR. RICHARDSON: No, sir.

5 THE COURT: Ms. Wilson?

6 MS. WILSON: No, sir, Your Honor.

7 THE COURT: All right. Court is in recess until
8 2:30.

9 (WHEREUPON, Court was in recess at 1:00 p.m.)

10 Two state 40.

11 (WHEREUPON, State's Exhibit No. 40 was marked for
12 identification only.)

13 (WHEREUPON, Court reconvened at 2:38 p.m.)

14 THE COURT: Ready to proceed, Mr. Richardson?

15 MR. RICHARDSON: Yes, Your Honor.

16 THE COURT: Ms. Wilson?

17 MS. WILSON: Yes, Your Honor.

18 THE COURT: If you would please bring in the jury.

19 (WHEREUPON, the jury panel enters the courtroom at
20 2:39 p.m.)

21 (WHEREUPON, a bench conference was held off the
22 record in the presence of the jury, but out of the
23 hearing of the jury.)

24 THE COURT: All right. Mr. Richardson, I see our
25 witness is back. Call your witness.

1 MR. RICHARDSON: The State calls Roderick Freeman.

2 MS. WILSON: Same objection as previously noted.

3 THE COURT: Preserved.

4 MS. WILSON: Thank you, Your Honor.

5 Roderick Freeman, after being duly sworn,

6 testified as follows:

7 THE COURT: All right. Mr. Freeman, how about give
8 us your name one more time?

9 A. Roderick Freeman. F-R-E-E-M-A-N.

10 DIRECT EXAMINATION

11 BY MR. RICHARDSON:

12 Q. All right. Mr. Freeman, where are you employed,
13 please?

14 A. It work for A.T. & T. and I'm based out of
15 Fayetteville, North Carolina.

16 Q. What's your occupation?

17 A. I'm a customer service manager.

18 Q. Is that the position that you hold?

19 A. Yes, sir.

20 Q. Did you receive a Court ordered subpoena to come
21 today?

22 A. Yes, sir.

23 Q. And to bring documents relating to area code

24 [REDACTED]-4731?

25 A. Yes, sir.

- 1 Q. Pass to you what has been marked previously as
2 State's Exhibit or Court's Exhibit Number Three. Tell me
3 if you recognize those?
- 4 A. Yes, sir.
- 5 Q. Were these -- those documents the ones that were
6 prepared in connection with that subpoena?
- 7 A. Yes, sir.
- 8 Q. You know Timmy Rogers?
- 9 A. No, sir, I do not.
- 10 Q. You know Sherry Engel?
- 11 A. No, sir, I do not.
- 12 Q. Okay. Let's talk about those particular records.
13 Phone records, correct?
- 14 A. Yes, sir.
- 15 Q. Did you prepare those yourself?
- 16 A. No, sir, I did not.
- 17 Q. Okay. Who prepared them?
- 18 A. Our technical department actually pulled the
19 record -- information from our cell towers and had them
20 prepared for today.
- 21 Q. Okay. And are you familiar with the process of
22 compiling that data?
- 23 A. Not the actual process that they use for compiling
24 that data. No, sir.
- 25 Q. Well, how is the data stored? Is it stored in paper

1 form like that?

2 A. No, sir, it's stored on a database.

3 Q. All right. And someone would have to print it off of
4 that database and bring it into a paper form?

5 A. Yes, that is correct.

6 Q. All right. Are those -- are you sure that those are
7 a copy of the data held in that storage facility?

8 A. Yes, sir.

9 Q. And who owns the storage facility?

10 A. A.T.&T.

11 Q. And does A.T. & T. keep records, phone records, in the
12 ordinary course of business?

13 A. Yes, sir.

14 Q. And do they keep those particular records in the
15 ordinary course of business?

16 A. Yes, sir.

17 Q. Let's go through those records if you will,
18 Mr. Freeman, for the jury. Tell the jury there what
19 Column One indicates?

20 A. Column One indicates the date and the time that a
21 call would have been made or received onto the phone.

22 Q. All right. And in particular does it deal with that
23 particular phone [REDACTED]-4731?

24 A. Yes, sir.

25 Q. All right. Tell the jury what Column Two is a

1 recording of?

2 A. Column Two records mobile originating or mobile
3 terminating which means basically whether or not the phone
4 made a call or whether the phone received a call coming
5 in.

6 Q. And Column Three, please?

7 A. Column Three is for the number that's actually
8 calling the mobile number.

9 Q. Okay. How about Column Four?

10 A. Column Four states the number that was actually
11 called.

12 Q. Okay. So if that number, [REDACTED]-4731, called
13 another number what would be under Column Three or
14 Calling?

15 A. If [REDACTED]-4731 made a call that would be the number
16 that is listed under Calling.

17 Q. All right. If [REDACTED] -- excuse me. If [REDACTED]-4731
18 received a call, that particular phone number received a
19 call, where would that information be listed?

20 A. That would be under the next column for called.

21 Q. Okay, and the person that was calling that number?

22 A. Would be ---

23 Q. Go ahead. I'm sorry.

24 A. Would be the person that was calling would be under
25 the calling category.

1 Q. Okay. Now, Column -- is that Five? Column 5,
2 I.M.E.I. Do you know what that means?

3 A. Yes, sir. That is, far lack of a better phrase, the
4 serial number for a particular phone.

5 Q. Serial number for a phone?

6 A. Yes, sir.

7 Q. And what is I.M.S.I?

8 A. I.M.S.I is a technical term for the SIM card of the
9 phone which is your brain of the phone. Each individual
10 number has as SIM card assigned to it.

11 Q. Okay, and that's the serial number for the SIM card?

12 A. Yes, sir.

13 Q. So in my phone here that would actually have a serial
14 number?

15 A. Yes, sir.

16 Q. And if I told you my phone number you would have the
17 records to be able to say, "Well, that serial number for
18 that particular phone is blank?"

19 A. Yes, sir.

20 Q. And y'all keep that in the ordinary course of
21 business?

22 A. Yes, sir.

23 Q. All right. And could you also, if I gave you this
24 phone number and said, "How about look up the SIM card's
25 Social Security number, for lack of a better term, could

1 you give me that, too.

2 A. Yes, sir.

3 Q. And that is what is listed in I.M.S.I?

4 A. Yes, sir.

5 Q. Is that right?

6 A. Yes, sir.

7 Q. All right. Could you tell if I opened the back of
8 this and changed SIM cards with say with you or the court
9 reporter could you tell that the SIM card had been changed
10 in this phone?

11 A. Yes, sir.

12 Q. How would you tell that?

13 A. We actually run a report that can actually generate,
14 once a call is made, we can pull the information on up on
15 what type of phone was actually being used. But that also
16 is kept within our records at the company.

17 Q. Okay. So you can tell -- well, the phone was the
18 same, but somebody switched ---

19 A. The phone number is the same, but we just swapped SIM
20 cards out between your phone and my phone in that
21 particular scenario.

22 Q. Okay, I see. Tell the jury what the next column is
23 there for?

24 A. The next column would be duration or how long the
25 call lasted.

1 Q. Y'all keep up with how long people stay on the phone?

2 A. Yes, sir.

3 Q. And what's the purpose of that?

4 A. Just the track how many minutes that they actually
5 used on the account, whether or not they're using minutes
6 within their allotted frame, or even if they're going over
7 their minutes.

8 Q. Okay. And if I asked you for a copy of my bill would
9 that information and those first few be provided?

10 A. Yes, sir.

11 Q. All right. But now this order that you prepared had
12 some other columns on it, correct?

13 A. Yes, sir.

14 Q. That next column, L.A.C.C.I.D, what, exactly is that,
15 Mr. Freeman?

16 A. That refers to the actual tower that the call was
17 routed through.

18 Q. Would it be fair to say that a serial number or some
19 indicator for the tower?

20 A. Yes, sir.

21 Q. Does each tower have a different serial number or
22 identifier?

23 A. Yes, sir.

24 Q. Okay. Now, the next column is, L.A.T. What does
25 L.A.T. stand for?

1 A. Latitude.

2 Q. All right. And there are figures there, and beside
3 that is longitude, I'm presuming?

4 A. Yes, sir.

5 Q. All right. There is figures under that. What
6 exactly does that latitude and longitude point to?

7 A. That points to the general area that the tower is
8 actually positioned in.

9 Q. Okay. So if I went to some sort of a database and
10 punched in Latitude A and Longitude B it would put me in
11 the general area where the cell tower is?

12 A. Yes, sir.

13 Q. And it would be the same cell tower with the
14 identifying marks under L.A.C.C.I.D or that security
15 number?

16 A. Yes, sir.

17 Q. Okay. And, finally, it appears that there is a
18 column that says, "E-164." Are you familiar with that?

19 A. No, sir, I'm not.

20 Q. Well, there is no numbers in it. Do you understand
21 what an E-164 is?

22 A. That would be out of my area of expertise. That may
23 be -- I can only assume that it's for technical purposes,
24 but since I'm not an engineer or technically trained in
25 that particular aspect I can't speak to it.

1 Q. I got you, but no doubt that those records are
2 compiled and kept by A.T.&T. for billing purposes?

3 A. Yes, sir.

4 Q. And what's the latitude and longitude? Why do you
5 want to keep up with that?

6 A. In the event or for marketing purposes, let's say
7 that we need to do maintenance on a tower or to just run
8 diagnostics on a tower in so far as call congestion,
9 dropped call, poor signal strength, we keep track of that
10 information so that way we need to know on the offhand
11 where we need to put a tower up in another area or even
12 decommission a tower. We have that information available.

13 Q. Okay. So you could tell what towers are busy? What
14 towers are less busy?

15 A. Yes, sir.

16 Q. That sort of thing? Where you need more towers?

17 A. Yes, sir.

18 Q. And where calls are dropping?

19 A. Yes, sir.

20 Q. All right. Now, let me make sure at least I
21 understand it, and that the jury can understand it. Under
22 latitude and longitude you're not saying where the actual
23 phone, this [REDACTED]-4731, where the actual phone the
24 located?

25 A. That is correct.

1 Q. You're saying that's where the tower that that phone
2 rang off is located?

3 A. Yes, sir.

4 Q. Or in close proximity to it.

5 A. Within proximity, yes.

6 Q. I got it. There is like a cone or a sphere, I would
7 think?

8 A. Right.

9 Q. All right. And you brought those from A.T. & T. for
10 the purposes of this hearing that we're here for today?

11 A. Yes, sir.

12 Q. And do you know who owned or used to own that 502
13 number?

14 A. No, sir, I do not.

15 Q. All right. Now, let me hand you what has been marked
16 as State's Exhibit or Court's Exhibit Number Four and tell
17 me if you recognize that?

18 A. These also records that were prepared and brought
19 down for today's trial.

20 Q. Okay. Those records are from what phone number?

21 A. These are for phone number [REDACTED]-6563.

22 Q. Do you know who owns that phone number?

23 A. No, sir I do not.

24 Q. Okay. Do you know who owned it?

25 A. No, sir, I do not.

1 Q. Now, this has fewer columns, it appears?

2 A. Yes, sir.

3 Q. Tell us what the columns stand for in this series of
4 phone records?

5 A. We have the service time which would be either a
6 local call placed within the particular market. I see
7 where there were voice mail retrieval entries meaning that
8 the owner of the phone actually called to check a voice
9 mail message. I notice a few mobile to mobile calls
10 meaning that they called somebody within the A.T. & T.
11 network.

12 And I actually see a few calls to Western Europe. So
13 those would be overseas calls in that first particular
14 column. In the next column there are, again, the dates
15 and the times that each individual call was made. There,
16 in the column next to that, there is a call location which
17 gives just a broad area of where the call is actually
18 being routed to. Doesn't give anything specific.

19 Q. No latitude? No longitude?

20 A. No latitude. No longitude; that is correct. The
21 next column following that is the actual city that's being
22 called. Following that would be the state that's called.
23 Then the calling number. Then the number called, and then
24 again, the call duration.

25 Q. And how long ---

- 1 A. How long the conversation lasted.
- 2 Q. I see. And you -- these appear to be your records?
- 3 A. Yes, sir.
- 4 Q. You contest that these are kept in the ordinary
- 5 course of business?
- 6 A. Yes, sir.
- 7 Q. This is Court -- Item Number Four is how many pages?
- 8 A. According to this it's ten pages.
- 9 Q. And Court's Exhibit Number Three is how many pages?
- 10 A. Six pages.
- 11 Q. And Court's Three has some other information on it
- 12 that Number Four does not have?
- 13 A. Correct.
- 14 Q. Okay, and that's what's you were asked to prepare?
- 15 A. Yes, sir.
- 16 Q. Okay. Matter of fact if I were to ask you to go back
- 17 at some later date or even today on this particular phone
- 18 and say, "Well, I need the latitude/longitude," could you
- 19 find -- get somebody to print those off?
- 20 A. Yes, sir.
- 21 Q. Would you keep that in the ordinary course of
- 22 business?
- 23 A. Yes, sir.
- 24 Q. All right. I believe that that's all I have for you.
- 25 If you will answer any questions that Ms. Wilson has.

1 MR. RICHARDSON: First, I'd like to move State's
2 Exhibit -- I mean Court's Exhibits Three and Four into the
3 record, Your Honor?

4 MS. WILSON: No objection.

5 THE COURT: Other than your preserve?

6 MS. WILSON: Yes, sir.

7 THE COURT: Okay. All right. Let's have those
8 marked. These are marked Court's Exhibits now. Let's
9 have them changed and marked as State's Exhibits -- what
10 number would that be, Ms. Gordon?

11 COURT REPORTER: Number 41 and 42.

12 THE COURT: Number 41 and 42, okay. State's Exhibit
13 41 and 42.

14 (WHEREUPON, State's Exhibit Nos. 41 AND 42 were
15 marked for identification and received into
16 evidence.)

17 THE COURT: Mr. Richardson, anything further of this
18 witness?

19 MR. RICHARDSON: I do want to clarify.

20 THE COURT: All right.

21 BY MR. RICHARDSON:

22 Q. Just to make sure. I believe you covered this, but
23 these records are particular to the 502 number?

24 A. Yes, sir.

25 Q. All right. And these records are particular to the

1 843 number?

2 A. Yes, sir.

3 Q. Okay.

4 MR. RICHARDSON: That's all I have.

5 THE COURT: All right. Ms. Wilson.

6 MS. WILSON: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. WILSON:

9 Q. Mr. Freeman, the cell phone records can't tell you if
10 a call was made mistakenly or accidentally?

11 A. No, ma'am.

12 Q. So if my purse dialed someone up it's still going to
13 show as a call out of my phone?

14 A. Yes, sir.

15 Q. Even though I'm actually on the phone talking to
16 somebody?

17 A. It's still going to show as a call.

18 Q. And there is no data that you can compile that can
19 actually tell you who is using a cell phone at a given
20 time?

21 A. No, ma'am.

22 Q. So any one person could be using a cell phone. It's
23 just going to show a specific cell phone and a specific
24 SIM card, correct?

25 A. Just to make sure I'm understanding your question.

1 If you have my cell phone it's not going to be able to
2 tell whether I'm making the call or you're making the
3 call. Is that what I'm understanding?

4 Q. That is exactly right.

5 A. Yes, ma'am. That is correct.

6 Q. And, now, the latitude and longitude you said only
7 covers the general location of the towers, correct?

8 A. Right. Within that area, yes, ma'am. I can't speak
9 to whether -- you know how exactly it is, but within that
10 area.

11 Q. And if a tower is, let's say -- well, if a tower is
12 overloaded with calls and I'm trying to call out to
13 somewhere if that tower is overloaded is -- my call is
14 actually going to be routed through another tower,
15 correct?

16 A. I can't speak to that. In my personal experience
17 I've seen where a message comes through that your call
18 cannot be completed at this particular time.

19 Q. Okay.

20 A. From my professional experience I can't say whether
21 or not it will get routed to another tower or you will get
22 a please try again later message.

23 Q. Okay?

24 MS. WILSON: Court's indulgence.

25 BY MS. WILSON:

1 Q. A couple more questions. You don't have any
2 specialized or expert knowledge about the radius of cover
3 of the towers, do you?

4 A. No, ma'am.

5 Q. All right. And, final question. You never saw
6 Mr. Timmy Rogers commit a murder, did you?

7 A. No, ma'am.

8 Q. You never saw him commit the murder of Mr. Fred
9 Engel, did you?

10 A. No, ma'am.

11 Q. Thank you.

12 MS. WILSON: No further questions.

13 THE COURT: Do you have any other need for this
14 witness, Mr. Richardson?

15 MR. RICHARDSON: No, sir.

16 THE COURT: Ms. Wilson?

17 MS. WILSON: None, Your Honor. Thank you.

18 THE COURT: Sir, you are released from your subpoena.
19 Thank you for coming.

20 THE WITNESS: Thank you.

21 MR. RICHARDSON: State calls Heather Brummett.

22 HEATHER BRUMMETT, after being duly sworn,
23 testified as follows:

24 CLERK OF COURT: All right. Please be seated.
25 Please state your full name. Spell your last name for the

1 Court.

2 THE WITNESS: Heather Brummett. B-R-U-M-M-E-T-T.

3 DIRECT EXAMINATION

4 BY MR. RICHARDSON:

5 Q. Ms. Brummett, where are you employed?

6 A. Horry County Police.

7 Q. And what division?

8 A. The Criminal Investigation Division within the Crime
9 Scene Unit.

10 Q. Tell the jury a little bit of detail what you do at
11 crime scenes?

12 A. Well, there is a list of things we do depending on
13 which crime scene we go to. But for the most part we
14 respond -- we talk to the first responding officers to see
15 what they have. We take photographs, initial photographs,
16 before anything is touched, searched, collected. We'll
17 walk through with the detective. After we take all
18 pictures then we'll start our search for any possible
19 evidence.

20 We take measurements. The evidence is collected.
21 And then we'll take the evidence back with us to the
22 police department and if it needs to be processed we
23 process it. Otherwise, we'll package it and it will be
24 stored for Court.

25 Q. Okay. And were you working on April 21st 2008?

- 1 A. Yes, I was..
- 2 Q. And into the early morning hours of April 22nd 2008?
- 3 A. Yes, sir, I was.
- 4 Q. Did you have an occasion to go out to the Birkshire
- 5 Forest Community?
- 6 A. Yes, I did.
- 7 Q. And what was your purpose for going out there?
- 8 A. I was called at approximately 2:50 a.m. on the 22nd I
- 9 believe. And my purpose was to work a crime scene. They
- 10 said it was a death investigation, and they had found a
- 11 victim in the woods next to the mailboxes in Birkshire
- 12 Forest.
- 13 Q. And as part of your going out there to Birkshire
- 14 Forest were you able to take some photographs? Take some
- 15 D.N.A. swabs and measurements?
- 16 A. Yes, I did.
- 17 Q. Did you also put together a diagram of the area?
- 18 A. Yes, I did.
- 19 Q. And label the evidence that you did collect?
- 20 A. Yes.
- 21 Q. And did you reduce some of those photographs,
- 22 certainly not all of them, but some of the photographs to
- 23 show the jury the crime scene as it were the early morning
- 24 hours of April 22nd 2008?
- 25 A. Yes, I did.

1 Q. Did you put those together on a Power Point
2 presentation?

3 A. Yes, I did.

4 Q. And do you think it would be helpful for the jury to
5 be able to review that presentation and some of the
6 slides?

7 A. I do.

8 Q. All right.

9 MR. RICHARDSON: Your Honor, I'm going to -- I've
10 already ---

11 THE COURT: All right, Ms. Wilson. My understanding
12 is that you and counsel have had an opportunity to review
13 these photos or the selected photos and that you have
14 agreed that these are appropriate. And you have no
15 objection to those photographs, is that correct?

16 MS. WILSON: That is correct, Your Honor.

17 THE COURT: All right. Then this Power Point is
18 admitted. I would suppose that you are intended on
19 offering it, were you not?

20 MR. RICHARDSON: Yes, sir, Your Honor.

21 THE COURT: All right. Is it in C.D. format or what
22 is that?

23 MR. RICHARDSON: It's in a C.D. format.

24 THE COURT: Okay.

25 MR. RICHARDSON: And it's State's Exhibit 37.

1 THE COURT: Well, the C.D. will be -- or the D.V.D.
2 or what -- what is it?

3 THE WITNESS: It's a C.D, sir.

4 THE COURT: The C.D. will be State's Exhibit 40.

5 MR. RICHARDSON: Thirty-seven.

6 THE COURT: Thirty-seven. All right.

7 MR. RICHARDSON: Can you let that screen down.

8 BY MR. RICHARDSON:

9 Q. Okay. Ms. Brummett, just tell us when you're ready
10 to go please tell the jury exactly what they're looking
11 at, okay?

12 A. Okay. And I'm sorry. And if I may say now these
13 photos are not going to be in the order that I took the
14 photos in that particular early morning hour. I put them
15 in an order that would be better to understand, but most
16 of the time like I said we do take pictures of everything
17 before its touched and then as we collect per item.

18 So you're going to see like item numbers that are not
19 going to be in order, but that's just for you guys to
20 better understand it.

21 Q. Okay, and let me ask you before you get started with
22 this. So far as your technique do you start out from afar
23 and move in or how do you do an investigation?

24 A. Yes, we do. We start from far, move in, and in this
25 particular case we -- you'll see it as we get closer to

1 it, but I took several pictures inside the woods. I
2 actually had to take a different route than the route that
3 was used for the victim. But I'll explain that more when
4 we get there, but, yes, we try to go a route that was not
5 used by the potential suspect.

6 Q. All right. If you move to the first slide. Tell the
7 jury please what that is?

8 A. This is just a sketch of the area. It shows the
9 mailboxes. That is a concrete slab and it has four
10 individual posts with a roof. The other little thing off
11 of that is I guess lights or something to the mailboxes.

12 Q. You're talking about right here?

13 A. Right.

14 Q. Yeah?

15 A. Below that the other two box -- the box below the
16 mailboxes and the box across from the mailboxes are
17 driveways.

18 Q. Here?

19 A. The one across.

20 Q. Let me give you this.

21 A. Yeah, that would be awesome.

22 Q. All right.

23 A. This driveway here it doesn't appear or it did not
24 appear at that time that this driveway was to a particular
25 residence. It was just kind of out there in the open.

1 This driveway, however, did belong to a residence, and on
2 the pictures there is three vehicles that were parked in
3 this driveway.

4 You will see the different numbers. There is the
5 legend. There's a total of 19 items collected. So then
6 you see one -- I can't see that far, but I know nine is
7 down here. And this is where the victim was located. And
8 I apologize. Our program is not perfect, but this is
9 wooded area so you do have several different openings.
10 The opening in which the victim was drug through would be
11 this one here. My first entry was made down here and up
12 this way.

13 Q. All right. Go to the next slide, please?

14 A. The lights on the mailboxes were not working that
15 night for whatever reason. So we do have lighting out
16 there. But this is pretty much what I saw when I first
17 walked up to the mailboxes. To road officers had the
18 mailboxes secured with crime scene tape.

19 And then there is blood pool there, and you will see
20 glasses as we get closer. This is the side view of the
21 concrete slab with the mailboxes. Over in that area --
22 apologize. I don't know what that is. Over in this area
23 right here is the -- where the blood and the glasses were.
24 And back this way would be where the driveway is with the
25 three vehicles.

1 Just another view. Again, there is the blood pool.
2 The woods are back in here. And this is another view
3 also. This shows -- it's kind of hard to see because it's
4 so dark. But the trees and stuff like that here, and you
5 will see the pots in a minute. They're here. And I made
6 entry over here.

7 Again that's just another shot closer up. The
8 mailboxes are on this side.

9 This is the corner of the mailboxes. The pots are in
10 here. And again, my entry was over here.

11 Now. We're getting close up photos of the actual
12 blood and glasses that I saw before anybody touched it.
13 On these next few photos you're going to see blood, blood
14 droplets, what looks like swipes or something of that
15 nature.

16 You know when you bleed most of the time if you have
17 a free flowing wound then it will drop. And then
18 sometimes if something wipes across that drop then you
19 know it's just like cleaning up water or something. You
20 know you can wipe it off or sometimes it just smears it.
21 So that's pretty much what we see.

22 Q. So, Heather, it appears at least in part that there
23 were blood droplets on the -- on that concrete slab?

24 A. Yes, sir, there is blood droplet here, here, and on
25 up the concrete slab that you will see. This, too, just

1 shows another picture from a different angle of additional
2 blood droplets, and you can see where something is swiped
3 or wiped across of the blood droplets that were initially
4 there.

5 That's just another photo of the blood that we saw as
6 well as there is the glasses. The lens were face down
7 with the ear pieces up.

8 Q. Was there blood on the grasses, Heather?

9 A. Yes. I believe there was a little bit but not much.

10 Q. It was determined, the source of that blood?

11 A. It was the victim's, Frederick Engel. This is just
12 an overall photo of the blood just to show pretty much how
13 long the trail is. Also these numbers help us to show for
14 later what order we collect things in. So Item Number
15 One, of course, is here and that is for the eye glasses.

16 That's an up close photo of the eyeglasses and more
17 blood droplets. This is the way that I was making entry
18 through the woods off to the side, and this is my first
19 view of the victim lying in the woods. Pants and shirt.

20 That, too, is just another view of the victim that I
21 saw. And like I said you will see several different
22 angles. We do that usually. We take several different
23 angles of the same thing.

24 Q. We took out all of them that were close up, correct?

25 A. Yes, sir, we did.

1 Q. Okay.

2 A. Now, this is ones that I had made at around the
3 victim -- around the victim and come around to the side,
4 and this is showing the victim's feet.

5 Q. Okay. Heather, how -- approximately how far in the
6 woods, using as a reference point the side of the mailbox,
7 was the body found?

8 A. I can tell you exactly if I look back at my notes,
9 but it's approximately 30 feet.

10 Q. Okay?

11 A. This here a just another angle of the victim. Shows
12 his left arm straight out. And Item Number Four is in the
13 background. This is a cell phone battery.

14 Q. Okay. Now, does that tell you anything with his left
15 arm hanging out?

16 A. Yes, it appeared, and you will see additional photos
17 later, however, it appears that he was drug face down by
18 his left arm. His right arm was found by his side which I
19 believe you will see a photo of that. His pants were
20 pulled down. It didn't appear that they were pulled down,
21 but however, like if you drag something and they just slid
22 down somewhat.

23 They were over his feet, his ankles. And he did have
24 quite a bit of dirt on his shirt and the front of his
25 pants.

1 Q. Okay.

2 A. This photo I'm standing in front of the victim. I
3 zoomed a little bit so I could try to see some of the
4 mailboxes. It's hard to, but back in there, that light,
5 is pretty much the flashlight back at the mailboxes.

6 This photo is once we rolled the victim over. It
7 shows the dirt on his shirt and the dirt on his pants.

8 Q. Now, Heather, and I know you cropped this down. How
9 far up that shirt did you see dirt?

10 A. Up to right above the chest to about right here.

11 Q. Okay.

12 A. These are the flower pots I was talking about. I
13 believe in a few minutes you will see a daytime photo of
14 the flower pots. However, I found two flip flops. One at
15 the pots that was collected and found out it did belong to
16 the victim, Fred Engel.

17 Another photograph of the flip flop. And this is
18 just showing with the marker. Here is the second flip
19 flop that was found that matched the one you just saw.

20 Q. The first one near the pots was that closer or is
21 that photograph closer to the mailbox?

22 A. The first one was closer to the mailboxes.

23 Q. So it appears that that one came off and then this
24 one came off later?

25 A. Yes, sir, that's correct. Closer view of the flip

1 flop. And then again this one was collected as Item
2 Number Three.

3 This show the relationship between where Item Number
4 Three, the flip flop, was collected and where the victim
5 was located. This here has dirt, of course, on his pants.
6 And this shows his cellphone in his pocket. We did find
7 two partial footwear impressions. This again is the
8 mailbox. This is the wood area or the open area between
9 the woods.

10 That's the shoe impression, and that is shoe
11 impression right now as a cast. And you will see -- go
12 ahead and click.

13 Q. Were you able to determine anything from the shoe
14 impression?

15 A. We were not. Sometimes, depending on the dirt.
16 That's a photo of one of the shoe impressions. Depending
17 on the dirt when we actually cast the footwear impression
18 it doesn't come up that well. So that's why we take a
19 photograph of that before it's collected. We were not
20 ever able to find shoes that we were able it compare to
21 this photograph or the castings for that matter.

22 Q. Is there any way to tell from the castings whether or
23 not that was a boot or a shoe?

24 A. I cannot tell. However, someone that is trained and
25 that is an expert in footwear impressions I'm sure could

1 tell you.

2 Q. Okay.

3 A. This, too, is just the footwear impressions. This is
4 the side of the concrete. This is where the blood
5 droplets stopped. And then there is where the black pots
6 are. The black flower pots in here. There is blood on
7 the side of the pot.

8 Q. Heather, was that blood droplets or smears there?

9 A. Smears. The -- pretty much the rest of the stuff in
10 the woods is smears. Even if it were droplets it would be
11 hard to tell because it's woods through the rest of the
12 photographs.

13 Q. And approximately how high up is that smear in
14 inches?

15 A. This is pretty much almost to the ground. Maybe an
16 inch from the ground and then it goes up maybe an inch to
17 the top. That's just showing Item Number 18 I collected,
18 the blood, with sterile swabs to send the S.L.E.D. This
19 is a photo walking into the woods the same route that the
20 victim was drug.

21 Q. Could you tell by that foliage anything? How were
22 you able to determine that that was the route that the
23 victim was pulled through?

24 A. You will see some additional photos coming up.

25 Q. Okay?

1 A. There is several more where you see several blood
2 droppings or smears as well as a tree that's pulled down,
3 however, it's not broken. It just looks like something
4 was drug across the tree. And I believe this is the tree
5 that I'm referring to here. It's kind of hard to see some
6 of these photographs here, but I believe this is the tree
7 here.

8 And the victim is this direction. The mailboxes are
9 these directions -- is this direction. So if -- with the
10 victim being drug it is possible that the victim was drug
11 over this tree. And I believe there is the blood sample
12 that I collected from this area. Yeah. Oh, yeah, this is
13 a closer photograph of it here.

14 This is the same tree that was kind of pushed down
15 and this is the blood on the tree. This was collected as
16 Item Number 15. This is just another photo that this is
17 where Item Number 15 is, and we're getting ready to come
18 up on another area that has blood.

19 Number 16, and I can't tell from here, but there is
20 blood on this tree as well. And I believe this one was
21 the same. It was not standing straight up. This is a
22 stump that was near the tree where the victim was, and
23 that also has blood on top of the stump.

24 Q. Is that where the -- where you found the victim at
25 that stump?

1 A. No, the victim is still just a little bit further.

2 Q. Okay?

3 A. That just shows that it was collected as Item 17.

4 The victim was found right here at this tree. This here
5 is a swab carton box. I apologize for the whiteness
6 there, but the victim was found right here. And if you
7 look back this is where the mailboxes are. And you can
8 barely see one of the posts.

9 This is before I'm coming out of the woods right
10 there at the black flower pots. The pots are pretty much
11 right here at my feet, and I take a photo looking back at
12 the mailboxes in the roadway. And that's it.

13 Q. Let me pass to you what has been marked as State's
14 Exhibit 25 and see if you recognize that photograph?

15 A. Yes, I do.

16 Q. And what is that a photograph of?

17 A. This is a photo of the victim's right palm, face up
18 before the victim was moved in any way.

19 Q. See any sign of injury to his right hand?

20 A. No, no injury that can be seen.

21 Q. And State's Number 27?

22 A. This is a photo of the victim's right hand and arm.

23 Q. Okay. And do these, 25 and 27, fairly and accurately
24 depict the victim's hand as they were to have appeared on
25 the 22nd?

1 A. Yes, sir.

2 MR. RICHARDSON: Your Honor, we move State's 25 and
3 27 into evidence?

4 THE COURT: These are agreed photos?

5 MS. WILSON: Yes, sir, they are.

6 THE COURT: All right. Let me see. Are you offering
7 them? Okay.

8 MR. RICHARDSON: Thank you. Twenty-five and 27 in
9 evidence.

10 THE COURT: Admit without objection.

11 MR. RICHARDSON: Thank you, Your Honor.

12 (WHEREUPON, State's Exhibit Nos. 25 and 27 were
13 admitted into evidence.)

14 BY MR. RICHARDSON:

15 Q. Let's go back to the mailboxes. Were you able to
16 take any fingerprints, anything like that, from the
17 mailboxes?

18 A. Yes, I did collect two partial prints and then I
19 swabbed one of the partial prints for D.N.A. on one of the
20 posts at one of the mailboxes.

21 Q. Anything come back to either Timmy Rogers or Sherry
22 Engel there?

23 A. No, none of them did.

24 Q. Did you have enough detail to be able to run a print
25 from the one at the mailbox?

1 A. No, there was not enough detail to make a comparison
2 off the fingerprint.

3 Q. Okay. Did you find any of the Defendant's, Timmy
4 Rogers, D.N.A. at the mailbox?

5 A. No, I did not.

6 Q. Okay. Any of Sherry Engle's at the mailbox?

7 A. No, I did not.

8 Q. And the blood was the victim's blood?

9 A. Yes, sir.

10 Q. And when you found the body of Fred Engel, will you
11 describe Mr. Engle's body for the jury.

12 A. Yes, again he was facing away from the mailboxes.
13 His feet would be facing towards the mailboxes. He was
14 lying on his stomach with his left arm straight out. His
15 right arm by his side, close to his side lying straight
16 out behind him.

17 Shirt was on, and his pants, like I was saying
18 before, were pulled down which would be consistent with
19 someone being drug. And the pants were all the way down
20 covering one of his feet. And he was barefoot.

21 Q. Were you able to determine the cause of death? Was
22 there anything left at the scene that would help you
23 realize how Fred Engel had died?

24 A. Yes. Initially we -- I don't think we saw it, but
25 after we got closer there was a white shoe string that was

1 around the victim's neck.

2 Q. Okay. Let me pass you what has been marked as
3 State's Exhibit Number One. Do you recognize that?

4 A. Yes, I do.

5 Q. And what is that?

6 A. This is the shoe string that was around the victim's
7 neck.

8 Q. All right. And when was that -- was he taken for his
9 autopsy with that string still around his neck?

10 A. Yes, he was.

11 Q. And when did evidence receive it?

12 A. After the autopsy.

13 Q. Okay. It was placed back into evidence?

14 A. Yes, it was.

15 Q. Were you able to get any D.N.A. off of this shoe
16 string?

17 A. Yes, we did get D.N.A. off of it.

18 Q. Whose D.N.A. was that?

19 A. I belonged to Fred Engel.

20 Q. Okay. The tinting, what is that? Do you know? Is
21 that dirt? Blood?

22 A. I could be a mixture of both, but it's probably
23 mostly blood.

24 Q. Okay. Did you collect any other evidence? Did you
25 go to Kentucky to collect any evidence?

1 A. I personally did not got to Kentucky. No.

2 Q. All right. Anything else that you can help the jury
3 with from the crime scene standpoint?

4 A. Not that I can think of, no.

5 Q. Okay. I would ask that you answer any questions
6 Ms. Wilson may have for you.

7 CROSS-EXAMINATION

8 BY MS. WILSON:

9 Q. Ms. Brummett, you photographed the scene in a certain
10 manner, correct?

11 A. Yes, ma'am.

12 Q. And in photographing the scene in a certain manner
13 you said that you had to come in a different way that you
14 believe the body was actually taken into the woods?

15 A. Yes, ma'am, that's correct.

16 Q. And in doing so you then kind of backtracked to
17 collect evidence? Is that how you would term it?

18 A. No. We didn't backtrack. What happened was if we go
19 in the same direction that we believe the victim was taken
20 then we can destroy potential evidence. So I went around
21 to view the victim. The victim was dealt with first and
22 then we started collecting other items.

23 Q. So in effect you're telling us that -- you're telling
24 this Court that you were extremely thorough in processing
25 this scene; that is correct?

1 A. Yes, thorough to the best of my abilities.

2 Q. And you did everything you could to protect the
3 scene?

4 A. Yes, that is correct.

5 Q. To protect the integrity of the scene?

6 A. Yes, that's correct.

7 Q. And when I say 'integrity' you understand that I mean
8 you did everything you possibly could to make sure that
9 you disturb anything that was already there?

10 A. Right. Once I arrived then, yes.

11 Q. Now, there was lots of pictures that you showed to
12 the Court. Those pictures were of varying amounts of
13 blood and different locations on branches, on leaves. On
14 pots, on the ground. You would have been the person who
15 sent all of that information to S.L.E.D. for testing,
16 correct?

17 A. Yes. I believe all the D.N.A. swabs collected at the
18 scene were sent to S.L.E.D. for testing.

19 Q. And out of all of that evidence that you sent --
20 approximately how many pieces of evidence do you think you
21 sent to the South Carolina Law Enforcement Division?

22 A. Total or just the D.N.A. swabs?

23 Q. Let's just say for right now D.N.A. swabs.

24 A. Twenty, roughly. Maybe more.

25 Q. Oh, I'm sorry. I'm so sorry?

1 A. No. I was just saying maybe more. I don't know
2 without referring back.

3 Q. So were going to say at least 20, correct?

4 A. Yes, ma'am.

5 Q. Out of that, let's say 20 swabs, none of it -- none
6 of it came back testing position for Timmy Rogers, did it?

7 A. No. It was all to the victim.

8 Q. So on scene that you've been very careful at; that
9 you have processed very carefully not one swab came back
10 testing for Mr. Rogers, did it?

11 A. No, it did not.

12 Q. And I want to talk about the cast very briefly? You
13 say that you did take a cast of the footprint or the shoe
14 print that was found on scene, correct?

15 A. Yes, I did.

16 Q. And that shoe print cast yielded no useful
17 information?

18 A. That is correct.

19 Q. So in other words you're saying that you don't --
20 you're not able to say that that shoe cast belonged to
21 Timmy Rogers, can you?

22 A. No, I couldn't say that cause I'm not trained in
23 footwear impressions.

24 Q. So, again, out of the D.N.A. swabs and the foot cast
25 based on what you're telling us you collected nothing,

1 nothing connects Timmy Rogers to this event, correct?

2 A. Correct. Nothing that I collected from the scene.

3 Q. Is there -- excuse me. Is there -- well, let me
4 just -- there is nothing here on this shoestring that
5 connects Timmy Rogers to this murder, is it?

6 A. No, it wouldn't be.

7 Q. You did send this for testing as well, didn't you?

8 A. Yes, I did.

9 Q. But nothing matched Timmy Rogers?

10 A. No.

11 Q. Thank you.

12 MS. WILSON: Your Honor, no further questions.

13 THE COURT: Mr. Richardson.

14 REDIRECT EXAMINATION

15 BY MR. RICHARDSON:

16 Q. With regards to the shoestrings what if any D.N.A.
17 would you have expected to see from Timmy Rogers?

18 A. That only D.N.A. that you would be able to see on the
19 shoestring would be blood D.N.A.

20 Q. Why wouldn't touch D.N.A. show up?

21 A. Blood D.N.A. overrules touch D.N.A, so anytime
22 something is saturated in blood it can pick up blood from
23 two different individuals. However, it cannot pick up
24 touch D.N.A. and blood D.N.A.

25 Q. And there were more blood on the shoestring than

1 there was touch, apparently?

2 A. Yes, it was saturated.

3 MR. RICHARDSON: I have no further questions.

4 MS. WILSON: Just a couple of questions on redirect.

5 RE CROSS-EXAMINATION

6 BY MS. WILSON:

7 Q. So if it's a bloody victim such as there is in this
8 case, apparently, and there was a struggle of some sort
9 would you normally have blood from two people?

10 A. Not always. At times there are blood from two
11 people, and times there is not blood from two people.

12 Q. But in this instance there is only blood of one
13 person?

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

15 Q. And someone is being cloaked or strangled to death,
16 correct?

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

18 Q. And extensively there probably would have been a
19 struggle, correct?

20 MR. RICHARDSON: Your Honor, it calls for
21 speculation.

22 MS. WILSON: Withdrawn, Your Honor.

23 THE COURT: All right.

24 MS. WILSON: One final question.

25 BY MS. WILSON:

1 Q. Did you -- I know the Solicitor asked you some
2 questions about the hand. Did you test any clippings from
3 Mr. Engle's hands or fingernails?

4 A. No. That was collected at the autopsy which I did
5 not attend.

6 Q. Okay. So you had nothing to do with actually sending
7 that material to S.L.E.D.?

8 A. Yes, when you're the initial case investigator then
9 you pretty much send everything that every investigator
10 and detective collects. So I would have probably sent it
11 to S.L.E.D, but I did not have anything to do with the
12 collection process of the nail clippings.

13 Q. Well, let me ask you this. Even though you didn't
14 actually collect it you would have been responsible for
15 sending it to S.L.E.D, correct?

16 A. Yes, ma'am, that's correct.

17 Q. And once you got a response from S.L.E.D. as to any
18 D.N.A. or any materials found in -- under or in or on Mr.
19 Engle's fingernail clippings did you find anything? Did
20 you get a report saying that there was anything connecting
21 Mr. Timmy Rogers to this murder?

22 A. No, we did not.

23 Q. Thank you.

24 MS. WILSON: Your Honor, no further questions.

25 MR. RICHARDSON: Just ask that she be released from

1 her subpoena.

2 THE COURT: Ms. Wilson.

3 MS. WILSON: No, objection, Your Honor. Thank you.

4 THE COURT: You may step down, and you are released
5 from your subpoena.

6 MR. RICHARDSON: May we approach?

7 THE COURT: Yes, sir.

8 (WHEREUPON, a bench conference was held off the
9 record in the presence of the jury, but out of the
10 hearing of the jury.)

11 THE COURT: Our next witness is going to be a rather
12 lengthy one so why don't we take about a ten minute break,
13 and perhaps I can get the technical people in here and
14 they can fix the carnival lights.

15 (WHEREUPON, the jury panel was excused from the
16 courtroom at 3:41 p.m.)

17 (WHEREUPON, Court was in recess at 3:41 p.m. and
18 reconvenes at 3:59 p.m.)

19 COLLOQUY

20 THE COURT: You're going to question the codefendant?

21 MR. RICHARDSON: Yes, sir.

22 THE COURT: Bring her in, please. Madam Clerk, would
23 you place the witness under oath, and we'll do it again
24 when the jury comes in.

25 SHERRY ENGLE, after being duly sworn, testified

1 as follows:

2 EXAMINATION BY THE COURT

3 BY THE COURT:

4 Q. All right, ma'am, your name is?

5 A. Sherry Guyla Engel.

6 Q. All right. And, Ms. Engel, I believe that you are a
7 codefendant in this case; is that correct?

8 A. I am indeed.

9 Q. And you are represented by counsel?

10 A. Yes, sir, I am.

11 Q. And that's Ms. Pratt?

12 A. Yes, sir.

13 Q. I notice Ms. Pratt is in the courtroom today?

14 A. Yes, sir.

15 Q. Have you had an opportunity to discuss the fact that
16 you are testifying in this case with your attorney?

17 A. Yes, sir.

18 Q. All right. I want to advise you that as a witness
19 you have the right to invoke the protections given to you
20 by the Fifth Amendment of the Constitution of the United
21 States. This provision and in part says no person shall
22 be compelled in any criminal case to be a witness against
23 himself, and that applies to the case in which you maybe
24 testifying. Not your case, any other.

25 This means that you cannot be required to be a

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1 witness against yourself. This is a personal right which
2 can only be claimed by you. You have the right to refuse
3 to answer any question asked of you which you think gives
4 you reasonable cause to believe that the answer to the
5 question, if given, might tend to incriminate you.

6 If you wish to exercise this right when a question is
7 asked you will state to this Court that you refuse to
8 answer the question because the answer may tend to
9 incriminate you. Do you understand that?

10 A. Yes, sir.

11 Q. I also advise you that you are not the final decision
12 maker on the issue of whether an answer to a question will
13 violate the protections afforded to you by the Fifth
14 Amendment. That is for this Court to determine if silence
15 on your part is justified. Now, do you understand what
16 I've explained to you?

17 A. Yes, sir.

18 Q. Do you have any questions about what I explained to
19 you?

20 A. No, sir.

21 Q. Do you still intend to testify in this matter?

22 A. Yes, sir.

23 Q. All right. Ms. Pratt, I see that you are here with
24 your client. You do represent her; is that correct?

25 MS. PRATT: Yes, Your Honor.

1 THE COURT: You've had an opportunity to explain to
2 her her rights under the Fifth Amendment?

3 MS. PRATT: I have, Your Honor.

4 THE COURT: And you've discussed with her the
5 ramifications of her testimony in this case? I don't know
6 what's she's testifying to, but she does understand that
7 it may be used to incriminate her at a later date?

8 MS. PRATT: She certainly understands that, Your
9 Honor.

10 THE COURT: And you have advised her of that?

11 MS. PRATT: Yes, sir.

12 THE COURT: And she does intend to testify?

13 MS. PRATT: Yes, Your Honor.

14 THE COURT: And you do concur with that decision?

15 MS. PRATT: I do, Your Honor.

16 THE COURT: Very well. Bring in the jury.

17 (WHEREUPON, the jury enters the courtroom at
18 4:02 p.m.)

19 THE COURT: Let the record reflect that the jury and
20 the alternates are in the courtroom. Would you place the
21 witness under oath.

22 SHERRY ENGLE, after being duly sworn, testified
23 as follows:

24 CLERK OF COURT: Please be seated. Please state your
25 full name and spell you last name for the Court. Talk

1 right into this microphone.

2 THE WITNESS: Sherry Guyla Engel. E-N-G-E-L.

3 THE COURT: Mr. Richardson.

4 MR. RICHARDSON: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. RICHARDSON:

7 Q. Ms. Engel, where are you currently residing?

8 A. J Ruben Long Jail.

9 Q. How long have you been out there?

10 A. Twenty-nine months.

11 Q. What are you there for? What is your charges?

12 A. Murder, accessory before and after the fact.

13 Q. And with regard to that murder or the accessory
14 before and after that murder who is the victim, please?

15 A. My husband, Frederick Engel.

16 Q. All right. Now, Sherry, testifying under proffer.
17 Correct?

18 A. Yes, sir.

19 Q. I want you to tell the jury what if anything the
20 State or any representative of the State has promised to
21 you?

22 A. I have not been promised anything. Nothing.

23 Q. Anybody tell you that if you testify you would get 30
24 years or 20 years or ten years, any figure?

25 A. No, sir.

1 Q. All right. I want to show you what has been marked
2 as State's Exhibit Number 40. Tell me if you recognize
3 that?

4 A. Yes, sir.

5 Q. And what is that?

6 A. This is the proffer that I signed.

7 Q. Proffer?

8 A. Um hum.

9 Q. That's your signature?

10 A. It is, sir. Sherry G. Engel. September the 28th
11 2010.

12 Q. And you know that proffer we're going to move to put
13 it in evidence, correct?

14 A. Yes, sir.

15 Q. And in a nutshell what does the proffer tell you?

16 THE COURT: Let me see it.

17 MR. RICHARDSON: Yes, sir. Court's Exhibit Five.

18 (WHEREUPON, Court's Exhibit No. 5 was marked for
19 identification and received into evidence.)

20 BY MR. RICHARDSON:

21 Q. All right. With regards to Court's Exhibit Five ---

22 A. Yes, sir.

23 Q. In a nutshell what is this telling you to do?

24 A. Nothing really that I'm just ---

25 Q. With regard to your testimony?

1 A. Yes.

2 Q. What are you gaining from this?

3 A. Nothing. Nothing.

4 Q. But you are hoping that the State would take into
5 account your willingness to testify against your
6 codefendant?

7 A. Yes, sir.

8 Q. All right. Had anybody promised you we would do
9 that?

10 A. No, sir.

11 Q. Okay. And what if anything were you told about your
12 testimony?

13 A. Nothing.

14 Q. Has anybody ever asked you to tell a story?

15 A. No, sir.

16 Q. All right?

17 A. Told me to tell truth, the whole truth.

18 Q. Nothing but the truth?

19 A. Nothing but the truth.

20 Q. Okay. Now, with regard to that, and I know it's been
21 29 months, but I ask you to let's go through from the
22 beginning to the end, okay?

23 A. Yes, sir.

24 Q. To the best of your ability?

25 A. Yes, sir.

1 Q. All right. Please do not minimize. Tell the truth,
2 okay?

3 A. Yes, sir.

4 Q. Tell this jury how you met Fred Engel?

5 A. I was in a chat room on the internet talking to a
6 friend of mine in Australia, and Fred came into the chat
7 room and was talking with us. And then it begin with that
8 chat room and then became to calling me on the telephone
9 and everything.

10 I was in Kentucky. He was in Australia. Then we
11 talked a few months and eventually he came to Kentucky.
12 He came to Kentucky in March of 2000 -- of 2000.

13 Q. Okay?

14 A. And spent two weeks there with me in Kentucky, and
15 then he went back home to Australia to move to Chili. He
16 was married at the time to another lady.

17 Q. And I don't mean on the interrupt, but I want to
18 cover a couple of things before you go back. Tell the
19 jury, in 2000, were you married at that time?

20 A. Yes. Yes, I was married, too.

21 Q. Okay. You were married to a different person?

22 A. Yes, sir, I was married to a different person. He
23 was married to a different woman.

24 Q. Okay, he came from Australia to Kentucky ---

25 A. Um hum.

1 Q. --- and y'all spent a couple weeks together?

2 A. Yes.

3 Q. Okay. And then -- I'm sorry for interrupting you.

4 A. That's okay.

5 Q. After that, apparently, he went back to where?

6 A. He went back to Australia to move to Chili were his
7 wife was at at the present time. She had moved from
8 Australia ahead of him, and he moved to Chili. And in the
9 process of moving to Chili he told her that he was leaving
10 her around. He was going back home to Holland, in which
11 he did.

12 Q. Okay, from Chili back to Holland?

13 A. Um hum.

14 Q: All right. Tell me was there ever a time that you
15 went to visit Fred Engel in Holland?

16 A. Yes, I left Kentucky in -- May the 5th of 2000 to go
17 be with Fred in Holland.

18 Q. Approximately how long did you stay with Fred in
19 Holland?

20 A. Off and on, we would go in and out because of my
21 passport having to be -- I was only allowed to stay like
22 three months at a time and then we would go in and out
23 through different place during the year, England, London
24 or whatever. And then approximately two years all
25 together, yeah.

1 Q. All right. So you stayed in Holland but for little
2 vacations to clear your passport?

3 A. Yes.

4 Q. But you stayed a total of two years?

5 A. Two years.

6 Q. Okay. Now, when, approximately, did you move back to
7 Kentucky?

8 A. 2002.

9 Q. And what did Fred do when you moved back to Kentucky?

10 A. He stayed in Holland.

11 Q. All right. Did you guys continue to converse, date,
12 whatever from 2002 on?

13 A. Yes, sir.

14 Q. All right. Was there other times that you went to
15 Holland or that he came to Kentucky?

16 A. Yes, sir.

17 Q. All right. Now, something happened in 2006. Talk
18 about how Fred came to live in Myrtle Beach?

19 A. 2006. Take me a minute ---

20 Q. All right.

21 A. --- to remember.

22 Q. Well, don't worry about the date. Just tell the jury
23 how -- what Fred did for a living and how he came to move
24 to Myrtle Beach?

25 A. First of all before he left Holland he had

1 established his own Fred Engel Consulting, and he was --
2 he had a contract through his business -- his company
3 there in Holland. And he would put his contract through
4 that. So he would be able to work. And so he was -- he
5 had applied for jobs and then he had come up with this job
6 of Sylvania Lighting Company, and it was in Mullins, South
7 Carolina.

8 Q. Okay.

9 A. And he got the job. And at the time he was president
10 of the company. He moved here before I did. He was here
11 a couple of months before I was. And then during 2006 in
12 March, the 4th, we married. And then ---

13 Q. Okay. I'm sorry. Where did you get married?

14 A. In Kentucky.

15 Q. So give me again about what time y'all got married?

16 A. March the 4th 2006. Yeah.

17 Q. And upon getting married in Kentucky did there come a
18 time when y'all moved back to Myrtle Beach?

19 A. Yes, sir.

20 Q. Tell us about what went on from March 4th until you
21 moved to Myrtle Beach?

22 A. March, after we married he stayed a couple of weeks
23 and then he went back to Myrtle Beach and I stayed. And
24 then he came back the first part of May and started
25 preparing to get the furniture and everything moved to

1 Myrtle Beach out of my apartment and everything. And he
2 was getting the moving truck and going through all that
3 with me and everything.

4 And getting me ready to move what we had to move in
5 the automobile. So then we moved out of my apartment over
6 Memorial Day Weekend that May. That last weekend of May.

7 Q. Was that 2006?

8 A. 2006.

9 Q. Okay.

10 A. Yes, sir.

11 Q. And that's the first time you moved to Myrtle Beach?

12 A. Yes.

13 Q. All right. In the meantime had you visited Myrtle
14 Beach? Visited Fred?

15 A. Yes.

16 Q. Back and forth?

17 A. Yes.

18 Q. And him to Kentucky?

19 A. Yes, sir.

20 Q. And you got married, and a few weeks later you moved
21 to Myrtle Beach?

22 A. Yes.

23 Q. Did you meet Tom Rickerson?

24 A. Yes.

25 Q. And his wife?

- 1 A. Yes, Karen
- 2 Q. Okay. And, now, he come and testified earlier. He
- 3 lives pretty close to y'all?
- 4 A. Yes.
- 5 Q. All right. And did Fred talk about him about Tom to
- 6 you before you moved down?
- 7 A. Yes. Yes.
- 8 Q. So you kind of knew Tom when you moved to the Beach?
- 9 A. Yes. Um hum.
- 10 Q. Get along pretty good with him?
- 11 A. Yes, sir.
- 12 Q. This area that you moved to in, I guess the better
- 13 phrase would be Carolina Forest?
- 14 A. Birkshire Forest.
- 15 Q. Birkshire Forest?
- 16 A. Yes, sir.
- 17 Q. Okay. Y'all -- you moved in there. Was that kind of
- 18 a -- how would you describe that community? Did you have
- 19 a lot of houses? A lot of people in there?
- 20 A. Yes, it became that way. Yes.
- 21 Q. All right. Back in 2006 when y'all first moved in
- 22 was it fairly crowed then?
- 23 A. No. No.
- 24 Q. Had people started building and coming?
- 25 A. Um hum.

1 Q. All right. Come a time that -- tell us about Fred's
2 work with Mullins; that plant in Mullins?

3 A. It was a company that needed to be restructured.
4 They were going bankrupt, and Fred came in and done a lot
5 of restructuring in it, hiring people, firing people.
6 Just doing what he had to do to make that company become
7 more rehabilitated to do what they had to do with the
8 company to make it make money indeed of losing all their
9 money.

10 Q. Okay. Is that pretty much what Fred was doing when
11 he was in Holland and Australia and Chili?

12 A. Yeah, yeah, yeah. It was pretty much, yeah. Except
13 maybe some of it was director of marketing.

14 Q. Okay. So if we get this right you are now living in
15 Myrtle Beach. It's the early part of 2006. Everything is
16 going good. Were there -- tell the jury when the first
17 time you met Timmy Rogers?

18 A. It was May of 2006.

19 Q. May of 2006?

20 A. I mean 2007.

21 Q. Okay.

22 A. 2007. 2007.

23 Q. All right. May of 2007?

24 A. Yes.

25 Q. Tell us where you met him. How you met him.

1 A. I was at my storage building in Kentucky unloading
2 some stuff that I had to bring back from Myrtle Beach that
3 we didn't want in the house. And I was unloading it, and
4 he just pulled up and started talking to me.

5 And then he just talked about who he was and where he
6 worked and everything. And then he left. And then wasn't
7 a few minutes until he was back again. And this time he
8 was eating ice cream cone and writing his number down and
9 giving me the number to call it. And then he didn't say a
10 lot, and I didn't say a lot and he left to go back to
11 work.

12 Q. Did you give him your number?

13 A. No, sir.

14 Q. Somewhere after that time you and Mr. Rogers had an
15 affair?

16 A. Yes, sir.

17 Q. All right. Tell us about the timeframe that you
18 started seeing Rogers in a relationship?

19 A. Started like the second week of May in 2007.

20 Q. Okay. And, Sherry, tell us where you guys would
21 meet. Was it in South Carolina or Kentucky?

22 A. At that present time Kentucky.

23 Q. All right. Started meeting him in Kentucky?

24 A. Yes, sir.

25 Q. All right. Motels? Cars? Exactly how did it go

1 down?

2 A. Just like at the state park at the boat dock and
3 stuff like that. Only one time at the motel at that
4 present time.

5 Q. Okay. And that was within a month of when you first
6 met Rogers?

7 A. Yes. The first time I met him and we met to see each
8 other I would meet him out at Mickey Sweat's House.

9 Q. Okay. And Mickey Sweatt, that was the best man in
10 you and Fred's wedding, right?

11 A. Yes, sir.

12 Q. All right. And when you meet over there at Mickey's
13 house what you tell Mickey about Fred?

14 A. Nothing really. That he was just home.

15 Q. Okay?

16 A. You know, he was home, and I was in Kentucky.

17 Q. Okay. What was -- did he ever say anything about
18 Timmy being there with you?

19 A. No, sir.

20 Q. Okay. All right. And when you started seeing Rogers
21 romantically how often from that -- I think you said May
22 of 2007?

23 A. Yes, sir.

24 Q. From then on about how often would you see him?

25 A. Every month probably, maybe, sometimes a week or two

1 at a time.

2 Q. You'd keep going back to Kentucky?

3 A. I would go back to Kentucky?

4 Q. These early times did he ever come to Myrtle Beach?

5 A. Later on.

6 Q. Later on, but that first?

7 A. Not at that time his did not. No.

8 Q. And ---

9 A. Quite a few months later.

10 Q. Okay. Tell us what sort of excuses you would use to
11 go to Kentucky?

12 A. Well, at the time I still had to see my doctor once a
13 month and get my prescriptions. And my -- all my children
14 lived there. My family lived there. And I really didn't
15 have to use an excuse. Fred never did ask me a lot of
16 questions. He just never did. He wasn't that type.

17 Q. But he knew you had to see your doctor from time to
18 time?

19 A. Yeah, he knew I had to see my doctors.

20 Q. You had had surgery not far before that?

21 A. Yes. I had had gastric bypass surgery. And then I
22 had like later on, like eight months after they and I lost
23 all my weight. I had a tummy tuck, augmentation of the
24 breast.

25 Q. Okay. And that was by doctors up there in Kentucky?

- 1 A. Yes, in Louisville, Kentucky.
- 2 Q. You had to keep going up there from time to time?
- 3 A. Yes.
- 4 Q. And every time you would see Rogers?
- 5 A. Pretty much sometimes. Yes.
- 6 Q. Early on in your relationship with Rogers what sort
- 7 of a boyfriend was he?
- 8 A. Nice.
- 9 Q. Okay?
- 10 A. Easy to get along with.
- 11 Q. Now, was Rogers married at that time?
- 12 A. Yes, sir, he was.
- 13 Q. And what was his wife's name?
- 14 A. Tammy.
- 15 Q. Was he -- what was his telling her or what about her?
- 16 Was that a good relationship?
- 17 A. No. With her?
- 18 Q. Yes, ma'am?
- 19 A. No.
- 20 Q. All right. Subsequently did they get a divorce?
- 21 A. Yes.
- 22 Q. All right. And once they got a divorce do you know
- 23 if him see anybody except you?
- 24 A. No.
- 25 Q. So he saw you exclusively?

1 A. So far as I know, yes.

2 Q. Were you seeing anybody else besides him or Fred?

3 A. No, sir.

4 Q. Okay. And you'd go back and forth from time to time
5 and get prescriptions and still see the doctor up there in
6 Kentucky? Sometime to see family?

7 A. Yes.

8 Q. Tell the jury some of your people that lived up there
9 in Kentucky.

10 A. My brother, Bobby, and his wife, Faye. I have three
11 daughters and a son, Holly, Samantha, Mickey and David, my
12 son, lived in Kentucky. I have brothers, another brother,
13 Joey, there that lives in Kentucky. Pretty much my family
14 is what lived there. I have an aunt and cousin and
15 everything there, too, you know. Just we're in a small
16 town, so.

17 Q. And the only time you had -- at Myrtle Beach was, of
18 course, Fred?

19 A. Yes, sir.

20 Q. When you -- now, you started seeing him in May 2007.
21 Tell the jury what took place mid July 2007?

22 A. July 2007. I have to think a minute.

23 Q. Well, let me tell you what I'm talking about. Did
24 Faye -- who is Faye to you?

25 A. She's my sister in law. Bobby's wife.

- 1 Q. Bobby's wife. She had a stroke?
- 2 A. Oh, yes.
- 3 Q. Okay. What about was that?
- 4 A. July the 13th.
- 5 Q. 2007?
- 6 A. 2007.
- 7 Q. All right. A pretty bad stroke?
- 8 A. Yes, an aneurism of the brain.
- 9 Q. Who went up to visit Faye in the hospital?
- 10 A. Everyone was pretty much there and visiting, coming
- 11 in and out when me and Fred arrived. Cause we arrived
- 12 late into the morning that next day.
- 13 Q. So you and Fred went to stay with her at the
- 14 hospital?
- 15 A. Yes, we met the family there.
- 16 Q. Did y'all get a motel or did you just kind of stay at
- 17 the hospital?
- 18 A. We stayed to the hospital.
- 19 Q. How many days did Fred stay at the hospital?
- 20 A. Oh, two or three.
- 21 Q. Okay, and then he went back to the beach?
- 22 A. He went back to the beach, yes. He had to go to
- 23 work.
- 24 Q. Did Timmy ever show up at the hospital?
- 25 A. Oh, yeah.

1 Q. How often would Timmy show up at the hospital?

2 A. Every day if he could.

3 Q. And at some point some of your family actually saw
4 you and Timmy in the garage of the hospital, correct?

5 A. Well, actually before then was when they -- some of
6 the family seen him with me.

7 Q. Okay, and that was when Fred went back?

8 A. That was before Fred went back.

9 Q. Okay.

10 A. That's when he -- that's when I was walking outside
11 and I hadn't gotten to the entrance doors, and my oldest
12 daughter, Holly, and my son, David, were coming in it.

13 And I -- Charlie had called me on the phone telling me
14 that I needed to get back upstairs to Bobby because they
15 were going to take Faye in for a second surgery.

16 So I turned around, and they were coming, too, and I
17 was telling them what was happening. We were getting on
18 the elevator. We got on the elevator and went up and then
19 as we were getting off Timmy was sort on the back of me
20 and holding me, you know. And like, you know, and didn't
21 know what was going on with me.

22 And I looked around wondering who had a hold of me,
23 and it was him. And my son said, "What the hell are you
24 doing. This is my mom. What are you touching my mom like
25 that for." And I said, "Get off of me. Get off of me.

1 Just get away from me." You know, and Bobby was standing
2 there.

3 Q. Bobby is your brother?

4 A. Bobby is my brother was stand there. So then he
5 apparently -- he just moved over sort of to the side. He
6 didn't go anywhere, and then me and Bobby went back into
7 where Faye was in I.C.U. And we had prayer for her and
8 everything and talked to her and talked between each other
9 and cried, and you know, and prayed that the Lord would
10 help her.

11 So after a while I was back there. I decide I was
12 going to go out and let the kids go back. Holly and David
13 wanted to see her and everything. So when I came out the
14 door there from the I.C.U. he was standing -- Tim was
15 standing by the elevators. The elevators was here and my
16 door was here, and he was standing there.

17 And I said, "What. What are you doing. Why don't
18 you just get out of here. Just go. Get away from me.
19 I'm done. It's over. It's done. Get away from me. Just
20 go away." And he just kept standing there waving his
21 hand, and I said, "Just get the hell out of here and leave
22 me alone. Just go."

23 Q. Did he know that Fred was there at this time?

24 A. Yes, he knew Fred was there. He knew Fred was there.

25 Q. Has his ever me Fred before?

- 1 A. Yes, he has.
- 2 Q. Okay. How did -- tell us about him meeting Fred?
- 3 A. One morning when I was taking a pot of coffee out on
- 4 the porch he was sitting on the patio, and he wanted to
- 5 meet Fred that day.
- 6 Q. Now, where was this?
- 7 A. At our house in Myrtle Beach.
- 8 Q. Myrtle Beach?
- 9 A. Yes.
- 10 Q. This was later? This was after?
- 11 A. Yeah, this was way later.
- 12 Q. Though, when we talk about at the hospital had Timmy
- 13 every met Fred at that point?
- 14 A. No. Not at that point, no.
- 15 Q. And you had this whole secret life going on?
- 16 A. Yes, sir, I did.
- 17 Q. And had your children ever met Rogers?
- 18 A. No.
- 19 Q. Okay. Bobby, Faye, any of them ever met Rogers at
- 20 that point?
- 21 A. No.
- 22 Q. Now, approximately how long did you stay with Faye?
- 23 How long did it take her to get out of the hospital?
- 24 A. She was in the hospital in August and then in July
- 25 and then we moved her to rehab in August. And she was

1 released I think August the 28th, and then we took her
2 home. And she couldn't do anything for herself, and my
3 brother was the only one there. And I kids had to work
4 and everything, so I decided that I would stay there and
5 help him with her and everything.

6 And so I stayed there until October until Fred
7 decided it was time for me to come home.

8 Q. Now. From that time in July when Fred left and come
9 back to Myrtle Beach until October, somewhere around
10 about, when you went home tell us about the times that you
11 would see Timmy Rogers.

12 A. Timmy was living in a hotel/motel at the time.

13 Q. Okay?

14 A. I would just go visit him and everything. And
15 sometimes I would have to tell Bobby that I was going to
16 Samantha's and I would tell Samantha Mason that I was
17 going to stay at Bobby's and I'd wind up having to go see
18 him.

19 Q. Okay. So you stayed with him on and off ---

20 A. On and off.

21 Q. --- during that time?

22 A. Not a lot because I couldn't be gone away from Faye
23 for a long period of time.

24 Q. Did y'all continue to talk back and forth on the
25 phone?

1 A. Yes.

2 Q. Approximately, and I'm asking you to think back, but
3 how many times a day would you say y'all talked while you
4 were up there in Kentucky and he was staying in a motel?

5 A. Fifteen, 20 times a day.

6 Q. Okay, and you called him? Him calling you?

7 A. Yeah.

8 Q. All right. Now, what happened at some point? Fred
9 come and got you and took you back to Myrtle Beach?

10 A. Yes.

11 Q. And that was -- did you say October of ---

12 A. It was -- um hum. First of October. Somewhere in
13 there.

14 Q. Now, what if anything did Timmy Rogers say about
15 that?

16 A. He didn't like it. He didn't want me to go. He was
17 always afraid that Fred was going to take me and he would
18 never see me again.

19 Q. Okay. But you continued to go back and forth to
20 Kentucky?

21 A. Yes, sir, I did.

22 Q. October and November, whatever, right on?

23 A. November I went -- we went -- I went back to
24 Kentucky. Nobody knew I was home for Thanksgiving.

25 Q. All right. You -- so you didn't see your kids or ---

1 A. I didn't see any of my family. The only one I seen
2 was Timmy Rogers.

3 Q. Timmy Rogers. Where did you eat Thanksgiving dinner?

4 A. At Mickey Sweat's.

5 Q. Okay. And what -- tell me about Mickey's family. He
6 got a wife?

7 A. He's got a wife, yes. And stepdaughter.

8 Q. Okay?

9 A. And a stepson that's, I think, in the service. I
10 know his mom and sisters and everybody was there on
11 Thanksgiving.

12 Q. Let me pass to you what's been marked as State's
13 Exhibit 21. Tell me if you recognize that?

14 A. Yeah.

15 Q. All right?

16 A. Me and, Lynn, Mickey's wife.

17 Q. All right. And who is that in the background?

18 A. Timmy Rogers.

19 Q. All right. About -- is that -- do you know when that
20 photograph was taken?

21 A. That was Thanksgiving.

22 Q. Thanksgiving.

23 A. Um hum.

24 Q. You had lunch over there and Timmy Rogers had lunch
25 the Thanksgiving before Fred was killed?

- 1 A. Yes.
- 2 Q. Correct?
- 3 A. Yes.
- 4 Q. How about that one. Who is that?
- 5 A. That is Mickey's wife, Lynn, and one of her nephews,
- 6 I believe, and Timmy Rogers in the background.
- 7 Q. Okay. And that was State's Exhibit 21. State's
- 8 Exhibit 22, see if you recognize that?
- 9 A. Yes, I do.
- 10 Q. All right. And what is that?
- 11 A. Picture of me and Timmy.
- 12 Q. Is that also Thanksgiving ---
- 13 A. Thanksgiving.
- 14 Q. --- 2007?
- 15 A. Yes.
- 16 Q. At the Sweatt house?
- 17 A. Yes.
- 18 Q. Okay. And State's Number 24, do you recognize that?
- 19 A. Yes, I do.
- 20 Q. And who is that?
- 21 A. Timmy Rogers.
- 22 Q. And is that that the Sweatt house for Thanksgiving?
- 23 A. Yes.
- 24 Q. Cutting pie?
- 25 A. Yes, sir.

1 Q. All right. And, now, I'm going to ask you about
2 this, State's 23. Do you recognize that?

3 A. Yes, I do.

4 Q. Can you date that for us?

5 A. I believe it was -- I want to say in the summer.

6 Q. Okay?

7 A. I'm not sure of what date it was or anything, but I'm
8 sure to say in the summer.

9 Q. Of 2007?

10 A. Yes, sir. I'm sure it is.

11 Q. And that's Mickey Sweatt?

12 A. Yes, sir, that's Mickey Sweatt.

13 Q. Was Timmy with you at that point?

14 A. Here at this time?

15 Q. Not in the photograph, but was he at Mickey's during
16 that time.

17 A. With me?

18 Q. Um hum.

19 A. I don't believe so. No.

20 Q. Let's take that one out.

21 MR. RICHARDSON: We would offer State's Exhibits 20,
22 21, 22 and 24?

23 THE COURT: Have you seen them, Ms. Wilson?

24 MS. WILSON: Yes, sir, Your Honor, I have.

25 THE COURT: All right.

1 (WHEREUPON, State's Exhibit Nos. 20, 21, 22 and 24
2 were admitted into evidence.)

3 MR. RICHARDSON: Thank you.

4 THE COURT: They're offered without objection. Any
5 objection?

6 MS. WILSON: No objection, Your Honor.

7 THE COURT: Thank you. Their introduced without
8 objection. You may publish.

9 MR. RICHARDSON: Thank you.

10 BY MR. RICHARDSON:

11 Q. All right. So y'all were together. No doubt about
12 it Thanksgiving before Fred was killed the following
13 April?

14 A. Yes, sir.

15 Q. All right. Let's talk about December. You remember
16 anything about December around Christmastime 2007. Did
17 you see Timmy during the month of December?

18 A. No I did not.

19 Q. Did not. And what do you recall why that would have
20 been?

21 A. I spent Christmas and everything with Fred.

22 Q. Spent Christmas with Fred?

23 A. In Myrtle Beach.

24 Q. Y'all talked back and forth? Talked with each other?

25 A. I'm sure we did. I'm sure we did.

1 Q. Do you ever remember a day that you didn't call Timmy
2 or Timmy call you?

3 A. Yes.

4 Q. All right. Tell us about that?

5 A. It was in January.

6 Q. January?

7 A. Um hum, of 2008. And it's when the time when me and
8 Fred were going to Kentucky to take Bobby and Faye to
9 Elizabethtown for their -- I mean Owensburg for their
10 Social Security meeting.

11 Q. Okay. So you didn't talk with him during those day
12 ---

13 A. Correct.

14 Q. --- cause Fred was there?

15 A. Um hum.

16 Q. Most of the time if Fred wasn't standing there you
17 would be on the phone with Timmy or him calling you or him
18 calling you.

19 A. Yes.

20 Q. All right. Now, let's go on and until -- closer to
21 let's say March of 2008. We've got some records showing
22 that Rogers was in Myrtle Beach at that Value Place?

23 A. Yes, sir.

24 Q. You aware of that?

25 A. Yes, sir.

1 Q. All right. Did you go visit at the Value Place while
2 he was there in March?

3 A. Yes, sir.

4 Q. All right. And how about in May of 2000? Excuse me,
5 April of 2008?

6 A. When he returned on the second time; is that what
7 you're recalling.

8 Q. Yes, ma'am.

9 A. Yes, I did.

10 Q. All right. Now, the lady at the Value Place said
11 that you paid for the motel?

12 A. I could have possibly done it. Yes.

13 Q. Okay.

14 A. I don't recall it, but I could have possibly done it.
15 Yes.

16 Q. No doubt you spent a good bit of time there with
17 Timmy Rogers at the Value Place?

18 A. Yes, sir.

19 Q. And how close was the Value Place Motel to your
20 house?

21 A. Oh, it was quite a bit away. It was 10 or 12 miles,
22 probably. It's according to how you took it. If you took
23 501 or took the back roads or whatever.

24 Q. What would you tell Fred when you were going to spend
25 the day or night or whatever at Value Place?

1 A. I never spent the night at Value Place.

2 Q. Okay?

3 A. But I didn't have to explain to Fred. I mean I would
4 go see Tim with going to the grocery store or going
5 shopping or whatever. Doing what I needed to do. I
6 didn't do it just going out to go see him. I had other
7 things to do.

8 Q. Okay. And you said at some point, and I may have --
9 I didn't get the date right, but you said one morning that
10 Timmy was at your house out on the patio?

11 A. Yes.

12 Q. Do you remember and approximate date?

13 A. Early March. It was early March.

14 Q. The March time that he came to stay in Myrtle Beach?

15 A. Yes.

16 Q. Besides those do you know of Timmy staying anywhere
17 but Value Place Motel?

18 A. Not that I know of. I don't recall.

19 Q. But other than -- do you remember another time that
20 Timmy may have come to Myrtle Beach to see you?

21 A. Other than the two times?

22 Q. Yes, ma'am.

23 A. No.

24 Q. Okay. All right. Now, at some point the
25 conversation turned to Fred, and the need to be rid of

1 Fred?

2 A. Yes, sir.

3 Q. All right. Now, tell this jury when all that came to
4 a head.

5 A. Came to a head on April the 21st.

6 Q. All right. When did y'all start discussing the need
7 to be rid of Fred Engel?

8 A. He started discussing it in March.

9 Q. In March?

10 A. But he discussed it long before that back in the
11 summer of that year.

12 Q. You're saying the summer of 2007?

13 A. Um hum.

14 Q. All right.

15 A. Because he had wanted to hire a -- his sister had a
16 brother. I don't know if it's a half brother or a full
17 brother, but he lived in Germany and he was a sharp
18 shooter. So Tim wanted to hire him to kill Fred.

19 And I told him no, no. I argued with him and fussed
20 with him. But then when Tim went to ask him he told him
21 no any way.

22 Q. Okay?

23 A. And that's what Tim had told me. That's what he told
24 me.

25 Q. All right. But at some point you became more

1 compliant with this idea of having Fred killed?

2 A. Yeah.

3 Q. And when did that -- when did you start to turn and
4 say, "Well, if you're going to kill him let's talk about
5 it?"

6 A. April.

7 Q. In spring?

8 A. Um hum.

9 Q. And y'all talked about every day?

10 A. Yes.

11 Q. All right. Take me and the jury to the spot that
12 y'all talked about the time, the place, the manner, the
13 who, when, what, when, where and why. When all the plans
14 were put into effect?

15 A. It was at Value Place.

16 Q. Okay?

17 A. And that morning the calls started early. And it
18 wasn't a lot of reasoning to him. He was determined he
19 was going to do it. So I went to the Value Place to talk
20 to him and I talked to him. And he said it was -- this
21 was the day. This was going to be the day they Fred died.

22 He wanted Fred out of the way a long time before that
23 because he felt like Fred was going to take me away from
24 him or whatever. But Tim didn't realize that there was
25 nothing there to begin with. I kept telling Tim that I

1 loved my husband. I didn't want to leave my husband. But
2 he just kept thinking into things, putting things in there
3 that wasn't there. So we were setting at that table at
4 Value Place cause it has a small kitchen and everything
5 there.

6 And I finally told him I said, "Well, if you're going
7 to do it you go ahead and do it. There is nothing I can
8 say or do to change your mind." And he told me that day
9 he said, "You, I'm going to go and be at the mailbox
10 tonight." He said, "What I want you to do is I want you
11 to call when Fred leaves the house." And I said, "Okay."

12 Q. Now with regards to -- let's go into the details a
13 little bit?

14 A. Okay.

15 Q. Did Timmy tell you where he was going to park?

16 A. He did indeed. He told me that he was going to park
17 over by the park area. Behind our townhouses we have a
18 parking area here and the yard of our townhouse is right
19 here. And there is a four-car parking thing there that
20 you can park in, but I went there two or three times out
21 on my patio and never seen the truck there.

22 Q. Okay.

23 A. So I can't say if he was or if he did, you know, or
24 if he didn't. But that's where he said he was parking the
25 truck.

1 Q. Well, at some point his told you that he was in
2 place. He was there at the mailbox?

3 A. Yes.

4 Q. After he told you that did you go look at where he
5 told you he was going to park?

6 A. Yes, I did.

7 Q. Did you see a vehicle out there?

8 A. No, it was not out there.

9 Q. With regard to how he was going to kill Fred did he
10 tell you how he was going to kill him?

11 A. He told me he was going to shoot him.

12 Q. Okay.

13 A. He told me that he had bought a gun from a guy there
14 in Value Place for \$40. And he was going to shoot Fred.

15 Q. He ever show you a gun?

16 A. No.

17 Q. Did he ever say if it was a pistol or a long gun?

18 A. He never did say, no.

19 Q. Okay. Have you ever known Timmy to own guns?

20 A. Yes, sir.

21 Q. All right. And what kind of guns did he own?

22 A. He had a hunting gun and a shotgun that I seen.

23 Q. Actually, the Police took a couple of guns from your
24 house?

25 A. They were Timmy's.

1 Q. All right. And where were they stored?

2 A. Where he put them. In the closet and under the bed,
3 I believe.

4 Q. Okay.

5 A. And then he put three shells in the night stand
6 beside my bed.

7 Q. Okay, now, he told you that, "I'm going to park
8 behind your house and I'm going to shoot him?"

9 A. That's what he said. I'm going -- he's going -- I'm
10 going to shoot Fred.

11 Q. Did he tell you where he was going to be when Fred
12 came to the mailbox?

13 A. Yes, he was supposed to be behind the bushes cause
14 there was a parking area there, and there is bushes right
15 liar, real tall bushes. He said he was going to be behind
16 the bushes, which the mailboxes are right here by the
17 bushes.

18 Q. With regard to that, when he called you and told you
19 I'm in place, I'm not asking for a specific time until --
20 if you remember it give us that, but was it daylight or
21 dark?

22 A. It was dark.

23 Q. Do you remember a time or round about?

24 A. It was approximately 11:05, something like that.
25 Five or ten minutes after 11:00.

1 Q. And he was in place at ---
2 A. He was in place.
3 Q. --- 11:00 or something like that. All right. Now.
4 Let's switch gears because we've got Timmy in the bushes?
5 A. Yes.
6 Q. Supposedly with a gun waiting on Fred?
7 A. Yes.
8 Q. Take us to inside of the Engel household. What was
9 going on with you and Fred inside?
10 A. I was in there in the bed watching t.v. and he's
11 upstairs working. And he had the dog upstairs with him,
12 and he brought the dog down to me and I met him in the
13 living room. And he said, "I think I can do a lot more
14 work if you take to dog in the bed with you." And I said,
15 "Okay." And he said, "I'll be in bed in about an hour.
16 I'll be done."
17 Q. Did he ever make any mention about going out to the
18 mailbox or anything along those?
19 A. No. But I did ask him to go pick up the mail.
20 Q. Okay. Now, at some point did Fred leave the house to
21 go get mail?
22 A. Yes, he did.
23 Q. And what did you do?
24 A. When I heard the for garage opening which you can
25 hear it in my bedroom and I heard the garage door opening

1 and I knew he was leaving to go to the mailbox. So I
2 picked up my phone and I called him and I said, "He's
3 leaving," and hung up.

4 Q. Okay. And you had fulfilled your part of the
5 agreement?

6 A. I had, indeed.

7 Q. All right. Now, was there ever a call back, either
8 from you and if you don't remember which way it came
9 that's fine, but was there ever an indication that it was
10 over?

11 A. Yes, Tim called me.

12 Q. And he said what?

13 A. He said, "It's done," and he was out of breath and
14 everything and I couldn't hardly understand a lot of what
15 he was saying. But I could tell he was in the woods cause
16 of the way he was stomping and everything. And he was
17 saying things that I couldn't understand because he was so
18 out breath and everything and still running. And then
19 about like ten minutes then we just hung up. .

20 Q. Okay?

21 A. And then later on before I went over to Tom and
22 Karen's I had called Tim back.

23 Q. All right?

24 A. And he was back at the motel at that time again.

25 Q. And do you remember the gist of that conversation?

1 What went on in the conversation around midnight?

2 A. Yeah, he was telling me that he was getting the blood
3 off of his hands and everything and getting his coveralls
4 and everything off. And his boot and everything because
5 he had stepped in the blood, and he was cleaning his self
6 up from where he killed Fred.

7 Q. And so far as your part, now, you had to make sure he
8 was out of there?

9 A. Yes, sir.

10 Q. All right. Now, tell us about your part. What were
11 you checking on at 12 o'clock or somewhere abouts 12:00?

12 A. You're talking about when I went to Tommy and
13 Karen's?

14 Q. Before when you were on the phone with him?

15 A. With -- I was checking to make sure that he was out
16 and where he was at before I went to Tommy and Karen's
17 house.

18 Q. Did you let him know that you were fixing to go ---

19 A. Yes, sir.

20 Q. --- and sound the alarm?

21 A. Yes, sir.

22 Q. Make sure you were out of town?

23 A. Yes, sir.

24 Q. And he assured you he was gone?

25 A. He assured me he was gone.

1 Q. All right. Tell us what you did next?

2 A. I left the house and went over to Tommy and Karen's,
3 and I got them out of bed and I told them I couldn't find
4 Fred. So Tom didn't have on his pants or anything. So he
5 went and got dressed, and Karen had to get dressed. And
6 just sort of set it in play.

7 Q. Okay. And, of course, at some point in time Tommy
8 left and went looking for Fred outside of your house or
9 his house?

10 A. Yes, he did. He drove around the subdivision and
11 looked and everything. He didn't see anything or anybody.
12 He come back. And he said that he didn't see anybody and
13 didn't find Fred or anything. So any way, I told him take
14 me to the mailbox.

15 Q. Cause you knew where Fred was?

16 A. I knew. I knew something had happened at the
17 mailbox. I knew Tim was supposed to do it at the mailbox.
18 Yes, I did.

19 Q. What did you see upon arrival at the mailbox?

20 A. I seen blood on the front of the boxes with Fred's
21 glass laying in it. And then I want to go pick up his
22 glasses and Tommy wouldn't let me. He made me get back in
23 the car and held me in the automobile until we got back to
24 my house. And then I believe they called 911.

25 Q. Imagine it's pretty surreal at that point. I mean

1 you talked about this deed going down, but to actually see
2 it, what does that do to you?

3 A. Awful.

4 Q. Wasn't no doubt in your mind that Fred was dead?

5 A. He was dead.

6 Q. And you saw it for your own eyes bu seeing the blood
7 and the glasses?

8 A. I seen it.

9 Q. And you now who did it?

10 A. I knew who did it.

11 Q. And you knew that you had played a part in it?

12 A. I knew I played a part in it, too.

13 Q. Big part?

14 A. Big part.

15 Q. Matter of fact if you hadn't called or conspired with
16 Timmy Rogers ---

17 A. Fred would be alive today?

18 Q. All right. So Joe Hawes, Neil Livingston, they come
19 and talk with you, correct?

20 A. Yes.

21 Q. But by that time you had deleted all the phone calls
22 off your phone?

23 A. Yes, sir, I had.

24 Q. And you freely handed them your phone?

25 A. I did, indeed.

1 Q. But there was no calls on that log ---

2 A. No, there was not.

3 Q. --- to Timmy?

4 A. No, there was not.

5 Q. Did you think that that would do away with the calls?

6 A. I didn't really think about it at all. I just did
7 it.

8 Q. Okay. And you told Joseph and Neil that saw his
9 glasses. Don't know what happened to him?

10 A. Yes.

11 Q. You didn't tell them about your part in this?

12 A. No, sir, I did not.

13 Q. At some point, Sherry, you even -- maybe you didn't
14 break it up but you talked with him about another boy
15 around there that could of -- said, "Well, maybe he's the
16 one that killed Fred?"

17 A. Yes, sir, I did.

18 Q. Trying to lead them on some sort of goose chase?

19 A. Yes, sir, I did.

20 Q. All right. When y'all -- now y'all had some sort of
21 service here for Fred in Myrtle Beach?

22 A. Yes, we did.

23 Q. And where was that?

24 A. At small funeral home in Myrtle Beach. Uh huh, at
25 Myrtle Beach.

- 1 Q. Okay. And did Rogers show up for that?
- 2 A. No, he did not.
- 3 Q. Did not. Was Rogers still in the area when y'all had
- 4 the wake or whatever you call it there?
- 5 A. I don't believe he was.
- 6 Q. Okay?
- 7 A. I don't believe he was.
- 8 Q. Do you know when he checked out of the Value Place?
- 9 A. No, I don't. No, I don't.
- 10 Q. And what day did y'all have the funeral for Fred?
- 11 The actual funeral for Fred?
- 12 A. We had it in Kentucky on the 28th, on a Monday.
- 13 Q. About a week later?
- 14 A. A week later.
- 15 Q. After the 21st when -- did you see Fred on the 21st?
- 16 Excuse me. Did you see Timmy on the 22nd?
- 17 A. No.
- 18 Q. Okay. Did -- when is the next time you saw Timmy?
- 19 A. At the funeral in Kentucky.
- 20 Q. The 28th?
- 21 A. 28th.
- 22 Q. So from the 21st through the 28th you didn't see him?
- 23 A. No, I did not.
- 24 Q. Did y'all talk from time to time on the phone?
- 25 A. I think he called once or twice. He called once

1 that -- the week before -- while we were waiting for the
2 body to be released of Fred and everything. He called and
3 asked me what do you want me to do with his watch and
4 keys. You want me to bring them to you. And I said,
5 "What I want with them. Don't you bring nothing to me."

6 Q. What arm did Fred wear his watch on?

7 A. His right one.

8 Q. His right arm?

9 A. Left one. Left one. I had to think.

10 Q. All right. Before the burial did you have an
11 occasion either in Myrtle Beach or Kentucky to view the
12 body?

13 A. Yes, I did.

14 Q. All right. Tell the jury what you found upon view
15 the body. The injuries that you saw?

16 A. The only injury that I really seen was where his head
17 was all mashed in and hurt and where he been hit with
18 something. And the autopsy where he had been sewed up and
19 everything. And the back of his head where it had been
20 sewed up and everything:

21 Mostly, all the damage was right here on the side of
22 his head. And then he had a lot of scratching and
23 bruising down his arm and on the sides here and everything
24 on his right side.

25 Q. When y'all had talked about Fred being killed is

1 there ever any talk about beating him up or hitting him
2 with anything?

3 A. No.

4 Q. Did you or Timmy ever mention anything about
5 strangulation?

6 A. Timmy did. Later on -- later on down -- down after
7 the funeral and everything.

8 Q. Oh, but ---

9 A. But the time, no.

10 Q. I'm talking about in the planning stage?

11 A. No. No. No. No. No.

12 Q. He had talked about some other guy from Germany
13 shooting him?

14 A. Larry.

15 Q. He ever say anything about hitting him in the face or
16 anything like that?

17 A. No.

18 Q. Messing him up?

19 A. No.

20 Q. Choking him out?

21 A. No.

22 Q. Do you remember -- do you feel a bullet hole or
23 anything like that upon ---

24 A. No, I did not, and I was looking because that's what
25 he had told me he had done.

1 Q. Now, did you talk with Rogers about that? Where is
2 the bullet hole? What went on?

3 A. Not until later on after the funeral in Kentucky.

4 Q. Okay. What did he tell you about the manner of
5 death when y'all were talking in Kentucky?

6 A. He told me he had shot him.

7 Q. He continued to tell you he shot him?

8 A. Yeah.

9 Q. Where was that, Sherry? Where did y'all talk?

10 A. He came down after the funeral to my brother,
11 Bobby's, house where everybody met for lunch. And that
12 evening I went out on the porch to sit out there and he
13 came out there. And I said, "Now, you need to tell me
14 what you done to Fred," because at the time I really had
15 ruled it out because there wasn't anything there that I
16 seen when I looked at the body at that funeral home
17 before.

18 And I said, "You need to tell me just exactly what
19 you done," and this is what he said. He said, "I came out
20 of the bushes. Fred was standing there by the mailbox,
21 and I come out behind him." And I said, "He didn't hear
22 you?" And he said, "No," and he said, "I put the gun to
23 the back of his head and I pulled the trigger." That's
24 what he said.

25 Q. Did he ever tell you anything about a rope or choking

1 him to death?

2 A. He had said something about a rope, but never did
3 tell me that he had choked Fred, no. But he had talked
4 about a rope before, but he never did say what he was
5 going to do or anything.

6 Q. He ask you anything about what the police knew or
7 what they talked with you about?

8 A. Yeah, oh, yes. Yeah.

9 Q. Once Fred went to Bobby's house and Faye's house
10 after the funeral you ever leave?

11 A. Who.

12 Q. I'm sorry. Once Timmy went to Bobby and Faye's house
13 after the funeral did he ever leave?

14 A. No, he did not.

15 Q. Where did he stay?

16 A. Right there.

17 Q. At Bobby and Faye's? Where'd you stay?

18 A. Right there. But I was in a trailer next to it.

19 Q. Okay. You stayed in a trailer?

20 A. Yes, I did.

21 Q. He stayed in the house?

22 A. He stayed in the house.

23 Q. Now, let's talk about Timmy's truck for just a bit.
24 What did he drive?

25 A. A maroon, S10 pick up truck.

1 Q. Did he ever drive anything else?

2 A. No, not that I know of.

3 Q. That first time you met him over there at the storage
4 sheds what was he driving?

5 A. He was driving his work van then, but when he came
6 down to Mickey's to -- no, he -- no, he didn't have the
7 maroon thing then. He had his company truck then. But
8 later on when he had left his wife and moved to the motel
9 he had the maroon S10 pick up truck then.

10 Q. Okay. Once you saw him after the funeral was he
11 still driving the maroon S10 truck?

12 A. Well, after he come back from the funeral -- from
13 taking the flowers of Fred's up to the nursing home when
14 he come back he pulled it close enough that I had seen
15 that he had primered it white or gray or whatever color
16 you want to call it, grayish color.

17 It wasn't maroon any long.

18 Q. Was that the day of the funeral?

19 A. That was the day of the funeral in Kentucky I saw it.

20 Q. Okay. So within a week he had painted the vehicle?

21 A. Yes.

22 Q. Do you know exactly when he painted it?

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

24 Q. And what were you saying about taking the flowers?

25 You were talking about Fred's funeral flowers?

1 A. Yeah, he came in the trailer, and he said, "You don't
2 need these damn things around you. I'll get rid of them."
3 That's when he put them in his truck and he took them up
4 to the nursing home and donated them in Fred's name.

5 Q. Okay. Now, what about the interior of the vehicle.
6 Was it clothe?

7 A. No.

8 Q. What was it?

9 A. I believe it was leather, white leather, tan leather
10 like.

11 Q. You have any idea why there wouldn't be Fred's D.N.A.
12 in that vehicle?

13 A. No.

14 Q. Did Timmy ever talk with you about anything besides
15 painting that truck in a way of changing it?

16 A. He told me that he had washed the steering wheel down
17 with bleach because he had blood on it, and he forgot to
18 do the shifter because he had forget to do that when he
19 washed the steering column, the steering wheel.

20 Q. Some sort of bleach solution?

21 A. Yeah, he said he used bleach to wash it off because
22 it had blood on it.

23 Q. What about -- Timmy ever tell you what he wore to
24 kill Fred in?

25 A. Yes, sir.

- 1 Q. And what was that?
- 2 A. He had a pair of camouflage coveralls and his boots.
- 3 Q. Have you ever seen those coveralls before?
- 4 A. Yes, sir, I had.
- 5 Q. You ever seen the boots before?
- 6 A. Yes, I had. I bought them for him.
- 7 Q. You did?
- 8 A. Yes, sir, I did.
- 9 Q. Did you ever see them after April 21st?
- 10 A. No, his got rid of all of it. He got rid of the
- 11 keys, the watch, the coveralls, the boots. He told me he
- 12 got rid of all of it.
- 13 Q. Washed down the interior of the truck and painted it?
- 14 A. He sure did, yes.
- 15 Q. Okay. At some point Neil Livingston and Joseph Hawes
- 16 came back and talked with you again while you were there
- 17 in Kentucky?
- 18 A. Yes, sir.
- 19 Q. You'd been arrested at that point?
- 20 A. Yes, sir.
- 21 Q. And once they talked with you were you able to tell
- 22 them the truth?
- 23 A. Not in the beginning.
- 24 Q. Before you came back to Myrtle Beach after being
- 25 given your Miranda warnings did you finally tell them the

1 truth?

2 A. I did.

3 Q. Who did you ride back with from Kentucky to Myrtle
4 Beach?

5 A. Selina, my niece, my grandson, Joshua, my brother,
6 Bobby, and Faye from Myrtle Beach.

7 Q. No.

8 A. Oh.

9 Q. I'm saying when you left Kentucky?

10 A. Oh.

11 Q. When you were in custody who did you ride back with?

12 A. I rode back with the detectives and everything.

13 There were several detectives with me.

14 Q. But not Neil and Joseph?

15 A. I don't think so.

16 Q. Okay?

17 A. I think they might have been maybe with Timmy. I
18 don't know. I don't know if they were or not.

19 MR. RICHARDSON: Court's indulgence for just one
20 moment.

21 BY MR. RICHARDSON:

22 Q. Pass to you a few other exhibits and just ask if you
23 recognize them. Pass to you what has been marked as
24 State's Exhibit Seven and ask if you recognize that?

25 A. Yes, sir, I do.

- 1 Q. What is that?
- 2 A. A Valentine's card to me.
- 3 Q. From who?
- 4 A. From Timmy.
- 5 Q. Is it signed?
- 6 A. Yes, it is.
- 7 Q. With that sketch of you was that included in the
- 8 Valentine's card?
- 9 A. Yes.
- 10 Q. All right. And where was that kept? You remember?
- 11 You remember where the police got it?
- 12 A. Under the mattress of my bed.
- 13 Q. Okay. Pass you what's been marked as State's Exhibit
- 14 Number 14. And Tell me if you recognize those and where
- 15 they were at when the police seized them?
- 16 A. Yeah they were in my purse.
- 17 Q. Okay. Those the contents of your purse?
- 18 A. Um hum. These right here, these here Tim had given
- 19 me.
- 20 Q. Okay, that's Tim and ---
- 21 A. Um hum. These had ---
- 22 Q. Timmy and a shark mouth graduation picture?
- 23 A. Yes.
- 24 Q. All right.
- 25 A. And these were taken at the Litchfield Motel.

- 1 Q. Okay, did you take those?
- 2 A. Personal check where we stayed at. Yes, sir, I did.
- 3 Q. So he stayed at Litchfield, Kentucky?
- 4 A. Litchfield, Kentucky. Yes, sir.
- 5 Q. Well, we've got a Litchfield, South Carolina.
- 6 A. Sorry.
- 7 Q. Okay, what is that?
- 8 A. It's a Domino's Pizza card for room service.
- 9 Q. Look over on the back?
- 10 A. Value Place.
- 11 Q. That was found in your purse?
- 12 A. Um hum.
- 13 Q. That a key to the motel?
- 14 A. Yes, sir.
- 15 Q. Okay. Sherry, and all that was in your purse when
- 16 the police seized it?
- 17 A. Yes, sir.
- 18 Q. All right. And let me pass to you what has been
- 19 marked as State's Exhibit Number 13. You can open that up
- 20 and see if you recognize it and where it was seized from
- 21 you?
- 22 A. This is Tim's high school ring.
- 23 Q. Do you recognize any of that other stuff? First of
- 24 all, where was it kept?
- 25 A. In my billfold I believe.

- 1 Q. In your purse?
- 2 A. Um hum, in my purse.
- 3 Q. All right.
- 4 A. This is probably just stuff I had in there.
- 5 Q. Okay.
- 6 A. With it.
- 7 Q. So the only thing that you would say out of State's
- 8 Exhibit 13 is attributable to Tim is his high school ring?
- 9 A. Yes, sir.
- 10 Q. It says 'Tim' and 'Class of '86'. Pass to you what's
- 11 been marked as State's Exhibit Eight. Tell me if you
- 12 recognize that and where it came from?
- 13 A. It's a notebook with letters and pins and things like
- 14 that in it to me. Then it's got some numbers back here
- 15 with carpenters, and he had to call State Farm and the
- 16 post office and stuff like that.
- 17 Q. Whose handwriting is that, Sherry?
- 18 A. That is Tim's.
- 19 Q. It's signed with his name at the bottom?
- 20 A. Yes, sir, it is. It's signed, "I love you forever,
- 21 Tim."
- 22 Q. You know where that was seized?
- 23 A. No, I do not.
- 24 Q. Okay. Had you seen than notebook before?
- 25 A. Yes, I have.

1 Q. Thank you?

2 MR. RICHARDSON: Your Honor, the State would seek to
3 move State's Exhibit Seven, Eight, 13 and 14 into
4 evidence?

5 MS. WILSON: Your Honor, if I could briefly see one
6 item.

7 MR. RICHARDSON: And, Your Honor, what we'll do, and
8 I think without objection, is enter Seven and Eight and 14
9 and then the objection to 13 it's the only thing she
10 attributed to Tim was his high school ring. So I'm going
11 to pull out everything but the high school ring.

12 MS. WILSON: And that's acceptable, Your Honor.

13 THE COURT: All right. Otherwise you have no
14 objection?

15 MS. WILSON: None.

16 THE COURT: All right. Entered without objection.

17 (WHEREUPON, State's Exhibit Nos. 7, 8, 13 and 14 were
18 admitted into evidence.)

19 MR. RICHARDSON: Thank you, Your Honor. One second,
20 Your Honor. That's all I have, Your Honor.

21 THE COURT: All right, Ms. Wilson.

22 MS. WILSON: Your Honor, if we could approach
23 briefly.

24 THE COURT: Yes, ma'am.

25

1 (WHEREUPON, a bench conference was held off the
2 record in the presence of the jury, but out of the
3 hearing of the jury.)

4 COLLOQUY

5 THE COURT: Ladies and gentlemen of the jury, we're
6 going to break for the evening. Mr. Roth, if you would
7 take the jury out the back. I'm going to ask you to be
8 back in your jury room about 9:30 in the morning, okay.
9 I'd like to actually start at 9:30, so perhaps get here at
10 9:15 we'll be ready to go, okay.

11 (WHEREUPON, the jury panel was excused from the
12 courtroom at at 5:19 p.m.)

13 THE COURT: All right. Okay, we're at ease until
14 tomorrow morning.

15 MR. RICHARDSON: Your Honor, we can take it up any
16 time you like, but I mentioned to you that Tony Collins
17 prepared just the charting of the figures on the phone
18 record that is already in evidence, and they had an
19 objection. I'd like to show you ---

20 THE COURT: Why can't we do that tonight? You have
21 an objection? You got a motion in limine?

22 MS. WILSON: I will, Your Honor. I'm actually going
23 to have two.

24 THE COURT: Okay. All right. Let's hear it.

25 MS. WILSON: Your Honor, my position on Mr -- I'm

1 sorry. What is his name again?

2 MR. RICHARDSON: Tony Collins.

3 MS. WILSON: On Tony Collins is, A, he is not listed
4 as a potential witness in this case. I know nothing of
5 his ---

6 THE COURT: I thought he was on there.

7 MR. RICHARDSON: He is.

8 MS. WILSON: I'm sorry. I have not seen it. Where
9 are you looking? Oh, I'm sorry. Number Eight. This
10 record of -- I don't know what this document is -- these
11 documents are supposed to be detailing what is supposed to
12 be my client's trip from Kentucky to Myrtle Beach.

13 I've never seen these before today. Certainly, I'm
14 going to have to have some time to go over them if the
15 Court would allow them in, but my ---

16 THE COURT: Are you just getting them?

17 MS. WILSON: Probably right before we started for the
18 afternoon session, Your Honor.

19 THE COURT: What is it, Mr. Richardson? I mean this
20 is awful late.

21 MR. RICHARDSON: Your Honor, I ---

22 THE COURT: What's the purpose of it?

23 MR. RICHARDSON: The -- we can show you in about five
24 minutes, but I can explain to you shorter than that. What
25 Tony did was simply go through these six pages ---

1 THE COURT: I'm sure that's what he did. He took a
2 G.P.S. and he tried to figure out where they were.

3 MR. RICHARDSON: Yes, sir.

4 THE COURT: Is that what he did?

5 MR. RICHARDSON: Yes, sir, he took the last and then
6 deleted out all the phone calls that didn't apply to
7 either Sherry calling Timmy or Timmy calling Sherry. So
8 he took these out. Then he showed lat/long not saying
9 that that's where the phone was but the tower from
10 Kentucky. And you can see it, which it's already in
11 evidence, that he's in Myrtle Beach.

12 But you see him come to Myrtle Beach. Then the night
13 of the murder what you will see is where that is reading
14 to which towers. And we're not going to say that it's a
15 specific spot, but these are the towers. And you will see
16 it go until that final tower where it stays. The phone
17 stays and the phone calls stay for a period of minutes and
18 then it leaves out and goes back to the motel.

19 THE COURT: Well, tell me about the foundation you
20 will have to lay to this document?

21 MR. RICHARDSON: Well, Your Honor, this is in
22 evidence, of course.

23 THE COURT: And know, and I put that in and it's in,
24 okay.

25 MR. RICHARDSON: Yes, sir. The only thing that he

1 did from this point was take the records and go coordinate
2 the latitude and longitude through Google Earth and punch
3 those in ---

4 THE COURT: Right.

5 MR. RICHARDSON: --- and then trans ---

6 THE COURT: Yeah, but what are you offering him as?
7 I mean is that just something you think he can testify to?

8 MR. RICHARDSON: I think he can ---

9 THE COURT: You going to do some sort of foundational
10 work on that?

11 MR. RICHARDSON: He's going to say that he ---

12 THE COURT: Tell me how he knows how to do that or
13 what he's doing or can he explain what he's doing?

14 MR. RICHARDSON: Yes, sir, he can tell that the
15 process that he went through to do it, but?

16 THE COURT: You know what he's doing. If you say
17 he's going to a website, Google Earth, and he's punching
18 in numbers on Google Earth and he's reporting back what he
19 reads from Google Earth isn't that a hearsay? I mean
20 isn't that a -- don't we have a hearsay problem there?
21 Even though it's machine generated isn't it hearsay? I'll
22 hear you on that.

23 MR. RICHARDSON: Well, and yes, sir. My argument is
24 that, of course, the documents are what they are and the
25 A.T.&T. person came in and said, "That doesn't have

1 anything to do with the actual phone. It's the location
2 of the towers." From that I believe that
3 latitude/longitude and the listings have been in existence
4 since way before you know they were selling the ocean back
5 and forth.

6 THE COURT: I mean I'd feel better if you would just
7 ask him to take judicial notice of it, but I've got a
8 problem for Mr. Collins to say, "I don't really know where
9 it is to tell you the truth about it. I'm not a navigator
10 or anything like that. But what I did I went to Google
11 Earth and I punched it in. And Google Earth told me this
12 is where it was." You see where I'm coming from? I mean
13 don't you have a problem with that?

14 MR. RICHARDSON: And I can -- I can do it
15 differently. Horry Telephone can attest to all of the
16 sites up and down the east coast, but they will come in
17 and look at where he's got them and say, "From our
18 standpoint I can physically tell you where that tower is,
19 where that S.I.D. Number is, and yes, it is where he says
20 it is." That is the location, and they will even says
21 it's Third Avenue South or 48th Avenue behind so and so
22 location.

23 That is where it registers. That's where the actual
24 tower. And he can tell that, Your Honor. The guy ---

25 THE COURT: I mean I've just got a problem with the

1 confrontation clause where the witness simply says, "You
2 know I went on Google Earth and it told me that's where it
3 was.

4 MS. WILSON: Your Honor, if you could briefly. I'm
5 sorry.

6 THE COURT: Mr. Galmore has become so much more
7 sophisticated in his trial technique. He just reaches up
8 and grabs co-counsel.

9 MR. RICHARDSON: I'll mention one compromise, and if
10 this doesn't -- this is the end of ---

11 THE COURT: There is an exemption under the federal
12 rules for non -- an exception to hearsay. It's
13 non-hearsay if you put in machine generated data. Now, I
14 don't know. Typically, typically, that's been used where
15 you will have, say a machine that gives a D.N.A. profile
16 or something like that or gastromagraph.

17 MR. RICHARDSON: Exactly.

18 THE COURT: Just prints it out, but I'm not sure what
19 we have a website that uses whatever method that we don't
20 know about that then reports that -- a fact that is
21 important in this case. I've just got a problem. You're
22 going to have all night to work on it, Mr. Richardson.

23 MR. RICHARDSON: Let me ---

24 THE COURT: I'm sure you will. But I'm just giving
25 you a heads up.

1 MR. RICHARDSON: I will.

2 THE COURT: The problem I have -- I'm not going to
3 rule on this today.

4 MR. RICHARDSON: Let me ask you if it would make a
5 difference, and that might alleviate a bunch of it. It
6 may not make a difference to you, but if instead of
7 entering it as an exhibit if -- we entered it as a
8 demonstrative tool. It would not go back to the jury.
9 They would be able to view it here, but it would not be a
10 part of the evidence?

11 THE COURT: What's the difference? Doesn't make any
12 difference. You know there is all sorts of sources of
13 information. You've got the National Enquirer, and you've
14 got the Wall Street Journal. Where does your Googling --
15 it's somewhere between -- I don't know how reliable his
16 report may be.

17 I'd feel a bit more comfortable if I had a hand held
18 G.P.S. and I walked out the courtroom yard and, bingo, I
19 hit it and I hit Wadepoint and it took it off of a
20 satellite, that's a machine telling me what it is. That's
21 a direct reading. I'd feel much more comfortable with
22 that rather than a website that is telling me what/where a
23 location is.

24 I don't even know how it reports it. Something for
25 you to work on tonight. You know what my concerns are?

1 MR. RICHARDSON: Yes.

2 THE COURT: I'm concerned about that violating the
3 confrontation clause. You know Crawford has set a new
4 standard for us. We know what we've got to do. I don't
5 think he can cross-examine what that website is saying,
6 and that gives me a problem. I think it is hearsay. I
7 mean out of the shoot I'm telling you that. Work on it
8 tonight, okay, and I'll hear you in the morning, okay?

9 MS. WILSON: Thank you, Your Honor.

10 MR. RICHARDSON: Yes.

11 THE COURT: All right. We're in recess.

12 END OF TRANSCRIPT OF RECORD

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1 CERTIFICATE OF REPORTER

2

3

4 STATE OF SOUTH CAROLINA)

5 COUNTY OF HORRY)

6

7

8 I, HATTIE O. GORDON, Official Court Reporter for the

9 4th Judicial Circuit of the State of South Carolina, do

10 hereby certify that the foregoing is a true, accurate and

11 complete Transcript of Record of the proceedings had and

12 evidence introduced in the trial of the captioned case,

13 relative to appeal, in the Court of General Sessions for

14 Horry County, South Carolina, on the 12th day of October,

15 2010.

16 I do further certify that I am neither of kin,

17 counsel nor interest to any party hereto.

18

19

20 January 17, 2010

21 

22

23 HATTIE O. GORDON, Court Reporter

24

25

1 (WHEREUPON: The court was called
2 to order by the Bailiff at 9:21 AM, October 13, 2010; and
3 all pertinent parties, along with their counsel, were
4 back and present in the courtroom.)

5 BAILIFF:

6 The court will come to order. All
7 Rise.

8 THE COURT:

9 Okay. Thank you. Please be
10 seated.

11 All right.

12 Mr. Richardson, we have the
13 Defendant in -- in the courtroom.

14 I believe we were going to address
15 Ms. Wilson's -- uh -- motion to suppress testimony by Mr.
16 -- uh -- Officer Tony -- or Detective Tony Collins
17 concerning the location of certain cell towers.

18 Is that correct?

19 MS. WILSON:

20 Yes, sir, Your Honor.

21 THE COURT:

22 Uh -- Based on the information
23 provided by the witness from AT&T concerning latitude and
24 longitude, which was provided by him -- uh -- as part of
25 a business record.

1 Is that correct?

2 MR. RICHARDSON:

3 Yes sir.

4 THE COURT:

5 All right.

6 So what we have here, as I

7 understand it, is:

8 We had that expert -- or that

9 witness testify that:

10 As part of their business records

11 -- uh -- the location of certain cell towers -- uh -- are

12 kept and indexed under latitude and longitude.

13 Now that is in.

14 Now, that witness did not testify

15 as to the actual -- an actual description of the

16 location, other than latitude and longitude.

17 MR. RICHARDSON:

18 Right.

19 THE COURT:

20 And what you intend to do is:

21 Put up Officer Collins -- or

22 Detective Collins.

23 And he is going to testify that he

24 looked at -- or -- or went on a Google Earth -- uh --

25 website, and put in those coordinates.

1 And from those coordinates, he
2 wants to testify as to the -- uh -- or to describe that
3 location -- uh -- in other terms, such as a physical,
4 street address, or something of that nature; or show a
5 map and point it out, rather than just have latitude and
6 longitude.

7 MR. RICHARDSON:

8 And Your Honor, I can tell you:

9 We've done some other things, I
10 think will help The Court with that.

11 Uh -- Of course, like we talked
12 about last night, he did plot latitude and longitude
13 through Google Earth.

14 He plotted it through Bing.

15 But last night, we also went
16 through and plotted those same coordinates through -- uh
17 -- NOAA; and that's the National Oceanic and -- uh --
18 Atmospheric Administration federal website.

19 It came out to the same thing.

20 In addition -- uh -- we found
21 where you can plot those coordinates -- uh -- change to
22 an aerial view, which we don't purport to do in front of
23 the -- uh -- jury; but just to help the -- the judge
24 under 901 Rule.

25 You can look -- and we are

1 prepared to show you -- and see the actual tower -- uh --
2 through Google Earth.

3 So you punch in a series of
4 numbers, it takes you to a spot. And you can see the
5 actual tower.

6 If you were off by a number or
7 two, you might see a house or something else.

8 But what we punched in shows the
9 actual towers, or the reflection of the towers -- you
10 know -- uh -- the -- uh -- shadow of the -- of the
11 towers.

12 And in addition Your Honor, Tony
13 went out to -- not to the Kentucky site -- to the
14 Tennessee site.

15 But he went to each of the cell
16 towers that are mentioned in the Myrtle Beach area that
17 we have talked about; used his own GPS; and verified that
18 what he was putting into Google -- what was on those
19 records -- uh -- were in fact correct.

20 And it's our argument that:

21 Under Rule 901, that anything
22 where the -- uh -- authentication or identification of
23 the condition present to the admissibility needs evidence
24 sufficient to support the finding is what it purports to
25 be.

1 Uh -- Now, the -- you know -- we
2 didn't drive back to Kentucky and check them.

3 But we can show you, by punching
4 in any one of those records that you want to, it'll --
5 it'll pull up a photograph of the cell tower -- overhead
6 view of the cell tower.

7 And it was done by -- uh -- a
8 federal agency -- or a check through a federal agency
9 with the same latitude and longitude.

10 And that's -- that's what we
11 worked on last night.

12 Now Tony had gone to those places
13 in the past and just not verified them.

14 And what he would say Judge, is
15 that:

16 When -- When he got there and
17 checked it out, it might be off a thousandth or a
18 millionth under those dot, dot, dot.

19 But that ... He couldn't get
20 underneath the tower. That was, of course, blocked off.

21 But he went to that location and
22 looked where a tower should be, and there was the tower.

23 In fact, on one of those -- uh --
24 we were told that the tower was on top of a water tower;
25 and punched it in. And you can easily see the water

1 tower at the location where it purports to be.

2 THE COURT:

3 All right.

4 I'm -- uh -- I -- I understand
5 your position on 901 is the authentication.

6 Uh -- However, I want to look back
7 at -- at 803.

8 And you tell me that:

9 Now, the testifying witness does
10 not rely on -- uh -- on Google Earth. Rather, he relies
11 on the records of National Oceanic and Atmospheric -- uh
12 -- what was it -- uh -- NOAA?

13 MR. RICHARDSON:

14 Administration, Your Honor.

15 THE COURT:

16 Yeah -- uh -- NOAA.

17 Uh --

18 MR. RICHARDSON:

19 I want to prove --

20 THE COURT:

21 That is a public record.

22 MR. RICHARDSON:

23 Yes sir.

24 THE COURT:

25 Uh -- I think that that is

1 satisfied -- uh -- or -- or satisfies the requirement of
2 803(8) -- uh -- of being a record, report, statement, or
3 data compilation --

4 MR. RICHARDSON:

5 Yes sir.

6 THE COURT:

7 -- uh -- in any form of public
8 offices or agencies setting forth:

9 a: The activities of the office
10 or agent, or matters observed pursuant to the duties
11 imposed by law -- uh -- as to which matters there was a
12 duty to report.

13 Uh -- I think that under 901(b)8,
14 that evidence is also admissible.

15 Uh -- That section says that:

16 Evidence of the document or data
17 compilation in any form:

18 a: Is in such condition as to
19 create no suspicion concerning its authenticity;

20 b: Was in a place where it, if
21 authenticated, would likely be; and

22 c: Has been in existence 20 years
23 or more at the time it is offered.

24 Certainly -- uh -- NOAA has been
25 an agency -- uh -- and The Court takes judicial notice of

1 that fact for well in excess of 20 years.

2 Uh -- And these are -- are -- are
3 locations that are established by latitude and longitude,
4 which has been recognized and used for navigation
5 purposes and all for centuries.

6 Uh -- The only question is:

7 Whether or not we can rely upon
8 the -- uh -- the exact physical location of that latitude
9 and longitude, and what's there on the ground.

10 That's -- That's the only thing
11 that gives me concern.

12 Now, I want to hear from you, Ms.

13 -- Ms. Wilson.

14 MS. WILSON:

15 Thank Your Honor.

16 THE COURT:

17 I quite frankly don't believe that
18 there is any reason to suspect that it would be anything
19 but a correct location.

20 But let me hear from you?

21 MS. WILSON:

22 Yes sir.

23 Your Honor, I -- I don't even
24 reach the conclusion that it is permissible.

25 My thought process is that:

1 Number one:

2 This is GPS at its worse.

3 The Solicitor has not brought in
4 any single expert from either of those places to
5 authenticate this -- describe the mode of -- of obtaining
6 that information.

7 THE COURT:

8 Yes, he has.

9 MS. WILSON:

10 He hasn't laid any foundation for
11 it.

12 THE COURT:

13 He has -- He has put up the ATT --
14 uh -- AT&T ex -- uh -- expert, or witness, who testified
15 that:

16 In the regular course of their
17 business, that they locate these towers.

18 They're able to describe the
19 location of latitude and longitude.

20 That was a business record that is
21 already in.

22 The question before -- before us
23 is:

24 How reliable is his information
25 concerning the physical location of that latitude and

1 longitude -- uh -- what's on the ground, I guess you
2 would say.

3 Now, I did have some question in
4 my mind about the use of Google Earth. Because that is
5 not a public agency. It is a private company that -- uh
6 -- provides this information.

7 I don't know where it gets it.

8 I don't know where it comes from.

9 I think that you would certainly,
10 if -- if that's all he's relying on, I think you would be
11 re -- uh -- entitled to -- uh -- to cross-examine some
12 person from Google Earth who -- uh -- says:

13 This is the low -- the physical
14 location.

15 But, now he is using -- uh -- a --
16 a database from the National Oceanic and Atmospheric
17 Agency -- uh -- which is a federal agency.

18 Uh -- And he says he is using
19 their data.

20 Now, tell me what the problem
21 there is?

22 MS. WILSON:

23 Your Honor, the problem is that:

24 a: Tony Collins -- Investigator
25 Collins is not an expert.

1 He does not know -- Even if he
2 pulled this information from a -- a source that The Court
3 finds acceptable, which I still object to, and I find
4 that -- I don't believe that it would be -- uh --
5 admissible -- uh -- information, because --

6 THE COURT:

7 Why?

8 MS. WILSON:

9 -- he has not laid a foundation.

10 Because, even though he has the
11 latitude and longitude from the phone records, he's
12 already got those in.

13 If Investigator Tony Collins
14 wanted to come in -- which I still feel it would be
15 inappropriate -- wanted to come and talk about what's in
16 the phone records, then he could do so.

17 But he's still not an expert --

18 THE COURT:

19 What if he --

20 MS. WILSON:

21 -- to testify about that location.

22 THE COURT:

23 What if he testified that he was
24 given a street address, and he went to the street
25 address; and this is what he observed at that street

1 address?

2 Latitude and longitude is
3 something very similar.

4 MS. WILSON:

5 It is, Your Honor.

6 But, he would be able to say that
7 he went to the latitude and longitude and saw a cell
8 phone tower.

9 He's no able to say that he saw a
10 specific area -- He could say what was in an area that he
11 observed.

12 But he can't document my client on
13 a map all the way from Kentucky based on the location of
14 cell phone towers, which is basically what they're trying
15 to do.

16 And I just --

17 THE COURT:

18 I -- I don't -- I don't think
19 that's what he's going to do.

20 I -- I think what he wants to
21 testify to is this:

22 The AT&T witness has testified
23 that this particular call was pinged off of a tower
24 located at this latitude and this longitude; okay.

25 He wants to be able to tell the

1 jury, in layman's terms I guess, what the street address.
2 or the physical, on the ground location, of that tower
3 is.

4 MS. WILSON:

5 And Your Honor --

6 THE COURT:

7 It's just by way of clarification.

8 MS. WILSON:

9 Well -- And I don't believe that
10 he is -- he has the -- the expertise or the knowledge to
11 do that.

12 He -- If Jimmy Richardson wanted
13 to put in that:

14 These towers -- and it wouldn't --
15 I don't believe it would actually be pinged, and I would
16 object to the use of that term.

17 But Jimmy Richardson trying to put
18 in that my client was at this location, passing through
19 this area, and this area, trying to track him all the way
20 from one location to another.

21 That's specifically what's on the
22 map. And that's specifically the only purpose for which
23 he could bring in Investigator Collins.

24 THE COURT:

25 But it -- Wasn't the testimony

1 that:

2 He would be in the area that would
3 be serviced by a particular --

4 MR. RICHARDSON:

5 That's exactly right.

6 THE COURT:

7 -- tower --

8 MS. WILSON:

9 And that evidence, Your Honor --

10 THE COURT:

11 -- or within 10 miles or so;

12 whatever --

13 MS. WILSON:

14 And that evidence, Your Honor, is
15 already in -- in -- in The Courts possession.

16 The jury's already heard that from
17 the person who testified for AT&T.

18 So for Investigator Collins to get
19 up here -- he's basically taking that information;
20 drawing a conclusion, which is prohibited under 803(8),
21 and trying to say to This Court -- to the jury:

22 These are the things that we have
23 compiled based on what was said on the stand by a
24 witness, who -- with an authenticated document.

25 That's all he's trying to do.

1 And I'm saying to The Court that
2 that's not permissible. It's not allowed under the
3 rules.

4 THE COURT:

5 What he's doing is saying:

6 This is where latitude X,
7 longitude X is.

8 That's -- That's what he's
9 testifying to.

10 MS. WILSON:

11 Well, Your Honor, then it would be
12 reasonable to assume that:

13 If that's what he's really saying,
14 then he can actually say:

15 This latitude and longitude is at
16 this location.

17 That's not what he's doing.

18 THE COURT:

19 That's what he's doing.

20 MS. WILSON:

21 He's got an actual map.

22 And the map details from day one
23 -- that Jimmy Richardson wants to use -- showing my
24 client's travel.

25 He's trying to document him on a

1 map; saying:

2 He's at this point.

3 And:

4 He's at this point.

5 If he wants to say to the jury

6 that:

7 This latitude and longitude simply
8 means this is where the tower is, and there is a radius
9 around the tower; he can get that information in without
10 drawing a map.

11 He's presenting the map.

12 And he wants to get the map in
13 through Investigator Collins, because he's trying to say
14 to the jury:

15 Look at where he went and how he
16 came here.

17 That's what he's doing.

18 THE COURT:

19 Well, Mr. Richardson, tell me what
20 your purpose is.

21 MR. RICHARDSON:

22 That -- uh -- That is basically
23 it; to show that he came from Kentucky to South Carolina.

24 And he -- The evidence is in --

25 THE COURT:

1 Well, this -- this is -- this is
2 talking about:

3 How precise do you want to be?

4 Are you talking about movement --

5 MR. RICHARDSON:

6 We --

7 THE COURT:

8 -- in a -- in a -- say a 10 mile
9 square where he could have gotten his call off of any
10 number of towers?

11 Or, are you trying to say that:

12 These towers are located between

13 Kentucky --

14 THE COURT:

15 That's all we're saying.

16 MR. RICHARDSON:

17 -- and Myrtle Beach.

18 MR. RICHARDSON:

19 That's all we're saying.

20 And we're not saying that He was
21 standing at the tower.

22 And we will even tell them:

23 This is not where Timmy Rogers
24 physically was.

25 Now a lot of the cell towers are

1 lined up beside -- uh -- interstates.

2 And the purpose is so that they
3 could pick up calls around those barren areas around
4 there.

5 But, we're not going to say he was
6 at the cell tower.

7 We're were going to say he was in
8 the coverage area of that cell tower.

9 THE COURT:

10 And what you can say is that:

11 He made a phone call --

12 MR. RICHARDSON:

13 In the coverage --

14 THE COURT:

15 -- that was -- uh -- came off of
16 this tower.

17 Isn't that as far as you can go?

18 MR. RICHARDSON:

19 That's all I care to go.

20 THE COURT:

21 Or, that his phone -- Or, there
22 was a call from his phone.

23 MR. RICHARDSON:

24 Not even that he made it.

25 MS. WILSON:

1 Then, Your Honor, then what is the
2 purpose of Investigator Collins today?

3 if that is all that he's really
4 trying to do by getting this information in, what purpose
5 -- because he's already done that.

6 He's got calls listed with the
7 latitude and longitude on the document that was
8 authenticated through a --

9 THE COURT:

10 But the jury doesn't know -- any
11 more than I would know -- where a particular latitude and
12 longitude is, as far as being on the map.

13 I -- I'll tell you:

14 I'm very familiar with Google
15 Earth. I use it all the time.

16 MS. WILSON:

17 Uh-huh.

18 THE COURT:

19 Uh -- I -- I'm -- I spent a lot of
20 time in Canada. And you use it there. You use GPS's a
21 lot.

22 MS. WILSON:

23 Uh-huh.

24 THE COURT:

25 Uh -- Just because it's -- it's so

1 vast.

2 I understand what it's about.

3 I had real concerns about him,
4 though, going to Google Earth, which is a public site,
5 retrieving information, and recording it in this
6 courtroom, where you would not have a right to confront
7 the accuracy of that information.

8 Google Earth can say:

9 At -- At the intersection of
10 Highway -- uh -- Interstate 77 and 85 near Concord, North
11 Carolina.

12 I would not let him do that.

13 But now he tells me that he has
14 confirmed it with a public database.

15 And I think that that would be
16 admissible -- uh -- for him to use that information.

17 It's available to anyone.

18 But if there is no suspicion --
19 there's -- and that's what The Court has to look at the
20 trustworthiness of the site; or the trustworthiness of
21 the data.

22 And there is absolutely no reason
23 for This Court to suspect that data downloaded -- that is
24 available to the public -- that data downloaded from --
25 uh -- the NOAA site would not be reliable.

1 MS. WILSON:

2 And Your Honor, I would just go
3 back to 803.

4 Clearly, it says -- 803(8) very
5 clearly says that:

6 Records, such as this one, would
7 be admissible.

8 But the problem I'm having here,
9 Your Honor, is:

10 a: I don't believe that the
11 trustworthiness has been established.

12 We have the Solicitor --

13 THE COURT:

14 But that -- that's the purpose of
15 803(8).

16 803 -- The purpose of 803 --
17 excuse me -- (8) -- is that:

18 Those are exceptions to -- uh --
19 hearsay.

20 MS. WILSON:

21 Yes sir.

22 THE COURT:

23 When we're using a reliable,
24 public data -- uh -- report -- uh -- or data compilation
25 by a public office or agency, that we can rely on those.

1 And for that reason, they're not
2 suspect.

3 MS. WILSON:

4 But actually, Your Honor, at the
5 very end, it says:

6 Provided, however, that any -- uh
7 -- investigator's notes involving opinions, judgments, or
8 conclusions, are not admissible.

9 This is a conclusion about the
10 evidence is that has already been entered into --

11 MR. RICHARDSON:

12 He's not making any conclusions.

13 THE COURT:

14 I --

15 MS. WILSON:

16 That's --

17 THE COURT:

18 I --

19 MS. WILSON:

20 That's --

21 THE COURT:

22 I -- I don't think that's an
23 opinion. It's where it is.

24 MS. WILSON:

25 Well, the conclusion --

1 THE COURT:

2 It's a fact.

3 MS. WILSON:

4 The conclusion, Your Honor, is
5 where he was.

6 That is what is detailed in the
7 map.

8 THE COURT:

9 But that's just it.

10 They're not going to say where he
11 was.

12 They're just going to say that:
13 He was in the general area of a
14 cell tower.

15 MS. WILSON:

16 But Your Honor, there's no --

17 THE COURT:

18 Or the phone was in a general
19 area.

20 MS. WILSON:

21 Yes sir.

22 But there's no general area of
23 detail here.

24 There's -- There's a specific line
25 with the times of the calls; the phone numbers to which

1 they are -- to which this phone was calling; and the
2 location of one line -- one line.

3 There's no general area on here.

4 THE COURT:

5 Isn't that line a hi-lite?

6 MR. RICHARDSON:

7 That line is a highway.

8 MS. WILSON:

9 So you're saying he's on the
10 highway.

11 MR. RICHARDSON:

12 No. We're -- We're marking the
13 cell towers off of the highway.

14 THE COURT:

15 That's merely a map to show the
16 location of the cell tower.

17 MS. WILSON:

18 So then, Your Honor, if he took a
19 -- a picture of an actual cell phone towers, and said
20 that:

21 On this -- In this -- At this
22 tower, this is just latitude and longitude.

23 That would not be more reasonable
24 under the circumstances.

25 Because my position is that:

1 This map details a travel plan.

2 That's what it shows.

3 THE COURT:

4 It shows a highway.

5 MS. WILSON:

6 It shows a travel plan, Your
7 Honor, where the map was -- where the -- the towers are
8 lined up.

9 And he's trying to say that:
10 This is how he traveled.
11 Otherwise, it wouldn't even need
12 to be on map form.

13 THE COURT:

14 I -- I understand that.
15 But I think, and it's my ruling
16 that:

17 It is an exception to hearsay
18 under 803(8); and that the authentication -- uh -- is --
19 uh -- adequate under 901(b)8, as well.

20 So I'm going to let it in -- let
21 him do it; okay.

22 MR. RICHARDSON:

23 Thank you, Your Honor.

24 MS. WILSON:

25 Thank Your Honor.

1 And -- uh -- of course, I would
2 ask that you preserve my objection.

3 THE COURT:

4 I will preserve your objection;
5 okay.

6 MS. WILSON:

7 Thank you.

8 THE COURT:

9 And there again, Mr. -- uh --
10 Richardson, I'm relying on the fact that you tell me that
11 this information was -- was -- uh -- uh -- taken from a
12 NOAA site; okay.

13 MR. RICHARDSON:

14 And Joseph Hall is here, and Tony
15 Collins.

16 We were -- We were both out here
17 till about nine o'clock last night.

18 THE COURT:

19 I mean, I -- I -- I --

20 MR. RICHARDSON:

21 If you want me to ask --

22 THE COURT:

23 My ruling would probably be
24 different if you were to tell me that:

25 I went on Google Earth, which is

1 not a -- an official agency, public site.

2 It -- It's nothing more than
3 public site.

4 I would have real difficulty -- uh
5 -- allowing him to testify as to information he got from
6 that site.

7 Although, I don't think it's
8 suspect.

9 I -- I still believe she would
10 have a right to confront --

11 MR. RICHARDSON:

12 Well --

13 THE COURT:

14 -- because it's not set forth in
15 the rule as being an exception.

16 MR. RICHARDSON:

17 I understand.

18 But I -- I do want to make The
19 Court aware that:

20 When we typed it in, it come up
21 Google Earth being the exact same location.

22 So I think that passes the
23 standard.

24 When we typed it in under NOAA --

25 THE COURT:

1 But you --

2 MR. RICHARDSON:

3 -- it did the same thing.

4 But, Your Honor, NOAA --

5 THE COURT:

6 All you need to do is talk about

7 NOAA.

8 MR. RICHARDSON:

9 Well, NOAA uses, as one of its --

10 uh -- latitude, longitude, Google.

11 NOAA uses that.

12 So, I mean, they -- it's a federal

13 agency; but that's a --

14 THE COURT:

15 I want your information coming

16 from --

17 MR. RICHARDSON:

18 NOAA.

19 THE COURT:

20 -- NOAA.

21 Okay. All right.

22 MR. RICHARDSON:

23 Okay.

24 THE COURT:

25 All right. All right.

1 All right; let's bring in the
2 jury; okay

3 MR. RICHARDSON:

4 But we're not going to put NOAA on
5 the map unless you tell us to.

6 THE COURT:

7 I -- I --

8 MR. RICHARDSON:

9 We'll just say --

10 THE COURT:

11 I'm -- I'm looking to his
12 testimony; okay.

13 MR. RICHARDSON:

14 Yes sir.

15 THE COURT:

16 He confirmed it with NOAA.

17 MS. WILSON:

18 Excuse me, Your Honor, one quick
19 question.

20 Uh -- Is the map from Google
21 Earth?

22 MR. RICHARDSON:

23 No. We're going to -- The map is
24 being confirmed by NOAA, but he's going to go back and do
25 it as it were from NOAA at first.

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1 THE COURT:

2 Okay.

3 MR. RICHARDSON:

4 NOAA.

5 THE COURT:

6 Okay.

7 MR. RICHARDSON:

8 So those will be close, but it'll
9 be the same thing; okay.

10 (WHEREUPON: The jury empanelled
11 in the case was escorted back into the courtroom at 9:52
12 AM, October 13, 2010; and was in fact present during the
13 following proceedings.)

14 THE COURT:

15 I see we have all our jurors.

16 Did -- uh -- Mr. Roth have ham
17 biscuits for you this morning, and coffee?

18 FOREPERSON:

19 (Laughs.) Thank you, very much.

20 THE COURT:

21 He -- He took care of you.

22 Well, I -- I -- Mr. Roth will
23 always do that.

24 FOREPERSON:

25 That was very nice; thank you.

1 THE COURT:

2 I apologize for us getting a late
3 start this morning.

4 Actually, we didn't get a late
5 start.

6 We've been working, as is often
7 the case.

8 Uh -- From time to time, we have
9 to address legal issues that arise in a trial. And -- uh
10 -- rather than bring you out and send you back -- uh --
11 we tried to take care of everything that we could up
12 front this morning.

13 Again, that is to -- uh -- avoid
14 having -- uh -- to -- sending you in and out of the
15 courtroom.

16 But we've taken care of a -- a
17 good bit that we needed to resolve this morning.

18 So we're ready to go. And I hope
19 you are, as well.

20 All right.

21 Now, Mr. -- uh -- Richardson, your
22 next witness.

23 MR. RICHARDSON:

24 Your Honor --

25 THE COURT:

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1 No. I think we -- uh -- we -- uh
2 -- you had just completed the examination of -- uh -- of
3 Ms. Engle?

4 MR. RICHARDSON:

5 Yes sir.

6 THE COURT:

7 Is that correct?

8 MR. RICHARDSON:

9 Yes sir.

10 THE COURT:

11 And -- uh -- your direct is
12 complete?

13 MR. RICHARDSON:

14 Yes sir.

15 THE COURT:

16 All right. Then let's -- uh --
17 have Ms. Wilson, or Mr. Galmore, whoever -- uh -- will be
18 doing the cross-examination.

19 CLERK:

20 Does she need to be sworn?

21 THE COURT:

22 She has been previously sworn.

23 And I remind you of that, Ms. Engle.

24 WITNESS:

25 Yes sir.

1 MS. WILSON:

2 Thank Your Honor.

3 WHEREUPON: SHERRY ENGLE WAS
4 REMINDED OF HER EARLIER OATH AND TESTIFIED UNDER OATH AS
5 FOLLOWS:

6 CROSS-EXAMINATION BY MS. WILSON:

7 Q. It's true that it was you, and not Timmy Rogers,
8 that wanted to killed your husband; isn't it?

9 A. No it's not.

10 Q. After all, Timmy simply got divorced; didn't he?

11 A. Excuse me?

12 Q. He simply got divorced; didn't he?

13 A. But he didn't -- He told me he was married.

14 Q. He simply got divorced; didn't he?

15 A. He simply got divorced.

16 Q. And his ex-wife is alive and well; isn't she?

17 A. Yeah.

18 Q. Yeah. So, did you decide you wanted to get rid of
19 your husband after a week --

20 A. No.

21 Q. -- of marriage?

22 A. (Nods in the negative.)

23 Q. Did you decide to get rid of him after the Christmas
24 holidays?

25 A. I never decided anything.

CROSS-EXAMINATION OF SHERRY ENGLE

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1 Q. Well, sure you did; didn't you?

2 A. Uh-uh. (Nods in the negative.)

3 Q. I mean, certainly you must have decided, on his
4 birthday maybe, that he had to go; correct?

5 A. No.

6 Q. So, maybe you decided to kill him just one weekend;
7 right?

8 A. No.

9 Q. Now, you do admit that you arranged to have you
10 husband killed; didn't you?

11 A. (No response.)

12 Q. You admitted that right?

13 A. Me and Tim done the arranging.

14 Q. No. Ma'am, you said that you arranged it.

15 A. Me --

16 Q. Didn't you?

17 A. -- and Tim, together, arranged it.

18 Q. You called someone, you said -- you claim it was
19 Timmy Rogers; correct?

20 A. (No response.)

21 Q. But you're saying that you called someone and told
22 them:

23 He is going to the mailbox.

24 Q. Didn't you say that?

25 A. I called Tim Rogers.

1 Q. You arranged your husband's murder; did you not?

2 A. Tim and I arranged it the day before.

3 Q. So you claim that you and Timmy Rogers arranged the
4 day before; but you are the one who called someone and
5 said:

6 He's on his way to the mailbox.

7 Okay; you can kill him now.

8 A. That's --

9 Q. Did you not?

10 A. -- what Tim told me to do.

11 Q. Tim told you to do what?

12 A. To call him when Fred left the house.

13 Q. Tim told you to call him?

14 A. Uh-huh.

15 Q. Time told you to call him when Fred left the house?

16 A. He did indeed.

17 Q. But you called; didn't you?

18 A. I sure did.

19 Q. You claim -- You claim it him. But you called?

20 A. I called Tim.

21 Q. Was Tim -- Was Tim -- Tim wasn't at your house; was
22 he?

23 A. (No response.)

24 Q. Saying: Call me right now. You better call me;
25 wasn't he?

CROSS-EXAMINATION OF SHERRY ENGLE

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- 1 A. No.
- 2 Q. So you picked up the phone and you called Tim
- 3 Rogers. Or you claimed you called Tim Rogers; and said:
- 4 He's on his way to the mailbox.
- 5 A. I did call --
- 6 Q. So in other words --
- 7 A. -- Tim Rogers.
- 8 Q. -- you arranged to have your husband killed; didn't
- 9 you?
- 10 A. Me and Tim had it arranged.
- 11 Q. You and Tim. You and Tim had it arranged.
- 12 A. Yes.
- 13 Q. So you're still minimizing your participation in
- 14 this crime; aren't you?
- 15 A. I'm just as guilty as Tim.
- 16 Q. Actually, you're actually guiltier; aren't you --
- 17 A. No, I --
- 18 Q. because you actually set it up.
- 19 A. (No response.)
- 20 Q. This was your husband; correct?
- 21 A. Yes, Fred was my husband.
- 22 Q. Your husband? The husband you claimed you loved;
- 23 right?
- 24 A. I loved him.
- 25 Q. As a matter of fact, you were sitting here crying

1 before this jury yesterday; weren't you?

2 A. (No response.)

3 Q. Shedding tears?

4 A. (No response.)

5 Q. Shedding tears over the man that you claimed that
6 this man wanted to kill because he just had to be with
7 you; correct?

8 A. That's what --

9 Q. Isn't that correct?

10 A. That's what he said.

11 Q. So basically, you're telling This Court that:

12 Because he loved you so very much,
13 he was so overcome with your beauty perhaps?

14 Was that it?

15 A. (No response.)

16 Q. Was he overcome with your beauty?

17 A. I don't know what he was overcome with, ma'am.

18 Q. Was -- Was he overcome with lust?

19 A. Probably; yes.

20 Q. Probably lust? Probably lust? That's what usually
21 does it; right?

22 A. (No response.)

23 Q. So he's so overcome that he tells you:

24 I'm going to kill your husband.

25 And what did you say?

CROSS-EXAMINATION OF SHERRY ENGLE

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1 A. (No response.)

2 Q. What did you say when he says:

3 I want to kill your husband?

4 A. Are you crazy?

5 Q. But -- No; that's not what you testified to
6 yesterday; is it?

7 A. (No response.)

8 Q. Yesterday, you told The Court that:

9 Timmy Rogers called you up and
10 said:

11 I'm going to kill your husband.

12 And you said what?

13 A. (No response.)

14 Q. You said: Okay.

15 A. (No response.)

16 Q. Isn't that right?

17 A. That's not the first time he called to talk about
18 it. He --

19 Q. I didn't ask you about the first time --

20 A. No --

21 Q. -- he called to talk about it.

22 COURT REPORTER:

23 I can only take one at a time.

24 MS. WILSON:

25 Sorry about that.

1 COURT REPORTER:

2 Please let her answer.

3 MS. WILSON:

4 I apologize.

5 CROSS-EXAMINATION BY MS. WILSON CONTINUED:

6 Q. I didn't ask you about the first time he called you.

7 I ask you what your response was.

8 So, you --

9 A. My response was:

10 You go ahead and do it. You're
11 going to do it anyway. And there's nothing I can do to
12 change your mind.

13 Q. So you can't control what happens in this situation;
14 is what you're trying to tell this jury?

15 A. I could not control it. That's true.

16 Q. So you couldn't use your phone to call the police?

17 A. No.

18 Q. And you couldn't use your phone to call up a friend
19 or family member?

20 A. No.

21 Q. And you couldn't call up Fred Engle's family; could
22 you?

23 A. No.

24 Q. So, you're telling This Court -- and you want it to
25 be very believable to all these people -- that you just

CROSS-EXAMINATION OF SHERRY ENGLE

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1 couldn't do anything?

2 You were powerless to stop this
3 from happening?

4 A. I was powerless.

5 Q. So you're so powerless that your phone doesn't work;
6 that you can't speak; and you can't keep yourself,
7 basically, from sending your husband out?

8 A. (No response.)

9 Q. Is that what you want us to believe?

10 A. Yes.

11 Q. Do you -- You can't possibly think that's really
12 believable; do you?

13 A. Yes; for the reason, yes.

14 Q. So again, you're still minimizing this crime,
15 minimizing what you did?

16 A. (No response.)

17 Q. And minimizing is basically lying; isn't it?

18 A. No.

19 Q. So, as far as your claim that you loved Fred -- Fred
20 Engle, the decedent -- deceased here -- the man you
21 killed; you -- You weren't happy; were you?

22 A. Yes I was.

23 Q. So you were so happy with Fred Engle that you were
24 having an affair with someone --

25 A. Yes.

1 Q. -- correct?

2 A. (Nods in the affirmative.)

3 Q. So happy with Fred Engle that you basically brought
4 your lover to Myrtle Beach; didn't you?

5 A. He followed me here.

6 Q. He followed you? Oh yes; I remember you saying
7 that on yesterday.

8 He followed you here from
9 Kentucky. But you checked him into the hotel.

10 You paid for the hotel room; isn't
11 that correct?

12 A. I do not recall that.

13 Q. You don't recall it?

14 A. I don't recall. I could have. And I -- you know
15 -- I don't really recall --

16 Q. So --

17 A. -- if I paid for it or not.

18 Q. So, on yesterday, when you told This Court that you
19 believed that you paid for it; that you know you checked
20 him in; are you saying that's not true?

21 A. I'm saying that I said yesterday that I was there
22 with him. I don't know if I paid for it, or checked him
23 in.

24 I have -- I don't remem -- recall.

25 Q. So you don't recall what you said yesterday.

CROSS-EXAMINATION OF SHERRY ENGLE

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1 A. (No response.)

2 Q. So, you don't recall if you were lying?

3 A. I don't recall what I done yester -- with him in the
4 motel.

5 Q. So you -- you don't recall the truth from yesterday;
6 is what you're saying?

7 A. Yes, I recall the truth.

8 Q. Then -- Then, are you telling it to the jury right
9 now?

10 A. Yes.

11 Q. Well you can't be. Because this truth today doesn't
12 match the truth from yesterday; does it?

13 A. Yes it does.

14 Q. It doesn't match; does it?

15 A. (No response.)

16 Q. Because yesterday, you said that you checked him in.
17 And that you were there, and you paid for the room.

18 A. I could have.

19 Q. So now you're saying it's possible that you didn't
20 do it on yesterday?

21 A. I could have. I don't recall it.

22 MR. RICHARDSON:

23 Your Honor, I believe she's
24 answered that.

25 She said she don't recall.

1 THE COURT:

2 You've asked it several times --

3 MS. WILSON:

4 Thank Your Honor.

5 THE COURT:

6 -- and she's answered.

7 MS. WILSON:

8 Yes sir.

9 THE COURT:

10 please move on.

11 CROSS-EXAMINATION BY MS. WILSON CONTINUED:

12 Q. Uh -- Now, you wanted to move -- Fred wanted to move
13 overseas; didn't he?

14 A. I beg your pardon?

15 Q. Fred wanted to move overseas; did he not?

16 A. Not that I know of.

17 Q. You didn't call your brother up and complain that
18 Fred wanted to move you overseas?

19 A. He had talked about going to Hong Kong -- to move to
20 Hong Kong.

21 But there hadn't been any -- uh --
22 really arrangements or anything; 'cause we hadn't really
23 sat down and discussed it.

24 Q. So, when you called up your brother to complain
25 about it, it was just because it wasn't probably going to

CROSS-EXAMINATION OF SHERRY ENGLE

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1 happen; correct?

2 A. It was probably going to happen 'cause he had a job
3 there.

4 Q. So, you --

5 A. And I didn't really want to move to Hong Kong.

6 Q. Exactly. So Fred wanted you to go. And you didn't
7 want to go, did you?

8 A. No I didn't want to go.

9 Q. And you were complaining about that fact to your
10 brother; didn't you?

11 A. Yes.

12 Q. And your brother told you to go ahead and do what
13 you wanted to do; didn't he?

14 A. Yes.

15 Q. Thank you. So you didn't work outside this home;
16 did you?

17 A. No.

18 Q. Fred was the wage earner; correct?

19 A. Yes ma'am.

20 Q. And he was pretty good at what he did; wasn't he?

21 A. Yes ma'am.

22 Q. He made good money; didn't he?

23 A. Yes ma'am.

24 Q. And Fred took care of all of the expenses in your
25 household; didn't he?

- 1 A. He sure did; yes ma'am.
- 2 Q. He took care of you?
- 3 A. Yes ma'am.
- 4 Q. He gave you an allowance?
- 5 A. No. I just went to the bank and got it whenever I
- 6 wanted to.
- 7 Q. So then, it was money on tap for you; wasn't it?
- 8 A. Yeah.
- 9 Q. You could go get money out of the bank whenever you
- 10 wanted to?
- 11 A. Yes ma'am.
- 12 Q. Need a hundred here, go to the ATM; correct?
- 13 A. Yes ma'am.
- 14 Q. You need 500 over there, Fred was easy about that;
- 15 wasn't he?
- 16 A. Yes ma'am.
- 17 Q. He didn't care. He was willing to share everything
- 18 he had with you; wasn't he?
- 19 A. He was, indeed.
- 20 Q. 'Cause you were his wife; correct?
- 21 A. Yes ma'am.
- 22 Q. And, matter of fact, Fred not only took care of you;
- 23 took care of your household; but he also helped you with
- 24 your family; didn't he?
- 25 A. He did indeed.

CROSS-EXAMINATION OF SHERRY ENGLE

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1 Q. And you gave lots of money to your family to help
2 them out; didn't you?

3 A. Fred and I, together, did it.

4 Q. But it was for Fred's money, ultimately, correct?

5 A. Yes.

6 Q. And you even went so far as to tell the police that
7 Fred handled all the financial matters and situations in
8 your household; didn't you?

9 A. He did take care of all the financial deals and
10 everything like that; yes.

11 Q. As a matter of fact, you were adamant, when the
12 police originally talked to you, when you're saying that
13 -- that:

14 You knew nothing about the
15 financial situation?

16 A. I didn't.

17 Q. But you knew how to use those ATM cards; didn't you?

18 A. I sure did?

19 Q. And -- uh -- basically, you were pretending to be
20 the helpless window; weren't you?

21 A. No, I did not.

22 Q. Once -- Once it was discovered, with your help of
23 course, that Fred had been killed; you pretended that you
24 did not know anything about anything; didn't you?

25 A. Yes ma'am, I did.

1 Q. You denied knowing about the murder; didn't you?

2 A. Yes ma'am.

3 Q. You denied knowing about your financial situation;
4 didn't you?

5 A. (No response.)

6 Q. Didn't you?

7 A. In what statement? How are you quoting that
8 statement.

9 Q. I said you got into a situation?

10 A. I knew how our financial situation was.

11 Q. And --

12 A. I mean, I didn't have much or anything, you know.

13 Q. But you knew it was a good financial situation;
14 didn't you?

15 A. Yes.

16 Q. You knew that when you went to that ATM --

17 A. He provided very well for me; yes.

18 Q. And you knew that when you went to the ATM, Money
19 always came out; didn't you?

20 A. Yes ma'am.

21 Q. Now, you pretended to be helpless and -- and
22 ignorant of things. But you're actually very shrewd;
23 aren't you?

24 A. Yes.

25 Q. Very manipulative; aren't you?

CROSS-EXAMINATION OF SHERRY ENGLE

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1 Q. Yes.

2 Q. As a matter of fact, you had access to the money.
3 Fred gave you money whenever you wanted it. He didn't
4 question you about it?

5 A. (No response.)

6 Q. You had a really great situation; didn't you?

7 A. (No response.)

8 Q. But for the fact that you weren't happy there; you
9 weren't satisfied.

10 Isn't that right?

11 A. I was happy.

12 Q. Well, you couldn't have been too happy, because you
13 -- you killed your husband.

14 A. (No response.)

15 Q. I mean, happy people don't kill their husbands; do
16 they?

17 A. (No response.)

18 Q. They don't go out and allow someone to take the life
19 of the person they love; do they?

20 A. I didn't do it by myself.

21 Q. I know you keep saying that. But bottom line is:

22 Again, we're minimizing; aren't
23 we?

24 We're minimizing your
25 responsibility?

- 1 A. My responsibility is just as much as Tim Rogers.
- 2 Q. Just as much as Tim Rogers?
- 3 A. Uh-huh.
- 4 Q. Because Tim has to come back into it; doesn't he?
- 5 A. (No response.)
- 6 Q. Because Tim is a person who refused you; isn't he?
- 7 A. No, he is not.
- 8 Q. He refused to do anything that you wanted him to do;
- 9 didn't he?
- 10 A. No, he did not.
- 11 Q. So, basically, what you're telling This Court today
- 12 is that:
- 13 You allowed your husband to be
- 14 killed; but you loved him; correct?
- 15 A. Yes I did.
- 16 Q. But you loved him?
- 17 A. I loved my husband.
- 18 Q. Now -- Now, Fred took you to different countries;
- 19 didn't he?
- 20 A. Yes ma'am.
- 21 Q. You went to Holland; correct??
- 22 A. Yes ma'am.
- 23 Q. Did you go to Spain?
- 24 A. No.
- 25 Q. What about Italy or England?

CROSS-EXAMINATION OF SHERRY ENGLE

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- 1 A. Yes.
- 2 Q. So, before Fred, you didn't even have a passport,
3 probably; did you?
- 4 A. Yes, I did.
- 5 Q. You did?
- 6 A. (No response.)
- 7 Q. For what -- Where did -- Did you go on a cruise with
8 Fred?
- 9 A. Did I what?
- 10 Q. Did you ever go on a cruise with Fred?
- 11 A. No ma'am.
- 12 Q. But he took you all over the world just about?
- 13 A. Different places; yes.
- 14 Q. Different places? So, it would be safe to say that
15 the possibility for travel and for world experience
16 opened up for you when you married Fred; didn't it?
- 17 A. Yes ma'am.
- 18 Q. And would you -- I mean, you would say that Fred was
19 a pretty traditional kind of husband; wouldn't you?
- 20 A. Yes ma'am.
- 21 Q. He was the wage earner?
- 22 A. Yes ma'am.
- 23 Q. And he -- you know -- wanted you as his wife to have
24 a traditional role of not working and taking care of the
25 household; didn't he?

1 A. Yes ma'am.

2 Q. And to that end, he took care of everything --
3 everything that you could possibly ask him to take care
4 of?

5 A. Yes ma'am.

6 Q. He even had you -- uh -- because you wanted, I
7 presume, a breast augmentation; and -- and a bypass -- a
8 gastric bypass; didn't you?

9 A. He didn't pay for the gastric bypass.

10 Q. He paid for the breast augmentation, though --

11 A. Yes.

12 Q. -- correct?

13 A. (Nods in the affirmative.)

14 Q. Okay. And when you were making all those trips
15 back and forth to Kentucky --

16 A. Yes ma'am.

17 Q. -- when you loved your husband --

18 A. Yes ma'am.

19 Q. -- but when you were cheating on him; you say that
20 Fred subsidized those trips; didn't you?

21 A. Yes.

22 Q. It was his money that helped you travel; correct?

23 A. Yes.

24 Q. And it was his money that you gave to your family?

25 A. Yes ma'am.

CROSS-EXAMINATION OF SHERRY ENGLE

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1 Q. And it was his money that you used when you set Tim
2 Rogers up in a hotel; isn't it?

3 A. If I set Tim up in a hotel, yes, it was Fred's
4 money.

5 Q. So, again, we're minimizing, I understand; correct?

6 A. (No response.)

7 Q. Because you say: If you did it.

8 A. All I'm saying that:

9 If I -- If I could recall, if I
10 really did it, gave the money for his hotel room and
11 everything; then, yes, I -- you know -- I would --

12 Q. So --

13 A. I did.

14 Q. I'm sorry?

15 A. I did; yes.

16 Q. Okay. So, now you're saying you did. And I want
17 to make sure I'm being clear. Because there's been some
18 confusion.

19 A. I'm just saying:

20 Yes, I would have -- I would --
21 you know -- I would -- You've got me confused.

22 Q. Well, I think it's easy to become confused when
23 you're not being truthful; don't you think?

24 A. I'm being truthful.

25 Q. Certainly. Uh -- Now, Fred provided a beautiful

1 home for you?

2 A. (No response.)

3 Q. Correct?

4 A. Yes.

5 Q. And Fred Engle, who gave you money; took care of
6 you; took care of your family; let you come and go as you
7 pleased; still wasn't enough for you; was he?

8 A. (No response.)

9 Q. He wasn't enough for you; was he?

10 A. Yes, he was.

11 Q. Well, he couldn't have been enough for you; because
12 you admit to having a relationship with Timmy Rogers?

13 A. I do indeed.

14 Q. While you were married to your spouse; correct?

15 A. Yes.

16 Q. So Timmy Rogers supplemented your relationship with
17 the husband that you were so happy with?

18 A. No, he did not.

19 Q. Is that what you're telling me?

20 A. No, he did not.

21 Q. But you're so happy in that relationship with Fred
22 Engle, that you're having an affair?

23 A. I was having an affair; but not of my free will.

24 Q. So, now you didn't have free will?

25 A. Yes.

CROSS-EXAMINATION OF SHERRY ENGLE

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- 1 Q. So you were going back and forth to Kentucky.
2 You're having a relationship with Timmy Rogers. You're
3 giving him jewelry; correct?
4 A. (No response.)
5 Q. Didn't you give him jewelry?
6 A. Yes.
7 Q. What kind of jewelry did you give him?
8 A. A ring and a watch.
9 Q. And wasn't there a necklace?
10 A. He took that.
11 Q. He took the necklace from you?
12 A. Yeah. He took that off --
13 Q. You just couldn't get that back; could you?
14 A. No, not necessarily; no.
15 Q. Because he was so forceful, he took it from you?
16 A. He is forceful.
17 Q. Right. Right. He's forceful. You are having an
18 affair on your husband. You're getting money. Traveling
19 anywhere you want to go; doing anything you want to do;
20 but you're overcome because somebody takes your necklace?
21 A. (No response.)
22 Q. And you don't know how to get that back; correct?
23 A. He did overcome me.
24 Q. Is that what you're telling This Court today? You
25 were overcome?

- 1 A. I was overcome by Tim Rogers.
- 2 Q. Okay. So you're overcome by Tim.
- 3 A. (No response.)
- 4 Q. Well, let's -- let's talk about that a little bit
- 5 more actually.
- 6 A. And I --
- 7 Q. Because you did a lot of things to manipulate Mr.
- 8 Rogers; didn't you?
- 9 A. I did not.
- 10 Q. So you -- you didn't tell Mr. Rogers you were
- 11 pregnant?
- 12 A. No.
- 13 Q. (Laughs.) You didn't tell him you were pregnant
- 14 with twins?
- 15 A. No.
- 16 Q. You didn't show him any baby cloths --
- 17 A. No.
- 18 Q. -- that you had purchased --
- 19 A. No.
- 20 Q. -- to support your story?
- 21 A. No.
- 22 Q. And you didn't give him any pills either, did you?
- 23 A. No.
- 24 Q. Of course you didn't; because -- because that would
- 25 be manipulation; wouldn't it?

CROSS-EXAMINATION OF SHERRY ENGLE

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- 1 A. I would -- I would say so; yes.
- 2 Q. Telling somebody you're pregnant when you know
- 3 you're not; and giving somebody pills --
- 4 A. Ms. Wilson, I had a --
- 5 Q. Those things would be manipulative; wouldn't they?
- 6 A. I had a complete hysterectomy in 1982. How could I
- 7 possibly be pregnant?
- 8 Q. Well, the issue is:
- 9 How could Tim know that you
- 10 couldn't possibly be pregnant?
- 11 A. That's one of the things he dreamed up, I guess.
- 12 Q. He dreamed it up?
- 13 A. He was -- He was constantly imagining things that
- 14 wasn't there, or wasn't happening.
- 15 Q. Constantly imagining things?
- 16 A. Yes.
- 17 Q. So, did he imagine, then, that you loved him?
- 18 A. He -- He -- He kept thinking that Fred was going to
- 19 take me away from him, and everything.
- 20 He would -- kept going on with
- 21 different things; wanting to know what he could do to
- 22 keep me.
- 23 Q. Take you away from him; you say; correct?
- 24 A. Yes.
- 25 Q. Yet, it was already pretty clear, by your own

1 statement here today, that you weren't really going
2 anywhere; were you?

3 A. With him; no. I wasn't.

4 Q. With Fred Engle. You weren't going anywhere with
5 Fred Engle; were you?

6 A. Yes, I was. He was my husband.

7 Q. Well, you told your brother you didn't want to go;
8 didn't you?

9 A. I didn't want to go to Hong Kong; no.

10 Q. So you're saying you would have gone anywhere else
11 with Fred, but to Hong Kong?

12 A. (No response.)

13 Q. Is that what you're telling us?

14 A. Yeah.

15 Q. So, out of all the places in the world Fred might
16 have to go, you didn't want to go to one place only?

17 A. I didn't really want to go to Hong Kong.

18 Q. It just wasn't a good time for you to be in Hong
19 Kong; correct?

20 A. No; that wasn't the reason.

21 Q. Now, you -- you -- you went back and forth to
22 Kentucky. And while there, you met Timmy Rogers; didn't
23 you?

24 A. Yes.

25 Q. On one of your trips?

CROSS-EXAMINATION OF SHERRY ENGLE

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- 1 A. Uh-huh.
- 2 Q. And Timmy was an affable enough guy when you met
3 him; was -- wasn't he?
- 4 A. Yeah.
- 5 Q. And he told you at that time, didn't he, that he was
6 going through a rough patch in his life; didn't he?
- 7 A. Oh, yeah.
- 8 Q. And he was going through a divorce; wasn't he?
- 9 A. No, not at that time.
- 10 Q. He --
- 11 A. He wasn't going through the divorce.
- 12 Q. He was separated from his wife?
- 13 A. Yes.
- 14 Q. Things were not going well in his marriage; correct?
- 15 A. He told me that he was in the process of getting a
16 divorce.
- 17 Q. I think I just said that; didn't I?
- 18 A. He --
- 19 Q. He said that he was going through a rough patch and
20 he was in the process of getting a divorce; correct?
- 21 A. (No response.)
- 22 Q. Correct.
- 23 A. (No response.)
- 24 Q. Isn't that correct?
- 25 A. He didn't tell -- tell me that he was in the process

1 of getting a divorce at that time.

2 Q. Ma'am, you just stated to This Court that he told
3 you he was getting a divorce.

4 A. Yes.

5 Q. So --

6 A. Yes.

7 Q. -- he was going through a divorce --

8 A. Yes.

9 Q. -- at that time?

10 A. At that time.

11 Q. Thank you.

12 A. But he wasn't going through it at that time by -- by
13 filling out the papers or anything; because it was June
14 -- in June -- in the first of June when him and his wife
15 applied for the divorce.

16 Q. So again, we're equivocating about what it was
17 specifically?

18 A. (No response.)

19 Q. We're very clear. He was going through a divorce;
20 correct?

21 A. (No response.)

22 Q. A separation; a split from his wife, where he
23 planned to get a divorce?

24 A. Yes.

25 Q. Correct.

CROSS-EXAMINATION OF SHERRY ENGLE

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1 Q. Yes.

2 Q. And you thought he was a nice looking guy; didn't
3 you?

4 A. He was okay.

5 Q. Okay. And you wanted to talk to him; didn't you?

6 A. (No response.)

7 Q. So you did. You talked to him. You had a
8 conversation with him that very day; didn't you?

9 A. Yeah.

10 Q. The first day you met him?

11 A. Yeah.

12 Q. And you had a conversation with him about just how
13 hard a time he was having?

14 A. Not really.

15 Q. Correct.

16 A. Not really. I didn't -- I was working, putting
17 stuff in the storage building. And he was just sitting
18 there, idly, saying:

19 Well, where are you from?

20 And -- And:

21 Who are you?

22 And:

23 What's your name.

24 And stuff like that, you know.

25 Q. You told the Solicitor on yesterday that you and

1 Timmy talked --

2 A. We did talk.

3 Q. -- at -- So you did have a conversation with him?

4 A. We did talk.

5 Q. And you said that he told you information about
6 himself; didn't you?

7 A. Yeah. He did. He told me --

8 Q. And that you didn't really tell him anything; but he
9 told you a lot of things; correct?

10 A. He told me his name; and where he was from; and what
11 -- who he worked for; and all that.

12 Q. So -- So --

13 A. Just a normal conversation that you would have with
14 someone you didn't know.

15 Q. So, at the end of this conversation --

16 A. Yes.

17 Q. -- that you had, you got Timmy's phone number;
18 didn't you?

19 A. When he came back the second time to --

20 Q. Right. You got his phone number; didn't you?

21 A. Uh -- He offered me his phone number.

22 Q. Did you take it?

23 A. Yes ma'am.

24 Q. Yes, you did take it. And you took it because you
25 were interested; weren't you?

CROSS-EXAMINATION OF SHERRY ENGLE

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- 1 A. Not really.
- 2 Q. So, you took the phone number because you weren't
- 3 interested?
- 4 A. I mean, I really wasn't. I really wasn't.
- 5 Q. Don't you think it's odd that you would take a
- 6 number from someone when you're married, happily so,
- 7 according to you; and -- and not really want to take the
- 8 number?
- 9 A. Yeah.
- 10 Q. Don't you think that's weird?
- 11 A. Yeah.
- 12 Q. Don't you think it sounds like it to us?
- 13 A. No, not really.
- 14 Q. So it seems normal to you that you would take a
- 15 number from a man you really don't care about and you're
- 16 really not interested in, when you're so happily married
- 17 to Fred Engle?
- 18 A. (No response.)
- 19 Q. Correct.
- 20 A. I could have easily just throwed it in the trash
- 21 can, Ms. Wilson.
- 22 Q. But you didn't easily throw it in the trash can; did
- 23 you?
- 24 A. No.
- 25 Q. And that's the entire point; isn't it? You had an

1 opportunity to not take the number; to throw it away; and
2 you didn't do it; did you?

3 A. No.

4 Q. You didn't. You didn't because you wanted Timmy
5 Rogers number; didn't you?

6 A. (No response.)

7 Q. You wanted that number; didn't you?

8 A. Not really.

9 Q. You --

10 A. No.

11 Q. -- kept that number because you wanted it?

12 A. (No response.)

13 Q. Correct.

14 A. Not really; no.

15 Q. So, you knew that Timmy was looking for somebody to
16 lean on; didn't you?

17 A. Apparently.

18 Q. And you decided you wanted to ultimately be that
19 person that he turned to; didn't you?

20 A. No, not really.

21 Q. Didn't you take the time and the effort to call
22 Timmy and seek him out?

23 A. Yes.

24 Q. Because he had a date; didn't you?

25 A. I have never actually had a date with Tim Rogers.

CROSS-EXAMINATION OF SHERRY ENGLE

135

- 1 Q. You went --
- 2 A. We've met at different places.
- 3 Q. You went out with Tim Rogers; did you not?
- 4 A. The first time that we were out together, he came to
- 5 Mickey Sweatt's house and met me there.
- 6 I would not meet him out anywhere.
- 7 Q. So, you met him?
- 8 A. I met him there, at there house.
- 9 Q. This is a man, that you claimed, you didn't even
- 10 wanted to talk to?
- 11 A. I didn't --
- 12 Q. But you met him out?
- 13 A. (No response.)
- 14 Q. So, since you had his number and he didn't have
- 15 yours, it is a safe presumption to say that you called
- 16 him; isn't it?
- 17 A. Yes.
- 18 Q. So the man that weren't interested in; didn't want
- 19 to talk to; whose number you could have easily -- easily
- 20 thrown out; you called it?
- 21 A. Yes.
- 22 Q. While you were married -- happily married to Freddy?
- 23 A. Yes ma'am.
- 24 Q. That makes sense to you; doesn't it?
- 25 A. Yes.

1 Q. Makes sense to you?

2 A. Yeah.

3 Q. So, why did you -- You called Tim -- You called
4 Timmy because you wanted to deal with him. You wanted to
5 talk to him. You wanted that relationship.

6 You wanted that excitement; didn't
7 you?

8 A. I hadn't really thought about like that at that
9 time.

10 Q. You hadn't thought about the relationship
11 possibility with Timmy Rogers at that time?

12 A. Really not; no. I mean, we were actually just
13 friends. And he needed somebody to lean on.

14 He was falling apart.

15 Q. Well, you couldn't possibly have been friends with
16 him, yet; could you?

17 A. (No response.)

18 Q. By your --

19 A. He thought so.

20 Q. Well --

21 A. That's what he called it; friendship.

22 Q. Well, by your own admission, you didn't even like
23 this guy?

24 A. I didn't know him Ms. Wilson.

25 Q. But --

CROSS-EXAMINATION OF SHERRY ENGLE

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1 A. I hadn't got to know him well enough to know whether
2 I liked him or not.

3 Q. But you decided you wanted to get to know him, which
4 is why you called him; isn't it?

5 A. That's usually what normally you do.

6 Q. But you just sat here in front of this jury a second
7 ago and denied that you wanted to get to know him?

8 A. Normally --

9 Q. So which is it?

10 A. -- that's what you do to get to know someone.

11 That's normally what you do.

12 Q. I -- I agree with that statement. But, what I
13 don't understand is why you were saying just a second ago
14 that that's not what happened.

15 A. At that time, I didn't know that I wanted to have
16 any kind of dealings with him, or conversation, or see
17 him, or anything.

18 Q. But specifically, your answer a second ago was that:

19 You did not want to talk to him.

20 You didn't know him.

21 You didn't even really like him.

22 You were happily married.

23 And now, you're saying, correct,

24 that:

25 You wanted to get to know him?

1 A. In a --

2 Q. Is that correct?

3 A. In a -- After a few times that I seen him, yeah. He
4 was -- yeah.

5 Q. So, then you told me a second ago that you saw him
6 for the first time at Mickey Sweatt's house, I believe is
7 what you said?

8 A. After the storage building where he met me; and then
9 I met him at Mickey Sweatt's house.

10 Q. Right. But then, just now, you just said a couple
11 of times.

12 A. (No response.)

13 Q. Did you have other times that you went out and saw
14 him?

15 A. He met me -- I met him at the boat dock.

16 Q. Was that prior to going to Mickey Sweatt's house?

17 A. No.

18 Q. Well, then, you just said a second ago that you
19 decided after a couple of times that you did want to get
20 to know him?

21 A. Yeah.

22 Q. So, then, which one is it?

23 A. (No response.)

24 Q. Is it that you -- you met him for the first time at
25 Mickey Sweatt's house; or that you met him a couple of

1 times before Mickey Sweatt's house, when you decided you
2 wanted to get to know him?

3 A. I met him after Mickey Sweatt's house.

4 Q. So, when you got to Mickey Sweatt's house, you still
5 didn't know if you wanted to get to know him?

6 A. I didn't really. That was the first time I'd
7 really, actually, sit down and talked to him, and
8 everything.

9 Q. But you called him because you wanted to get to know
10 him?

11 A. Yeah.

12 Q. So, you're a little confused --

13 A. Sure.

14 Q. -- on that point; aren't you?

15 A. I mean, we had a telephone conversation.

16 Q. So you did talk to Timmy, then, before you ever went
17 out with him?

18 A. Well, yeah. He called. I called. After --

19 Q. He couldn't possibly call you; could he? You just
20 said that he didn't give you his number -- that he gave
21 you his number and then you didn't give him yours.

22 A. I called him back before I left the storage building
23 so he had my number then, Ms. Wilson.

24 Q. So -- So yesterday, when you told the Solicitor that
25 you didn't give your number to Timmy --

1 A. I did not give it to him. He got it off the caller
2 I.D. on the phone.

3 Q. So you called him first, is my point.

4 A. That's what he told me to do, call him later.

5 Q. So he told you to call him. And so you just said
6 you called him. But --

7 A. I called him.

8 Q. But you also -- But you also said -- You also just
9 said to This Court that you didn't want to talk to him.
10 And you could've easily thrown the number out.

11 A. But -- Maybe so. But I could've throwed the number
12 out. But I didn't.

13 That's why we're here today is
14 because I mistakenly not throwed the number away.

15 Q. So -- So you mistakenly didn't throw the number away
16 --

17 A. I --

18 Q. -- because -- because you, who wanted to meet this
19 man; who wanted to talk to him; made a mistake by keeping
20 the number?

21 A. (No response.)

22 Q. Isn't that right?

23 A. (No response.)

24 Q. That's what you're telling us; right?

25 A. If I hadn't have kept the number and made the

CROSS-EXAMINATION OF SHERRY ENGLE

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1 mistake, my husband would be alive today.

2 Q. Isn't it true that your husband would be alive today
3 if you didn't send him out to the mailbox so somebody
4 could kill him?

5 A. I didn't --

6 Q. I mean, that's what you're saying; right?

7 A. No.

8 Q. So, again, we're back to minimizing what you've done
9 here; right?

10 A. No. I'm just as guilty as Tim Rogers.

11 Q. Actually, you keep saying: Tim, Tim, Tim. But it
12 looks like you made every possible move to have your
13 husband killed; didn't you?

14 A. No.

15 Q. You made --

16 A. The hand of one is the hand of all.

17 Q. The hand of one is the hand of all. Well, let's --
18 let's talk about the hand of one.

19 Because you want Tim's hand to be
20 in this; don't you?

21 A. His hand is in it.

22 Q. You want his hand to be in it, because it suits you
23 to have him in it, doesn't it?

24 A. No.

25 Q. Because if you have a patsy -- if you've got

1 somebody who can take the fall for you for actually
2 committing this crime, then you're hoping for some
3 benefit for yourself; aren't you?

4 A. No ma'am, I'm not.

5 Q. Isn't that exactly why you've done a proffer
6 agreement?

7 A. No ma'am. It's not.

8 Q. So the proffer agreement means nothing to you?

9 A. It does not mean anything.

10 Q. You --

11 A. I want justice for my husband. And I will give
12 justice as well for my life as I will for Tim Rogers'
13 life.

14 Q. So, you want justice for your husband --

15 A. I want justice --

16 Q. -- now, after you killed him?

17 A. I want justice --

18 Q. Or had him killed?

19 A. -- for my husband.

20 Q. So --

21 A. I -- All I can give Fred Engle is justice.

22 Q. So justice coming this way --

23 A. By (trails off to inaudible).

24 Q. -- certainly after it's of no use to him.

25 COURT REPORTER:

CROSS-EXAMINATION OF SHERRY ENGLE

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1 I'm sorry. What did you say?

2 WITNESS:

3 By the -- By the truth.

4 CROSS-EXAMINATION BY MS. WILSON CONTINUED:

5 Q. But -- I'm sorry. By whose --

6 A. Justice --

7 Q. You say --

8 A. Justice --

9 Q. You're saying by your truth?

10 A. Justice by the -- by truth.

11 Q. By the truth that you're telling now; right?

12 A. Yes.

13 Q. As -- As you say it's the truth now?

14 A. It is the truth.

15 Q. Well, you told a lot of different stories; didn't
16 you?

17 A. (No response.)

18 Q. I'm sorry?

19 A. It's been two years, Ms. Wilson, 29 months. I've
20 been incarcerated 29 months. You expect me to remember
21 everything exactly the way it happened?

22 Q. I expect --

23 A. I remember exactly what we did; when we did it; and
24 how we did it; to have my husband killed.

25 Q. But it --

1 A. And Tim Rogers was one of the participants.

2 Q. So you then remember what you told the officers when
3 they first came to your house after your husband was
4 killed; don't you?

5 A. Yes, I do.

6 Q. And so you remember that -- and I want to make this
7 clear:

8 You did just tell us that you
9 didn't tell multiple stories; correct?

10 A. I did.

11 Q. Did you not just say --

12 A. I told -- I told -- I didn't tell them the truth in
13 the beginning.

14 Q. Okay. And I want to get to that. Because just
15 now, you told us that you didn't tell multiple stories.

16 A. I told multiple stories.

17 Q. But --

18 A. I didn't tell the truth in the -- the beginning --

19 Q. And so now you're admitting to --

20 A. -- when it happened.

21 Q. -- not telling the truth in the beginning; correct?

22 A. I did not tell the truth --

23 Q. Okay.

24 A. -- in the beginning to the detectives when they came
25 to my home.

CROSS-EXAMINATION OF SHERRY ENGLE

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- 1 Q. And you didn't tell the truth to the extent that you
2 even blamed someone -- not for the -- Apparently, the
3 first time, you even accused somebody, it was a lie;
4 right?
- 5 A. Yes ma'am.
- 6 Q. And you accused T. J. Seger (? phonetic), the
7 neighborhood boy; didn't you?
- 8 A. Yes.
- 9 Q. You accused him. Said that he was the one who did
10 it, possibly --
- 11 A. Probably --
- 12 Q. -- right?
- 13 A. Yes.
- 14 Q. That he was the one who -- who -- who might have had
15 reason to kill Fred?
- 16 A. Yes.
- 17 Q. And the police took your word at that, didn't they?
- 18 A. Yes ma'am.
- 19 Q. Because you were acting like the -- the aggrieved
20 widow, weren't you?
- 21 A. I was grieving.
- 22 Q. You were grieving the husband that you set up to be
23 killed; correct?
- 24 A. Yes. It was --
- 25 Q. By what you're saying?

1 A. Yes.

2 Q. And so, you set him up to be killed.

3 You're pretending to be sorry that
4 he's dead; correct?

5 A. I was really sorry.

6 Q. So you are pretending to be sorry. You set this
7 man up for the murder that you claim someone else did.

8 And -- And -- And you're basically
9 wanting This Court -- you're basically wanting This Court
10 to believe that that was just an aberration?

11 A. (No response.)

12 Q. We're just supposed to gloss over that; correct?

13 A. No.

14 Q. No, you don't want us to gloss over it?

15 A. No. I --

16 Q. Well, I don't want to gloss over it, either.

17 Because my understanding is:

18 The very first time you spoke to
19 the police, you told the officers it was T. J. --

20 A. Yes ma'am.

21 Q. -- didn't you?

22 A. I've done answered that.

23 Q. And you told the officers that T. J. had a reason to
24 want to kill your husband?

25 A. They had had -- They had had an altercation; yes.

CROSS-EXAMINATION OF SHERRY ENGLE

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- 1 Q. And you told the officers that they should
2 investigate T. J. Segers (? phonetic), didn't you?
- 3 A. I don't know if I told them to investigate him. I
4 just said -- told them about him.
- 5 Q. But the officers --
- 6 A. They took it upon their self to investigate him.
- 7 Q. But the officers did investigate --
- 8 A. Yes.
- 9 Q. -- your story; didn't they?
- 10 A. Yes.
- 11 Q. And did you believe -- I mean, you did believe at
12 that time, when the officers were talking to you, that
13 they wanted you to tell the truth; right?
- 14 A. Well, yes.
- 15 Q. So you don't think the officers wanted you to tell
16 them a lie; do you?
- 17 A. No.
- 18 Q. But you told them one; didn't you?
- 19 A. Yes.
- 20 Q. And so the officers spend the next month,
21 approximately, investigating someone that you already
22 knew was innocent --
- 23 A. No. They --
- 24 Q. Didn't they?
- 25 A. No. They didn't spend that much time; no.

1 Q. So they spent two weeks?

2 A. (No response.)

3 Q. Let's say they spent two weeks investigating someone
4 who you knew to be innocent; right?

5 A. I don't know if it was even two weeks. Because my
6 husband died on the 21st; and me and Tim was arrested May
7 the 5th.

8 Q. So, then, let's say -- let's say a week. The time
9 frame is irrelevant.

10 Bottom line is, again, you're
11 minimizing; aren't you?

12 Because you know that when you
13 told them T. J. Seger's (? phonetic) name, that you knew
14 that you had already set this up.

15 You knew what had happened.

16 You knew how it happened; didn't
17 you?

18 A. I knew how it happened; yes.

19 Q. You -- You knew how it happened. And you knew that
20 T. J. Segers (? phonetic) was innocent; didn't you?

21 A. Yes, I did.

22 Q. But you lied on him anyway; didn't you?

23 A. Yes ma'am.

24 Q. You did. Because it was self-serving and it suited
25 your purposes to have T. J. Segers (? phonetic) at the

CROSS-EXAMINATION OF SHERRY ENGLE

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1 eye of this police investigation; didn't it?

2 A. Yes.

3 Q. Yes, you did. And you basically went and -- about
4 your business, day for day, acting like you couldn't
5 stand the fact that your husband was no longer going to
6 be with you; didn't you?

7 A. (No response.)

8 Q. You even passed out at the police -- at the funeral
9 parlor; didn't you?

10 A. (No response.)

11 Q. Didn't you?

12 A. Yes.

13 Q. How many times did you pass out?

14 A. (No response.)

15 Q. Was it two times? One time? It was once -- It was
16 twice; wasn't it?

17 A. I don't know.

18 Q. But you were passing out; right?

19 A. Yeah.

20 Q. And you passed out because it fit the role that you
21 were playing at that time; wasn't it?

22 A. No.

23 Q. Certainly, it did; didn't it?

24 A. (No response.)

25 Q. I mean, you're sad that your husband's dead. Your

- 1 heart is breaking. You're aggrieved; right?
- 2 A. My heart was broke.
- 3 Q. Your heart was breaking. And you were so broken up;
- 4 so torn up about the man that you sent outside to the
- 5 mailbox to get killed, that you were passing out in the
- 6 funeral parlor?
- 7 A. (No response.)
- 8 Q. That's what you're telling The Court; right.
- 9 A. Ms. Wilson, I was made to do all at --
- 10 Q. You were made --
- 11 A. -- by Tim Rogers.
- 12 Q. You were made to do it by Timmy Rogers?
- 13 A. He made me do it.
- 14 Q. So you lied on T. J.?
- 15 A. To take it off of Tim. To take the -- it off of
- 16 Tim.
- 17 Q. You lied --
- 18 A. Tim -- Tim wanted it that way.
- 19 Q. You lied on T. J. to take it off of Tim?
- 20 A. Yes.
- 21 Q. Because Tim wanted it?
- 22 A. Tim wanted --
- 23 Q. Were --
- 24 A. -- time to get out of Myrtle Beach.
- 25 Q. Were you -- Were you concerned about what Fred

1 wanted?

2 A. (No response.)

3 Q. The man you loved?

4 A. (No response.)

5 Q. You weren't concerned about that; were you?

6 A. (No response.)

7 Q. But you were worried about the man that you didn't
8 even want to talk to, whose number you didn't even want
9 to use, that you could have easily thrown out; you were
10 concerned about what he wanted?

11 A. (No response.)

12 Q. Is that what you're telling us?

13 A. I was made to do it, Ms. Wilson.

14 Q. So you're powerlessness, is what you're telling us;
15 which fits of course with what you -- the show you put on
16 at the funeral parlor; right?

17 A. I didn't put on a show, ma'am.

18 Q. You -- You're so powerless. You -- You're so
19 broken down as a widow.

20 You're putting on a show for your
21 neighbors.

22 You're putting on a show -- I
23 mean, certainly, when you went to Tom Richardson's house,
24 and you're beating on his door at midnight; you already
25 knew Fred was dead; didn't you?

1 A. Yes, I did.

2 Q. So you're beating on the door, telling him to go
3 find your husband.

4 That was a show; wasn't it?

5 A. If you want to call it that.

6 Q. What -- Well, if I know the answer to the question
7 already; and I'm beating on doors, and yelling and
8 screaming, and wailing and crying; isn't that putting on
9 a show?

10 A. No, not really. Because my heart was broke. And I
11 knew what I had done was wrong; before it happened and
12 after it happened.

13 Q. So, you're saying that you knew what you did was
14 wrong, but you still did it?

15 A. I was -- Yes.

16 Q. You knew that the man you loved was going to be
17 killed?

18 A. Yes.

19 Q. And you sent him out there. And then you put on a
20 show for everybody that would listen; didn't you?

21 A. I did not put on a show.

22 Q. You did know that Fred was dead; correct?

23 A. Yes ma'am; I did.

24 Q. And you knew that when you went to Tom Richardson's
25 house.

CROSS-EXAMINATION OF SHERRY ENGLE

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1 A. I did, indeed.

2 Q. And you still beat on Tom Richardson's door; didn't
3 you?

4 A. I did, indeed.

5 Q. And you still cried?

6 A. I did, indeed.

7 Q. And you still wailed; didn't you?

8 A. And I'm still crying today.

9 Q. You are crying today. But I suggest that you're
10 crying for a different reason; aren't you?

11 A. No.

12 Q. You're crying because you got an attorney. And
13 you've talked to your attorney; haven't you?

14 A. (No response.)

15 Q. Haven't you?

16 A. This morning; yes?

17 Q. Any time?

18 A. Yes.

19 Q. And you know what this crime carries; don't you?

20 A. No, I do not.

21 Q. The crime of murder?

22 A. I do not know what it carries.

23 Q. You've never -- Your attorney has never told you
24 what the crime of murder carries?

25 A. Not that I can recall; no. No. No ma'am.

1 Q. So, you don't recall her telling you that this crime
2 carries life without parole?

3 A. No ma'am.

4 Q. She didn't tell you that?

5 A. No ma'am.

6 Q. So you're sitting up here. And your attorney,
7 according to you, has been so remiss, after two years --
8 or as you say, 29 months --

9 A. 29 months.

10 Q. -- in not telling you what this crime carries?

11 A. (No response.)

12 Q. So --

13 MR. RICHARDSON:

14 Your Honor, I believe she's been
15 charged with accessory before the fact. That's her
16 charge.

17 MS. WILSON:

18 Your Honor, could we approach real
19 quick?

20 THE COURT:

21 Certainly.

22 (WHEREUPON: Counsel for each party
23 conferred off the record with The Court at the bench at
24 10:31 AM, October 13, 2010.)

25 CROSS-EXAMINATION BY MS. WILSON CONTINUED:

- 1 Q. So you were putting on a show?
- 2 A. (No response.)
- 3 Q. Lying to your neighbors; correct?
- 4 A. (No response.)
- 5 Q. Because you lied to your neighbors; didn't you?
- 6 A. Yes ma'am.
- 7 Q. You lied to the police?
- 8 A. Yes ma'am.
- 9 Q. You lied to Fred Engle's family; didn't you?
- 10 A. Yes ma'am.
- 11 Q. You lied to Timmy Rogers too; didn't you?
- 12 A. No, I did not.
- 13 Q. You lied to everybody surrounding you.
- 14 A. (No response.)
- 15 Q. You lied to your own family as well; didn't you?
- 16 A. Yes ma'am.
- 17 Q. You lied to everybody?
- 18 A. Yes ma'am.
- 19 Q. And you lied because it suited you to do so at the
- 20 time, didn't it?
- 21 A. (No response.)
- 22 Q. It suited you to tell the story you were telling;
- 23 didn't it?
- 24 A. It suited both of us.
- 25 Q. It suited you?

1 A. It suited me and Tim Rogers.

2 Q. It suited you and Tim Rogers?

3 A. Yes.

4 Q. Because you intend to take Tim down with you; don't
5 you?

6 A. No --

7 Q. And

8 A. -- I did not intend to take Tim down.

9 Q. And as a matter of fact, you spent a lot of time and
10 effort to just position Tim Rogers just right; didn't
11 you?

12 A. I did not.

13 Q. You gave him pills; didn't you?

14 A. I did not.

15 Q. You didn't give him any Xanax?

16 A. No.

17 Q. You never gave him a Xanax?

18 A. No.

19 Q. What about the time you put in on a relationship
20 that you claim you didn't really want with him?

21 A. (No response.)

22 Q. You did put in that time with him; didn't you?

23 A. Yes.

24 Q. You wanted to be the person he relied on and leaned
25 on; didn't you?

1 A. Yes.

2 Q. You wanted to be there for Tim Rogers --

3 A. Yes.

4 Q. -- didn't you?

5 A. Uh-huh.

6 Q. And you told him you were pregnant; correct?

7 A. No ma'am, I didn't.

8 Q. So, you -- Of course, if you never told him you were
9 pregnant, you never would have told him, then, that you
10 had lost those babies; would you?

11 A. How do you lose something you never had and wasn't
12 capable of getting that way?

13 Q. And again, is that something you told him?

14 A. No.

15 Q. Okay. Uh -- Now, you didn't want him to bother
16 you?

17 I think yesterday you mentioned to
18 This Court that you actually -- he came to the hospital
19 at some point when you were there -- uh -- with a family
20 member?

21 A. (No response.)

22 Q. Correct?

23 A. (No response.)

24 Q. You said that Tim Rogers came to the hospital while
25 you were there. Was it with your sister-in-law?

1 A. Yes.

2 Q. Is that correct?

3 A. Yes.

4 Q. And while there with your sister-in-law, Tim had his
5 arm around you, is what you said; right?

6 A. No. He came up the elevator with me and my oldest
7 daughter and my son.

8 And I didn't even know Tim was on
9 the elevator with us when we were riding up to go to ICU.

10 I was meeting my brother up there.

11 His son had called me and told me
12 to get back up there.

13 And Tim came out over the back of
14 me; and pulling on me; and hugged me and everything.

15 And my son said:

16 Who in the hell are you? Get
17 your hands off my momma.

18 Q. So you do admit that Tim was holding you?

19 A. Yeah. He grabbed me.

20 Q. So he had his arms on you?

21 A. He --

22 Q. He had his arms on you --

23 A. He was all over me.

24 Q. -- at that time.

25 A. He was all over me.

CROSS-EXAMINATION OF SHERRY ENGLE

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1 Q. And you said that the person that had his arms all
2 over you; that you didn't even want to be around; that
3 you told to get away from you; you, then, brought down to
4 Myrtle Beach for an extended stay.

5 A. (No response.)

6 Q. And paid for the room? And helped him get checked
7 in. Is that what you're telling us?

8 A. Yes ma'am.

9 Q. So, you didn't want him. You didn't like them even
10 really?

11 You didn't even really want to
12 talk to him.

13 You could have gotten rid of his
14 phone number at any time.

15 But you moved him down here so he
16 could be closer?

17 A. No.

18 Q. You checked him n and paid for the room?

19 A. If I --

20 Q. Because you didn't want him near --

21 A. -- did that, I don't recall. But anyway --

22 Q. Well, you just admitted it earlier here today.

23 A. If I did -- If I pay for it, okay. I didn't recall
24 that I did. But if I did, I did.

25 Q. So you gave Timmy jewelry. You gave him a ring;

1 didn't you?

2 A. Yes.

3 Q. You gave a ring to the man you claimed you didn't
4 even want to be bothered with; right?

5 A. Yes.

6 Q. And you gave him a ring, because it tied him to you;
7 didn't it?

8 A. Not really; no.

9 Q. Every time he looked at that ring, he saw his
10 relationship with you; didn't he?

11 A. Well, I don't know what he saw.

12 Q. Well, you gave him a necklace as well; didn't you?

13 A. No; he took that.

14 Q. Took the necklace?

15 A. Yes.

16 Q. And so, he took a necklace. But you gave him a
17 ring.

18 And what kind of ring?

19 It was -- It was a like an
20 anniversary style band; wasn't it?

21 A. But I only brought it for him for a friendship ring.
22 And I told him that in the very beginning when I gave it
23 to him.

24 Q. But -- But you actually had a ring of his to; didn't
25 you?

CROSS-EXAMINATION OF SHERRY ENGLE

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- 1 A. His class ring.
- 2 Q. Right? So you had a ring of his. And he had a
- 3 ring of yours. Is that right?
- 4 A. Yes.
- 5 Q. But it was just a friendship ring?
- 6 A. Yes, it was.
- 7 Q. That he gave you?
- 8 A. Yes, it was.
- 9 Q. A friendship ring?
- 10 A. (Nods in the affirmative.)
- 11 Q. And Timmy would keep a journal too; didn't he?
- 12 A. Timmy kept several journals.
- 13 Q. And did you encourage him to keep these journals?
- 14 A. (Laughs.) No, I did not.
- 15 Q. You certainly liked to read them; didn't you?
- 16 A. Uh -- He pushed them in front of me to read.
- 17 Q. He pushed them in front of you to read?
- 18 A. Yeah, he wanted me to --
- 19 Q. So you didn't write notes in the journal?
- 20 A. After I read them, I wrote notes in the journal.
- 21 Q. So you're writing notes in the journal that he
- 22 pushed in front of you because he pushed your hand and
- 23 made you write it?
- 24 Is that what you're telling us?
- 25 A. No.

1 Q. So you're reading his journal and writing notes,
2 comments, critiques, in the side margin of the diary;
3 right?

4 A. Yes.

5 Q. Because -- Because you couldn't get away with that
6 pencil; could you?

7 A. (No response.)

8 Q. Is that what you're telling us?

9 A. (No response.)

10 Q. You couldn't --

11 A. No.

12 Q. Okay. Okay. So you couldn't get away; right?

13 A. (No response.)

14 Q. You couldn't get away?

15 A. No I couldn't get --

16 Q. All right. So you gave Timmy jewelry?

17 A. Yes.

18 Q. You gave him money?

19 A. (No response.)

20 Q. Didn't you?

21 A. I gave him money here and there; yes.

22 Q. You read his journal?

23 A. I read several journals that he's wrote in.

24 Q. And you made comments?

25 A. I made comments to him verbally; yes.

CROSS-EXAMINATION OF SHERRY ENGLE

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1 Q. Did you read his -- his legal documents?

2 A. I've read his legal documents; yes.

3 Q. He put those in front of you too; did he?

4 A. Yes, he did.

5 Q. So he put them in front of you?

6 A. Because he didn't understand them.

7 Q. And made you read them.

8 A. He put -- gave them to me because he didn't
9 understand them.

10 Q. So, then you were just reading them to help him;
11 right?

12 A. I was just reading them to help him, ma'am.

13 Q. Isn't it true that the document that you read was
14 the divorce decree?

15 A. Was a divorce decree; bankruptcy decree; and
16 everything.

17 He -- Everything that he had, he
18 brought to me.

19 Q. And --

20 A. He knows that as well as I do.

21 Q. And so, he was actually already divorced when you
22 read those papers; wasn't he?

23 A. He was indeed.

24 Q. So you telling This Court that Timmy Rogers didn't
25 understand the basic fact that the divorce he applied for

1 and filed for came through?

2 A. He didn't understand some of paragraphs in it.

3 Q. Some of the paragraphs, he didn't understand; right?

4 A. Yes.

5 Q. But you -- you, who by your own admission, doesn't
6 know a whole lot; isn't very worldly; was able to explain
7 it to him?

8 Is that what you are telling us?

9 A. Yes I was.

10 Q. So you knew what it meant.

11 A. Yes, I knew what it meant.

12 Q. Okay. So -- So you're there --

13 MS. WILSON:

14 The Courts indulgence?

15 (WHEREUPON: Ms. Wilson confers
16 with James Galmore at counsel table.

17 CROSS-EXAMINATION BY MS. WILSON CONTINUED:

18 Q. Now -- Now you never read any of Fred Engle's
19 divorce paperwork; did you?

20 A. Yes I have.

21 Q. You did?

22 A. Yes.

23 Q. And -- And you read that. Now Fred Engle is a very
24 business oriented man; isn't he?

25 A. Yes, he is.

1 Q. Or was he?

2 A. Yes, he is.

3 Q. Was very business oriented; very intelligent man;
4 wouldn't you say?

5 A. Very.

6 Q. Did he need you to go over his legal documents?

7 A. No; but that's just the way he was.

8 He -- He -- When we were going
9 through Immigration.

10 Q. Going through Immigration.

11 A. Uh-huh.

12 Q. So you knew enough about immigration law to help
13 Fred?

14 Is that what you're telling us?

15 A. No. I was just -- We were going through the process
16 of getting him into the country where he could work and
17 everything.

18 And he just had it there. And he
19 -- he had to have it trans -- translated into English.

20 And it was -- And he brought it
21 out and let me read it.

22 Q. So are -- You're not -- You're not suggesting to
23 This Court that you helped translate it?

24 A. No, it was already translated on the paper.

25 Q. So you're reading legal documents --

1 A. Yes.

2 Q. -- and helping your husband Fred understand the
3 documents.

4 A. No. I just read them because he wanted me to read
5 them.

6 He didn't want any advice from
7 them. He already knew that.

8 He was highly intelligent.

9 Q. And you understood what you read; didn't you?

10 A. I did.

11 Q. So you're reading Timmy's legal papers?

12 A. (No response.)

13 Q. You're giving him jewelry?

14 A. (No response.)

15 Q. You're trying to be there so you can be the person
16 that he's leaning on?

17 A. (No response.)

18 Q. You say you didn't tell him you were pregnant?

19 A. No I didn't.

20 Q. And -- And -- And then we get to the issue of you
21 cutting him off from his family?

22 You cut him off; didn't you?

23 A. I did not cut them off from his family.

24 Q. Didn't -- Didn't you tell him not to see his wife
25 and his son?

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1 A. No, I did not.

2 Q. You didn't try to --

3 A. I tried to get him to go back to his wife.

4 Q. So you were trying to piece together a happy home
5 for Timmy Rogers when you were tearing up your own?

6 Is that what you're telling us?

7 A. I tried to get Tim to go back to his wife before
8 they were ever divorced.

9 I tried to get him to go back to
10 his -- home to her and try to work it out.

11 Q. Did you --

12 A. I did.

13 Q. Did you tell him to go back to his wife before you
14 move him to the beach, or after?

15 A. Before. Before he ever -- ever got a divorce.

16 Q. So you call him up, and have a date with him.

17 Now, did you tell Tim to go back
18 home before you called him, or after?

19 A. This was before Tim ever left -- left the home with
20 the wife.

21 Q. So you --

22 A. When he was meeting me at the boat dock, is when --
23 when we had the conversation.

24 And I had tried to tell him to go
25 back to his wife and try to work it out with her because

1 of his son.

2 That is the truth.

3 I told him that.

4 Q. So you deny outright -- You're denying to This Court
5 today that you ever threatened Tim's ex-wife or his son
6 in order to keep them away from you?

7 A. I don't believe I ever threatened them.

8 Q. So now you're -- you're not sure. You don't believe
9 it; but it could have been; right?

10 A. It could have been. But I don't recall ever doing
11 that.

12 Q. Okay. So you, again -- and I hope that I am being
13 very clear.

14 You have got a man here that --
15 you know -- you have given money to?

16 A. (No response.)

17 Q. Right.

18 A. (No response.)

19 Q. You gave him money?

20 A. (No response.)

21 Q. You gave him jewelry?

22 A. (No response.)

23 Q. Cut him off from his family?

24 A. (No response.)

25 Q. Did you have a part in doing -- in cutting him off

CROSS-EXAMINATION OF SHERRY ENGLE

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1 from his job?

2 A. (No response.)

3 Q. I mean, hadn't he been a -- a carpenter for like 11
4 years before you?

5 A. I didn't cut him off from that. He automatically
6 done that himself.

7 Q. So you didn't encourage that, though?

8 A. No, I didn't encourage anything like what he was
9 doing.

10 Q. Isn't it true that after he's -- he's done with the
11 job -- after you've cut him off from the job, you then
12 move him back down to Myrtle Beach so you can say that
13 you're trying to help him find employment there?

14 A. No ma'am.

15 Q. Isn't that the reason you gave to him?

16 A. No ma'am.

17 The Court's indulgence for one
18 second?

19 Your Honor, I would like -- Your
20 Honor, at this time, I would like to enter in as a
21 Court's Exhibit, for the moment -- uh -- the transcript
22 of the statement that Sherry Ingle gave to the police
23 that was recorded.

24 THE COURT:

25 Mr. Richardson?

1 MR. RICHARDSON:

2 Your Honor, I -- I believe she can
3 if -- uh --

4 THE COURT:

5 You -- You're simply wanting to --
6 to cross-examine her on a statement she's made?

7 MS. WILSON:

8 Yes sir.

9 THE COURT:

10 All right.

11 Uh -- I will allow it as a Courts
12 Exhibit -- uh -- for the purpose of providing her with a
13 copy so that you can question her --

14 MS. WILSON:

15 Yes sir.

16 THE COURT:

17 -- on any prior consistent or
18 inconsistent statements.

19 MS. WILSON:

20 Yes sir.

21 WHEREUPON: A TRANSCRIPT OF SHERRY
22 ENGLE'S POLICE STATEMENT WAS MARKED BY THE COURT REPORTER
23 AS COURT'S EXHIBIT NUMBER 6.

24 MS. WILSON:

25 And Your Honor, this is Court's

CROSS-EXAMINATION OF SHERRY ENGLE

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1 Exhibit 6.

2 THE COURT:

3 All right.

4 Okay.

5 MS. WILSON:

6 Thank Your Honor.

7 CROSS-EXAMINATION BY MS. WILSON CONTINUED

8 Q. Ms. Engle, could you please turn to Page 22?

9 A. (Witness does as instructed.)

10 Q. Specifically, I want you to read Lines -- Before we
11 do that.

12 You made multiple statements to
13 the police; didn't you?

14 A. Yes ma'am.

15 Q. And those statements were given on -- uh -- April
16 2nd -- uh -- April 21st and April 22nd; correct?

17 A. Yes ma'am.

18 Q. And then you talked to the police again on May 5th;
19 didn't you?

20 A. Yes ma'am.

21 Q. And you talked to the police on May 5th in
22 Breckenridge County; didn't you?

23 A. Yes ma'am.

24 Q. And who investigated you or interrogated you on
25 those dates? Do you remember?

1 A. Joseph Hawes and -- and Will -- I don't know if I
2 say it --

3 Q. Livingston, I believe it is; correct?

4 A. Livingston; yes.

5 Q. And so this -- these -- these -- this transcript is
6 a copy of those conversations; isn't it?

7 A. Yes ma'am.

8 Q. So will you read from Line -- Page 22, Line -- let's
9 say start at Line 12.

10 Read Line 12, please through Line
11 15.

12 A. ...there to help me. I am -- and I had met Tim.
13 And Tim was -- couldn't find any work in Kentucky. I
14 said: Maybe you can find some in South Carolina. I --
15 I'll help you all I can. I even told Fred -- you know.

16 Q. So you just told This Court that you had nothing to
17 do with telling Tim to come down here that he might be
18 able to find work; didn't you?

19 A. (No response.)

20 Q. Didn't you just tell us that?

21 A. Yes.

22 Q. And now you just read to us from your own statement
23 to the police that you did tell Tim to come down here;
24 didn't you?

25 A. No, I did not tell him to come down here to live.

CROSS-EXAMINATION OF SHERRY ENGLE

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1 Q. You told him to come down here because he could find
2 work; did you not?

3 A. I told him; yes. I --

4 Q. And that's the exact question I asked you a second
5 ago; isn't it? And you denied it; right?

6 A. I can't recall that long ago.

7 Q. You can't recall it?

8 A. That long a -- no.

9 Q. So you don't recall bringing him down here?

10 A. (No response.)

11 Q. You don't recall bringing Timmy Rogers here in
12 April?

13 A. I never brought Timmy Rogers here. Timmy drove --
14 drove himself down here.

15 Q. So let's recap. Because you told us in This Court
16 that you paid for the room? Checked him into the hotel?

17 And now you just read to us after
18 denying it, that you told him to come down here because
19 he could probably find work; didn't you?

20 A. I'm -- Yeah.

21 Q. So that is what you did. You brought him down here.

22 A. (No response.)

23 Q. You had him come down here; didn't you?

24 A. Yes.

25 Q. Now, in effect, what you're not telling me is that:

1 You gave him jewelry after you
2 didn't want to talk to him, really.

3 You could have thrown that number
4 away but you didn't.

5 You gave him money.

6 You, of course, are denying ever
7 being pregnant and telling Tim that you were.

8 And you're denying telling him
9 that you lost the baby -- or the babies -- because they
10 were twins I believe; right?

11 A. No.

12 Q. Then you're denying telling Tim that you cared about
13 him or loved him?

14 You denied that you cut him off
15 from his family; that you threatened them; even though
16 you say you might have.

17 But you're not sure. You don't
18 remember that.

19 And now you're telling us that you
20 -- you moved him from another state down here; but all
21 the while you didn't really like him; you didn't really
22 want him; right?

23 A. Uh-huh.

24 Q. Because you were so happy in your relationship that
25 -- that you just -- you had -- wanted nothing to do with

CROSS-EXAMINATION OF SHERRY ENGLE

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1 him; but you brought him all the way here; didn't you?

2 A. (No response.)

3 Q. Didn't you?

4 A. Yes.

5 Q. Yes you did. And you even hired Timmy to do work
6 at your house; didn't you?

7 A. I never hired Timmy to do anything. It was Tim's
8 idea to come to my house.

9 I had talked to Fred about him
10 coming to the house and doing work for me; yes.

11 But we had never discussed
12 anything of a payment, or anything like.

13 Q. So, you're then admitting that you did have Tim come
14 to the house to do work?

15 A. He's cleaned the carpets; yes.

16 Q. What else did he do?

17 A. But when I offered --

18 Q. He did other work --

19 A. -- him -- to pay him, he wouldn't take it.

20 Q. So you tried to pay Tim Rogers --

21 A. I tried to pay Tim money --

22 Q. -- for work in the home?

23 A. -- and he would not take the money.

24 Q. So you hired him to do work and ultimately, he would
25 not accept payment?

1 Is that what you're telling us?

2 A. That's what he would not do; take payment.

3 Q. But you hired him; didn't you?

4 A. I guess that's what you would call it.

5 Q. So you hired Timmy to do work?

6 Uh -- And basically everything you

7 -- you did where Tim was concerned was about trying to
8 basically put him into a certain position; wasn't it?

9 A. No, it was not.

10 Q. As a matter of fact, you wanted to control Tim;
11 didn't you?

12 A. No ma'am.

13 Q. You wanted to be able to control him because you
14 wanted to be able to get him to do what you wanted him to
15 do?

16 A. No ma'am. Tim was in full control of me. He was
17 in full control of me.

18 I was doing what he told me to do.

19 Q. Well --

20 A. He was one that told me every time to move; every
21 time to get up; where to be; when to be; how long it took
22 me to get there; yes ma'am.

23 Q. So Tim --

24 A. He is the one that was in control.

25 Q. Tim is exercising so much control over you that

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1 you're moving him around; cutting him off from his job;
2 threatening him about his family; giving him jewelry.

3 But he's in control of you?

4 You're dictating --

5 A. Yes ma'am.

6 Q. You're dictating every single aspect of his life?

7 But he's controlling you?

8 A. No ma'am. I'm telling you that he controlled me.

9 I'm telling you that he would stop
10 me on the side of the road behind post offices and
11 everything; and say:

12 You know, let me go back with you.

13 Let me go back with you.

14 I'd say:

15 Why?

16 He'd say:

17 Well, there's something bad going
18 to happen if you don't.

19 And I said:

20 There's nothing bad going to
21 happen.

22 And he'd sit there beside my car
23 on his knees crying and begging to come back with me to
24 South Carolina.

25 I said:

1 Go ahead and come on. Let's go.

2 Q. So -- So you were so apathetic about him coming,
3 that you moved him down here yourself, to make it
4 simpler?

5 A. (No response.)

6 Q. Is that which are telling us?

7 A. No. I'm telling you that he wanted to move down
8 here, so I just agreed with it.

9 Q. So --

10 A. I was tired of fighting him.

11 Q. So you just gave up the fight, because --

12 A. I gave up the fight.

13 Q. -- you -- you were so weary from somebody that you
14 didn't want to be bothered with, that you just said:

15 I'll tell you what. I'm going to
16 make it so easy for you to get here, even though I don't
17 want you here, that I'm going to move you down here.

18 I'm going to tell you to find work
19 down here.

20 I'm going to take you away from
21 your family and your friends. And basically, I'm going
22 to put you in a position where you can be here like you
23 want to be, even though I don't want you to be?

24 Is that what you're telling us?

25 A. That's exactly right.

1 Q. Well, that doesn't make any sense; does it?

2 A. I didn't want them there. I didn't want him to
3 really come to South Carolina.

4 I didn't really want him near me.

5 Q. But you moved him down here so much -- You didn't
6 want here so much, you moved him down here.

7 A. He moved himself down here. I didn't move him down
8 here.

9 Q. But you paid for the room for him; right?

10 A. As far as I can tell; yes.

11 Q. And you checked him in; right?

12 A. I was there when he checked in; yes.

13 Q. And you're the one who gave him the idea about
14 coming down here for work; right?

15 A. No. He had talked -- We had talked about it.. We
16 had talked about it. And --

17 Q. You just read your own statement, ma'am.

18 A. Yeah. We had talked about it; coming to --

19 Q. It didn't say that you talked about it.

20 A. -- coming to South Carolina.

21 Q. It says very specifically -- and you just read it
22 into The Court's hearing; right --

23 A. Yes.

24 Q. -- that you told the police that you told Tim --

25 A. Yes. Okay.

1 Q. -- maybe you can find some work down here.

2 A. That's talking to him. I've talked to him about
3 that; yes.

4 Q. What you're -- Again -- And again, here we are where
5 you are trying to minimize what you've done.

6 A. No.

7 Q. Because, again, you're trying to say that:

8 Oh, there was some big discussion
9 about it.

10 You told him what he could do;
11 didn't you?

12 A. No.

13 Q. So when you say that:

14 I said maybe you can find some
15 South Carolina. I'll help you all I can.

16 You weren't telling him that, is
17 what you're saying?

18 A. We discussed it. We talk about it between
19 ourselves.

20 Q. Okay. That's fine. That's -- Okay. So --

21 A. It's not one-sided though, Ms. Wilson.

22 Q. Right.

23 A. It's not one-sided.

24 Q. Right. Uh -- I -- And I -- I -- I daresay that
25 you're right. Because I believe that Tim probably said

1 yes when you said you could probably find work here;
2 didn't he?

3 A. Yes, he did.

4 Q. Sure he did.

5 A. Uh-huh.

6 Q. So you are basically showing everybody what you want
7 them to see?

8 You're showing the Richardson's
9 what you think they should be seeing when you're beating
10 on the door?

11 A. (No response.)

12 Q. You're showing the police what you think they should
13 be seeing when they're talking to you about what happened
14 here; what information you could possibly give to help
15 them find the person that killed the husband that you
16 claimed you loved; right?

17 A. Yes.

18 Q. And you're leading them in the wrong direction;
19 aren't you?

20 A. Yes.

21 Q. So you lied to the police?

22 A. (No response.)

23 Q. And you're even being untruthful in here today;
24 aren't you?

25 A. No, I'm not.

1 Q. Because you're giving us lots of inconsistencies;
2 lots of things that don't make sense; lots of things that
3 contradict your own spoken statement to the police;
4 correct?

5 A. You expect me to remember everything?

6 Q. I expect you to see your words and recognize them.
7 And I believe that you are telling This Court that you do
8 recognize them; don't you?

9 A. I do recognize that; yes. And -- But we had a
10 conversation together.

11 Q. Now --

12 A. It's not one-sided.

13 Q. Now, you lied to Fred Engle's family as well; didn't
14 you?

15 A. Beg your pardon?

16 Q. You lied to Fred Engle's family as well; did you
17 not?

18 A. What am I lying to them about?

19 Q. Well, you lied to them about the nature of what
20 happened to Fred; didn't you?

21 A. The nature of Fred?

22 Q. The nature of what happened to Fred?

23 A. I'm sure I did.

24 Q. So you lied to the -- the family members?

25 A. (No response.)

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- 1 Q. And you lied to family members?
- 2 A. Yes.
- 3 Q. And those weren't one-time lies; were they?
- 4 A. No.
- 5 Q. Because, in effect, you were carrying on a show; a
- 6 charade for everybody's benefit?
- 7 A. I was not.
- 8 Q. And in carrying on this show and charade, this
- 9 happened over the period of what? Let's say three
- 10 weeks, maybe?
- 11 A. (No response.)
- 12 Q. Do you agree with that statement?
- 13 A. (No response.)
- 14 Q. Three weeks from the time that your husband was
- 15 killed to the time that you were arrested; approximately?
- 16 A. April the 21st to May the 5th --
- 17 Q. So --
- 18 A. -- whatever it is.
- 19 Q. So during that time, you were putting on a show for
- 20 everybody; right?
- 21 A. I wouldn't say I was putting on a show.
- 22 Q. Did you --
- 23 A. I really -- I didn't. I was in my home just doing
- 24 what I'd done everyday, trying make it through another
- 25 day.

- 1 One day at a time is what I was
2 doing.
- 3 Q. One day at a time?
- 4 A. One day at a time; because --
- 5 Q. Because --
- 6 A. -- my heart has been plucked out. It had been torn
7 to pieces.
- 8 Q. Well, your heart didn't get torn to pieces.
- 9 A. Yes it did.
- 10 Q. You plucked it out, didn't you?
- 11 A. No I did not.
- 12 Q. By having your husband killed, you pluck out your
13 own heart; didn't you?
- 14 A. Me and Tim plucked it out; 'cause --
- 15 Q. You and Tim plucked out your heart?
- 16 A. -- me and Tim made the plans to kill my husband.
- 17 Q. So, again, minimizing. It wasn't you; it --
- 18 A. I wasn't minimizing anything.
- 19 Q. Okay.
- 20 A. It was both of us.
- 21 Q. So --
- 22 A. We are both guilty. As we stand here today, we're
23 both guilty.
- 24 Q. According to you; correct?
- 25 A. We're both guilty --

CROSS-EXAMINATION OF SHERRY ENGLE

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1 Q. According --

2 A. -- as much as one as the other.

3 Q. According to you; correct?

4 A. According to both of us.

5 Q. No. Actually --

6 A. It's not a lie today. He --

7 Q. Timmy Rogers --

8 A. -- did kill my husband.

9 THE COURT:

10 Wait a minute.

11 WITNESS:

12 And I did send him down there to

13 the post office box.

14 THE COURT:

15 I want --

16 WITNESS:

17 And guess who --

18 THE COURT:

19 Wait.

20 One at a time.

21 MS. WILSON:

22 Yes sir.

23 THE COURT:

24 Mr. Buckner is trying to --

25 MS. WILSON:

1 Yes sir.

2 THE COURT:

3 -- to get it down; okay.

4 MS. WILSON:

5 Yes sir.

6 THE COURT:

7 Ask a question, and let her answer
8 it.

9 CROSS-EXAMINATION BY MS. WILSON CONTINUED:

10 Q. Timmy Rogers did not ever admit to killing Fred
11 Engle; did he?

12 A. Yes, he did on the telephone.

13 Q. On the telephone --

14 A. To me. Yes he did.

15 Q. So again, that would be the truth according to you;
16 right?

17 A. No; it's on -- it was on the telephone, when he
18 called me and said:

19 It's done.

20 Q. So you're saying that he was on the telephone with
21 you; correct?

22 A. He was on the phone with me. He called me after it
23 was over with --

24 Q. And --

25 A. -- after he had done what he done.

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1 Q. And of course that is the truth according to you.

2 A. That is --

3 Q. Is that right?

4 A. -- the truth; the whole truth.

5 Q. So you asked him to kill your husband?

6 A. (No response.)

7 Q. Didn't you?

8 A. We discussed it together, Ms. Wilson.

9 Q. And Tim said no; didn't he?

10 A. No he did not.

11 Q. Did you tell Fred to tell --

12 A. He had planned this before and talked about it
13 months before, doing something else with a Larry guy that
14 was -- uh -- a brother to his sister.

15 He wanted to hire that man to
16 shoot my husband.

17 Q. You killed Fred yourself; didn't you?

18 A. I did not kill Fred myself. I wasn't even there or
19 around that.

20 I don't even know what exactly
21 happened. But I'm sure that I could find out if I
22 could've talked to Tim more.

23 Q. So the man you didn't want; the man you didn't want
24 to be bothered with; the man that you did everything in
25 your power to control and to put into position; didn't

1 quite come through for you; did he?

2 A. Not the way that he should have, no; because --

3 Q. Right. Because he refused --

4 A. -- he was not the person that he -- he claims to be.

5 He has another side to him.

6 Q. Because he refused to kill your husband for you;

7 didn't he?

8 A. No, he did not.

9 Q. You --

10 A. No, he did not.

11 Q. When -- When Timmy Rogers met you and you knew he

12 was going through the divorce, he got divorced; didn't

13 you?

14 A. Yes.

15 Q. So he didn't kill his wife; did he?

16 A. No.

17 Q. So you're the only one still in a relationship;

18 right?

19 A. Yes. And you weren't happy where you are? Yes I

20 was happy.

21 Q. And you weren't happy; were you?

22 A. Yes, I was happy.

23 Q. And you were so unhappy that you continue to see

24 Tim; and you were setting Tim up; weren't you?

25 A. I was not setting him up.

CROSS-EXAMINATION OF SHERRY ENGLE

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1 Q. Now -- Now, we're very clear that you pretended to
2 be concerned that something happened to Fred; didn't you?

3 A. That's what I was told to do.

4 Q. You were told to do it? So --

5 A. That was in the --

6 Q. -- you --

7 A. That was in the conversation that me and Tim had
8 had, how I was supposed to be; how he would be.

9 It was all set up, Ms. Wilson --

10 Q. I believe it was --

11 A. -- by me and Tim Rogers.

12 Q. I believe it was set up. But I don't believe Tim
13 Rogers had anything to do with it; because he turned out
14 to not be the person that you could use to get done what
15 you wanted to get done; isn't that right?

16 A. Oh (sighs loudly) -- you're wrong.

17 Q. And so when you get to Tom Richardson's door, and
18 Tom Richardson runs out looking for your husband and
19 comes back not seeing anything, you insist on going back
20 out there; don't you?

21 A. Yes.

22 Q. Because you already know what's happened; don't you?

23 A. Yes.

24 Q. And it was a part of your plan that he should be
25 able to find the evidence of the crime that you already

1 knew had occurred; right?

2 A. I knew where Tim had done it at; yes.

3 Q. You knew where Tim had done it?

4 A. Yes.

5 Q. But you drove him straight to it; right?

6 A. (No response.)

7 Q. You drove him there. He -- You told him where to
8 go? Is that not correct?

9 A. I said: Let's go to the mailbox.

10 Q. So you -- We've already established, correct, that
11 you lied to everybody; basically?

12 A. At that time, yes I did.

13 Q. So you're lied in your first statement on the 21st;
14 right?

15 A. Yes.

16 Q. And you lied in your second statement to police on
17 the 22nd; right?

18 A. (No response.)

19 Q. This is within hours; the next day; right?

20 A. I don't think that's correct.

21 Q. You told the police --

22 A. I think --

23 Q. -- what you --

24 A. I think it was all on the same day of May the -- May
25 the 5th.

CROSS-EXAMINATION OF SHERRY ENGLE

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1 Q. So let's say we're equivocating over some hours. So
2 initially, when the police talked to you, after your
3 husband's body is found, you lie; correct?

4 A. Yes.

5 Q. And then they came and talked to you again that day,
6 and you lie?

7 A. Yes.

8 Q. And then they talked to you a third time; right?

9 A. (No response.)

10 Q. In May?

11 A. Yes.

12 Q. And -- And -- And you knew they wanted the truth;
13 didn't you?

14 A. Yes --

15 Q. You didn't even --

16 A. -- but I wasn't allowed to tell the truth.

17 Q. You wasn't allowed to tell the truth?

18 A. He told me not to tell the truth.

19 Q. So -- So you sign a consent to search and a Miranda
20 rights form, because -- because you thought they didn't
21 really want the truth?

22 A. No. I signed it because I felt like I had to.

23 Q. Okay. So now, the police are the ones who coerced
24 you into making that false statement?

25 A. No.

1 Q. To making that lie?

2 A. No.

3 Q. So then, you admit that you had the truth at your
4 disposal, according to what you say is the truth?

5 But you -- you didn't --

6 A. I didn't tell them --

7 Q. -- feel that you could tell the police?

8 A. I did not tell the truth; no.

9 Q. Okay. So then that same night -- Now -- Now we've
10 established you already lied on T. J.?

11 A. (No response.)

12 Q. Right? You lied on T. J. Seger (? phonetic), the
13 neighborhood boy?

14 A. Uh-huh. Yes.

15 Q. And so you're no stranger to lying on somebody;
16 right?

17 A. No.

18 Q. So you lie on T. J.. And then, the police are
19 talking to you. And you're still lying to all the
20 police?

21 A. (No response.)

22 Q. And then, you call the police back; don't you?

23 A. Uh-huh.

24 Q. After they charge you with -- with a crime; don't
25 you?

1 A. Yes I did.

2 Q. And you called them back, because at that point you
3 realize that everything's looking really dim for you;
4 isn't it?

5 A. No.

6 Q. You called them back, so you can try to get yourself
7 out in front of this crime; get yourself out in front of
8 this situation; and try to turn the tables to protect
9 you; don't you?

10 A. No, did not.

11 Q. And in protecting yourself, you need somebody to be
12 the fall person.

13 A. No.

14 Q. You couldn't get them to what you wanted them to do.
15 So you had to come up with a plausible story so that he
16 didn't end up being a witness against you.

17 Isn't that true?

18 A. That is not true.

19 Q. And when you put Tim as the person who committed
20 this crime, you've automatically helped yourself; haven't
21 you?

22 A. That's not as true.

23 Q. Because, if --

24 A. That's not true.

25 Q. Because, if --

- 1 A. I'm as guilty as he is.
- 2 Q. Because, if it's about --
- 3 A. I'm sitting here telling you I'm as guilty as he is.
- 4 Q. Because it's about for you --
- 5 A. I'm as guilty as he is.
- 6 Q. -- making yourself look the best you can possibly
- 7 look; isn't it?
- 8 A. Am I sitting here doing that, Ms. Wilson?
- 9 Q. Yes you are; aren't you?
- 10 A. No I'm not.
- 11 Q. Because you're --
- 12 A. I'm sitting here telling you I'm as guilty as him.
- 13 Q. You're saying to This Court --
- 14 A. I'm as guilty as him. I'm telling this jury and
- 15 these people:
- 16 I'm as guilty as him.
- 17 Q. You're saying to This Court that you were protecting
- 18 you at every single turn.
- 19 A. I was not protecting me.
- 20 Q. You lied to the police?
- 21 A. I was protecting Tim.
- 22 Q. You lied to Fred Engle's family?
- 23 A. I was protecting Tim.
- 24 Q. I'm sorry?
- 25 A. I was protecting Tim.

CROSS-EXAMINATION OF SHERRY ENGLE

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1 Q. You lied to the Engle Family?

2 A. I did indeed.

3 Q. You lied to your neighbor?

4 A. (No response.)

5 Q. You lied to everybody involved in this case;
6 including Tim Rogers.

7 And what you did is put yourself
8 in a position where you could come out the better?

9 Isn't that what you did?

10 A. I did not.

11 Q. Because by putting yourself in a position to come
12 out better --

13 A. I did not.

14 Q. -- you have given yourself a chance not to be
15 imprisoned --

16 A. I did not.

17 Q. -- indefinitely?

18 A. I did not.

19 Q. Didn't you?

20 A. No, I did not.

21 Q. So -- So finally -- Now, this new story that you
22 came up with to tell the police, you told because you
23 needed something, right?

24 A. (Sighs heavily.)

25 Q. T. J. didn't work out.

1 A. (No response.)

2 Q. Saying -- Claiming yourself as innocent didn't work
3 out?

4 A. (No response.)

5 Q. So you had to work an angle to help you; didn't you?

6 A. No I did not.

7 Q. And basically, the proffer agreement that you did,
8 with the State, helped you; right?

9 A. (No response.)

10 Q. I understand that you don't have a deal; do you?

11 A. I have nothing.

12 Q. But you anticipate a deal; don't you?

13 A. Not really; no.

14 Q. So you're telling This Court that you don't expect
15 anything as a result of your testimony today?

16 A. No, not really.

17 Q. Because --

18 A. I deserve whatever I get.

19 Q. Because it's true, isn't it, that:

20 If your story were to change from
21 what you've already told the State, that you would get
22 absolutely nothing; isn't that right?

23 A. That is not true.

24 Q. That's not a part of your proffer agreement?

25 A. That is not true.

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1 Q. So if your testimony changes today, you're telling
2 us that you're going to get the exact same deal.

3 A. (No response.)

4 Q. That you're going to get anything at all?

5 A. (No response.)

6 Q. You're telling you're still going to get something
7 if you get up here and change everything you've already
8 said?

9 A. I have not been promised anything. And no
10 discussion has been discussed with me about anything on
11 the proffer.

12 Q. But you anticipate the deal?

13 A. No, I do not anticipate anything. I'm as guilty as
14 he is.

15 Q. And --

16 MS. WILSON:

17 The Court's indulgence on second.

18 CROSS-EXAMINATION BY MS. WILSON CONTINUED:

19 Q. So if I had to encapsulate all of this, I would say
20 to you -- or ask you:

21 If you basically -- and you -- and
22 I will say you did it -- you set this whole thing into
23 motion; basically cut Tim off from everybody and
24 everything; moved him down here so you could have a
25 potential patsy if you needed it.

1 A. (No response.)

2 Q. You wanted him here because then -- to cast
3 aspersions on him?

4 That's what you wanted to do;
5 isn't it?

6 A. I did not.

7 Q. And by bringing him down here, when you asked him to
8 kill Fred and he refused, you had to find some
9 alternative means; didn't you?

10 A. No, I did not.

11 Q. And you did -- And you did find those means; didn't
12 you?

13 A. No, I did not.

14 Q. One -- One final question.

15 You didn't see Timmy Rogers kill
16 Fred Engle; did you?

17 A. No I did not.

18 MS. WILSON:

19 Thank you, Your Honor.

20 No further questions.

21 THE COURT:

22 Any redirect, Mr. -- uh --

23 Richardson?

24 MR. RICHARDSON:

25 Just -- uh -- one or two.

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1 questions.

2 REDIRECT EXAMINATION BY MR. RICHARDSON:

3 Q. Sherry, no doubt that you lied to the police a good
4 bit in the cover-up?

5 A. Yes.

6 Q. And you -- uh -- lied to Tom and -- and the rest --

7 A. Yes.

8 Q. -- thinking you could get away with it?

9 A. Yes.

10 Q. Then later, on May 5th, you gave --

11 A. The same day.

12 Q. -- another statement?

13 A. The same day; yes.

14 Q. And you told the police what happened to the best of
15 your knowledge?

16 A. To the best of my knowledge; yes.

17 Q. Okay. And as far as coming in here today and
18 yesterday you've tried to be as truthful as possible?

19 A. I have been truthful.

20 Q. Thank you.

21 A. I want justice for my husband. That's only thing I
22 want. That's all I want.

23 MR. RICHARDSON:

24 Thank you.

25 No further questions, Your Honor.

1 We would ask that she be excused.

2 MS. WILSON:

3 Actually, Your Honor, I need just
4 a couple of more seconds, if The Court would allow?

5 Thank you.

6 RE-CROSS-EXAMINATION BY MS. WILSON:

7 Q. But how -- And I'm sorry to back track you so far.
8 But I -- I need to go over one more thing.

9 The conversation you claim that
10 you had with Timmy Rogers where he was -- you all were
11 discussing, as you said, discussing killing your husband.

12 A. Yes ma'am.

13 Q. Was that at --

14 MR. RICHARDSON:

15 Your Honor, this improper recross.

16

17 THE COURT:

18 You -- Your recross is limited to
19 new matters raised on redirect.

20 MS. WILSON:

21 Yes sir.

22 We withdraw it.

23 THE COURT:

24 Okay. Thank you.

25 MS. WILSON:

1 Thank you.

2 THE COURT:

3 All right.

4 Any further need for this witness?

5 MR. RICHARDSON:

6 No sir.

7 MS. WILSON:

8 None here, Your Honor. Thank you.

9

10 THE COURT:

11 Okay. All right. The witness
12 will be taken back into custody; okay.

13 (WHEREUPON: The witness, Sherry
14 Engle, was escorted from the courtroom at 11:08 AM,
15 October 13, 2011.

16 THE COURT:

17 All right.

18 It's time for your midmorning
19 break.

20 Ladies and gentlemen if you would
21 go to your -- uh -- your juryroom. I think Mr. Roth has
22 some refreshments for you. He'll take care of you. So
23 let's a little break; okay.

24 (WHEREUPON: The jury empanelled
25 in the case withdrew from the courtroom at 11:09 AM,

1 October 13, 2010; and was no longer present during the
2 following proceedings.)

3 THE COURT:

4 Mr. Richardson, anything we need
5 to address before take a break?

6 MR. RICHARDSON:

7 No sir.

8 THE COURT:

9 Ms. Wilson?

10 MS. WILSON:

11 Nothing, Your Honor.

12 MR. RICHARDSON:

13 As far as timing, the next few are
14 going to be pretty quick.

15 THE COURT:

16 Okay. It should move along
17 quickly if I've anticipated what you have.

18 All right.

19 Uh -- Ms. Wilson, just for my
20 purposes, has there been a decision made as to whether
21 the Defendant will testify? Or is that still up in the
22 air?

23 MS. WILSON:

24 It's still slightly up in the air,
25 Your Honor.

1 THE COURT:

2 Okay.

3 MS. WILSON:

4 And I'd like an opportunity to
5 speak to again.

6 THE COURT:

7 No problem.

8 MS. WILSON:

9 Thank you.

10 THE COURT:

11 No problem. I was just thinking
12 in -- in terms of time, all right.

13 MS. WILSON:

14 Yes sir.

15 MR. RICHARDSON:

16 Thank Your Honor.

17 MS. WILSON:

18 Thank you.

19 THE COURT:

20 Okay. We're at ease.

21 (WHEREUPON: The court was
22 declared in recess at 11:10 AM, October 13, 2010)

23 (WHEREUPON: The court was called
24 to order by the Bailiff at 11:29 AM, October 13, 2010;
25 and all pertinent parties, along with their counsel, were

1 back and present in the courtroom.)

2 BAILIFF:

3 Order in The Court.

4 THE COURT:

5 Are we ready?

6 MR. RICHARDSON:

7 The State is ready, Your Honor.

8 MS. WILSON:

9 Yes, sir, Your Honor.

10 THE COURT:

11 All right. Let's bring the jury
12 in.

13 (WHEREUPON: The jury empanelled
14 in the case was escorted back into the courtroom at 11:31
15 AM, October 13, 2010; and was in fact present during the
16 following proceedings.)

17 THE COURT:

18 Mr. Richardson, are you ready to
19 proceed?

20 MR. RICHARDSON:

21 Yes sir.

22 THE COURT:

23 All right.

24 The record will reflect that all
25 of our jurors are back in the courtroom and so is the

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1 Defendant.

2 Call your witness.

3 MR. RICHARDSON:

4 Your Honor, the State would call
5 Chris Carman.

6 CLERK:

7 Please step over her for me.

8 WHEREUPON: CHRIS CARMAN WAS DULY

9 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

10 CLERK:

11 Thank you. Please be seated.

12 Okay. If you will state your

13 full name and spell your last name?

14 WITNESS:

15 Christopher Michael Carman; C-a-r-
16 m-a-n.

17 DIRECT EXAMINATION BY MR. RICHARDSON:

18 Q. Chris, I'm over here. Uh -- I just want you do
19 speak up and look toward the jury; okay.

20 A. (Nods in the affirmative.)

21 Q. Uh -- Chris, tell us how you're related to Sherry
22 Ingle?

23 A. She's my aunt. My dad's sister.

24 Q. Okay. What's your dad's name?

25 Q. Bobby Carman.

1 Q. And your mom?

2 A. Faye Carman.

3 Q. All right. All right. So I'm assuming you've
4 known Sherry all your life?

5 A. Yes sir.

6 Q. Did you ever know Fred Ingle?

7 A. Uh -- Yes; that -- before they got married and while
8 they were married; yes.

9 Q. Okay. Tell us a little bit about Fred?

10 A. Fred was a good man. Uh -- A Family man. Loved his
11 family. Uh -- Love my mom and dad. (Holding back
12 tears.)

13 And -- uh -- I thought a lot of
14 him.

15 Q. Now tell us about the first time you ever saw Timmy
16 Rogers.

17 A. Uh -- The first time I ever saw him was in the
18 parking garage at UOL Hospital.

19 My mom had had a stroke.

20 And -- uh -- I was walking through
21 the parking lot with my wife and my kids. And I saw
22 Timmy on his knee; Sherry standing above him; and they
23 were hugging.

24 Q. Okay.

25 A. And walked 10 feet from them and they acted like

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1 well they didn't even see us, you know.

2 And I asked her about the guy she
3 was hugging in the parking garage.

4 And just said:

5 I wasn't hugging anybody in that
6 parking garage.

7 My wife and I looked at each other
8 like -- you know -- bizarre; but --

9 Q. Did -- uh -- Did you see anymore of Timmy before
10 your uncle Fred's death?

11 A. Yes.

12 Q. And where was that?

13 A. Yeah, I saw him again at the hospital. And then --
14 uh -- my mom and dad had Bible studies at their house on
15 Sundays.

16 Shortly after my mom got out of
17 the Frazier Rehab in Louisville, we started back having
18 Bible Studies.

19 The very first Bible Study, Mr.
20 Rogers was there.

21 Q. Okay. And was -- uh -- Sherry there also?

22 A. Yes sir.

23 Q. Okay. And let's -- At -- At some point, you -- How
24 did you hear that Fred Engle had been killed?

25 A. How did I hear? Or --

1 Q. Yeah. How -- How did you know that your Uncle Fred
2 had died?

3 A. Uh -- My Uncle Bruce, who lives in Florida, had
4 called me at work.

5 I work at General Electric in
6 Louisville, Kentucky.

7 And -- uh -- he had called me and
8 told me that on the phone.

9 Q. All right. Were you -- Now if I told you -- Do
10 you know the day that -- the date that -- uh -- Fred
11 Engle died?

12 A. No sir.

13 Q. All right. Well the date that's in the record is
14 April 21st.

15 Do you know the date that he was
16 buried?

17 A. No.

18 Q. Okay. Do you know approximately how long after his
19 death that he was buried?

20 A. I do not.

21 Q. All right. Do you know if it was more than a week,
22 less than a week, or a week -- somewhere in that range?

23 Can you give us the generality?

24 A. I would say less than a week.

25 Q. Okay. But -- So at this stage, Mr. Engle is

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1 deceased. Where was he buried?. In Horry County or in
2 Kentucky?

3 A. I don't know.

4 Q. Where was the funeral?

5 A. The funeral was at Hardinsburg, yeah.

6 Q. Kentucky?

7 A. Kentucky? Yes sir.

8 Q. All right. Now before the funeral -- before the
9 funeral, but after your Uncle Fred's death -- uh -- did
10 you see Timmy Rogers?

11 A. Yes sir.

12 Q. And about -- uh -- how many days before the funeral
13 would you have seen Timmy Rogers?

14 A. I'd say 4 days.

15 Q. Okay.

16 A. Four.

17 Q. And where did you see Timmy Rogers?

18 A. Uh -- Since my mom -- mom had a stroke, I mow their
19 yard.

20 And I was down there mowing. And
21 he pulls down the driveway.

22 And that's the other time I saw
23 him.

24 Q. What was he driving?

25 A. He was driving his truck that had -- had been

1 primered.

2 Q. Okay. Had you seen this trick before it had been
3 primered?

4 A. Yes sir.

5 Q. And what color was it then?

6 A. Red.

7 Q. When he was -- uh -- Do you mention that to him
8 about the new paint job on his truck?

9 A. Yeah, I asked him if he was painting his truck. He
10 said he and his cousin were going to paint it; yes.

11 Q. All right. Did that mean anything to you?

12 A. At that time, I had a strong feeling; yes.

13 Q. And your feeling was?

14 A. That he did this.

15 MS. WILSON:

16 Objection, Your Honor. Calls for
17 speculation.

18 THE COURT:

19 Sustained.

20 The jury will please disregard the
21 last question and the response.

22 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

23 Q. You certainly felt that there was something strange
24 about what had just happened?

25 A. Yes sir.

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1 Q. Because of that, did you tell anybody?

2 A. Yes I did.

3 Q. And who did you tell?

4 A. Uh -- The Sheriff, Todd Pate, of Breckenridge
5 County.

6 We're close friends. And as soon
7 as he pulled out of the driveway, I called him.

8 Q. And you told him what?

9 A. I told him what had happened with Tim; that he had
10 paint -- uh -- primered his truck.

11 And I gave him the description of
12 the truck and the license plate number of the truck.

13 Q. So you felt enough to go and take down the license
14 plate also?

15 A. Yes sir.

16 Q. And gave the Sheriff a name?

17 A. Yes.

18 Q. All right. Uh -- Did you talk with Tim on that day
19 before your uncle's -- uh -- funeral?

20 A. Uh -- Yes I did.

21 Q. And tell us about that conversation?

22 A. Uh -- He -- He wanted to know about Fred. He wanted
23 to know if they had anybody -- uh -- arrested for what
24 had happened.

25 And I told him -- uh -- that they

1 did.

2 But at the time -- uh -- I didn't
3 know anything more than that.

4 Q. So you knew that they had arrested someone.

5 A. Yes sir.

6 Q. But you still felt strongly enough that Fred (sic)
7 has something to do with it that you called the sheriff?

8 A. Yes.

9 Q. The Breckenridge County Sheriff?

10 A. Yes sir.

11 Q. I pass to you what has been marked as State's
12 Exhibit Number 17; and see if you recognize that?

13 A. Yes sir.

14 Q. And -- Well go ahead. What is that a photograph
15 of?

16 A. That was the truck that he drove down the driveway
17 that day.

18 Q. Okay.

19 A. It's his truck that was primered.

20 Q. Let me pass you what's been marked as State's
21 Exhibit 18; and see if you recognize that?

22 A. Yes. That was the -- the color of his truck before
23 he primered it -- inside his truck.

24 Q. Okay. And where exactly is that --

25 A. That is in the driveway of my mom and dad's house.

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1 Q. All right. States Exhibit 17 is in the driveway --

2 A. Yes sir.

3 Q. -- of your mom and dad's house?

4 A. Yes sir.

5 MR. RICHARDSON:

6 Your Honor, The State would move
7 State's Exhibit 17 and 18 into evidence.

8 THE COURT:

9 All right; Ms. Wilson?

10 MS. WILSON:

11 Without objection, Your Honor.

12 THE COURT:

13 All right; without objection,
14 they're admitted.

15 WHEREUPON: TWO PHOTOS OF THE
16 SUBJECT TRUCK, EARLIER MARKED BY THE COURT REPORTER AS
17 STATE'S EXHIBITS NUMBERS 17 AND 18 WERE ENTERED INTO
18 EVIDENCE WITHOUT OBJECTION.

19 MR. RICHARDSON:

20 Your Honor, we'd would like to
21 publish.

22 THE COURT:

23 You may.

24 MR. RICHARDSON:

25 Thank you.

1 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

2 Q. Fred -- After Fred's funeral, do you know where
3 Timmy Rogers stayed?

4 A. He stayed at my parents house.

5 Q. Okay. And that's Bobby and Faye?

6 A. Yes sir.

7 Q. And do you ever remember a time that he stayed
8 anywhere else during that time --

9 A. No.

10 Q. -- from the funeral to the time he was arrested?

11 A. No.

12 Q. Did you have in concerns about that?

13 A. I did.

14 Q. And what did you do as a result of those concerns?

15 A. Uh -- Let the Sheriff know. And I didn't want him
16 in my parents house.

17 Uh -- I've got a friend that's a
18 State Trooper. I let him know. And -- uh -- they keep a
19 watch out for my family -- for my mom and dad.

20 Q. I want to backup just -- just a bit to the funeral
21 itself.

22 Did Timmy Rogers attend that
23 funeral?

24 A. Yes he did.

25 Q. And did he have any interactions with Sherry at that

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1 funeral?

2 A. Uh -- He brought her some clothes to that funeral
3 home.

4 Q. To the funeral home?

5 A. Yes.

6 Q. Okay. Did they have the funeral at a funeral home?

7 A. Yes they did.

8 Q. All right. Did you see anything during the service
9 that caused you any concern?

10 A. Uh -- Looking back at Timmy, my Aunt Sherry was.

11 Q. She was?

12 A. Yes sir.

13 Q. Did she make any gestures towards him?

14 A. Uh -- Blowing kisses at him. Uh -- We thought that
15 was bizarre.

16 We thought then she was doing to
17 us -- us being me, my two uncles.

18 And then we got to looking at each
19 other, and turned around. And it's Timmy sitting behind
20 us. So --

21 MR. RICHARDSON:

22 Okay.

23 The Court's indulgence?

24 I believe that's all. If you
25 answer any questions Ms. Wilson might have.

1 THE COURT:

2 All right, Ms. Wilson.

3 MS. WILSON:

4 Thank Your Honor.

5 CROSS-EXAMINATION BY MS. WILSON:

6 Q. Mr. Carman -- uh -- now, you say you found Sherry
7 and Timmy in the garage at the hospital?

8 A. Parking garage; yes ma'am.

9 Q. In the parking garage?

10 A. Uh-huh.

11 Q. And when you found them in the parking garage, you
12 say Timmy Rogers was on his knees?

13 A. Yes sir. On one knee.

14 Q. On one knee?

15 A. Yes ma'am.

16 Q. And that Sherry was standing over him; wasn't it?

17 A. Uh -- She was standing in front of him.

18 Q. Standing in front of him?

19 A. Uh-huh.

20 Q. But she was standing and kneeling --

21 A. Yes ma'am.

22 Q. -- correct?

23 A. Uh-huh.

24 Q. And -- uh -- now, you said -- So, Tim's on his
25 knees.

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1 A. (No response.)

2 Q. Is -- Are -- Is begging her? Is she praying?

3 A. Uh --

4 Q. He's hugging her; right?

5 A. Yes.

6 Q. And -- And she's hugging him back?

7 A. She was crying.

8 Q. She was crying?

9 A. Yes ma'am.

10 Q. And -- So she's crying. They're hugging.

11 And then, Sherry lies to you and
12 your wife and says that it never happened; right?

13 A. Yes ma'am.

14 Q. Now, when you talk about -- Let's talk about this
15 truck.

16 I'm sorry, I think the -- okay.

17 Uh -- Talking about the truck --
18 the truck pictures?

19 A. Yes ma'am.

20 Q. You -- You note that the outside of the truck had
21 been primered; right?

22 A. Yes.

23 Q. The inside hadn't changed; had it?

24 A. No.

25 Q. And you didn't notice anything different about the

1 inside at all; correct?

2 A. No.

3 Q. So the truck -- the only difference in the truck is
4 that the outside has been primed --

5 A. Yes --

6 Q. -- to your knowledge; correct?

7 A. Yes ma'am.

8 Q. Now, did you ever see Sherry give Timmy any pills?

9 A. No.

10 Q. Did you ever see Sherry give him money?

11 A. No.

12 Q. Did you ever see Sherry give jewelry?

13 A. No.

14 Q. Matter of fact, you would -- you didn't actually
15 really believe, until you witnessed yourself her making,
16 as you say, blowing kisses at the funeral in Kentucky --

17 A. Yes.

18 Q. -- correct? You never even thought that there was
19 something there; did you?

20 A. Uh -- I thought there was; yes.

21 Q. So you did suspect --

22 A. Yes --

23 Q. -- that Sherry might --

24 A. -- or had a relationship --

25 Q. Yes.

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1 A. Yes ma'am.

2 Q. And so, then, you would have never have expected,
3 though, that she would have arranged to have her husband
4 killed; would you?

5 A. No.

6 Q. And -- So you were surprised by that behavior;
7 weren't you?

8 A. By what behavior?

9 Q. The behavior that she admitted to; that she admitted
10 to having her husband killed; correct?

11 A. Yes.

12 Q. That was a surprise to you?

13 A. Uh-huh.

14 Q. So, in effect -- Well, let me ask you this:

15 You say that Fred loved his
16 family; correct?

17 A. Yes.

18 Q. And until the time that you observed what you
19 observed in the garage, I bet you thought that Sherry
20 loved her husband; didn't you?

21 A. I did.

22 Q. And it would be fair to say that you didn't know
23 Sherry the way you might've thought you knew Sherry;
24 isn't that right?

25 A. Correct.

1 dc

2 No further questions, Your Honor.

3 THE COURT:

4 Mr. Richardson, any redirect?

5 MR. RICHARDSON:

6 None.

7 THE COURT:

8 All right. You may step down.

9 MR. RICHARDSON:

10 Your Honor, may we approach?

11 THE COURT:

12 Certainly.

13 (WHEREUPON: Counsel for each party

14 conferred off the record with The Court at the bench at

15 11:47 AM, October 13, 2010.)

16 THE COURT:

17 All right.

18 Ladies and gentleman, we have --

19 uh -- concluded all the evidence that we can put up this

20 morning.

21 Uh -- I'm going to give you a long

22 lunch time. Uh -- We're going to come back at 2:00.

23 If you could, be back about 1:45.

24 Uh -- That's about two hours.

25 But if you would, be back in your

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1 juryroom at 1:45, if you would.

2 Thank you.

3 (WHEREUPON: The jury empanelled
4 in the case withdrew from the courtroom at 11:51 AM,
5 October 13, 2010; and was no longer present during the
6 following proceedings.)

7 THE COURT:

8 All right.

9 Uh -- We're going to break until
10 two o'clock.

11 I do want to place on the record
12 -- uh -- my feeling and understanding concerning
13 Detective Collins' testimony.

14 Now it's my understanding that
15 he's going to be testifying as to the location -- the on
16 the ground location of these lats and longs -- longitudes
17 and latitudes that were testified to by the AT&T
18 representative.

19 Now my initial finding is that:

20 That is self authenticating under
21 Rule 901, Subsection 7 -- uh -- I think it's -- uh --
22 (b) 7 -- as being part of a public record or database.

23 And that is the -- the location,
24 because it's coming from the National Oceanic And
25 Atmospheric Agency.

1 And I think that qualifies as self
2 authenticating.

3 However, we still have the issue
4 of it being hearsay.

5 And my -- my feeling at this time
6 is that:

7 Based upon your representation,
8 Mr. Richardson, that it would then be an exception to --
9 to the hearsay rule, again, as being a part of a public
10 record under 803(8), I think.

11 Isn't that correct?

12 MR. RICHARDSON:

13 Yes sir; 803(a) -- uh -- excuse me
14 -- 803(8).

15 THE COURT:

16 Eight.

17 Now, I will want to hear you if
18 you have -- uh -- another section that you are offering
19 as the authority for admission of that testimony?

20 Self authenticating under 901, and
21 exception to hearsay under 803; is that --

22 MR. RICHARDSON:

23 That's it.

24 THE COURT:

25 -- that the State's position?

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1 MR. RICHARDSON:

2 Yes sir.

3 THE COURT:

4 Okay. All right.

5 Now, Ms. Wilson, you know my
6 position on this.

7 We will see what develops in
8 trial.

9 The reason I wanted this record is
10 so that you -- You made a motion in limine.

11 MS. WILSON:

12 Yes sir.

13 THE COURT:

14 I want you to understand my
15 reasons for ruling as I have.

16 MS. WILSON:

17 Yes sir.

18 THE COURT:

19 And my reasons are based upon
20 representations as to the witnesses' testimony by the
21 State.

22 If it strays from that -- uh --
23 then, of course, you can renew your motion, or add -- add
24 other grounds for your motion.

25 Do you understand that?

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1 MS. WILSON:

2 Yes sir.

3 THE COURT:

4 I just want everybody to be clear
5 as to where we're going.

6 All right.

7 We're at ease until two o'clock.

8 MS. WILSON:

9 Thank Your Honor.

10 MR. RICHARDSON:

11 Thank Your Honor.

12 THE COURT:

13 Thank you all.

14 (WHEREUPON: The court was

15 declared in recess at 11:54 AM, October 13, 2010.)

16 (WHEREUPON: The court was called
17 to order by the Bailiff at 2:03 PM, October 13, 2010; and
18 all pertinent parties, along with their counsel, were
19 back and present in the courtroom.)

20 DEPUTY:

21 Order in the court. All Rise.

22 THE COURT:

23 Good morning. Good afternoon.

24 Glad to see everybody back. Have
25 a seat.

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1 You ready to go, Mr. Richardson?

2 MR. RICHARDSON:

3 Your Honor --

4 THE COURT:

5 I see him back there.

6 MR. RICHARDSON:

7 Kia said it would be okay for him
8 to come in.

9 MS. WILSON:

10 I said okay, Your Honor.

11 MR. RICHARDSON:

12 Let me -- uh -- Your Honor, let me
13 -- uh -- run something by you --

14 THE COURT:

15 All right.

16 MR. RICHARDSON:

17 -- concerning this mapping stuff.

18 We -- Before we bring the jury in,
19 we've had a change of plan.

20 We tried to plot it on NOAA. But
21 it -- But it showed up so small that the X would take up
22 the better part.

23 Instead of doing that, we have
24 brought a representative from ATT that owns the towers.

25 And he is going to say:

1 I'm not going on a latitude and
2 longitude. I'm going on the SID Number where the tower
3 is located.

4 Uh -- He has personally been to
5 all of them.

6 He has brought the map from --

7 THE COURT:

8 Of course, that resolves the
9 issue; doesn't it?

10 MR. RICHARDSON:

11 Okay.

12 THE COURT:

13 Right, Ms. Wilson?

14 You finally got what you wanted?

15 MS. WILSON:

16 Yes, sir, Your Honor.

17 Uh -- My understanding is that
18 this HTC representative is a technician who works on the
19 towers.

20 THE COURT:

21 Yes.

22 MS. WILSON:

23 And is actually going to be
24 talking about locales.

25 MR. RICHARDSON:

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1 Uh-huh.

2 MS. WILSON:

3 Okay.

4 THE COURT:

5 All right. Very well.

6 Let's bring the jury in. I think

7 Dr. Proctor is going to be next.

8 Is that correct?

9 MR. RICHARDSON:

10 Yes sir. I'm going to call Dr.

11 Proctor next.

12 THE COURT:

13 All right.

14 (WHEREUPON: The jury empanelled
15 in the case was escorted back into the courtroom at 2:06
16 PM, October 13, 2010; and was in fact present during the
17 following proceedings.)

18 THE COURT:

19 Good. I think we have all our
20 jurors.

21 I hope you had a nice lunch, and
22 are ready to work this afternoon.

23 Uh -- Mr. Richardson, you ready to
24 go the next witness?

25 MR. RICHARDSON:

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1 Yes sir, Your Honor.

2 The State would call Dr. Ed
3 Proctor.

4 THE COURT:

5 Come around, Dr. Proctor.

6 WHEREUPON: DR. EDWARD L. PROCTOR
7 WAS DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

8 CLERK:

9 Thank you. Okay, if you would
10 state your full name and spell your last name.

11 WITNESS:

12 Yes ma'am.

13 I'm Edward Leroy Proctor, Jr.; and
14 that is P-r-o-c-t-o-r.

15 DIRECT EXAMINATION BY MR. RICHARDSON:

16 Q. Dr. Proctor -- uh -- please, if you would, give the
17 jury the benefit of your education and expertise.

18 A. Yes sir. I -- uh -- received my -- uh -- college
19 diploma at Clemson, and my medical diplomas at the
20 Medical University of South Carolina.

21 That was followed by a residency
22 in pathology at Walter Reed Army Medical Center in
23 Washington, DC.

24 At that time, I completed all of
25 my requirements for subspecialty certification in

1 forensic pathology.

2 And upon completion of all my
3 training, I became board-certified in anatomic pathology,
4 clinical pathology, and forensic pathology.

5 I served four years active duty
6 following my training at -- uh -- Womack Army Hospital at
7 Fort Bragg, North Carolina, as Chief of Clinical
8 Pathology; and have been in private practice since that
9 time.

10 Q. Where do you -- uh -- where do you practice from?

11 A. I -- uh -- have a private practice of pathology with
12 offices at Grand Strand Regional Medical Center in Myrtle
13 Beach.

14 Q. And approximately how many autopsies have you
15 performed?

16 A. Uh -- Gees -- uh -- We do approximately 250 to 300 a
17 year. And I've been doing it for about 20 years?

18 Q. So thousands?

19 A. Yes sir.

20 Q. Have you ever been qualified as an expert in South
21 Carolina?

22 A. Yes sir, I have.

23 MR. GALMORE:

24 Your Honor, we would stipulate to
25 Dr. Proctor's qualifications as an expert in -- uh --

1 forensic or anatomical pathology and forensic pathology.

2 THE COURT:

3 Clinical, forensic, and anatomic
4 pathology?

5 MR. GALMORE:

6 Yes sir.

7 THE COURT:

8 So admitted.

9 WITNESS:

10 Yes sir.

11 MR. RICHARDSON:

12 Thank Your Honor.

13 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

14 Q. Dr. Proctor, did -- uh -- you have a chance to
15 perform an autopsy on Mr. Frederick Engle?

16 A. Yes sir, I did.

17 Q. And tell the jury please -- uh -- the date and time
18 of that autopsy?

19 A. I was contacted by the Deputy Coroner -- uh -- Ms.
20 Willard. And this autopsy was performed on April 22nd,
21 2008, at approximately 8:00 AM.

22 Q. Were you given the time of death?

23 A. Uh -- I was told at the time of autopsy the time of
24 death was approximately 10:30 PM on April 21st.

25 Q. All right. So less than a day?

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1 A. Yes sir; that -- uh -- Based upon what I was told,
2 about -- uh -- somewhere around 12 hours or less.

3 Q. And tell the jury, if you would, your findings with
4 regard to the body of Mr. Frederick Engel?

5 A. Mr. Engle had been strangled.

6 There was a shoe lace ligature
7 pulled tightly around the neck, angled straight up,
8 posteriorly -- uh -- causing extensive grooving of the
9 tissues of the neck, the skin, and the muscles underlying
10 that.

11 Uh -- This -- uh -- ligature was
12 tight enough such that it -- uh -- caused the blood
13 vessels around the conjunctivae of the eye to show
14 petechiae or hemorrhage.

15 And it -- uh -- also caused
16 swelling of the brain, as well as hemorrhage in the
17 brainstem area.

18 Q. Were you able to determine a cause of death?

19 A. Yes sir, I was.

20 Q. And what the cause of death?

21 A. The death was asphyxia due to ligature
22 strangulation.

23 Basically, the ligature tightened
24 around the neck, cutting off the blood supply and causing
25 asphyxia.

1 Q. And were you able to determine whether -- uh -- How
2 did you label this death?

3 A. Uh -- Manner of death -- uh -- Based upon the
4 information I had at the time of autopsy, my findings:

5 Uh -- Manner of death was
6 determined to be homicide.

7 Q. Dr. Proctor, did you see any -- uh -- indications of
8 defensive wounds on -- from the victim?

9 A. Uh -- Mr. Engle had a couple of things present.

10 He had -- uh -- an abrasion
11 contusion of the middle joint of his right thumb.

12 The mental joint here
13 (indicating).

14 He had a periorbital contusion
15 around one of his eyes with a -- with a laceration in the
16 mid-portion -- uh -- which to me would indicate attempts
17 at fighting the ligature; and possibly being pushed
18 forward onto the ground, striking his head, with someone
19 behind him pulling the ligature tight.

20 Q. And -- And that's -- uh -- sort of -- uh -- an
21 important point.

22 What is the first thing in -- in
23 your studies that people do upon being choked?

24 A. Uh -- The initial reaction of anyone who has blood
25 supply immediately cut off is to open the airway.

1 If it's an obstruction of the
2 airway, the first move is to try to open the airway,
3 whether that be sticking your hands around the ligature,
4 or trying to break the glass in a window if there's smoke
5 or something; but to try to get to air.

6 Q. Uh -- Would it be fair to say that you would try to
7 remove that even before you tried to -- uh -- work
8 towards your attacker?

9 A. Uh -- I would -- uh -- Based upon what I have
10 studied and read, the attempts are to open the airway by
11 any means whatsoever.

12 So I would -- uh -- feel that --
13 uh -- the person being strangled -- initial response
14 would be:

15 Go for the ligature.

16 Q. I'm going to pass to you a few exhibits.

17 MR. RICHARDSON:

18 And Your Honor, I'm showing these
19 to --

20 WHEREUPON: Mr. Richardson goes
21 over to Defense Counsel's table and shows the parties
22 present the subject exhibits.)

23 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

24 Q. Dr. Proctor, I hand you a series of photographs.
25 Tell me if you recognize those?

1 A. Yes sir, I do. These are photographs taken at the
2 time of autopsy by the -- uh -- crime scene people from
3 the County.

4 Q. And those were taken at Grand Strand?

5 A. They were taken in the morgue at Grand Strand; yes
6 sir.

7 MR. RICHARDSON:

8 All right, Dr. Proctor.

9 Your Honor -- And the State would
10 move State's 15, 16, 28, 29, 30, 31, 32, 33, 34, 35, and
11 36 in evidence.

12 THE COURT:

13 Have you had an opportunity to
14 review these photographs, Mr. Galmore?

15 MR. GALMORE:

16 Yes sir.

17 THE COURT:

18 All right. Any objection?

19 MR. GALMORE:

20 I would object on the grounds that
21 Dr. Proctor has testified about all of the information
22 that's contained in the photographs already.

23 And therefore, the photographs are
24 just cumulative, Your Honor.

25 THE COURT:

TESTIMONY OF DR. EDWARD L. PROCTOR

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1 All right. I'm going to let them
2 in.

3 MR. GALMORE:

4 Yes sir.

5 MR. RICHARDSON:

6 Thank Your Honor.

7 WHEREUPON: SEVERAL PHOTOGRAPHS
8 EARLIER MARKED BY THE COURT REPORTER AS STATE'S EXHIBITS
9 NUMBERS 15, 16, 28, 29, 30, 31, 32, 33, 34, 35, AND 36,
10 WERE ENTERED INTO EVIDENCE OVER OBJECTION BY DEFENSE
11 COUNSEL.

12 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

13 Q. Dr. Proctor, would -- uh -- in the description,
14 you've talked about some of the -- uh -- injuries to the
15 Defendant.

16 Uh -- Do you think it would help
17 the jury to be able to see exactly what injuries you were
18 talking about?

19 A. Well, photographs always illustrate the -- the
20 injuries that -- uh -- that we see; yes sir.

21 Q. I want to -- uh -- And I'll start with State's
22 Exhibit 36.

23 If you'll describe that; and then
24 I'll hold it up for the jurors.

25 A. Uh -- This is a photograph -- close-up photograph --

1 of the victim's neck with the ligature pulled tight, as
2 it was when we received the body.

3 It shows the grooving of the
4 muscles of the neck.

5 Q. Now, Dr. Proctor, the -- uh -- grooving of the
6 muscles? I -- I see that there's some overlap of the
7 skin.

8 Does that tell you anything?

9 A. Uh -- That just -- uh -- indicates that the ligature
10 was pulled extremely tight, compressing the skin and the
11 underlying muscles that allowed the layers of skin to
12 sort of -- to contact each other around it.

13 Q. And with that is -- I'm guessing that it cuts off
14 the -- uh -- blood supply?

15 A. What happens with a ligature in that manner is:

16 It cuts off the blood supply.

17 And in this case, it cut off the
18 oxygenated blood going to the head, as well as the return
19 of blood from the head.

20 And that was evidenced by the
21 petechiae in the eyes.

22 The blood could not return.

23 Therefore, it created increased
24 pressure and showed the -- uh -- bleeding around the
25 eyes.

1 Q. I want to again show you 34.

2 If you would, tell the jury what
3 you are demonstrating there?

4 A. This Number 34 demonstrates -- is a photograph of
5 the victim's eye showing the -- disregarding the pads and
6 all that, but looking at the eye itself -- shows the
7 hemorrhage that is beginning to develop around the eye --
8 around the tissues and the eye.

9 Q. And Dr. Proctor, exactly, if you could, tell us what
10 that means; the hemorrhaging around the eye?

11 A. Again, that just means that there was pressure to
12 the point that the blood could not return from the head
13 -- the vessels in the head -- to the heart, because the
14 ligature was tight enough that it cut off all blood flow.

15 Q. Thank you sir. I passed to you, State's Exhibit 31
16 and 35.

17 If you could describe those for
18 the jury.

19 First of all, is that the same
20 wound?

21 A. I am -- 35 is an extremely close-up shot that I am
22 not exactly sure what that one is.

23 But 31 -- 31 is the contusion with
24 laceration above the left eye that I described earlier.

25 This one is extremely close,

1 showing either the grooving of the ligature -- I'm not
2 sure.

3 But this one is definitely of the
4 eye with the -- uh -- confusion and small laceration.

5 Mr. Galmore

6 35 -- uh --

7 THE COURT:

8 All right.

9 Was it 35, we had some question as
10 to what it was?

11 MR. RICHARDSON:

12 Yes sir.

13 THE COURT:

14 Okay. We'll withdraw that one.

15 MR. GALMORE:

16 Yes sir. Thank you sir.

17 THE COURT:

18 I knew that what you were about to
19 do, Mr. Galmore. I just went ahead and did it for you.

20 DIRECT EXAMINATION BY MR. RICHARDSON CONTINUED:

21 Q. Is that -- uh -- The size of the ligature the major
22 -- the only other major one that you saw on the victim's
23 body?

24 A. Other than small contusions in the middle joint of
25 his thumb.

1 But -- uh -- but that was the only
2 other major injury that we did see.

3 Q. Does that show the injury of the thumb?

4 A. Yes sir, it does. You can barely see it. But it's
5 on the -- the middle joint of his right thumb; sort of
6 the middle joint in this area here.

7 You can barely see it sitting
8 right there.

9 Q. And you believe that that could have been caused by
10 fighting against the ligature?

11 A. That -- uh -- It -- It's certainly possible that it
12 could. Fighting against ligature, hands up, trying to
13 get the ligature, falling against the ground.

14 Uh -- It could have been any
15 number of things, so -- But yes, it's probably related to
16 the attempts of trying to get the airway open.

17 Q. Dr. Proctor, how did you -- uh -- get the ligature
18 away from the neck?

19 A. We -- When we remove ligatures in all of these
20 cases, we try to not cut them. We try to keep them
21 intact.

22 And in this case, we were able to
23 -- There was a sort of a slipknot. We were able to
24 loosen it just enough to pull it over the head.

25 Q. Okay. So the knot itself was a slipknot?

1 A. Uh -- To my recollection, it was a slipknot, yes
2 sir.

3 Q. Okay. And let me pass to you what has been marked
4 as State's Exhibit Number 1.

5 And I'll ask you if you recognize
6 this?

7 A. Yes sir, I do.

8 Q. And what is that, Dr. Proctor?

9 A. That is a shoestring ligature that I removed from
10 the neck of Mr. Ingram.

11 Q. Thank you. And what did you do -- uh -- uh -- after
12 taking this from the neck of Mr. Engle?

13 A. That was -- uh -- given directly to the Horry County
14 Crime Scene Officer.

15 MR. RICHARDSON:

16 Thank you.

17 And Your Honor, the State would
18 move State's Exhibit Number 1 into evidence.

19 MR. GALMORE:

20 No objection.

21 THE COURT:

22 Without objection.

23 WHEREUPON: A SHOE STRING LIGATURE
24 EARLIER MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT
25 NUMBER 1 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

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1 MR. RICHARDSON:

2 Give me just a second, Dr.

3 Proctor.

4 I believe that's all the questions

5 I have. If you would answer any questions for Mr.

6 Galmore?

7 CROSS-EXAMINATION BY MR. GALMORE:

8 Q. Dr. Proctor, you indicated that you performed an
9 autopsy at 8:00 AM on April 21st?

10 Is that right?

11 A. April 22nd.

12 Q. I'm sorry; April 22nd?

13 A. Yes sir.

14 Q. And I think you testified that -- uh -- you were
15 given some information that the body may have been -- uh
16 -- uh -- that he may have been killed about 12 hours
17 earlier, approximately?

18 A. I -- I was told by the Deputy Coroner, Ms. Willard,
19 that it was approximately 10:30 or so the night before;
20 and that -- uh -- he'd been found in a wooded area
21 adjacent to where he lived.

22 Q. Yes sir. Uh -- Did you conduct any type of testing
23 or anything to try to independently verify the time of
24 death?

25 A. Uh -- Other than observations as to degree of

1 decomposition and what not that you can do grossly, that
2 was what I performed.

3 Q. Yes sir. So you were able to independently verify
4 the time of death?

5 A. Uh -- Within -- Within reason, I can say that this
6 man died within 24 hours of the time I posted him.

7 I did not do internal
8 temperatures.

9 When I actually was there to
10 perform the autopsy, the body had already been in the --
11 uh -- refrigeration unit at the morgue.

12 So -- uh -- we did not.

13 Other than -- Other than my
14 observations that there was no evidence of decomposition,
15 I could say that -- uh -- he -- he'd died within the
16 previous 12 to 20 -- 12 to 24 hours.

17 Q. Okay. Because you can look at the amount of
18 decomposition to a body to determine approximate time of
19 death? Is that true?

20 A. You can -- You can -- uh -- You can look at a body,
21 and get an idea as to:

22 Has it been a few hours or say,
23 greater than a day.

24 But -- uh -- to pin it down to,
25 can I say that:

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1 Based upon my gross observation,
2 was 10:30 PM; boom?

3 No sir. There's no way.

4 There's no way I can accurately do
5 that.

6 Uh -- Temperature measurements are
7 a little more accurate. But even those -- you know --
8 they have variability in there.

9 So about the best we could ever
10 hope to do.

11 Unless it broke a watch or
12 something during the -- during the time that this was
13 committed, it's very hard to give you an exact -- exact
14 time.

15 I just can't do it.

16 Q. Okay. It -- It's also my understanding that you
17 can look at insects to determine an approximate time of
18 death also?

19 A. Uh -- You can look at insect larvae on decomp --
20 decomposed bodies to get an idea.

21 Uh -- You can look at insect
22 activity at the time of autopsy, which there was some
23 insect activity in this man's case.

24 It -- Just say that -- uh -- you
25 know -- there were insects present.

1 But that -- that can occur very
2 rapidly, depending on where the body is.

3 Q. But the bottom line is that:

4 You were able to independently
5 verify an approximate time of death --

6 A. Yes sir.

7 Q. -- based on your gross observation of the body?

8 A. I was. Yes sir. Yes I was.

9 Q. Now, would it be fair to say that the first thing
10 you do in an autopsy is a visual inspection of the body?

11 A. Yes sir.

12 Q. And in this case, what type of observations did you
13 make?

14 A. Uh -- The observations that I made specifically were
15 that:

16 There was a ligature very tightly
17 pulled around this man's neck, angled posteriorly in the
18 back, grooving enough that there was overlapping of the
19 skin to hide the ligature.

20 There was some seepage of blood
21 from around parts of the ligature.

22 Eyes were swollen; bloodshot.

23 Uh -- Some -- The spot on his
24 thumb and the abrasions on his face, and -- and evidence
25 that -- uh -- some insects had been there.

1 Particularly, the -- From the
2 pattern, it looked like some ants had been -- uh -- been
3 present.

4 Q. When you -- When you -- uh -- uh -- observed the
5 ligature around his neck, you -- you don't particularly
6 stop to say:

7 Oh, there's a ligature around his
8 neck. I figured out how -- how -- the manner and cause
9 of death?

10 A. Uh -- No sir. Uh -- We certainly look at that
11 ligature.

12 And then once we look at the
13 ligature, we care -- try to carefully remove it.

14 We examine all of the tissues
15 underlying that area; i.e.

16 We reflect the skin back; the
17 muscles back; look at that.

18 Look at the grooving on the
19 trachea.

20 We examine the hyoid bone, which
21 is a bone way up high in front of the -- uh -- windpipe
22 area.

23 And, in cases of manual
24 strangulation, sometimes pressure on the hyoid bone can
25 break it.

1 That's just -- It's a finding
2 that's there. If it's not there, it doesn't mean it
3 didn't happen.

4 We examine that.

5 Uh -- We looked at the grooves on
6 the trachea.

7 Looked at the grooves on the strap
8 muscles.

9 Saw where the ligature had come
10 across all of the blood vessels in the front of the neck
11 going to the head -- uh -- and noted all the findings of
12 the -- the blood in the head and those things.

13 Q. You stated in your direct testimony that -- uh --
14 the ligature was angled straight up posteriorly.

15 A. Uh-huh.

16 Q. What does that mean?

17 A. That means that:

18 When this ligature was thrown
19 around the man's neck, it was pulled tight from behind
20 with the knot in the back; and pulled tight up this way
21 (indicating) -- straight up.

22 Q. Okay. So how would you distinguish this particular
23 case from a suicide?

24 A. Uh -- There is no way that I could -- that -- Well,
25 I don't know of anyone who could suicidely strangle

1 himself, number one.

2 Number two:

3 A ligature pulled back that way --

4 Now, had he hung himself, it could have been that way.

5 It could have been anywhere.

6 But it was just pulled straight

7 back --

8 Q. Got you.

9 A. -- you know. Uh -- Other than tell you that that
10 knot was straight in the back, it could have been there
11 if somebody had of hung this man, or -- or whatever.

12 Q. Okay. So if -- if there was a hanging -- uh --
13 would the ligature have been angled straight up
14 posteriorly?

15 A. It could've been; yes sir.

16 Q. You indicated that when you visually inspected the
17 body, you saw some blood.

18 Did you determine the source of
19 the blood?

20 A. Uh -- The blood was -- uh -- around the ligature
21 itself. And there was some abrasion of the skin
22 underlying that, which appeared to be where the blood was
23 coming from.

24 Q. So the blood was coming from around the --

25 A. Yes sir.

1 Q. -- the skin had been --

2 A. Where the skin had been -- uh -- abraded by the
3 ligature.

4 Q. Okay. And you indicated that you reflected the
5 skin to look under -- under the skin to -- to look for
6 evidence also?

7 Is that correct?

8 A. That is correct.

9 Q. Okay. Did you have the opportunity to look at
10 perhaps the carotid artery or jugger vein?

11 A. When we -- uh -- When we reflect the skin -- As a
12 part of every forensic case we do, we trace out the
13 carotid arteries, both right and left.

14 The big reason we do that in cases
15 other than strangulation is:

16 We tie them off, so that it makes
17 it easy for the -- uh -- undertaker to embalm the
18 deceased.

19 But in this case, we reflected the
20 carotids and the jugger veins, and could note the
21 groovies right along with the strap muscles that overlie
22 those vessels, as well as the trachea ring's anterior.

23 Q. So you -- you observed a damage to the -- uh --
24 carotid arteries and to the --

25 A. You could see --

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1 Q. -- juggler?

2 A. You could see the compression marks; yes sir.

3 Q. And during the external description of the body you
4 indicated that:

5 There was an abrasion along his --
6 uh -- left eyebrow area?

7 A. Yes sir.

8 Q. And I think you said was five centimeters by 4
9 centimeters?

10 A. Uh -- Let's see. There is -- There is a -- 5 -- 4
11 centimeter abrasion with a central laceration along the
12 left eyebrow.

13 And the central laceration
14 measured a centimeter in the middle of that abrasion.

15 So what I'm talking about:

16 Contusions, abrasions, a bruise
17 with a same laceration in the middle of it.

18 And the laceration was closed --
19 so the result of blunt trauma.

20 Q. Was that the only abrasion to his facial area --
21 only bruising --

22 A. The only that I saw; yes sir.

23 Q. Could you tell this jury whether or not that injury
24 occurred prior to the strangulation or afterward?

25 A. Uh -- The -- The injury was a fresh injury.

1 As to whether it occurred just
2 prior to, or during, or posterior to the strang -- or
3 after the strangulation; no sir.

4 It's all in the same timeframe,
5 because it was fresh -- fresh blood, very -- Contusions
6 and abrasions, when they first happen, you see red, blue,
7 green, yellow, brown, in terms of how they change color.

8 Q. Yes sir.

9 A. And this was a -- This was a very reddish, bluish,
10 contusion, so it was very fresh.

11 Q. Okay. But you couldn't tell the jury if Mr. Engle
12 was hit in the head before he was strangled?

13 A. No sir, I cannot. I cannot.

14 Q. Could you tell from that laceration whether that --
15 that -- that wound was inflicted by a man or a woman?

16 A. No sir.

17 Q. Could you tell the jury anything about the amount of
18 force that was used to inflict that wound?

19 A. I -- It was a laceration.

20 Laceration, by definition, occurs
21 as a result of blunt trauma.

22 And laceration versus incised
23 wound:

24 In a laceration, when you look at
25 the little tissue bridges that run in between the edges